IMPROVEMENT OF BENEFITS UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT

HEARINGS

BEFORE THE

SELECT SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 10721 and Similar Bills

TO AMEND THE FEDERAL EMPLOYEES' COMPENSATION ACT TO IMPROVE ITS BENEFITS, AND FOR OTHER PURPOSES

HEARINGS HELD IN WASHINGTON, D.C.
SEPTEMBER 8, 14, 15, AND 16, 1965

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IMPROVEMENT OF BENEFITS UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT

WEDNESDAY, SEPTEMBER 8, 1965

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2261, Rayburn House Office Building, Hon. James G. O'Hara presiding.

Present: Representatives O'Hara, Pucinski, Hathaway, Quie, Gurney, and Bell.

Also present: Jim Harrison, director of subcommittee, and Michael J. Bernstein, minority counsel.

Mr. O'HARA. The Select Subcommittee on Labor will come to order.

This morning, we are opening hearings on legislation to amend the Federal Employees' Compensation Act. This is one of 54 workmen's compensation acts in force in the several States, Puerto Rico, the District of Columbia, and nationally, providing for compensation for injury incurred by working people in the course of their employment.

This Federal act covers only the civilian employees of the Federal Government, while the State acts cover employees of private concerns. The concept of workmen's compensation is a 20th century one, having begun in this country with a Federal act of 1908 covering public employees, and having spread to all of the States by 1948.

Today and next week, the subcommittee will examine the proposals before us to determine how to bring the Federal act up to date, how to make its benefits realistic and how the Federal act can profit from the experiences of the States.

Among the bills so far introduced in the House to amend the act are: H.R. 314, by Mr. Hosmer; H.R. 596, by Mr. Multer; H.R. 2624, by Mr. Miller; H.R. 3826 and H.R. 6554, by Mr. Sickles; H.R. 4478, by Mr. Collier; H.R. 5288, by Mr. Fascell; H.R. 6554, by Mr. Sickles; H.R. 9648, by Mr. Dyal; H.R. 10225, by Mr. Farnsley; and my own bill, H.R. 10865.

In addition to these bills, our distinguished colleague from Maine, Mr. Hathaway, has introduced H.R. 10721, a bill recommended by the Secretary of Labor.

At this point, if there is no objection, the texts of these bills will be made a part of the hearing record, beginning with H.R. 10721, to which Mr. Donahue will direct his testimony.

(The bills referred to follow:)

[H.R. 10721, 89th Cong., 1st sess.]

A BILL To amend the Federal Employees' Compensation Act to improve its benefits, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE

SEC. 101. This Act may be cited as the "Federal Employees' Compensation Act Amendments of 1965".

TITLE II—IMPROVEMENTS IN BENEFITS

INCREASED MAXIMUM AND MINIMUM COMPENSATION

SEC. 201. Section 6(a)(1) of the Federal Employees' Compensation Act, as amended by striking "$420" (the limit for computing augmented compensation for dependents), and inserting in lieu thereof "$546".

INCREASED MAXIMUM AND MINIMUM COMPENSATION

SEC. 202. Section 6(c) of the Federal Employees' Compensation Act (maximum compensation amount) is amended to read as follows:

"(c) Except as otherwise authorized under section 42, the monthly rate of compensation for disability, including any augmented compensation payable by reason of subsection (a) but not including any sum payable by reason of subsection (b), shall not be more than $685 per month and in cases of total disability shall not be less than $210 per month, unless the employee's monthly pay is less in which case his monthly rate of compensation for total disability shall be equal to his full monthly pay."

SEC. 203. Section 10(K) of the Federal Employees' Compensation Act (maximum death benefit amount), is amended to read:

"(K) In computing compensation under this section the monthly pay shall be considered not to be less than $280, but the total monthly compensation shall not exceed the monthly pay computed as provided in section 12 or the sum of $685."

AUTHORITY TO CONTINUE BENEFITS ON ACCOUNT OF SURVIVING CHILDREN FOR SCHOOL ATTENDANCE

SEC. 204. Paragraph (C) of section 10 of the Federal Employees' Compensation Act (authorizing compensation for children), is amended by adding the following new sentence: "However, as approved by the Secretary and under regulations prescribed by him, compensation payments on account of a child or to a child under any provision of this section, may be extended after his eighteenth birthday to permit him to continue his education or training on a full-time basis until he completes his program of education or training at an educational or training institution, as such terms are defined by the Secretary of Labor, or reaches the age of twenty-three, whichever is earlier. Payments of such compensation may be made on account of or to any unmarried child who prior to the effective date of the Federal Employees' Compensation Act Amendments of 1965 has passed his eighteenth birthday (and for whom compensation was being paid prior thereto) but who has not reached his twenty-third birthday nor completed his program of education or training at an educational or training institution, as defined herein, by such date."

SEC. 205. The third sentence of section 10(H) of the Federal Employees' Compensation Act (defining "child"), is amended by changing the period after "self-support" to a comma, and adding the following: "or on whose account or to whom compensation may be continued under section 10(C) of this Act to permit them to continue their education as authorized under section 10(C)."

SECRETARY'S RULEMAKING AUTHORITY IN EMPLOYMENT OUTSIDE THE UNITED STATES

SEC. 206. Section 32 of the Federal Employees' Compensation Act (rulemaking authority), is amended by adding the following: "In the adjudication of claims under section 42 of this Act, the Secretary shall have the authority to determine

the nature and extent of the proofs and evidence required to establish the right to benefits under this Act without regard to the date of injury or death for which claim is made."

TITLE III—INCREASE OF COMPENSATION FOR PRESENT BENEFICIARIES

SEC. 301. The monthly pay for disability or death awarded under the Federal Employees' Compensation Act at the time of this enactment shall be increased with respect to any period beginning on or after the first day of the first calendar month following the date of this Act by the annual average percentage change in the Consumer Price Index (all items—United States city average), published by the Bureau of Labor Statistics, as determined by the Secretary of Labor, since the year in which the award was made, offset on a percentage basis by any increase heretofore authorized by Congress in awards.

TITLE IV—MISCELLANEOUS

SEC. 401. Except for benefits provided under section 10(C) of the Federal Employees' Compensation Act (compensation for children), nothing in this or any other Act of Congress shall be construed to make the increases authorized herein applicable to military personnel or to any person or employees not within the definition of "employee" in section 40(b) (1) or (2) of the Federal Employees' Compensation Act. However, these amendments shall apply to employees of the government of the District of Columbia other than members of the Police and Fire Departments who are pensioned or pensionable under the provisions of the Policemen's and Firemen's Retirement and Disability Act.

SEC. 402. (a) No provision of the Federal Employees' Compensation Act Amendment of 1965 shall be construed to permit the amount of compensation on account of an employee's disability or death to be reduced on the basis of changes in the Consumer Price Index as determined by the Secretary hereunder.

(b) No increase in compensation authorized under section 301 shall exceed the percentage of annual average change in the Consumer Price Index as determined by the Secretary.

SEC. 403. The provisions of this Act shall be applicable to cases of injury or death occurring before or after the date of the enactment only with respect to any period beginning on or after the first day of the first calendar month following date of such enactment.

[H.R. 314, 89th Cong., 1st sess.]

A BILL To permit retired personnel of the uniformed services to receive benefits under the Federal Employees' Compensation Act without relinquishing their retirement pay

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 7 of the Federal Employees' Compensation Act (5 U.S.C. 757) is amended by striking out "for service in the Army or Navy" and inserting "retired pay, retirement pay, retainer pay, or equivalent pay, for service in the Army, Air Force, Navy, Marine Corps, or Coast Guard".

SEC. 2. The amendment made by this Act shall take effect as of July 12, 1957, and shall apply with respect to compensation payable under the Federal Employees' Compensation Act, and to retired pay, retirement pay, retainer pay, and equivalent pay, payable for periods after July 11, 1957.

[H.R. 596, 89th Cong., 1st sess.]

A BILL To amend the Federal Employees' Compensation Act to extend coverage to certain persons engaged in civil defense

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 40(b) of the Federal Employees' Compensation Act, as amended, is hereby amended by striking out "and" immediately before "(5)" and by inserting before the period at the end thereof a semicolon and the following new matter: "and (6) part-time and full-time, paid and unpaid, volunteers, auxiliaries, and civil defense workers subject to the order and control of a State government or any political subdivision

thereof engaged in, training for, or traveling to or from, activities relating to 'civil defense' as such term is defined in section 3(b) of the Federal Civil Defense Act of 1950".

(b) Section 40(f) of such Act is hereby amended by inserting immediately before the period at the end thereof the following new matter: "and except that each employee described in paragraph (b)(6) hereof shall be deemed to be receiving 'monthly pay' at a rate which would provide such employee and his dependents with the maximum benefits provided under this Act."

SEC. 2. Section 303(d) of the Federal Civil Defense Act of 1950 is hereby amended by inserting before the semicolon at the end thereof the following: "except for the purposes of the Federal Employees' Compensation Act, as amended".

[H.R. 2624, 89th Cong., 1st sess.]

A BILL To amend the Federal Employees' Compensation Act so as to permit injured employees entitled to receive medical services under such Act to utilize the services of optometrists

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fifth paragraph of section 40 of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes", approved September 7, 1916, as amended (U.S.C., 1934 ed., title 5, sec. 790), is further amended to read as follows: "The term 'physician' includes surgeons, optometrists, and osteopathetic practitioners within the scope of their practice as defined by State law. The term 'medical, surgical, and hospital services and supplies' includes services and supplies by optometrists, osteopathetic practitioners, and hospitals within the scope of their practice as defined by State law."

[H.R. 3826, 89th Cong., 1st sess.]

A BILL To amend the Federal Employees' Compensation Act so as to permit injured employees entitled to receive medical services under such Act to utilize the servics of podiatrists

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fifth paragraph of section 40 of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes", approved September 7, 1916, as amended (U.S.C., 1934 ed., title 5, sec. 790), is further amended to read as follows:

"The term 'physician' includes surgeons, podiatrists, and osteopathic practitioners within the scope of their practice as defined by State law.

"The term 'medical, surgical, and hospital services and supplies' includes services and supplies by podiatrists, osteopathic practitioners, and hospitals within the scope of their practice as defined by State law."

[H.R. 4478, 89 th Cong., 1st sess.]

A BILL To amend the Federal Employees' Compensation Act to remove certain inequities in the rates of payments to survivors

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (C) of section 10 of the Federal Employees' Compensation Act is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, compensation payable on account of a child who, when he reaches the age of eighteen, is a student, as defined in paragraph (M) of this section, shall continue during the period he is such a student, but not after he reaches the age of twenty-one."

(b) The amendment made by subsection (a) shall apply with respect to children who have not reached their twenty-first birthdays on the date of enactment of this Act, and shall be deemed to have been in effect on the eighteenth birthday of any such child whose eighteenth birthday occurred prior to the date of enactment of this Act.

SEC. 2. Paragraph (D) of section 10 of such Act is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, compensation of a child who, when he reaches the age of eighteen, is a student,

as defined in paragraph (M) of this section, shall continue during the period he is such a student, but not after he reaches the age of twenty-one."

SEC. 3. Section 10 of such Act is amended by adding at the end thereof the following new paragraph:

"(M) For the purposes of paragraphs (C) and (D), a child shall be considered a student while he is regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. A child whose twenty-first birthday occurs prior to July 1 or after August 31 of any calendar year, and while he is regularly pursuing such a course of study or training, shall be deemed to have attained the age of twenty-one on the first day of July following such birthday. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed four months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately following the interim."

SEC. 4. Paragraph (k) of section 10 of such Act is amended by striking out "or the sum of $525".

SEC. 5. (a) The Federal Employees' Compensation Act is amended by renumbering section 43 as 44, and by inserting immediately after section 42 the following new section:

"COST-OF-LIVING ADJUSTMENT

"SEC. 43. (a) After January 1, 1964, and after each succeeding January 1, the Secretary shall determine the per centum change in the price index from the later of 1962 or the year preceding the most recent cost-of-living adjustment to the latest complete year. On the basis of the Secretary's determination, the following adjustments shall be made in the compensation payable persons under section 10:

"(1) Effective April 1, 1964, if the change in the price index from 1962 to 1963 shall have equaled a rise of at least 3 per centum, the compensation payable to each person entitled thereto under section 10 whose entitlement is based on a death occurring earlier than January 2, 1963, shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.

"(2) Effective April 1 of any year other than 1964 after the price index change shall have equaled a rise of at least 3 per centum, the compensation payable to each person entitled thereto under section 10 whose entitlement is based on a death occurring earlier than January 2 of the preceding year shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.

"(b) For purposes of this section, the term 'price index' means the annual average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics."

[H.R. 5288, 89th Cong., 1st sess.]

A BILL To alleviate certain hardships to employees in the administration of the Federal Employees' Compensation Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7(a) of the Federal Employees' Compensation Act, as amended (5 U.S.C. 757(a)), is amended by adding at the end thereof the following: "Until a written claim of an employee is approved in accordance with this Act and the employee is in receipt of compensation by reason of such claim, his salary, pay, or remuneration as an employee, in effect immediately prior to injury on which such claim was based, shall be paid to him and any amounts due the United States by reason of such payment of salary, pay, or remuneration may be withheld from his compensation payments in such manner as may be equitable to the employee and the United States.".

SEC. 2. Section 8 of the Federal Employees' Compensation Act, as amended (5 U.S.C. 758), is amended by adding at the end thereof the following: "If, after a period of disability of an employee for which compensation is paid under this Act, such employee returns to duty, he shall receive annual and sick leave for

such period, in accordance with the leave system applicable to him, at the same rate of accrual at which he would have received such leave in such period if the disability had not occurred.".

[H.R. 6554, 89th Cong., 1st sess.]

A BILL To amend section 33 of the Federal Employees' Compensation Act so as to provide for the establishment of a Federal employee accident prevention program

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employees' Safety Act".

SEC. 2. Section 33(c) of the Federal Employees' Compensation Act, as amended (5 U.S.C. 784(c)), is amended to read as follows:

"(c)(1) In order to assist in the prevention of accidents in Federal activities and aid in the advancement, dissemination, and exchange of knowledge relating to their causes, it shall be the duty of the head of each Federal agency, in conformity with the standards, programs, and regulations prescribed by the Secretary under this subsection and in order to protect the lives, health, and safety of employees under his jurisdiction—

"(A) to provide places and conditions of employment which shall be reasonably safe for such employees;

"(B) to acquire, use, and maintain safety devices and other safeguards which are reasonably necessary to protect such employees;

"(C) to prescribe safety standards and practices for such employees;

"(D) to keep records of injuries and accidents to employees under his jurisdiction, whether or not resulting in loss of time in employment or the payment or furnishing of benefits; and

"(E) to make such reports to the Secretary with respect to such injuries and accidents as the Secretary by regulation may prescribe.

"(2)(A) It shall be the duty of the Secretary—

"(i) to develop, promulgate, and promote minimum standards for the protection of the lives, health, and safety of employees of Federal agencies and, to the extent feasible, promote uniformity in such standards;

"(ii) to collect and analyze data with respect to safety standards and programs in operation in the respective Federal agencies;

"(iii) to conduct studies and investigations of the causes of injuries and accidents in employment in the respective Federal agencies and the means of prevention of such injuries and accidents;

"(iv) to develop and make available to the respective Federal agencies information and personal services for the establishment and maintenance in such agencies of programs for the education and training of the officers and employees thereof in the recognition, avoidance, and prevention of unsafe conditions of employment;

"(v) to formulate and develop plans and programs to reduce the number of tort claims against the Government resulting from injuries to private persons attributable directly or indirectly to employees of the respective Federal agencies;

"(vi) to the extent appropriate, to collect information, from time to time, on safety programs, practices, and procedures generally, both in and outside of Government, and, upon appropriate request, make such information available to interested Federal agencies and other Government agencies;

"(vii) from time to time, to inspect the premises of the respective Federal agencies, and interview any of the personnel thereof, in order to ascertain if the minimum safety standards of the Secretary are being followed by such agencies;

"(viii) to issue to the head of each Federal agency, at least annually, a complete evaluation of the agency safety activities and programs summarizing accomplishments, recommendations, and other matters deemed pertinent; and

"(ix) to prepare for the issuance annually to the Congress by the Secretary a report showing the progress made in the field of accident prevention in the Federal agencies through the reduction of the number of accidents and injuries among the officers and employees of such agencies by the elimination of work hazards and health risks.

"(B) The Secretary shall be represented as a member on all boards of investigation and inquiry determining causes of incidents involving the safety and welfare of Federal civilian employees.

"(3)(A) There is hereby established in the Department of Labor a council to be known as the 'Federal Safety Council' (referred to in this subsection as the 'Council'). The Council shall be composed of such qualified representatives of the Federal agencies and such qualified representatives from national or international Federal Government employee unions as shall be appointed from time to time by the Secretary. The length of tenure of Council members shall be determined by the Secretary. The heads of the Federal agencies shall nominate the representative and alternate from their respective agencies and the heads of national or international unions having Federal employee members shall nominate the union representatives and alternates. The members of the Council shall serve as such without compensation. The Council shall include, as an integral part of its organizational structure and operation, such field councils as it deems necessary to perform its function. It shall be the function of the Council to collect, coordinate, and furnish to the Secretary and to the Safety Advisory Committee any information relating to safety of Federal employees which, in the opinion of the Council, may assist the Secretary and the Safety Advisory Committee in carrying out their functions under this subsection, together with such recommendations as the Council may deem appropriate.

"(B) There is hereby established in the Department of Labor a Safety Advisory Committee composed of nineteen members selected by the Secretary from among the membership of the Council. Not less than nine members of the Safety Advisory Committee shall be representatives from national and international Federal Government employee unions and the Chairman of the Committee shall be a representative of the Department of Labor designated by the Secretary. The Safety Advisory Committee shall advise the Secretary with respect to the development and maintenance of effective accident prevention programs in the Federal agencies and with respect to criteria, standards, and procedures designed to eliminate work hazards and health risks, and to prevent injuries and accidents in Federal employment.

"(C) The Federal Safety Council, reestablished pursuant to Executive Order 10990, dated February 2, 1962 (27 F.R. 1065), is hereby abolished.

"(4) As used in this subsection—

"(A) the term 'Federal agency' includes (i) the executive departments, (ii) the Departments of the Army, Navy, and Air Force, (iii) the independent establishments and agencies in the executive branch, including Government corporations and instrumentalities of the United States wholly owned by the United States, and (iv) upon the express consent of the Commissioners of the District of Columbia and after publication in the Federal Register of a resolution by the Board of Commissioners of the District of Columbia of such consent, the municipal government of the District of Columbia; and

"(B) the term 'Secretary' means the Secretary of Labor.

"(5) The Secretary is authorized to prescribe such regulations as may be necessary to carry out the purpose of this subsection.

"(6) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection."

[H.R. 9648, 89th Cong., 1st sess.]

A BILL To provide additional benefits under the Federal Employees' Compensation Act for certain disabled former employees of the Civilian Conservation Corps, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second proviso of the first section of the Act of February 15, 1934 (5 U.S.C. 796), is amended—

(1) by striking out "$150" in clause (a) and inserting in lieu thereof "$300"; and

(2) by striking out "$150" in clause (b) and inserting in lieu thereof "$300".

SEC. 2. Section 6(b)(1) of the Federal Employees' Compensation Act (5 U.S.C. 756(b)(1)) is amended by striking out "$125" and inserting in lieu thereof "$300".

SEC. 3. The amendments made by the foregoing provisions of this Act shall be applicable with respect to cases occurring before the enactment of this Act with respect to periods beginning on or after the first day of the first calendar month following the date of enactment of this Act.

[H.R. 10225, 89th Cong., 1st sess.]

A BILL To provide for the payment of interest on valid claims under the Federal Employees' Compensation Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 6 of the Federal Employees' Compensation Act (5 U.S.C. 756) is amended by adding at the end thereof the following subsection:

"(e) In addition to the monthly compensation otherwise specified in this Act, the Secretary shall pay an injured employee interest on compensation payments found to be due him at the rate of 6 per centum per annum, compounded annually, commencing on the ninetieth day following the receipt of a valid claim by the Secretary.".

(b) Section 10 of the Federal Employees' Compensation Act (5 U.S.C. 760) is amended by adding at the end thereof the following:

"INTEREST

"(M) In addition to the monthly compensation otherwise specified in this Act, the Secretary shall pay interest on compensation payments found to be due at the rate of 6 per centum per annum, compounded annually, commencing on the ninetieth day following the receipt of a valid claim by the Secretary.".

SEC. 2. The amendments made by this Act shall apply with respect to claims arising prior to, on, or after the date of enactment of this Act.

[H.R. 10865, 89th Cong., 1st sess.]

A BILL To amend the Federal Employees' Compensation Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the matter preceding paragraph (1) of section 5(a) of the Federal Employees' Compensation Act (5 U.S.C. 755(a)) is amended by (1) striking out "solely", (2) by inserting after "or involves disfigurement," the following: "and regardless of whether the disability also involves other impairments of the body,", and (3) striking out "as otherwise provided in subsection (b) and".

(b) Section 5(a) of such Act is further amended by inserting after paragraph (21) the following new paragraph:

"With respect to any subsequent period, compensation shall be as provided in section 3 if the disability is total or as provided in subsection (a) of section 4 if the disability is partial."

(c) Section 5 of such Act is amended by striking out subsection (b) and by redesignating subsections (c) and (d) as (b) and (c), respectively.

(d) The second sentence of the subsection of section 5 of such Act redesignated as subsection (b) by the preceding subsection is amended by striking out "for the purposes of disabilities specified in subsection (b).".

(e) Paragraph (1) of the subsection of section 5 of the Act redesignated as subsection (c) by subsection (c) of this section is amended by striking out "(including any disability compensable under the schedule to subsection (a) by virtue of subsection (b))".

SEC. 2. Section 14 of such Act (5 U.S.C. 764) is amended by inserting "(a)" after "SEC. 14." and by inserting at the end thereof the following new subsection:

"(b) Upon remarriage, a widow or dependent widower, entitled to compensation under section 10, shall be paid a lump sum payment equal to twenty-four times the monthly compensation payment (excluding any compensation on account of another person) to which he would have been entitled under such section had he not remarried."

SEC. 3. (a) Section 20 of such Act (5 U.S.C. 770) is amended by inserting "(a)" after "SEC. 20.", by striking out in the second sentence "due to radiation or other causes", and by adding at the end thereof the following new subsection:

"(b) The time limitations in this section shall not begin to run against a minor until he reaches majority or has a legal representative appointed nor shall they begin to run against an incompetent person until he has had a legal representative appointed."

SEC. 4. Section 32 of such Act (5 U.S.C. 783) is amended to read as follows:

"RULES, REGULATIONS, ETC.

"SEC. 32. That the Secretary is authorized to make necessary rules and regulations for the enforcement of this Act, including rules and regulations governing hearings held for the determination of the right to benefits under this Act".

SEC. 5. Section 36 of such Act (5 U.S.C. 786) is amended by inserting "(a)" after "SEC. 36." and by adding at the end thereof the following new subsection:

"(b) Upon application by any such beneficiary, within such period of time as may be prescribed in the regulations of the Secretary, the Secretary shall give such applicant reasonable notice and opportunity for a hearing with respect to such decision and, if a hearing is held, shall, on the basis of the evidence adduced at the hearing affirm, modify, or reverse his findings of fact and decision."

SEC. 6. Section 37 of such Act (5 U.S.C. 787) is amended (1) by inserting "(a)" after "SEC. 37.", (2) by striking out "not subject to review by any other administrative or accounting officer, employee, or agent of the United States" and inserting in lieu thereof "be final and not subject to review except by the United States district court as hereinafter provided", and (3) by adding at the end thereof the following new subsections:

"(b) Decisions of the Secretary under this section shall be reviewable in the United States district court. A claimant after a final decision of the Secretary following a hearing to which he was a party, irrespective of the amount in controversy, may obtain review of such decision by a civil action commenced within sixty days after the mailing to him of a notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the United States district court for the judicial district in which the plaintiff resides or if he does not reside within any such judicial district, in the District Court for the District of Columbia. As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decisions complained of are based. The findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court shall have power to enter upon the pleadings and transcript of the record a judgment affirming, modifying, or reversing the decision of the Secretary or remanding the cause for rehearing.

"(c) The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, for good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or decision or both, and shall file with the court any such additional and modified findings of fact and decision and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office."

SEC. 7. (a) Except as otherwise provided in this section, the amendments made by this Act shall apply to an injury whenever it occurs.

(b) The amendments made by the first section and sections 5 and 6 of this Act shall not apply with respect to any injury (whether or not resulting in death) sustained before the date of enactment of this Act.

(c) The amendments made by section 2 of this Act shall apply only with respect to a remarriage of a widow or dependent widower contracted after the date of enactment of this Act.

Mr. O'HARA. Our first witness is Mr. Charles Donahue, Solicitor of the Department of Labor. He will be followed by Mr. C. William Kontos, Director of Personnel for AID, who will testify on behalf of that agency, USIA, and the Department of State, with respect to the problems of civilian employees of the United States abroad.

Mr. Solicitor, we would be very pleased to hear from you at this time.

STATEMENT OF CHARLES DONAHUE, SOLICITOR, DEPARTMENT OF LABOR; ACCOMPANIED BY THOMAS A. TINSLEY, DIVISION OF THE BUREAU OF EMPLOYEES' COMPENSATION, DEPARTMENT OF LABOR

Mr. DONAHUE. Thank you, Mr. Chairman.

With your permission, I would like to submit for the record a prepared statement and then proceed in my own way to talk about the bill which is the subject matter in my testimony today.

Mr. O'HARA. Without objection, your testimony will be entered in the record at this point.

(The statement referred to follows:)

STATEMENT OF CHARLES DONAHUE, SOLICITOR OF LABOR

Mr. Chairman, I appreciate this opportunity to testify in support of H.R. 10721, a bill to provide interim improvements in the Federal Employees' Compensation Act. Federal employees look to this act to give them or their survivors a decent income when employment causes disability or death. Regrettably, today for many employees the act falls far short of sustaining this reasonable hope.

The Compensation Act stipulates that employees without dependents will receive two-thirds of their monthly pay when totally disabled; with dependents, the promise is of income indemnity up to three-fourths of salary. The maximum dollar limit under the Compensation Act now, however, is $525 a month. This limit, in many cases, pares the percentage of salary payable down to an extremely low figure. For 16 years, this $525 maximum has been unchanging. With each Federal salary increase, therefore, the proportion of working income restored under the Compensation Act for employees above a certain grade has consistently declined. H.R. 10721 would make up for some of this decline.

As to an equitable and long-range proposal to perfect a workmen's compensation protection for Federal employees, we are awaiting the findings of the President's Cabinet Committee on Federal Staff Retirement Systems which is making a collateral study of the Compensation Act. When the report of the Committee is filed on December 1, 1965, we will use it in further assessment of the FECA.

As you know, the Federal Employees' Compensation Act was enacted in 1916 and has since been amended very few times to increase benefits, irrespective of advancements in the economy. In 1916 when the first Federal Employees' Compensation Act was passed the maximum monthly payment for total disability was the odd sum of $66.67. Eleven years later, in 1927, it was doubled, to $116.65. Here it remained until 1949 when for the first time in the act's history, the maximum was substantially increased to $525. It has remained in this groove, since that time, despite the great economic changes we have experienced.

Between 1949 and 1964 Government earnings increased by 80 percent and the Consumer Price Index increased by 31 percent. The top salary for classified employees was $10,330 a year, now it is $24,500. But an injured Federal employee today—as in 1949—can expect to receive compensation income of only $6,300 a year.

During recent years the Congress has demonstrated its concern for the welfare of employees generally through legislation such as that which provides for manpower development and training activities, area redevelopment, equal pay, and the increase of Federal salaries. In line with improvements in the economic

status of private employees, it appears both imperative and desirable to provide fair workmen's compensation benefits for Federal employees. The economic plight of our injured employees insistently calls for attention.

To illustrate this point. first, let us examine the case of a flight test pilot with an annual salary of $14,965 which amounts to more than $1,110 a month, who will be incapacitated for months because of a fractured vertebra column. Under present law he can receive only $525 a month, approximately 50 percent of his present salary.

A second example involves an employee of one of our international agencies who was shot in a foreign country and, as a consequence, is paralyzed. The disabled employee's salary was $14,595 per year. However, because of the dollar ceiling limitation of $525 a month, he will receive compensation amounting to only $6,300.

The proposal before you alleviates to some extent situations such as these by increasing the present dollar maximum to $685 a month. H.R. 10721 would permit employees making $11,511 (the equivalent of a GS–11, step 10, or a GS–12, step 5) or less, to receive benefits up to the 75-percent maximum of basic monthly compensation which the act authorizes if dependents are involved. Available information indicates that 93.8 percent of all Federal workers are in this category.

When the $525 maximum was established in 1949, 99.5 percent of all Federal employees were eligible for up to 75 percent of their salary. Whereas today, only 85.6 percent of Federal employees are entitled to receive up to the 75 percent authorized in the act.

As you know, the act conforms to the recognized principle that a disabled worker with a family requires more compensation than one with no dependents. In such cases, the act augments the 66⅔ percent compensation for total disability by 8⅓ percent for dependents up to 75 percent of salary. However, the augmentation of basic compensation for dependents is now limited to that part of monthly pay which is not in excess of $420.

The bill, therefore, amends the act to increase from $420 to $546 the limit upon the amount of an employee's basic pay which may be considered in computing additional compensation because of dependents. If this were not done the increase in the maximum which is proposed would be held down in cases involving dependents by another outmoded figure.

Under the act, survivor benefits now range from 45 percent of the monthly pay of a deceased employee for a widow without dependent children up to 75 percent, depending on the number of children. The present dollar limit of $525 per month for survivor benefits would also be increased to $685 per month, by this bill, thereby enabling a greater number of beneficiaries to receive up to the allowable 75 percent.

The proposal also increases the minimum compensation amount of $180 per month to $210 a month, approximately the same as the minimum wage under the Fair Labor Standards Act. With today's living costs, it is believed that employees earning $210 a month or less would be unable to subsist on 75 percent of their earnings and that therefore, their entire earnings should be paid during total disability. Only a few thousand blue-collar employees are within a wage bracket so low they would be affected by this provision. The minimum rate for employees under the Classification Act GS–1, step 1 is $3,385, or approximately $280 a month, a much higher figure than the blue-collar minimum.

To assure that the income status of persons already on the rolls is also improved by these amendments, provision is made in this bill for increases in previous compesation awards on a basis which is consistent with increases in the Consumer Price Index. These awards are to be adjusted on the basis of the percentage change in the annual average Consumer Price Index as determined by the Secretary, between the year of the award and the most recently available annual CPI figure (presently the average for 1964). This increase would be offset by any increase authorized by Congress since the award adjudications

In addition, the bill clearly indicates that it applies only to persons who are "employees" under the act as distinguished from those persons not having a technical "employee" status to whom the benfits of the act have been extended. In order to prevent any unforeseen anomalous situation from arising, there are cautionary statements that no reduction in compensation by reason of Consumer Price Index changes is authorized or that no previous compensation award shall be increased by more than the applicable change. Further, payments are authorized only on a prospective basis.

The bill also extends the benefits, of surviving children of employees who are fatally injured in employment, from the age of 18 until the age of 23 if the child is still attending school. This provision reflects the concern of the administration to encourage and increase educational opportunities.

As you know, one of the basic reasons for making compensation awards to or on behalf of children is to defray living costs during the period of dependency. It was quite logical for these benefits to expire at age 18 in 1916 since at that time most children of 18 could reasonably be expected to become self-supporting, irrespective of whether they had finished high school.

Today education beyond high school is becoming increasingly necessary because of rapid technological changes and the increased number of professional, technical and other jobs which require additional education. This has resulted in lengthening the period of dependency. Therefore the increased family financial need could be alleviated and education encouraged if the survivor payments continue until such time as the child could normally finish college (i.e., the age of 23).

To prevent inequities with respect to children who became 18 before the effective date of this act, who are now pursuing an education and are not yet 23 and, therefore, could qualify for the continuation of benefits, the bill authorizes payment of compensation on their account as for other surviving children in school.

This is not a new or unique proposal since several other Federal programs provide precedents for continuing benefits to children after the age of 18. Under the war orphans educational assistance program of the Veterans' Administration, benefits may be continued up to age 23 if the child is attending school. The civil service retirement program generally pays benefits up to the end of the academic year in which the student reaches age 21.

The act which established the medicare program supported by the administration and enacted on July 30, 1965, section 306(s), provides for continuation of a child's social security insurance benfit if he is a full-time student under 22 years of age.

The States are also concerned about proposals such as this, an example of the States recognition of the need for this type of provision is the workman's compensation rehabilitation law recently recommended by the Council of State Governments which contains a provision similar to the one here proposed, except that it provides for the continuation of benefits until the students reach the age of 25.

Even without such precedents, the continuation of compensation for education is socially and economically desirable in our society which regards the education of offspring as one of the breadwinner's primary responsibilities.

A technical amendment is proposed to transfer a substantive item from the Department of Labor Annual Appropriations Act to the Compensation Act. For many years, the appropriations acts of the Department have provided that the rulemaking authority of the Secretary of Labor under the Federal Employees' Compensation Act be construed to include the authority to establish the nature and extent of proofs and evidence required in compensation claims of certain noncitizens and nonresident employees employed outside the United States.

In conclusion, I urge the committee to support this bill which applies the principles of fairness and concern to meet a great need of Federal employees. These amendments will not only benefit Federal employees and their families but will tend to make Government employment more attractive to qualified individuals who can contribute to the efficiency of our Federal service.

Mr. DONAHUE. I am here to testify in support of H.R. 10721. This is an administration proposal which was submitted by the Department of Labor, by the Secretary of Labor, as a suggestion for improvement of the Federal Employees' Compensation Act.

I wish to compliment the distinguished gentleman from Maine, Mr. Hathaway, for his introducing this measure, and I think I should say at the outset that this is, in our opinion, a modest but much needed interim measure to attempt to adjust the benefits payable under the Employees' Compensation Act to present times in a situation where no adequate adjustments have been made for a considerable period of time.

This is being done principally in three major ways: The first is to lift the ceilings and the floors on the maximum benefit amounts which would be payable to Federal employees.

The second concerns itself with the educational opportunities of the children of Federal employees, the survivors of these employees, who are entitled to benefits.

And the third principal way of improving the statute under this proposal is by increases of compensation presently being paid to employees now to adjust for the changes in the cost of living which have occurred since the time when the amount of the benefit was first figured.

To return to the first point here, that is, lifting the ceilings and the floors, there are two ceilings in effect at the present time under the statute. The first is a ceiling on what is technically known under the statute as an augmented compensation. In other words, a person who is disabled is entitled to two-thirds of his rate of pay. He is also, in addition, entitled to 8⅓ percent of that as an augmented benefit depending upon—or, to put it another way—8⅓ percent if he has a dependent or dependents. But there is a ceiling imposed upon that amount. The present ceiling is $420, so that only that much of his present salary or return per month can be figured.

It is our purpose and proposal here to increase that $420 to $546.

There is another ceiling in the statute at the present time which relates to the benefits which are payable. The amount of the ceiling here is $525 at the present time. This, under our proposal, would be increased to $685 per month.

I think I might add in both these cases, the case of the 8⅓-percent augmentation and the case of benefits generally, the maximum within the ceiling is confined to three-quarters or 75 percent of the salary of the person on whose account benefits are being received.

Now, there is also a floor under the amount of money payable. Regardless of the salary or pay received, a person who, in any event today, will be entitled to $180 a month as a fixed minimum. Our proposal would increase that to $210 a month.

Turning now to the second phase of our principal proposals, to the provisions for the education of children, surviving children of those in whose behalf benefits are paid, we would provide the children may draw benefits after the age of 18 under regulations provided by the Secretary of Labor in order to complete their education, or until they reach the age of 23, whichever happens sooner.

The third part of our recommendations would increase the benefits of those now on the rolls in accordance with the percentage change in the Annual Average Consumer Price Index between the year on which a benefit computation is based and the most recent available annual CPI figure at the time the bill is enacted, the present average being that in effect for the year 1964.

Now, turning in a little greater detail to each one of these principal suggested changes in the law, I want to say parenthetically there are other less important changes contained in the bill which are gone into in my statement, and I would not at this time discuss them and leave them to the extent the committee would desire to question later on.

I would like to say to the first of our proposals, that is, one which provides for the raising of the maximum monthly benefit for disability, or death, from $525 to $685, that this is most necessary at this time,

particularly in regard to the higher grades employees. Those who are killed or disabled are few, perhaps, but that does not in any way lessen the equities involved here.

We will have, so I understand, representatives of the Agency for International Development and related agencies testify here presenting to you the particular inequities which have caused them to support proposals such as we are studying today. I will not try to duplicate their area of concern.

I merely wish to say, or, rather, to cite two examples quickly. The first is—and these are actual examples which have occurred—a test flight pilot with an annual salary of $14,965, which amounts to more than $1,100 a month, fractured a vertebra and is totally disabled and he can receive only approximately 50 percent of his present salary rather than the maximum of 75 percent which would otherwise be available to him.

Mr. QUIE. At this point, may I ask a question

Mr. O'HARA. Yes.

Mr. QUIE. Even with the maximum, he wouldn't be able to get 75 percent?

Mr. DONAHUE. Even with our maximum, he would not be able to get 75 percent.

Mr. QUIE. So he would be getting about 65 percent?

Mr. DONAHUE. Something in that order, but it would be more than he is receiving at the present time.

I think perhaps I should add at this point this is an interim proposal. I use that word in the sense that at the present time the President's Cabinet Committee on Federal Staff Retirement Systems is reexamining all of the various programs under the various statutes for different classes of employees, whether it is civil service retirement, military retirement, or whether it is disability pay or benefits under the Federal Employees' Compensation Act, and they will come up with more thoroughgoing recommendations which will cover all the areas and present, one would hope, a consistency of pattern in all the different compensatory retirement systems.

Mr. QUIE. When will that be completed?

Mr. DONAHUE. I believe the Committee report will be filed December 1 of this year, 1965, and appropriate action, I suppose, will be taken thereafter in the light of what it says.

The example which I have given is typical of those which have prompted these other agencies to support this bill, and I think that it very ably demonstrates the need of the bill without further explanation.

Mr. O'HARA. Mr. Donahue, I am sure the other members of the committee are eager to question you. I would like to just ask a couple of questions now and then reserve an opportunity to question you after the other members have completed their questioning.

What is the reason for the ceiling in the first place? Why don't we simply remove it?

Mr. DONAHUE. Well, that is a very good question.

The Bureau of the Budget and the Government at this time, at this point, have decided that pending further examination of all of these various systems, they would continue to impose ceilings of the past primarily as a matter of costs to the Government and it was on that

basis that this ceiling was chosen by the Bureau of the Budget in our discussing this matter with them. Personally, and I am speaking only personally, I would have agreed with the implications of the Congressman's question. I would personally think that, particularly as to these higher salaried employees who normally are not disabled in the course of their duties, in terms of numbers of them, that removing the ceiling might be a very appropriate course of action.

Mr. O'HARA. It wouldn't cost much because there are few in the pay brackets affected by the ceiling.

Mr. DONAHUE. That would be my view.

Mr. O'HARA. Unless they drop a paperweight on their toe.

Mr. DONAHUE. I have come near to falling off my chair.

Mr. O'HARA. We had a hearing earlier in the year when Mr. Gibbons fell off his chair.

Mr. GURNEY. I wonder if we couldn't have for the record some figures as to how many people in this category have been injured in a year? I think it would be slight but it would be good if we had it for the record.

(The following information was subsequently furnished to the subcommittee by the Department of Labor:)

During the past year the Bureau received slightly more than 111,000 injury cases of which 337 involved death. Of this number approximately 70,000 did not involve any loss in time from work and were submitted to us in order that we might pay medical expenses. In 27,500 of the cases the employee did not lose wages since he chose to use either sick or annual leave apparently feeling this was more advantageous to him than filing a claim for compensation benefits under the Compensation Act. In these cases, too, the Bureau paid for medical care. The remaining 13,500 cases involved claims for compensation for wage loss. Of this group slightly more than 600 had salaries in excess of that at which the maximum comes into play. In the death cases approximately 52 had salary rates in excess of the maximum. I might point out here that we have no way of knowing how many employees did not pursue claims under the Compensation Act because it was to their advantage to accept benefits under the retirement laws. This would also be somewhat true of those who used their leave rather than accept compensation benefits. Therefore, it would be extremely difficult to state accurately exactly how many cases would be effected by the maximum.

If H.R. 10721 were enacted it is estimated that the additional annual cost to the compensation fund would amount to $5,500,000. This estimate would be broken down as follows: By increasing the monthly maximum from $525 to $685 on new claims the additional cost would be $700,000 per year; increasing the augmented compensation limit from $420 to $546 on new claims would cost $250,000 per year; adjusting cases presently being paid on the basis of the change in the Consumers Price Index would cost $3,550,000; continuing benefits to children over 18 years of age who continue their education to age 23 would cost $1 million per year.

Mr. DONAHUE. I have some general figures here, estimated by the Bureau of Employees Compensation, which states that of the average 15,000 new compensation cases a year, 600 are estimated to have a salary rate in excess of the present maximum. The cost which would result in the course of the year is estimated as $950,000. That is on this aspect of it.

Mr. O'HARA. $950,000, by raising the ceiling as you propose?

Mr. DONAHUE. That is correct.

Mr. O'HARA. For how many cases a year?

Mr. DONAHUE. It would be 600 cases, estimated.

Mr. GURNEY. Is this additional cost over and above the ceiling proposed?

Mr. DONAHUE. Within the ceiling proposed within our bill.

I am sorry I confused the Congressman. I didn't mean to do so. I was talking in terms of the additional cost under our bill.

We would be glad to get for you an estimate of cost over and above that if we removed the ceiling. That is what you wanted to get?

(The following information was subsequently furnished to the subcommittee by the Department of Labor:)

If the ceiling were removed altogether the additional yearly cost above and beyond that mentioned earlier concerning H.R. 10721 would be approximately $1 million.

Mr. GURNEY. That is right.

Mr. O'HARA. I would like to have those figures submitted for the record, if you could.

Mr. DONAHUE. Very good.

Mr. QUIE. I imagine a substantial number of those 600 would be within the maximum after you did raise it?

Mr. DONAHUE. I suspect that is correct.

Mr. QUIE. We are talking about an even smaller number of employees.

Mr. O'HARA. I think it would be helpful if we could have the figures both ways, how many fall above the current maximum cost, and how many fall above the proposed new maximum.

Mr. DONAHUE. That was my intention in answering Mr. Gurney.

Mr. GURNEY. We probably should have a figure on new permanent disability cases.

Mr. O'HARA. At least in approximate terms.

Mr. GURNEY. Yes.

(The following information was subsequently furnished to the subcommittee by the Department of Labor:)

Of the 16,700 cases currently receiving compensation benefits, approximately 400 are adversely affected by the present ceilings. These numbers do not include reservists, emergency relief workers, and others who would not be affected by the present legislation but who also receive benefits from the Bureau. It includes only regular Federal civilian employees currently on the rolls.

Based upon the present salary distribution of injured civil Federal employees approximately 180 would still be likely to be injured each year and have base salaries high enough to bring the new ceiling into play. This would be a very conservative figure since we do not now know how many employees do not file claims with us because they find it more advantageous economically to go on disability retirement under one of the retirement laws.

Mr. O'HARA. Would the changes you propose in the maximum and minimum apply to employees currently receiving compensation?

Mr. DONAHUE. They would not apply to those currently receiving compensation. The only provisions applying to them would be those relating to cost-of-living increases in the amounts to their benefits.

Mr. O'HARA. What about the provision for keeping the dependency augmentation for dependent children in college beyond the age of 18? Does that apply to persons presently on the rolls?

Mr. DONAHUE. It would apply—Mr. Thomas A. Tinsley, Director of the Bureau of Employees' Compensation, advises me that it would apply.

Mr. O'HARA. If we have a person currently receiving compensation for total disability for whom the percentage figures exceed the current ceiling, would he receive an increase in compensation?

Mr. DONAHUE. Not under this bill, except as there may be a cost-of-living increase.

Mr. O'HARA. When you have State compensation systems, the reasons for making these changes prospective are quite obvious. They are done on an actuarial basis and it is just a question of the payment or the cost of coverage at a certain amount. In the typical State system the employer buys insurance. At any rate, in calculating his costs he relies on the law as written covering the employees that he presently has on his payroll, but when you make a change in the law he may have to raise his cost and it makes a different computation. One can see not going back on the rolls and giving them an increase because of the effect it has on the insurance concept.

But the Federal Government isn't really in the same position. In other words, we will run into situations where someone may become entitled to compensation or permanent disability the day before this proposal of Mr. Hathaway's is adopted, if it is adopted, and he would be bound by the old maximum or the amount he would receive would be limited by the old maximum, and the fellow who becomes entitled to compensation the day after would be entitled to the new maximum. Is that right?

Mr. DONAHUE. That is correct.

Mr. O'HARA. I would like to ask several other questions but first I think we better give the other committee members a chance including Mr. Hathaway, sponsor of the bill.

Mr. HATHAWAY. Wouldn't it be better to increase compensation of those already injured along with the newly injured since we don't have the problem of the employer adjusting his insurance rates?

Mr. DONAHUE. I think it is a matter of cost, primarily.

I would be glad to furnish the committee a cost estimate of trying to give protection to those who have received protection under the present ceiling if they were given protection under the proposed ceiling.

Mr. O'HARA. If the gentleman would yield?

As a matter of fact, that is another change I don't think would cost too much. Many of the old cases were people who were injured when the Federal pay scale was much lower than it is today. I don't know how many who are affected by the old maximum are currently receiving compensation, but I think it might be a relatively small number.

Mr. DONAHUE. Do you have any information on that, Mr. Tinsley?

Mr. TINSLEY. We would be able to put together the information. However, along this point, you have to remember in these old cases that the pay rates in them for compensation purposes have been increased twice, once in 1949 and once in 1960; so the pay rate we are using for compensation is much higher than it was on the actual date of injury.

Mr. O'HARA. That is a good point. I recall I was on this subcommittee in 1960 when we took that action.

Mr. HATHAWAY. They have received some increase?

Mr. O'HARA. Yes, and they may have hit the maximum. They may now be affected by the maximum whereas they had not been before.

Mr. HATHAWAY. Mr. O'Hara suggested some amendment with respect to hearings. I understand the initial determination is made now by someone in the Department without benefit of hearings?

Mr. DONAHUE. The determination of amount of benefits is made without a hearing before the Claims Determiner but there is a right of appeal which also involves a right of hearing to the Federal Employees' Compensation Appeals Board.

Mr. HATHAWAY. I was wondering whether it wouldn't be better to have a hearing in the first instance and avoid these appeals, as I understand is done under most State compensation laws.

Mr. DONAHUE. Certainly that is something which the committee ought to consider.

(The following information was subsequently furnished to the subcommittee by the Department of Labor.)

The direct effect of applying the proposed new ceilings contained in H.R. 10721 to cases presently on the compensation roll is to incur an additional yearly cost of $260,000. Most, if not all, of this amount would already be reflected in the $3,550,000 additional annual cost attributable to the consumer price index adjustment. It should be pointed out in connection with this reply that section 301 of the bill provides for an adjustment on the basis of a change in the consumer price index, but at the same time provides an offset for increases authorized by Congress in previous amendments to the law. In 1949 the wage rates for compensation purposes were increased by a certain percent depending upon the date of the injury. However, the bill also contained a provision that limited the increase in compensation to $50 a month. In 1960 Congress also amended the law to provide a further increase in the wage rate for compensation purposes dependent on date of injury. However, the 1960 amendment also contained a provision that limited the increase in compensation by a certain percent. The present bill in section 402(b) also contains a limiting provision which states that compensation cannot be increased under section 301 by more than the percentage change in the annual average consumer price index. All these various factors would place qualifications on this estimate for if any one of them were removed it would affect the result.

I have been, just speaking personally, somewhat concerned with this whole area of procedure for determining these claims and at the appellate structure level, rather, as well as at other levels in the structure. I think it certainly is entitled to reexamination. I would hesitate to express an opinion as to the need of changing the system to assure greater fairness.

Mr. HATHAWAY. It is done under the Longshoremen's Act, as I understand it.

Mr. DONAHUE. There is a hearing before a deputy commissioner whose finding is final under that statute; the findings of fact are final as far as the courts are concerned.

Mr. O'HARA. That is more in accord with the Administrative Procedure Act. That is where a hearing attempts to establish the facts and to make a decision. Appeals from that decision are based upon the record made in the hearing.

Mr. DONAHUE. I think there are many considerations involved here, and I certainly wouldn't preclude the possibility of some change that would assure a hearing or a right to a hearing. There is the matter of cost of administration, the matter of fairness to the individual involved.

If you have a hearing, you may well need to have a higher grade type of officer handling the case. Other aspects of it, with which I, personally, have some questions—you have an opportunity to be heard on appeal before an appeal board whose actions are final here in Washington. Someone who is down in Arizona, or California, or in the State of Washington, is not going to come here to be heard in the majority of cases and, in fact, they don't have many real hearings.

In most cases, the only person appearing in the matter is a representative in the Solicitor's Office who presents the case to the appeals board. I think the whole area is entitled to reconsideration.

As I said, I have been questioning many aspects of it myself on reexamination of budgets and appropriations—on things like that. The matter has kept coming up currently in my mind and I think that is a task we ought to undertake in the Department.

Mr. HATHAWAY. Also under the Social Security Act, permanent disability hearings are held under what I understand are very good circumstances. Normally, a person doesn't need to hire an attorney. He is given opportunity to come in and present his case to an examiner and I think that experience has worked out pretty well and could be applicable here.

Mr. DONAHUE. That is a very good suggestion.

Mr. HATHAWAY. Thank you very much.

Mr. O'HARA. Mr. Quie?

Mr. QUIE. Thank you, Mr. Chairman.

I would like to ask some questions mostly to add to my information and to bring myself up to date on this bill and the act.

Back again to the maximum, you indicate if this bill, H.R. 10721, was passed, employees making $11,511, the equivalent of a GS–11, step 10 or a GS–12, step 5, or less, to receive benefits up to the 75 percent maximum—what was the maximum—$525? What grade level would this provide a person to get up to 75 percent back in 1949?

Mr. DONAHUE. GS–14, step 1, Mr. Tinsley informs me.

Mr. QUIE. What would the maximum have to be for GS–14, step 1, to be the same as before?

Mr. DONAHUE. Mr. Tinsley, I would appreciate it if you would handle that calculation.

Mr. TINSLEY. We will have to do a fast calculation.

GS–14, step 1, the salary rate presently is $14,170. The maximum would probably have to be in excess of $900 a month; this is a rough figure.

Mr. O'HARA. To get comparability?

Mr. TINSLEY. That is a very rough figure. The difficulty here is that you are making the computation in two rates: three-fourths on a certain amount of salary and then two-thirds. We could furnish the exact figure.

Mr. O'HARA. Without objection, the witnesses are requested to furnish figures in response to Mr. Quie's question.

(The figures are as follows:)

In order to allow a GS–14, step 1, employee making $14,170 per year to receive the full 75 percent rate up to $546 per month salary as provided in the present bill and the full 66⅔ percent rate on salary above $546, the monthly maximum compensation would have to be set at $835. Similarily, for a GS–18 making $24,500 per year, the monthly maximum compensation would have to be set at $1,410. If, on the other hand, one wanted the employee to receive a full 75 percent the monthly maximum would have to be $886 for the GS–14 and $1,532 per month for the GS–18.

Mr. QUIE. Has anything been changed in the salary schedule relating to the number of people that go above GS–14, GS–15, or GS–18? Isn't there a greater number in GS–18 than there was in 1949?

Mr. TINSLEY. I believe so. There was no GS–18 at that time.

Mr. QUIE. Fifteen was the highest?

Mr. TINSLEY. Yes.

Mr. QUIE. What would the maximum be if we had the maximum at GS-18?

Mr. TINSLEY. That salary is $24,500 at the present time; approximately $1,500 a month.

Mr. QUIE. I think this would be relevant if we are going to compare it to the maximum as it related to salaries in 1949 because you indicate that 99.5 percent of all Federal employees were eligible for up to 75 percent of their salary at that time. I think this would be something we ought to take into consideration.

Mr. O'HARA. I think one other figure they might give us is to what figure would we have to raise the maximum to bring the percentage of Federal employees eligible for their 66 or 75 percent up to the percentage that was eligible in 1949.

Mr. DONAHUE. We will be glad to supply that, Mr. Chairman.

(The following information was subsequently furnished by the Department of Labor:)

The $525 maximum established in 1949 encompassed 99.5 percent of all civil employees of the U.S. Government. In order to accomplish the same thing at present the ceiling would have to be adjusted to accommodate an annual salary of $20,900. This is the salary of a GS-16, step 4. In order to assure the 75 percent rate up to $6,552 per year and 66⅔ percent on salary above that amount, the monthly maximum compensation would have to be set at $1,210. It is necessary to keep in mind here that the 75-percent rate only applies to a portion of the salary. If we wanted to insure 75 percent of the total salary it would have to be $1,307 a month.

Mr. QUIE. On another subject, what happens with the FECA when a person retires? Does a civil servant get his retirement pay and his Federal Employees' Compensation Act money with neither of them reduced?

Mr. DONAHUE. No; I don't think so. I would like to have Mr. Tinsley explain that in greater detail.

Mr. TINSLEY. In most cases, an injured employee who is confronted with receiving benefits under the Compensation Act or retirement benefits must make a choice between the two benefits; therefore, if he chooses compensation because it is higher, he relinquishes his retirement for the period of time he is collecting compensation.

There is one situation where that is not so and that is in the case of a scheduled award under the law. This is the type of award made for a permanent partial disability involving one of the members of the body. In that case, the individual is entitled to receive his scheduled award, which is for a specified number of weeks, and his retirement. An employee may also receive medical care and retirement.

Mr. QUIE. Does this apply with all the retirement systems that we have in the Federal Government?

It seems to me we usually end up with the Foreign Affairs Committee coming out with some different program here.

Mr. TINSLEY. When this was placed in the law in 1960, the amendment specifically mentioned the civil service retirement system. As a result, if the retirement is under the Foreign Service retirement system or one of the many other retirement systems, even if it is a scheduled award, the employee must elect which one he will take.

Mr. QUIE. There is a difference?

Mr. TINSLEY. Yes. In the other retirement systems, under all circumstances an election must be made, under civil service retirement one does not if it is a scheduled award.

Mr. QUIE. Is there some continuity here? This will come up in the study. Is it acceptable that we move into this area of making it all uniform with all retirement systems?

Mr. O'HARA. I expect the gentleman from Minnesota will have something to say on that when we move to executive session.

I can see no justification for treating Federal retirees who are entitled to compensation and retirement differently whether or not they were in the Foreign Service or under the Classification Act, can you?

Mr. DONAHUE. I would agree with the chairman.

Mr. QUIE. That is all I have.

Mr. O'HARA. Mr. Gurney?

Mr. GURNEY. I have one more question on ceiling.

It occurs to me from the figures you submitted and testified on here, that what the original drafters of the act must have been thinking of in 1949 was to place a ceiling of approximately 75 percent under the then existing salary rate. Is that a fair statement?

Mr. DONAHUE. I think it is a reasonable proximation of what they did in terms of the levels of grades 14 and 15 in effect at that time.

Mr. GURNEY. But with 100 percent of the employees who would be eligible for a 75-percent ceiling, it does look as though that was what they had in mind?

Mr. DONAHUE. If I were speculating, I might reach the same conclusion.

Mr. GURNEY. We are really trying to adjust the act to what it was in 1949 under the present salary scales and inflation scales and 75 percent, if we were using a percentage figure, would bring you back in line to what it was then?

Mr. DONAHUE. Using a 75-percent ceiling would bring it back in line to what it was then?

Mr. GURNEY. Yes.

Mr. DONAHUE. I am not good on percentages, but it would seem to be in that order.

Mr. GURNEY. Except for a few isolated instances.

Isn't it also true that, increasingly, in recent years with the sort of cold war we have been fighting, some of our civilian employees are really about as much on the frontline as some of our military people?

Mr. DONAHUE. Events have very well proved that, I think.

Mr. GURNEY. Therefore it would seem that, in viewing this, that certainly, as far as permanent disability is concerned and survivors' benefits that might flow from losing one's life in service of one's country, even though it is on the civilian side instead of military, we would be more fair to do it on percentages. Don't you agree?

Mr. DONAHUE. I do, and this is one of the major concerns that produced this bill. It is concern for those risking their lives in Government service, whether at home here or abroad, and who are paid at higher salaries because they have higher valued skills and they are accustomed to a standard of living that higher salary would get, there is a hardship for their survivors or dependents in case of disability. They would have to pull in their belts and live at a much more modest level than they have been living while the wage earner was earning wages, and those thoughts prompted this bill.

As I said before, the limitations which are contained in here certainly should be carefully considered by the committee in terms of cost and other factors. They are placed in here at this point, as I say,

because we have not had a thorough, overall reevaluation of these programs. It is hoped we will have a reevaluation before the end of the year and at which time these questions will be met more directly than they are in this bill which, as I said before, is an interim proposal rather than a final one.

Mr. GURNEY. One other observation that occurs to me is that, as far as these people in civil service in rather hazardous places, we are really applying a double standard as far as the military and their benefits and our civil service and their benefits; is that a fair statement?

Mr. DONAHUE. I think probably it is, although the Congressman's question suggests he knows more about the different systems than I know. But it is that disparity which has prompted the President's Committee which is coming up with the report. There is no rationale of difference if the people are equally exposed to hazard.

Mr. GURNEY. One other question regarding these benefits for children age 18 to 23 who are continuing their schooling: What is your conception of a schooling definition there?

Mr. DONAHUE. I think that, of course, is left up to regulations to be provided by the Secretary of Labor and at this point I would give you my own personal reactions to it rather than any considered reactions in a bureaucratic sense of the word.

Schooling would normally mean the going to regularly recognized educational institutions in terms of high schools, preparatory schools, colleges, and, if one is bright enough to get at it before the age of 23, I suppose possibly the graduate work, professional training of one sort or another. Whether or not different kinds of courses and particularly specialized training such as stenographic training of a short-term character would qualify, I am not certain at this point. I wouldn't want to exclude it by saying that that is not appropriate.

I can see causes where short-term course might be appropriate to consider and, with fairness, if it took maybe 6 months' training beyond the age of 18 to qualify for work, it might be a desirable thing to make sure that that is part of a person's continuing education.

I don't think that we ought to be too niggardly at the outset in trying to determine what kind of education a person should be taking when we consider the payment of benefits beyond the age of 18. I think education, particularly at this time of changing jobs, should be encouraged rather than discouraged, and this is one way of encouraging that vital need at the present time.

Mr. O'HARA. Will the gentleman yield?

Mr. GURNEY. Yes.

Mr. O'HARA. I think it would be appropriate if you, Mr. Donahue, would supply the committee with a letter indicating the principles by which the Department would be guided in determining the eligibility of children over 18 pursuing educational courses.

We don't expect you can tell us what the Department would do in their regulations and rules with respect to every kind of education, but we would like to know the principles that would guide the Department in determining which children would be eligible for dependent payments beyond 18.

Mr. DONAHUE. We will be glad to do that.

(The following information was subsequently submitted by the Department of Labor:)

TENTATIVE GUIDELINES FOR DETERMINING ELIGIBILITY OF SURVIVING CHILDREN TO COMPLETE EDUCATION UNDER SECTION 204 OF FECA AMENDMENTS [1]

A "full-time student" would be determined in the light of the standards of the institution which he is eligible to attend under regulations of the Secretary. Students paid by employers while attending an educational institution at the request of his employer or pursuant to a requirement, of an employer would not be eligible.

"Program of education" would be defined along the lines of "any curriculum or any combination of unit courses or subjects all skill development training pursued at an educational institution which is generally accepted as necessary to fulfill the requirements for the attainment of a predetermined and identified educational, professional, or vocational objective."

"Educational institution" would be defined generally as "public or private secondary school, vocational school, or approved training program, business school, junior college, teacher's college, college, normal school, professional school, university, or scientific or technical institution, or any other institution if it furnishes education at the secondary school level or above."

The Secretary of Labor may require evidence of accreditation of an educational institution or approval of a training course or such other evidence as he may deem appropriate to establish that the institution or course meets a desirable standard of educational or training proficiency.

Mr. GURNEY. That is all I have.

Mr. O'HARA. Mr. Bell?

Mr. BELL. No questions. Thank you.

Mr. O'HARA. Mr. Donahue, I have a couple of other points.

One quick one. On the occasions when the poverty program and its forerunners have been before the committee, there has been considerable discussion with respect to the application of the Federal Employees' Compensation Act to Job Corps trainees and VISTA volunteers. These discussions revolve around the eligibility of compensation of such trainees or volunteers who are injured when they are off duty, perhaps in a residential situation, perhaps while they are on authorized pass or leave, and so forth.

On several of these occasions, I have successfully resisted provisions which would set up special treatment under FECA for Job Corps trainees or VISTA volunteers. On the most recent of those occasions, I was unsuccessful in resisting that special treatment in the poverty program bill now in conference.

It seems to me that all those Federal employees, and including in that category as we have done, Job Corps trainees and VISTA volunteers, should be treated alike with respect to off-duty situations and residential situations.

I would appreciate receiving from the Department a memorandum on the law regarding persons covered by Federal employee compensation with respect to disability from injuries while off duty, in an authorized leave status, in an unauthorized leave status, while in a residential situation connected with their employment, and so forth; because I pledged to the committee, at the time this came up, that

[1] Sec. 204, par. (C) of sec. 10 of the Federal Employees' Compensation Act (authorizing compensation for children), is amended by adding the following new sentence: "However, as approved by the Secretary, and under regulations prescribed by him, compensation payments on account of a child or to a child under any provision of this section, may be extended after his 18th birthday to permit him to continue his education or training on a full-time basis until he completes his program of education or training at an educational or training institution, as such terms are defined by the Secretary of Labor, or reaches the age of 23, whichever is earlier. * * *"

when we undertook a review of FECA, we would look at this entire area and give our careful attention to it.

Mr. DONAHUE. Your question is——

Mr. O'HARA. What about a Forest Service person who is in a residential situation out in one of the national forests, in an employment situation similar to that of the Job Corps trainees in terms of the fact that he lives in, and so forth?

Mr. DONAHUE. We will try to cover that in the memorandum. In fact, we will cover that in the memorandum.

Mr. QUIE. You mean, the Forest Service employees in the summertime, ~~like jump group~~, are provided for differently than what is available now for the Job Corps work.

Mr. O'HARA. Exactly.

I think we have to. If indeed the Federal Employees' Compensation Act does not adequately cover these employees who live in, thereby necessitating a special provision applicable to Job Corps training, I wonder if we should not review the FECA on that score.

In other words, if it is not adequate for Job Corps trainees who live in, is it adequate for other Federal employees who live in?

(The memorandum requested was subsequently submitted as follows:)

COVERAGE UNDER FEDERAL EMPLOYEES' COMPENSATION ACT

(*a*) *While off duty.*—Under the Federal Employees' Compensation Act, to be compensable an injury must be sustained "while in the performance of duty." This phrase is regarded as the equivalent of the test commonly used in workman's compensation laws, "arising out of and in the course of employment." This construction makes the statute effective in those situations generally recognized as properly within the scope of a workman's compensation law. It is as a rule held that an injury arises out of and in the course of employment when it takes place, (*a*) within the period of employment, (*b*) at a place where the employee may reasonably be, (*c*) while he is reasonably fulfilling the duties of the employment or doing something incidental to it, and (*d*) when it is the result of a risk involved in the employment or the risk is incidental to the employment or to the conditions under which the employment is to be performed.

For example, the general rule is that employees going to or returning from their regular place of work are not protected. In such instances, the employee is considered "off duty." It must be noted however that these cases all turn on their particular facts and it is usually impossible to state categorically that coverage does or does not exist in a given situation.

(*b*) *In an authorized leave status.*—Employees may be absent from their regular place of work for a variety of reasons, all of which can be considered "authorized." The general rule as to coverage in these situations is to permit coverage if such absence and the activities performed thereunder are associated, or incidental to the employment. Thus, one on annual leave doing nothing connected with his work will likely not be covered during this period. The application of the rule becomes less certain in cases of so-called administrative leaves to attend conferences, donate blood, to vote, serve on a jury, etc. When such activities are undertaken during regularly established working hours, or by administrative order employees are allowed time off from work for the purpose, or the activities are regarded by the employer as official duties, the orbit of employment may be enlarged by the presence of any or all of these factors. Again, it must be recognized that the cases will turn on their particular facts.

(*c*) *In an unauthorized leave status.*—Generally, employees away from their regular place of work or proper station without official permission or designation will not be covered by the act during this period as their activities cannot be considered "in the performance of duty," i.e. in the course of employment.

(*d*) *In a residential situation connected with the employment.*—As a general rule, coverage exists for injuries sustained in the employee's residence when the employee is required to live in quarters or premises furnished or made available by the employer (Government). Further, injuries generally which occur on an

employer's premises are covered whether the injury situs is a building, or on a base or national park. Employees may even be covered when away from the premises if it can be established that they are still "on call," i.e. if the injury can in any way be substantiated as employment related. Where residence at the place of employment is not required, but merely permitted, and the employee is not on 24-hour call, coverage will generally be denied during the period away from the place of employment and in an activity not related to the employment. However, if the work-residence is not required, but there exists no reasonable alternative to accepting it, coverage should exist, though this, like all situations, must be examined in the light of all the facts. As a concommitant to the residence principles, where the employer in lieu of housing grants a quarters allowance and the recipient of the allowance has the right to exercise essentially free choice of quarters, coverage will likely not exist. But where the employer contains real control over how the quarters allowance is to be spent, coverage may apply.

(c) *Other similar situations.*—Injuries in other types of residential situations would be subject to the principles discussed above.

I would like to bring up a couple of other points. I wonder if Mr. Donahue or Mr. Tinsley could describe to the committee the difference in treatment accorded Federal employees who suffer a scheduled injury without injury to any other part of the body, as compared to Federal employees who suffer scheduled injuries as well as injuries to other parts of the body.

There is a rather strange difference there.

Mr. DONAHUE. I would certainly have to ask Mr. Tinsley to answer that.

Mr. TINSLEY. The way the law is presently written, it contains a section, which is section 5, that says if the sole disability remaining after the injury involves one of these members—and it lists the members—arms, hands, legs, et cetera, then the only benefit payable is compensation equivalent to a specified number of weeks.

When that compensation is paid out, it is in full satisfaction of all liability; no further benefits are payable other than medical benefits.

In the event that you have an employee who has an injury which goes beyond that particular member of the body—for example, not just his arms injured, but his arms and his back are injured—there is disability in both areas of the body. He is not entitled to a scheduled award for the partial loss of use of the arm, but is only entitled to benefits for the effect that the combined disability has on his ability to work. Payments are based on his loss of earning capacity and they are payable for as long as the disability affects his ability to earn.

Mr. O'HARA. In other words, the fellow who loses a finger and injures his back is in a different situation than the fellow who injures his back and does not lose his finger.

Mr. DONAHUE. A little.

Mr. O'HARA. Mr. Pepper has made famous a "living in sin" amendment to the Social Security Act. We have the same problem, I will advise my colleagues, in the Federal Employees' Compensation Act. That is to say that those who are drawing service benefits lose their entitlement to such benefits if they remarry, and there are those who would contend that the provisions of the act discourage marriage and, conversely, encourage less formal arrangements.

We did take action earlier this year to alleviate that problem with respect to the Social Security Act, and I propose in my bill that we take similar action with respect to that problem under the Federal Employees' Compensation Act.

One of the things we would like you to do—I have listed a number of bills that have been sponsored by various Members of the Con-

gress and, although I am not going to ask you gentlemen for formal reports, I would hope that you would have time to review each of these bills and assess its effects and so forth, and be prepared to discuss these bills with us at some later stage of the proceedings, prior to the time we begin to mark up this bill, so that we can have informally the Department's views and pros and cons of the numerous proposals before the committee in addition to Mr. Hathaway's proposal.

Mr. DONAHUE. Very good.

Mr. HATHAWAY. Under section 771—this is in title 5—there is provision for examination by a physician designated by the Secretary. I know, under State law, we had many complaints that the physician designated was usually—especially after he was employed for several years by the employer—too employer oriented, and so various suggestions have been made such as having an independent panel of physicians.

Mr. DONAHUE. Perhaps Mr. Tinsley has some recollection as to how it happened to be enacted that way.

Mr. TINSLEY. This particular situation, where this is used, is usually, after the man has had an opportunity to present his medical evidence, there is also in the record medical evidence from other sources, usually Government physicians, and at this point, what we are usually looking for is an impartial examination, a referee examination.

Therefore, many men might feel that if you are sending him for a referee examination and you are going to pay for that examination, there might be a question as to the equity of it.

In some of these examinations, the men would object to going before a strange doctor. They would be concerned about what type of examination. So, provision was placed in the law to permit him to have his own doctor present, but he would bear the expense of just his own doctor's charge.

I might point out, he also has to bear the expense of his own attorney's fees. The Government does not pay an attorney's fee that represents the claimant.

I might add that it is rare that an employee has his own doctor present at one of these examinations. Usually we try to permit the employee to participate in the selection of this particular doctor.

Mr. HATHAWAY. Although that is not provided for in the section?

Mr. TINSLEY. No.

Mr. O'HARA. Mr. Pucinski?

Mr. PUCINSKI. On page 3 here, third paragraph.

Mr. DONAHUE. That of the bill?

Mr. PUCINSKI. Of your statement. You say that 93.8 percent of all Federal employees would be covered by the 75 percent provision if you left the ceiling at $685 a month. Does that mean that 93 percent of all Federal employees?

Mr. DONAHUE. I believe it means that—93.8 percent of all Federal workers would be in the category within the ceiling of $685 a month.

Mr. PUCINSKI. Your point here is that previously we covered 99.5 percent. What you are trying to tell us is that we are going backward.

Mr. DONAHUE. We are going forward, but not as fast as we were in 1948.

Mr. O'HARA. If the gentleman would yield. We asked the Department to furnish us with figures with respect to where you would have to set the ceiling to equal the 99.5 percent figure of 1948 and other facets of that problem.

Mr. PUCINSKI. On that same page, you give the example of a test pilot employee in an international agency. For how long would these benefits continue?

Mr. DONAHUE. I believe they continue on a permanent basis to those entitled to them. For instance, if there is a surviving wife, as the chairman pointed out a moment ago, she continues to get them until she gets married or dies.

Mr. TINSLEY. That is correct.

Mr. DONAHUE. The children would discontinue getting benefits at the age of 18, or the surviving wife would discontinue getting benefits for a child after the age of 18.

Mr. PUCINSKI. How does the Federal disability compensation program compare to private industry?

Mr. DONAHUE. Compared to the compensation benefits, in ordinary cases of workmen's compensation in the States—I believe Mr. Tinsley could give a better comparison than I could.

Mr. TINSLEY. In general, at the present time, the Federal program, both in terms of benefits and in terms of coverage, is probably more liberal than practically all of the State programs.

Mr. PUCINSKI. Would you be able to say how much more liberal?

Mr. TINSLEY. It would depend upon the comparison of the Federal to the individual State.

Now, some States have rather low weekly payments. Some States have high weekly payments.

Mr. PUCINSKI. What would the compensation be for a factory worker in a typical State—a good State that you want to pick, a liberal State—making $7,000 a year?

Mr. TINSLEY. You asked me to identify a liberal and a good State. That is a very dangerous thing to do under these circumstances.

Mr. BELL. Why don't you identify Illinois?

Mr. PUCINSKI. If you can, fine.

Mr. O'HARA. I wonder if instead of doing it that way, if the gentleman from Illinois would not object, if we could ask the Department to furnish us with a statement, State by State, showing percent of wages paid for permanent disability and the maximums and minimums that apply.

Mr. PUCINSKI. I would like to have it.

The reason I asked that question—and I have no objection to this legislation. I think it is good legislation and I intend to support it, but so often we hear statements from Federal employees about many of these programs, and in many instances there are some fringe benefits in Federal employment which a person in private employment does not have.

Such benefits would be, if nothing else, job security, continuous employment instead of seasonal employment, retirement program, the disability program, hospital care.

When you put all these things together, I think that this Government does reasonably well by its Federal employees. This does not mean there is no room for improvement, and we have been improving as we go along. But I think we can probably measure this legislation better and evaluate it more intelligently if we can say how this compares to private industry, and I would like to have those figures if we may.

Mr. DONAHUE. Very good.

(The tables were subsequently submitted as follows:)

55-030—65——3

TABLE 10.—*Minimum and maximum benefits for permanent total disability*

State	Maximum percentage of wages	Maximum period	Payments per week		Total maximum stated in law
			Minimum	Maximum	
Alabama	[1] 55–65	400 weeks. (For specific types of disability, 500 weeks.)	$15, or actual wage if less	$38	$15,200
Alaska	65	Duration of disability	$18, or actual wage if less	$52.65	
Arizona	65	Life	$30 if worker is 21 years of age or older	$150	
Arkansas	65	450 weeks	$10	$38.50	
California	[2] 61⅔	400 weeks; thereafter 60 percent of average weekly earnings at time of injury, for life.	$20	$52.50	14,500
Colorado	66⅔	Life [3]	$11.50 [3]	$49 [3]	
Connecticut	60	Duration of disability	$20	55 percent of State's average production wage. ($57).	(4)
Delaware	66⅔	do	$25, or actual wage if less	$50	
District of Columbia	66⅔	do	$18, or average wage if less	$70	
Florida	60	do	$8, or actual wage if less	$42	
Georgia	60	400 weeks	$12, or actual wage if less	$37	
Hawaii	66⅔	Duration of disability	$18	$112.50	12,500
Idaho	[1] 55–60	400 weeks; [5] thereafter $15 per week ($18 if dependent wife) plus $4 to $15 for children, for duration of disability.	$15 ($18 if dependent wife) to $33.[1]	$32 to $52 [1] (see col. 3)	(6)
Illinois	[1] 65–80	Life	$31.50 to $49.[1]	$51 to $61	
Indiana	60	500 weeks: thereafter payments may be made for an indefinite period.[7]	$18	$45	(3) [7] 20,000
Iowa	66⅔	500 weeks	$18	$37	18,500
Kansas	60	415 weeks	$7	$42	17,430
Kentucky	66⅔	425 weeks [8]	25 percent of 85 percent of the State's average weekly wage.	55 percent of 85 percent of the State's average weekly wage.	
Louisiana	65	400 weeks	$10, or actual wage if less	$35	
Maine	66⅔	Duration of disability	$18	[9]	
Maryland	66⅔	do.[1]	$18, or average wage if less	$55	
Massachusetts	66⅔	do.[9]	$20	$53, plus $6 for each total dependent. Aggregate shall not exceed the average weekly wage of the employee.	30,000
Michigan	66⅔	do.[10]	$18 to $28.[1]	$58 to $91 [11]	
Minnesota	66⅔	do	$17.50, or actual wage if less	$45	(11)
Mississippi	66⅔	450 weeks	$10	$35	12,500
Missouri	66⅔	330 weeks, thereafter 40 percent of wages, maximum $30 for duration of disability.	$16	$47	

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Montana	[1] 50–66⅔	500 weeks	$31.50	$35 to $56 [1]		
Nebraska	66⅔	300 weeks; thereafter 45 percent of wages, maximum $34 for duration of disability.	$28 or actual wage if less, 1st 300 weeks; thereafter $24 or actual wage if less.	$42 (see col. 3)		
Nevada		3Life	$37.50 to $51.92 [1]			
New Hampshire	66⅔	12 weeks; thereafter annual extensions in the discretion of the labor commissioner.	$15, or actual wage if less	$50		
New Jersey	([12])	4 50 weeks; under certain conditions benefits paid for life.[12]	$10; after 450 weeks may be $5 [12]	$45 [12]		
New Mexico	60	500 weeks	$24, or actual wage if less	$40	20,000	
New York	66⅔	Duration of disability	$20, or actual wage if less	$60		
North Carolina	60	400 weeks; 500 weeks for 2 injuries in same employment. (Payable for life in certain circumstances.[13])	$10	$27.50	[13] 12,000	
North Dakota	80	Life	$15, plus $3 for each dependent child under 18, or those 18 and over incapable of self-support (up to a total of $15).	$50 to $65 [1]		
Ohio	66⅔	Life	$40.25,[14] or average wage if less	$49		
Oklahoma	66⅔	500 weeks	$15, or actual wage if less	$40		
Oregon	66⅔	Duration of disability	$28.85 to $33.46 [1]	$35.77 to $70.38 [1]		
Pennsylvania	66⅔	do	$27.50, or 90 percent of actual wage if less, but in no event less than $20.	$47.50		
Puerto Rico	66⅔	do	$9.23	$20.76		
Rhode Island	60	do.[15]	$17 if worker is receiving benefits under the Temporary Disability Insurance Act. $22 if worker is not receiving benefits under the Temporary Disability Insurance Act.	$40 if worker is receiving benefits under the Temporary Disability Insurance Act. $45 if worker is not receiving benefits under the Temporary Disability Insurance Act.	([15])	
South Carolina	60	500 weeks	$6	$35	10,000	
South Dakota	55	300 weeks; thereafter 30 percent of earnings, maximum $15 for life.	$20, first 300 weeks; $12 thereafter	$38 (see col. 3)	13,500	
Tennessee	65	550 weeks	$15, or average wage if less, but in no event less than $12.	$38	14,000	
Texas	60	401 weeks	$9	$35		
Utah	60	260 weeks; thereafter 45 percent of weekly wages during disability, maximum $40.[16]	$25 to $39.25 [1]	$42 to $60 [1]	([16])	
Vermont	66⅔	330 weeks [1]	$21 plus $2.50 for each dependent child under 21, or average wage if less.	$41 plus $2.50 for each dependent child under 21.	13,560	
Virginia	60	500 weeks	$14	$39	15,600	
Washington		Duration of disability	$42.69 to $81.23 [1]	$42		
West Virginia	66⅔	Life	$22	$42		
Wisconsin	70	do	$14	$68		

See footnotes at end of table.

TABLE 10.—*Minimum and maximum benefits for permanent total disability*—Continued

State	Maximum percentage of wages	Maximum period	Payments per week		Total maximum stated in law
			Minimum	Maximum	
Wyoming			$28.85 to $34.62,[1] plus $5.54 for each dependent child under 18, or each child under 21 incapable of self-support because of mental or physical incapacity.[17]	$28.85 to $34.62,[1] plus $6.92 for each dependent child under 18, or each child under 21 incapable of self-support because of mental or physical incapacity.[17]	[1 17] $17,500 27,500
United States:					
Federal employees	[1] 66⅔-75	Life	$41.54, or actual wage if less	$121.15	
Longshoremen	66⅔	Duration of disability	$18, or average wage if less	$70	

[1] According to number of dependents. In Idaho, Oregon, Washington, and Wyoming, according to marital status and number of dependents. Under the Federal Employees' Compensation Act, the 75 percent of wages is contingent upon the existence of a statutory dependent.

[2] The California law provides for 65 percent of 95 percent of actual earnings, or 61¾ percent.

[3] Colorado: If periodic disability benefits are payable to the worker under the Federal OASDI, the workmen's compensation weekly benefits shall be reduced (but not below zero) by an amount approximating one-half such Federal benefits for such week. If disability benefits are payable under an employer pension plan, the workmen's compensation benefits shall be reduced in an amount proportional to the employer's percentage of total contributions to the plan.

Colorado does not limit total maximum for disability from accidental injury, but sets a maximum of $12,598.25 in case of occupational diseases.

[4] Hawaii: After $25,000 has been paid, compensation at the same rate is paid from a special fund.

[5] In case total disability begins after a period of partial disability, the period of partial disability shall be deducted from the weeks specified.

[6] Illinois: After $13,500 to $17,500, depending upon number of dependents, has been paid, a pension for life is provided.

[7] Indiana: After $20,000 and 500 weeks, further payments of compensation may be paid for an indefinite period from a special fund.

[8] Kentucky: If period of total disability begins after a period of partial disability, the period of partial disability shall be deducted from the 425 weeks.

[9] Law expressly provides that such payments are in addition to payments for temporary total.

[10] Michigan: Law states that there is a conclusive presumption that disability does not extend beyond 800 weeks, but after that time the question of permanent total disability is determined in each case in accordance with the facts.

[11] Minnesota: After $18,000 paid, OASDI benefits credited against workmen's compensation benefits.

[12] New Jersey: Benefits set in accordance with a "wage and compensation schedule." After 450 weeks, if worker has accepted such rehabilitation as may have been ordered by the Rehabilitation Commission, further benefits may be paid during disability, amounting to his previous weekly compensation payment diminished proportionately as the wages he is then able to earn bear to the wages received at the time of the accident. If his wages equal or exceed such former wages, his benefit rate shall be reduced to $5 a week.

[13] North Carolina: In cases in which total and permanent disability results from paralysis resulting from an injury to the brain or spinal cord or from loss of mental capacity resulting from an injury to the brain, compensation shall be paid during the life of the injured employee, without regard to the 400 weeks or to the $12,000 maximum.

[14] Ohio: For persons previously awarded permanent total disability benefits, supplemental payments may be made from the Disabled Workmen's Relief Fund to bring payment up to $40.25.

[15] Rhode Island: After 1,000 weeks, or after payment of $16,000, payments to be made for life from second-injury fund.

[16] Utah: After payment of $18,720 by the employer or carrier, a worker who has cooperated with the Division of Vocational Rehabilitation but who cannot be rehabilitated receives from the combined injury fund 45 percent of wages, for period of disability, weekly maximum $40.

[17] Wyoming: As to the allowance for the children, the law states: ". . . there shall be credited to the account of each of such children . . . a lump sum equivalent to $24 per month [$5.54 per week] until the time when each of said children would become 18 years of age; provided that the lump sum credited to the account of all said children shall in no case exceed $7,000." The total maximum of $19,000 shown on the table includes the $7,000.

[18] Maine: ⅔ of States average weekly wage as computed by the employment security commission.

TABLE 7.—*Minimum and maximum benefits for temporary total disability*

State	Maximum percentage of wages	Maximum period	Payments per week		Total maximum stated in law
			Minimum	Maximum	
Alabama	[1] 55-65	300 weeks	$15.00, or average wage if less.	$38.00	
Alaska	65	Duration of disability.	$25.00, or average wage if less.	$100.00	$20,000.
Arizona	65	433 weeks	$30.00 if worker is 21 years of age or over.	$150.00, plus $2.30 for total dependents.	
Arkansas	65	450 weeks	$10.00	$38.50	$14,500.
California	[2] 61¾	240 weeks	$25.00	$70.00	
Colorado	66⅔	Duration of disability.	$11.50	$49.00 [3]	([3]).
Connecticut	60	Duration of disability.	$20.00	55% of State's "average production wage." [4]	
Delaware	66⅔	Duration of disability.	$25.00, or actual wage if less.	$50.000	
District of Columbia.	66⅔	Duration of disability.	$18.00, or average wage if less.	$70.00	$24,000.
Florida		350 weeks	$8.00, or actual wage if less.	$42.00	
Georgia	60	400 weeks	$12.00 or actual wage if less.	$37.00	$12,500.
Hawaii	66⅔	Duration of disability.	$18.00, or average wage if less.	$112.50	$25,000.
Idaho	[1] 55-60	400 weeks;[5] thereafter $15 per week ($18 if dependent wife) plus $4 to $15 for children, for duration of disability.	$15.00 ($18.00 if dependent wife) to $33.00.[1]	$32.00 to $52.00 [1] (see column 3).	
Illinois	[1] 65-80	Duration of disability until equivalent of death benefit is paid, except in specific injury cases limited to 64 weeks.	$31.50 to $49.00 [1]	$62.00 to $76.00 [1] after first 64 weeks, reduced to $56.00 to $68.00.	$13,500-$17,500.[1]
Indiana	60	500 weeks	$18.00	$45.00	$20,000.
Iowa	66⅔	300 weeks	$18.00, or actual wage if less.	$40.00 to $56.00 [1]	
Kansas	60	415 weeks	$7.00	$42.00	$17,430.
Kentucky	66⅔	425 weeks [6]	25% of 85% of the State's average weekly wage.	55% of 85% of the State's average weekly wage.	
Louisiana	65	300 weeks	$10.00, or actual wage if less.	$35.00	
Maine	66⅔	Duration of disability.	$18.00	([6])	
Maryland	66⅔	208 weeks	$18.00 or actual wage if less.	$55.00	
Massachusetts	66⅔	Duration of disability.	$20.00, or average wage if less, but not less than $10 if normal working hours are 15 or more.	$53.00, plus $6 for each total dependent. Aggregate shall not exceed the average weekly wage of the employee.	$16,000, plus dependents' allowances.[7]
Michigan	66⅔	Duration of disability.	$18.00 to $28.00 [1]	$58.00 to $91.00 [1]	([8]).
Minnesota	66⅔	350 weeks	$17.50	$45.00	
Mississippi	66⅔	450 weeks	$10.00	$35.00	$12,500.
Missouri	66⅔	400 weeks	$16.00, or actual wage if less.	$52.00	
Montana	[1] 50-66⅔	300 weeks	$31.50	$35.00 to $56.00 [1]	

See footnotes at end of table.

TABLE 7.—*Minimum and maximum benefits for temporary total disability*—Con.

State	Maximum percentage of wages	Maximum period	Payments per week		Total maximum stated in law
			Minimum	Maximum	
Nebraska	66⅔	300 weeks;[8] thereafter 45% of wages, maximum $32.00.	$28.00 or actual wage if less, first 300 weeks; thereafter $22.00, or actual wage if less.	$42.00 (see column 3).	
Nevada	[1] 65–90	433 weeks	No statutory minimum.	$48.75 to $67.50 [1]	
New Hampshire	66⅔	312 weeks; thereafter annual extensions in the discretion of the labor commissioner.	$15.00, or average wage if less.	$50.00	
New Jersey	(9)	300 weeks	$10.00	$45.00	
New Mexico	60	500 weeks	$24.00, or actual wage if less.	$40.00	$20,000.
New York	66⅔	Duration of disability.	$20.00, or actual wage if less.	$60.00	$6,500.
North Carolina	60	400 weeks.[10]	$10.00	$37.50	$12,000.[10]
North Dakota	80	Duration of disability.	$15.00, plus $3 for each dependent child under 18, or those over 18 incapable of self-support.	$50.00 to $65.00	
Ohio	66⅔	Duration of disability.	$25.00, or actual wage if less.	$56.00 for the first 12 weeks; thereafter $49.00.	$10,750.
Oklahoma	66⅔	300 weeks; may be extended to 500 weeks.	$15.00, or actual wage if less.	$40.00	
Oregon	[1] 50–75	Duration of disability.	$30.00, or actual wage if less.	$39.23 to $73.85 [1]	
Pennsylvania	66⅔	Duration of disability.	$27.50, or 90% of actual wage if less, but in no event less than $20.	$47.50	
Puerto Rico	66⅔	312 weeks	$8.00	$35.00	
Rhode Island	60	Duration of disability.[11]	$17.00 if worker is receiving benefits under the State temporary disability insurance act. $22.00 if worker is not receiving benefits under the State temporary disability insurance act.	$40.00 if worker is receiving benefits under the State temporary disability insurance act. $45.00 to $57.00 [1] if worker is not receiving benefits under the State temporary disability insurance act.	(11)
South Carolina	60	500 weeks	$5.00	$35.00	$10,000.
South Dakota	55	312 weeks	$20.00, or average wage if less.	$38.00	$13,500.
Tennessee	65	300 weeks	$15.00, or average wage if less, but in no event less than $12.	$38.00	
Texas	60	401 weeks	$9.00	$35.00	
Utah	60	312 weeks	$25.00 to $39.25,[1] or actual wage if less.	$42.00 to $60.00 [1]	$13,104. $18,720.[1]
Vermont	66⅔	330 weeks [8]	$21.00 plus $2.50 for each dependent child under 21, or average wage if less.	$41 plus $2.50 for each dependent child under 21.	

See footnotes at end of table.

TABLE 7.—*Minimum and maximum benefits for temporary total disability*—Con.

State	Maximum percentage of wages	Maximum period	Payments per week		Total maximum stated in law
			Minimum	Maximum	
Virginia	60	500 weeks	$14.00	$39.00	$15,600.
Washington		Duration of disability.	Same as maximum.	$42.69 to $81.23 [1]	
West Virginia	66⅔	208 weeks	$22.00	$42.60	
Wisconsin	70	Duration of disability.	$8.75	$68.00	
Wyoming	66⅔	Duration of disability.	$30.00 to $46.15 [1]	$40.38 to $60.00 [1]	
United States: Federal employees.	[1] 66⅔-75	Duration of disability.	$41.54, or actual wage if less.	$121.15	
Longshoremen	66⅔	Duration of disability.	$18.00, or average wage if less.	$70.00	$24,000.

[1] According to number of dependents. In Idaho, Oregon, Washington, and Wyoming, according to marital status and number of dependents. In Illinois, according to number of dependent children under 16, or under 18 when not emancipated.
[2] The California law provides for 65 percent of 95 percent of actual earnings, or 61¾ percent.
[3] Colorado: If periodic disability benefits are payable to the worker under the Federal OASDI, the workmen's compensation weekly benefits shall be reduced (but not below zero) by an amount approximating one-half such Federal benefits for such week. If disability benefits are payable under an employer pension plan, the workmen's compensation benefits shall be reduced in an amount proportional to the employer's percentage of total contributions to the plan. Colorado does not limit total maximum for disability from accidental injury, except that if payable in lump sum, maximum is $15,288; in case of occupational diseases the maximum is $13,693.75.
[4] Connecticut: Beginning October 1963, the maximum amounted to $57 a week.
[5] In case total disability begins after a period of partial disability, the period of partial disability shall be deducted from the specified period for temporary total.
[6] Maine: ⅔ of State's average weekly wage as computed by State's employment security commission.
[7] Massachusetts: Maximum $18,000 for temporary total and permanent partial disability.
[8] Michigan: Total maximum may not exceed 500 times total weekly amount payable.
[9] New Jersey: Benefits are set in accordance with a "wage and compensation schedule." Under this schedule, the 66⅔ percent level is adhered to fairly closely for workers earning wages of $45 a week or less. For workers who earn more, the schedule specifies benefits which are less than 66⅔ percent. For instance, a worker earning $60 a week is entitled to a compensation benefit of $36, or 60 percent.
[10] North Carolina: The 400 weeks and $12,000 do not apply in cases of permanent total disability resulting from an injury to the brain or spinal cord or from loss of mental capacity caused by an injury to the brain.
[11] Rhode Island: After 1,000 weeks, or after $16,000 has been paid, payments to be made from second-injury fund for period of disability. The allowance of up to $12.00 a week for dependent children is also payable from this fund.

Mr. O'HARA. Thank you, very much, Mr. Donahue and Mr. Tinsley, for appearing before us and I am sure we will be calling upon you for assistance.

Mr. DONAHUE. We will help you in any way we can.

Mr. O'HARA. Thank you. You have done your usual excellent job.

Mr. DONAHUE. Thank you.

Mr. O'HARA. Our next witness will be the Director of Personnel for the Agency for International Development, Mr. C. William Kontos, who will testify on behalf of AID, the Department of State, and USIA.

Mr. Kontos, would you please identify yourself for the record?

STATEMENT OF C. WILLIAM KONTOS, DIRECTOR, OFFICE OF PERSONNEL ADMINISTRATION, AGENCY FOR INTERNATIONAL DEVELOPMENT; ACCOMPANIED BY A. M. LERNER, CHIEF, EMPLOYEE-MANAGEMENT RELATIONS DIVISION, OFFICE OF PERSONNEL ADMINISTRATION

Mr. KONTOS. My name is C. William Kontos. I am Director of the Office of Personnel Administration of the Agency for International Development. I am speaking in support of H.R. 10721 and I speak

on behalf of my own agency as well as the Department of State and the U.S. Information Agency.

Mr. Chairman, I have submitted a statement which is very short and to the point and with your permission, I would like to read it inasmuch as there are one or two minor changes near the end.

Mr. O'HARA. Please do so.

Mr. KONTOS. I speak on behalf of the Department of State and the U.S. Information Agency as well as my own agency. Together we number a total employee strength of 26,600 Americans, of which 14,000 are employed in the United States and 12,600 overseas.

We strongly support the bill which Mr. Hathaway has placed before the Congress. We feel its benefits are needed and are long overdue. We also feel that it provides a worthy approach to the problem. Our support of the bill should also be taken as support for further and expanded measures which, we hope, will be offered in the future.

The spokesman for the Department of Labor has ably presented justification for the various provisions of the bill now before you. These will enlarge the benefits of legislation, too long unchanged, for illness, injury, disability and death incurred by Federal employees and by reason of their Federal employment. Their purpose is to revive and reinforce the legislative intent which was last expressed in 1949, in terms of today's cost of living, today's value of the dollar, today's scale of earnings.

We support all these provisions, but would like to focus our attention on one aspect of the bill, namely the maximum award for service-connected total disability or death. This is the feature which establishes the limit of the Government's assistance under the Federal Employees' Compensation Act.

I address myself to this award "ceiling" not only from the standpoint of its effect on all employees, but its effect especially on our employees, who, I feel, must be mentioned separately in viewing the proposed amendments. There is a significant difference between this group and the rest of the Government population. This difference is reflected in the degree of skill and training required of them, the locales in which they operate and the risks to which they are subject.

It is this very difference which explains my appearance before you. Mr. Donahue has already cited the example of the AID overseas employee who is paralyzed for life. The hand which fired the bullet in a Bolivian mountain pass a year ago and severed Jacob Jackson's spinal cord jolted us with the realization that the present ceiling on awards cut the Jackson family's annual income overnight from $14,595 to $6,300 for a totally disabled father, wife, and three young children.

It is such a situation, repeated early this year in the death of Joseph Grainger, an AID employee killed by the Vietcong while resisting recapture, which dramatizes the inequity of today's ceiling on FECA awards. Joe Grainger's salary was $11,325; the maximum award his wife and four children can receive is a total of $6,300. And at this moment Gustav Hertz, the Chief of AID's Public Administration Division in Vietnam, remains a prisoner in some unknown Vietcong location. His salary is $20,200. Should the possible happen, Mrs. Hertz and their children would be limited to the same $6,300 award.

Even these three cases do not tell the whole story of civilian, service-connected, maximum risks abroad. An early victim, again in Vietnam but long before the present inflamed stage of affairs, was Dolph Owens, one of our public safety advisers, struck down from ambush in November of 1960, within weeks after his arrival in that country and at the very moment when his young wife and two small daughters were en route to join him there.

Vietnam, of course, comes first to mind when we think of danger abroad, and our three agencies alone have a total of 850 employees there. But Vietnam, as we already know, is not the only place where employment-connected disaster can strike.

For example, this morning I understand that most of the U.S. establishment in Lahore has been evacuated or will be evacuated, as soon as we can get airplanes in there, because of the hostilities between India and Pakistan.

In addition to Bolivia, the Dominican Republic, Cyprus, the Congo, and many other manmade and nature-created emergencies can only too easily be recalled. The civilians who fight our country's—perhaps the world's—battle abroad need the support this bill provides.

The present ceiling on our financial recognition of death or disability from Federal service was not ungenerous when it was established 16 years ago. But, being an absolute amount rather than a percentage, it sank proportionately lower year by year as salaries and cost of living have risen steadily since 1949.

The bill's increase of monthly maximum from $525 to $685 is of some help. The new maximum annual award of $8,220 is an improvement. We understand that the President's Cabinet Committee on Federal Staff Retirement Systems has under consideration this very employee need as one of the collateral subjects it is exploring and interrelating with retirement and other employee benefits. We trust that its report will offer guidance for continuing address to the problem.

The bill does not alter the method of calculating the amount of award below the dollar maximum it establishes, but the award cannot exceed $685 per month, or $8,220 per year. All Federal employees who earn $11,511 or less will have the assurance that their award—or their family's, in the event of their own death—can approach substantially their full earnings before the event.

Not so employees whose earnings are greater than $11,511. These employees (older, perhaps, with greater family responsibilities; more experienced and skilled; dispatched to far reaches of their country's service; or engaged in the more important and more taxing responsibilities of Government) will remain limited to the same $8,220 per annum recovery.

We are informed that 93.8 percent of the Federal work force earns $11,511 or less per year. The great bulk of the Government's establishment, therefore, is assured the full allowable proportion (75 percent) of salary in the circumstances we are discussing, and only 7 percent will receive a lesser proportion.

However, of the 26,600 employes of our three agencies, it is nearly 37 percent, not less than 7 percent, who earn more than $11,511, and who cannot expect the full proportion of salary.

In summary, we support the bill in its entirety. We consider a most important feature of the present act to be the amount of compensation

which can be awarded to the employee or to his family if the most tragic events associated with his employment should befall him—total disability or death. We appreciate that the increase in maximum award which this bill provides is an advantage over that which is now provided.

We recommend favorable action on the bill now before you.

Mr. Chairman, I appreciate the opportunity to appear before you.

Mr. O'HARA. We thank you very much, Mr. Kontos. I think I would gather from the questions asked by members of the committee to Mr. Donahue that there seems to be a consensus within this committee at the moment to examine this entire question of maximums and its justification and its different applications to present-day salary scales as compared to salary scales of 1949 when the maximum was adopted.

Of course, I think to make an observation with respect to the entire area of maximums and percentage of salary to which a beneficiary is entitled, that we ought to keep in mind the genesis of these workmen's compensation laws, including the Federal Employees Compensation Act.

The idea behind them is that both the employer and the employee gave up something. The employee gave up his right to bring suit against his employer for injury or tort action against his employer for injuries caused by the negligence or misconduct of the employer, in which case he would have been entitled—if he had been successful in establishing liability—to his loss of earnings due to his disability projected on into the future. Not a percentage of them, but all of them, plus any award he might have received for pain and suffering. He cannot, of course, get that kind of recovery under a compensation act, either Federal Compensation Act or State act.

On the other hand, he has acquired a right to some form of recovery, whether or not his injuries are as a result of the employer's negligence or misconduct. So, he has gotten something in return.

And I think whenever we approach this, we have to approach it from the standpoint of where do we balance off these equities? At what point do we arrive at a balance?

I am inclined to agree with you that the maximums in many cases leave us out of balance in the context of today's cost of living and today's Classification Act pay schedules. On the other hand, I don't think that we ought to disregard completely this question of where the equities leave us. But I am sure that the committee will want to make some change, although I don't know what changes, in the maximums and in the compensation received.

Mr. Hathaway, do you have anything?

Mr. HATHAWAY. Mr. Kontos, thank you for your excellent statement. I agree with Mr. O'Hara that some consideration should be given to the maximum.

Do you have any other suggestions with respect to changes in the law?

Mr. KONTOS. Mr. Congressman, we have addressed ourselves to the effect that the law has to our people serving abroad, and I think the Department of Labor has answered our needs adequately in the testimony that they have made before this committee.

I would defer to their judgment in these matters.

Mr. HATHAWAY. There have been no other complaints that you know of with respect to the act?

Mr. KONTOS. No; this is the only one, and I might add that we view this as a very important step and a very salutary change from the situation that existed, and we support it.

We think it is a forward-looking step and we are also looking forward to the President's Commission on the total range of employee benefits and retirement systems which presumably will look at this problem from a Government-wide point of view.

Mr. O'HARA. Mr. Quie.

Mr. QUIE. In regard to uniformity to the civil service retirement systems and the retirement systems for Foreign Service officers, do you concur with this?

Mr. KONTOS. Yes, sir.

Mr. QUIE. It was not in your testimony, but it meets with your approval?

Mr. KONTOS. Indeed, I think uniformity and equal treatment of employees, both in the civil service and the Foreign Service, is an objective toward which we should strive.

Mr. O'HARA. Mr. Pucinski?

Mr. PUCINSKI. Mr. Kontos, you perhaps properly raise the question of a ceiling. It is my understanding that the Bureau of the Budget has approved the $685 ceiling; is that correct?

Mr. KONTOS. Yes, sir.

Mr. PUCINSKI. Do you know of any indication that they may want to change their mind on that ceiling?

Mr. KONTOS. No; I think we are all agreed that we can live with the current ceiling and are looking toward a wider perspective, a wider look at the problem which we hope will be tackled when the committee completes its labors in December.

Mr. PUCINSKI. I was wondering about that. I did not have a chance to ask Mr. Donahue about it. But from his statement, I gather that there are going to be some new guidelines handed down after the President's Cabinet Committee on Federal Staff Retirement Systems has completed its work; is that correct?

Mr. KONTOS. The President's Committee is looking at a whole range of problems, including what I believe are 25 different retirement systems that the Federal Government operates, as well as collateral problems such as Federal employees compensation.

This is a total look from a Government-wide perspective, and out of this may flow implications that impinge on the bill we are discussing today.

Mr. PUCINSKI. Certainly the examples that you have cited are examples that we all would feel are deserving of a greater benefit than they are receiving. But what percentage of the AID force is in this kind of hazardous operation, such as is involved in Vietnam or India?

Mr. KONTOS. It is difficult to give an exact percentage. If we include India and Pakistan with Vietnam as areas of hostility, this represents one of the largest segments of our oversea employees. The Indian mission alone represents a fairly sizable contingent. I could give you those figures for the record if you wish.

In addition, we have sizable U.S. representation in Colombia and Venezuela where there has been action of an insurgent nature.

We have had a problem in the Congo. It is hard to say in what specific areas at the moment this kind of danger lurks.

Mr. PUCINSKI. While I agree with you that these civilians who are engaged in hazardous duty, whether it is in this country or overseas, certainly are entitled to some special consideration; the difficulty with these examples is that, emotional as they are and justified as they are, they have a tendency to rush a bill through that covers a whole spectrum of the Federal service. People who are not exposed to any greater dangers than the elevator usually benefit from the improvement that the Congress is asked to vote because of the hazardous examples that you gave here.

For that reason I was wondering, because of our wide scale, worldwide commitments in the last 20 years, don't you think the time has come when maybe we should give some consideration to some special treatment of people that are involved in hazardous duty as opposed to people who operate out of the AID headquarters here in Washington and are never exposed to any more danger than any of us are exposed to?

Mr. KONTOS. An element of the Hays bill does what you suggest. There is a hazardous pay element there which will increase the differential from the maximum of 25 percent, which is currently in being, up to 50 percent.

Mr. PUCINSKI. Do you support that?

Mr. KONTOS. Yes, sir.

Mr. PUCINSKI. Now, the reason I have asked you these questions is, as you probably know, that this whole question of disability compensation, unemployment compensation, and so on is becoming a very, very serious cost of operation in the private sector. It is a huge outlay today.

What we do in the Federal Government, whether we like it or not, does set the pace for private industry, so when we adjust the disability compensation standards for 2½ million Federal employees, we can agree that it is going to be a very short time, 1 or 2 years, before we feel the backlash of this across the private sector.

I don't know to what extent this is inflationary. I don't know what effect it is going to have on the economy. These are things that are beyond my understanding, but I ask you these questions merely because I want to impress upon you that what we do involves not only the Federal Government employees; it has an effect upon the whole Nation's economy sooner or later. That is why I think the subject deserves such careful consideration by this committee.

Mr. KONTOS. I agree with you, sir. The element that I hope to concentrate on in our discussions are the relatively small number that are involved in an oversea capacity and who presumably, in many cases, are in situations of danger. At the same time they represent a small proportion of the total Federal Government employment, something less than 7 percent, even a fraction of that is what we are talking about. And I hope the figures that the Solicitor of Labor will produce for this committee will indicate exactly how much is involved from the point of view of cost to the Federal Government as a possible formula somewhat more generous than what is presently called for.

Mr. PUCINSKI. But by the same token, that same formula then becomes a guideline across the country?

Mr. KONTOS. Yes, sir; it could.

Mr. PUCINSKI. This is where I think the committee has to be very cautious in what it does. I wonder really if the time has not come, if we should not give some consideration to staying with the bill the way it is, because it does recognize the existing inequity and I think the bill is necessary.

Mr. KONTOS. I agree.

Mr. PUCINSKI. But perhaps the time has come when you ought to prepare for us some additional language. If you are concerned about the ceiling for hazardous duty, maybe we should have something in here. I don't know if the Hays amendment is going to do it. Perhaps we should have some consideration here for removing it.

I would be willing to waive the ceiling for any Federal employee who has been sent into hazardous duty and suffered disability. I think that those people are being called to make great sacrifices and encounter personal danger and even danger to their families.

It would seem to me we ought to give some thought to providing better protection for those people. But I don't like to see their example being used to apply across the board.

Mr. KONTOS. These were examples that dramatized the situation. Again, I repeat we are talking about a relatively small number of people who fall beyond the maximum and it is, even in our own service, less than half of our total numbers that are eligible. But I would like to repeat that we support the bill.

We think it is a very useful, important step and we could live with the bill in its present form.

In answer to your question about hazardous pay, I think the Hays bill amendments that have been proposed do take care of that very fully indeed.

Mr. PUCINSKI. Will it take care of it in this compensation also?

Mr. KONTOS. The hardship differential?

Mr. PUCINSKI. Will the Hays amendment apply?

Mr. O'HARA. It does not affect the maximum under that act, does it?

Mr. KONTOS. No; it will increase by up to 50 percent the salary of those that will be involved in serving abroad in hazardous areas.

Mr. PUCINSKI. Perhaps the author of the bill may want to give some thought to putting in an amendment here to remove the ceiling where the disabilities occurred under hazardous conditions.

Thank you very much for your fine testimony.

Mr. O'HARA. Mr. Gurney?

Mr. GURNEY. We had a lot of testimony on the ceiling, yet I have one more question on it. Is it the position of your three agencies that you recommend that a percentage ceiling—without trying to pin you down as to the amount—is a more realistic approach to this thing than a fixed dollar amount?

Mr. KONTOS. Yes, sir; that is my personal view, and I think it reflects the consensus of the three agencies I represent. On the other hand, we are anxious that this interim step be taken as rapidly as possible, but the specific answer to your question is "Yes."

Mr. GURNEY. The other question is this: With regard to the AID employee who is now a captive of the Vietcong, is his full salary being paid?

Mr. LERNER. It is, under the Missing Persons Act.

Mr. KONTOS. This is Mr. Abe Lerner, head of our Employee-Management Relations Division.

Mr. GURNEY. What happens in this sort of case? Suppose it is determined that he died 6 months ago. Is there any attempt to recover back money for the family?

Mr. LERNER. No, sir; the death is not official, for salary purposes, until the head of the agency makes an official finding of death based on the evidence available.

In one case which Mr. Kontos cited, Joe Grainger was discovered in April to have been killed while resisting recapture in January. In order for us to have enough background to clearly identify all the facts, it was sometime beyond April that an official finding of death was made, and the salary continued until that time.

Mr. GURNEY. Does that act cover all Federal employees?

Mr. LERNER. And members of the Armed Forces. All Federal employees and members of the Armed Forces.

Mr. BELL. Mr. Kontos, you mentioned the Hays bill. Perhaps I am being repetitious, but how would you define "hazardous"? Is there any trouble with that particular aspect, or have you discussed it? I may have missed it.

Mr. KONTOS. We have not discussed it.

Mr. BELL. Did the Hays bill define "hazardous"?

Mr. KONTOS. I think it makes general reference to the subject. I do not think it goes into great detail.

Mr. BELL. Members of the Armed Forces, for example, are in areas of actual combat. There might be a question as to what would be hazardous, in your type of operation. Is this correct?

Mr. KONTOS. Yes, sir; it would be a problem of definition. It seems we could agree that Vietnam is hazardous. We could agree that Indian and Pakistan hostilities put people in a hazardous zone.

Mr. BELL. You would not agree that Berlin could be a hazardous zone?

Mr. KONTOS. That's right. If you would like, we could submit for the record our current views on what constitutes a hazard.

Mr. O'HARA. If you would, please.

(Information furnished follows:)

DEPARTMENT OF STATE,
AGENCY FOR INTERNATIONAL DEVELOPMENT,
Washington, D.C., September 14, 1965.

Mr. JAMES HARRISON,
Director, Select Subcommittee on Labor,
Rayburn Building.

DEAR MR. HARRISON: In the course of my testimony in support of Mr. Hathaway's bill, H.R. 10721, on September 8, the question was asked what the criteria were for the establishment of salary differentials for U.S. civilians stationed abroad, particularly for those in hazardous areas.

The Secretary of State has been given the authority to establish differentials up to 25 percent of salary under section 231 of the Overseas Differentials and Allowances Act (Public Law 86-707). We submit an outline of the criteria and methods used.

Mr. Hays' bill, H.R. 6277, which is now before the Senate, amends section 231 *by providing that "In a foreign area* where there is danger of injury due to hostile activity" the additional compensation can be fixed as high as 50 percent of base salary—Vietnam is an obvious example. Criteria for establishing differentials beyond the present 25 percent are now being developed for the Secretary. Among the background elements which will be under consideration are the Department

of Defense criteria for members of the uniformed services in similar areas. These appear under title 37 of the United States Code. A copy is enclosed.

We will be happy to forward more complete information concerning the establishment of civilian differentials in areas of hostile activity as soon as it is developed.

Sincerely yours,

C. WILLIAM KONTOS,
Director, Office of Personnel Administration.

OUTLINE OF AUTHORITY FOR, AND SYSTEM USED IN, DETERMINING FOREIGN POST DIFFERENTIAL CLASSIFICATIONS FOR CIVILIAN PERSONNEL

By Executive Order 10903, dated January 9, 1961, as amended, the President has given the Secretary of State authority and responsibility under section 231 of the Overseas Differentials and Allowances Act (Public Law 86-707) for prescribing regulations and establishing foreign post (salary) differentials for civilian employees. Payment of the post differential is limited to places involving one or more of the following:

(*a*) Extraordinarily difficult living conditions,
(*b*) Excessive physical hardship, or
(*c*) Notably unhealthful conditions.

These three elements have been divided into 11 major categories:

Extraordinarily difficult living conditions:
- Inadequate housing accommodations.
- Lack of cultural and recreational facilities.
- Geographic isolation.
- Inadequate transportation facilities.
- Lack of food and consumer services.

Excessive physical hardship:
- Deleterious effects of climate and altitude.
- Dangerous conditions affecting life, physical well-being, or mental health.

Notably unhealthful conditions:
- Incidence of disease and epidemics.
- Lack of public sanitation.
- Inadequate health control measures.
- Inadequate medical and hospital facilities.

For purposes of objective analysis, the 11 major categories of hardship have been subdivided into 77 factors, many of which are again divided into variations of the same factor. Each factor or variation of factor is given specific point weight. It is the combination of these weights as applied to environmental conditions at the post which determines its differential classification under the point-score system used by the Department of State. For example, the category, "Isolation" is subdivided into the following factors:

A. Geographic restrictions.
B. Places of interest.
C. Population.
D. Distance from any city.
E. Transportation away from post.
F. Regional transportation.
G. Local transportation.
H. Mail.
I. Size of English-speaking colony.
J. Size of American colony.
K. Restriction of social life due to customs of language.

In the explanatory standards used for evaluation of each factor "Geographic restriction," as an example, is described as follows:

Personnel geographically restricted by natural barriers, official regulations or otherwise similarly isolated. Examples: Small islands where mainland cannot be easily reached by ferry or other commuting facilities; towns removed from other civilization or isolated by desert, jungle, mountains, etc.; restriction to specified areas such as to a city or sector thereof by regulation of U.S. or local government.

(1) Considerable geographic isolation, where personnel can get away from post only infrequently.

(2) Extreme geographic isolation, resulting in virtual confinement to post.

Item (1) carries only half the point weight of item (2), thus providing delineation between places which are fairly isolated and places at which isolation has considerably more effect on employees' life. Scoring for item (1) or item (2), not both, is of course applied.

From the answers to questions on form DSP-36, "Foreign Post Differential Questionnaire," as well as other available sources of current information, the State Department's differential analysts follow this system in evaluating the 11 major categories of hardship conditions at posts by applying appropriate weights, where warranted, to one of the variations under each of the 77 factors. Under the system, the highest score in any one factor such as "Geographic restrictions" will not alone be sufficient to provide a differential classification. A combination of scores under all applicable categories is necessary to achieve this result. It is the total score of applied weights, measured against predetermined cutoffs, which determines whether the post warrants a differential classification of 0, 10, 15, 20, or 25 percent. At least annually, posts are rated individually by at least two analysts and the higher for each are reconciled and approved by at least two officials before any classification is recommended to the Secretary for approval.

A certain degree of hardship is considered to be inherent in any foreign assignment, even for posts like Paris and Rome. To qualify for a 10-percent differential is a post must have a total point score in excess of the lowest predetermined cutoff. Higher differential classifications are warranted for relatively higher total point scores. Because of the statutory limitation of 25 percent, however, some posts which involve extreme hardship conditions cannot be classified at a higher rate even though their accumulative point scores would warrant higher classification.

There is a range of several points between cutoffs in each of the differential classifications which means that a post classified at, say, 10 percent might be high, medium, or low in that range. A later analysis of current environmental conditions at the post might show improvements which require eliminating the 10-percent classification. It might show worsened conditions which warrant increasing the classification, or it might show either such change in conditions but in insufficient degree to place the post's point score in a different classification bracket. Successive analysis over 3 or 4 years could gradually increase or decrease the post's point score without change in classification. The fifth analysis, however, might increase or decrease the score just a few points but just sufficiently to warrant a changed classification. It is this change in classification, particularly if it is a decrease, which is difficult for employees to understand particularly when they have been at the post only a short time and have seen or felt no change in conditions.

TITLE 37

310. Special pay: duty subject to hostile fire.

(a) Except in time of war declared by Congress, and under regulations prescribed by the Secretary of Defense, a member of a uniformed service may be paid special pay at the rate of $55 a month for any month in which he was entitled to basic pay and in which he—

(1) was subject to hostile fire or explosion of hostile mines;

(2) was on duty in an area in which he was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period he was on duty in that area, other members of the uniformed services were subject to hostile fire or explosion of hostile mines; or

(3) was killed, injured, or wounded by hostile fire, explosion, of a hostile mine, or any other hostile action.

A member covered by clause (3) who is hospitalized for the treatment of his injury or wound may be paid special pay under this section for not more than 3 additional months during which he is so hospitalized.

(b) A member may not be paid more than one special pay under this section for any month. A member may be paid special pay under this section in addition to any other pay and allowances to which he may be entitled.

(c) Any determination of fact that is made in administering this section is conclusive. Such a determination may not be reviewed by any other officer or agency of the United States unless there has been fraud or gross negligence. However, the determination may be changed on the basis of new evidence or for other good cause.

(d) The Secretary of Defense shall report to Congress by March 1 of each year on the administration of this section during the preceding calendar year. (Added Public Law 88-132, 9(a)(1), Oct. 2, 1963, 77 Stat. 216.)

Mr. PUCINSKI. Would my colleague yield?

Mr. BELL. Yes, sir.

Mr. PUCINSKI. I can appreciate the difficulty in trying to define a hazardous area or zone, but I don't think the agency would have any difficulty in determining, after the injury has been suffered, after the disability has been suffered, whether that disability was suffered under hazardous conditions or not.

Mr. BELL. I agree and I am not inferring that the gentleman's point is not well taken, but as you said, there is a broad pattern and in order to set that pattern, you have to have something that is uniform or fairly uniform at least.

This is a question I should have asked Mr. Donahue when he was here, but I just thought I would mention it to you to get your opinion on it. He talks about, in this bill, education for dependents, the age limit is 23.

I know some States say 25, but 23 seems to be maybe a little close to the line. I might ask the chairman about this point because with military service maybe they did not get the skills they need—they could be behind.

Mr. PUCINSKI. Do you yield?

Mr. BELL. Yes, sir.

Mr. PUCINSKI. It is significant that the masses of American workers covered by social security get compensation for their children only up to 22, and this Congress set that limitation at 22.

Mr. BELL. This is 23, so it is a variation for that.

Mr. O'HARA. I think the gentleman is perfectly correct. This is one of the questions we ought to look at though. What arbitrary age we are going to set? I might add at this point that I completed law school just 2 months before my 30th birthday. So, I will be sympathetic.

Mr. BELL. There are also problems of birthdays. Some children's birthdays happen at the wrong time.

Mr. PUCINSKI. The only point I was making on age 22, Mr. Chairman, is that the gentleman who is paying the taxes to support all these programs, the workingman in this country, the best he can get out of his social security, if he should be killed and leaves a young family, is until age 22.

Now we are talking about 23, 25. Let's think about the man who is paying these bills.

Mr. BELL. I think your point is well taken. However, you are breaking the pattern when you say 23. You might as well analyze it properly.

Mr. PUCINSKI. You might also keep in mind that under social security the worker is paying into that fund. He is paying half the benefits of that social security. He is paying it.

As far as I know, under the Federal program I don't think there is any contribution by the employees.

Mr. O'HARA. Under workmen's compensation laws in the States—it is my understanding that there is no deduction made from wages. Of course, the amounts set aside are paid in premiums by the employer

for workmen's compensation, and they are a form of wage cost, although unlike the FECA.

But under workmen's compensation laws the average age varies considerably. Some are 18, some 21, some with a special provision for skills, some without.

I want to thank the gentleman very much for coming over and we are certainly sympathetic with the problems that many of your employees face, and I believe you can leave with the assurances that we are going to consider the maximums very carefully.

Mr. Holland, the chairman of this subcommittee, has asked me to announce that he has invited witnesses from Government employee organizations and other interested groups to appear on the 14th and 15th of September.

On the 16th, Mr. Arthur Larson, former Under Secretary of Labor, now with Duke University and Mr. Samuel Horovitz, an attorney from Boston, both of whom are recognized authorities on workmen's compensation, will appear.

Without objection, the committee will now stand in adjournment.

Mr. KONTOS. Thank you very much, Mr. Chairman.

Mr. O'HARA. We will meet again on the 14th in this room at 10 a.m.

(Whereupon, at 11:45 a.m., the hearing adjourned, to reconvene at 10 a.m., Tuesday, September 14, 1965.)

IMPROVEMENT OF BENEFITS UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT

TUESDAY, SEPTEMBER 14, 1965

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2261, Rayburn House Office Building, Hon. James G. O'Hara presiding.

Present: Representatives O'Hara, Pucinski, Hathaway, and Quie.

Also present: Jim Harrison, staff director; Michael J. Bernstein, minority counsel; and Susan M. Parry, clerk.

Mr. O'HARA. The Select Subcommittee on Labor of the House Committee on Education and Labor will come to order.

The purpose of today's hearing is to continue the hearings begun last week on H.R. 10721 and related bills to amend the Federal Employees' Compensation Act, to improve its benefits and make other changes in the act designed to improve its operation.

Our first witness today is our very distinguished colleague from Florida, Congressman Dante Fascell, and if he is anywhere near as expert on Federal employees' compensation as he is on almost everything else that comes up in the House, especially the business of his committees, and is as helpful on this matter as he is on those, I am sure we will be able to adjourn the hearings immediately following his testimony and mark up the bill.

Congressman Fascell, we would be pleased to have your testimony.

(Statement referred to follows:)

STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman and members of the subcommittee, I appreciate your kindness in extending me an opportunity to appear here today to make a statement in support of H.R. 5288, which I introduced on February 23, 1965.

This bill proposes to make two separate changes in the Federal Employees' Compensation Act. I believe that these changes are desirable and necessary to prevent certain hardships to employees whose injuries require them to come under the FECA program.

Section 1 of H.R. 5288 is designed to provide financial relief to injured workers who experience delays in receiving their awards under the compensation program. It would allow an employee to continue to receive his regular pay between the time of his injury and the time when he receives his first compensation payment. Any amounts due the United States by reason of the continued payment of the employees' salary or remuneration would, under the terms of the bill, be recoverable by withholding sums from his compensation payments in a manner which would be equitable to the employee and to the Government. One of the effects of this recovery provision would be to prevent abuse of the benefits extended by the bill.

Under present law, as you know, an injured worker awaiting his first compensation check may use up any annual or sick leave to which he is entitled, if he so chooses, but he then receives no further payment from the Government until his claim is processed and his first FECA payment is sent to him. In many instances this can be a prolonged and difficult period, running for months in some cases. During this time the employee must provide for himself and his family as best he can.

An injured worker may experience delays of varying periods both within the agency that employs him and within the Bureau of Employees' Compensation, which processes all claims after they leave the employment agency. I am informed that the average period of elapsed time between the date of an injury and the date it reaches the BEC is 48 days. This represents the time lapse within the agency.

Most claims are processed fairly rapidly by the Bureau. According to a statement by its Director, 75 percent of the claims they receive are processed within 1 week to 10 days; 85 percent are processed in 3 weeks, and the remainder take a longer time for a variety of reasons. Those cases in which there are difficulties in establishing a causal relationship between the injury and the conditions of employment usually take the longest time in processing.

So the situation is this, Mr. Chairman: Considerable delays are experienced in processing these FECA claims and during the waiting period an employee must either utilize what leave he might have, or go without a fixed source of income until his first compensation payment is sent to him.

In many cases employees are forced to go a step further and utilize their sick leave rather than apply for FECA payments. There just came to my notice an article in the current issue of the Federal Times concerning the practice by postal employees of utilizing sick leave and foregoing FECA benefits. I am sure that the provisions of my bill would alleviate the problems discussed in this article. I ask permission to submit a copy of this article for insertion in the record.

Section 2 of H.R. 5288 would allow an employee who has been granted an award under the FECA program and who returns immediately to Federal employment to earn annual and sick leave credits for the period that he was on the FECA rolls. Under present law no annual or sick leave credits are earned during the period an employee is on leave without pay and drawing FECA benefits. The situation is just the opposite with respect to an employee who is on annual or sick leave. Such an employee continues to accrue leave credits while he is on leave.

It is patently unfair, in my opinion, to the employee who is injured on the job to be denied a benefit extended to another employee who is on vacation or absent from work because of illness.

In considering this bill we must remember that the vast majority of Federal employees are dependent upon their paychecks to keep their households functioning. A letter carrier earning around $5,000 or $6,000 a year, for example, cannot afford to miss a single paycheck without feeling an immediate strain on his resources. Those who are forced to undergo 5 or 6 weeks without income, as many now do while awaiting their compensation awards, are confronted with a severe financial struggle. The bill I have introduced, with its built-in safeguard against abuse, is necessary to help these workers in surmounting the problems they face at these dire times.

[From the Federal Times, Sept. 15, 1965]

IN POST OFFICE—SICK LEAVE ABUSE CUT TIED TO FASTER CLAIMS PROCESSING

WASHINGTON.—Post Office Department will seek speedier processing of claims to the Bureau of Employees' Compensation. The action was recommended by a special labor-management committee investigating use of sick leave by postal employees, James H. Rademacher, who represented the National Association of Letter Carriers, complained of delays in the processing of claims for injury compensation and suggested that such delays might be responsible for increased use of sick leave by postal workers.

The committee endorsed Rademacher's suggestion and recommended that the matter be discussed with the Bureau of Employees' Compensation in the Labor Department.

Two other measures were recommended as safeguards against the abuse of sick leave by employees. The group agreed to an educational program through Department and union publications and other channels emphasizing the value and proper use of sick leave.

Changes in the administration of sick leave regulations also were suggested. Deputy Assistant Postmaster General Richard E. Orton, who was in charge of the management side of the committee, said that a draft of the changes will be sent to unions and to the Postmaster General for approval.

He said that the process should be completed within 3 or 4 weeks. Specifics of the changes were not made public, but they would not change amount of sick leave (13 working days) or rules of accumulation.

Sick leave cost the department $127.3 million in fiscal 1965. Employees used 40.3 million hours of sick leave during that time, about 2 million hours more than the year before.

Rademacher suggested that employees might make more compensation claims instead of using so much sick leave if compensation could be obtained more rapidly. Compensation pays about three-fourths of an employees pay; sick leave pays the full amount.

* * * * * * *

Orton agreed to confer with Bureau of Employees' Compensation officials about the problem of speeding claims processing.

BEC Director Thomas Tinsley told Federal Times that he has been concerned with the same problem and is interested in expediting claims.

"We'd like to give service so that an employee never misses a paycheck," he said.

Tinsley suggested that a good part of the delay is in the transmittal of claims from the agency to the BEC. He said that some claims of postal employees may be sent from post office to regional office before they arrive at BEC. Processing could be expedited if claims were sent directly from the post office to the BEC, he said.

As it is, Tinsley said, his agency processes 75 percent of the claims within 1 week to 10 days after they arrive at BEC. About 95 percent are processed in 3 weeks, he said. The remainder might be delayed because a form was incomplete or because the examiner might need special information or confirmation of facts, he said.

About half the BEC caseload concerns postal employees. The agency handles about 110,000 continuing cases each year, and it receives about 14,000 new claims each year.

The committee that recommended the discussion with BEC has completed a 7-month study of sick leave and its alleged abuses in the Post Office Department. The group was appointed in response to charges from the General Accounting Office that postal and other Federal employees had been abusing sick leave rights.

Rademacher and the United Federation of Postal Clerks representative to the committee, Francis S. Filbey, agreed that the committee had found virtually no evidence of abuse of sick leave by postal employees.

Rademacher flatly stated: "There was no abuse at all."

Filbey said that the recommendations of the committee, including the educational program and other measures, were adequate to deal with any isolated instances of abuse.

* * * * * * *

Radecacher said that if there is any abuse, it is perpetrated by some postmasters. These officials, he said, could take as much as a year's sick leave just before they retire.

Daniel Jaspan of the National Association of Postal Supervisors was the other member of the committee.

General Accounting Office has asked Post Office and the Civil Service Commission to adopt a rule prohibiting an employee from engaging in other employment while he is on sick leave. Both agencies have rejected the rule as arbitrary; they agree that a postman with an injured leg may be unable to deliver mail but could handle deskwork while he is recovering.

The sick leave educational program is intended to take a positive approach to the situation, Orton said. The assistant chief of personnel said: "We don't want to hound our employees."

Through publicity in trade magazines, local conferences, and other measures, the Department will counsel its employees to make proper use of sick leave, he said.

STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. FASCELL. Mr. Chairman and members of the subcommittee, first let me express my appreciation for allowing me to appear and discuss the matters which are under consideration by your committee and to extend my commendation to you for undertaking the sometimes not highly publicized efforts of making amendments of a technical nature to this kind of a law. However, these matters are extremely important to a lot of people who are involved.

Let me file a disclaimer immediately. I don't claim to be an expert on anything, particularly on the subject matter that is before this committee.

I am approaching it strictly as a layman who sees that there are inequities which seem to be rather patent. I ask that the committee consider the inequities and then take whatever remedial action with such technical changes as may be necessary to accomplish what is suggested here.

One section of H.R. 5288 simply provides financial relief to injured workers who are awaiting their determination or award under the compensation program.

Under the present law the injured worker awaiting his first compensation check uses up his annual or sick leave if he chooses, and then receives no further payment at all until such time as his claim is processed and his first FECA payment is made. So this presents a problem, notwithstanding the fact that normal or average determination time is good and there is no, shall I say, negligence on the part of the Bureau with respect to processing. But just the normal processing time presents problems to the employees. Therefore the bill suggests that an employee be allowed to continue to receive his regular pay between the time of his injuries and the time he receives his first compensation payment.

That is the theory. There may have to be amendments to that idea. You may have to write in some safeguards, but this is generally the theory.

Also under another section of this bill, section 2, we would provide there that the employee would be entitled to accrue retirement credits just as if he were on sick leave.

I frankly find it very difficult to understand the difference between an employee who is injured and one on sick leave. Yet the injured employee on compensation would not be entitled to his retirement credits and the one who is on sick leave would.

It seems to me that is an inequity and this is the problem which the second section of the bill seeks to deal with. As I say, there may be technical additions because of other matters in the law with which I am not familiar. This subcommittee may have to amend the proposal to accomplish these purposes, but from an equitable viewpoint it would seem to me that these two matters are matters which are patently inequitable and need correction and attention by this committee.

To illustrate, and, of course, you could get probably thousands of these kinds of letters, but this is a short one and it points up the problem, I believe—let me read this letter.

It says:

Our Florida newspaper, the Mailman, carries the item about your bill to alleviate the hardship incurred by Federal employees injured in the line of duty; to wit, quicker payments of benefits and continued credits of sick or annual leave during periods of nonworking status.

If this letter will aid my brothers and sisters in Federal employment, you have here my permission to use this letter as you choose fitting. To reinforce your belief in such a law may I state my present case briefly.

I was injured Wednesday, January 7; my right ankle bone and in the achilles tendon while delivering mail. I made out the required forms for the day of labor, tried to work 3 hours or more a day on a bad foot because of the shortage of help, and dated my claim February 2 rather than date of accident.

What with filling out other forms and forms being lost or misplaced I received no pay until today, March 18, or a total of 50 days, 7 weeks. But I am lucky. My wife works and I have no young children and my mortgage payments are low, but despite these factors in my favor I have had to struggle and lose interest on my bank savings.

I have lost sick and annual leave and receive 75 percent of my wages. However, one of those less fortunate than I, how could they have lived?

This man thus states the problem.

As I say, this is not anybody's fault. It is just one of those things, and I think the average time the Bureau would report is a lot less than that for most cases. In most cases it may not present a problem, but there are enough of these so that some adjustment needs to be made.

Mr. O'HARA. Mr. Fascell, I thank you for your statement. Without objection, the full statement and the article attached thereto will be entered in the record immediately preceding your oral presentation.

Mr. FASCELL. Thank you, Mr. Chairman. The organizations can speak for themselves, but I think generally they support the theory of this legislation.

Mr. O'HARA. I think the theory is very good and I would like to discuss it with you just for a moment or two.

I think one of the difficulties arises if the claim is denied. What do we do then? Do we attempt to recover the amount of salary paid during the interim period?

There are very few, but there are a few claims that could be said to be completely unjustified just as there are under State workmen's compensation statutes where a fellow hurts his back digging in the rose garden in his backyard.

Mr. FASCELL. A man could get drunk and cut off his wrist and this would be a clear case of a noncompensable injury; I am sure this is not a new problem. It has been met in other statutes somewhere or in other practices.

Mr. O'HARA. That is correct and I am not familiar with——

Mr. FASCELL. I am not either.

Mr. O'HARA (continuing). Procedures under which it has operated. I am going to ask counsel to attempt to determine just how this problem is handled, especially since H.R. 10865, a bill introduced by myself, would establish a hearing procedure, which may have the effect of having fairer and more complete determinations, but may also have the effect of delaying the original award to some extent, and I think that we are going to have to wrestle with that problem of what happens in the interim period.

Mr. FASCELL. Mr. Chairman, you put your finger on the entire problem. It is probably the reason why this hasn't been tackled before. But I think that you could write reasonable safeguards in this to prevent any kind of abuse or any substantial losses.

You could write time limitations. You could write amount limitations if you wanted to. You could write negligence limitations. I imagine there are half a dozen different ways to approach the problem of the safeguards with reference to the problem you are talking about.

Mr. O'HARA. I think your proposal to amend section 8 to preserve the accumulation of annual and sick leave credits during a period of nonemployment because of work-connected disability is an excellent suggestion.

I think the committee will certainly give that its thorough consideration and attempt to determine if there is any good reason why we should not do this.

Mr. FASCELL. Mr. Chairman, I was going to say there may be another side to that and there probably is, but I am not aware what it is.

Mr. O'HARA. I am not aware of it, either.

Mr. FASCELL. We are going to rely on the good judgment of this committee to do what is right and what is fair to protect the Government and employees, too.

As I say, looking at it strictly as a layman, it seems to me these are matters that ought to be considered and some adjustment made.

Mr. O'HARA. Mr. Hathaway?

Mr. HATHAWAY. I just wanted to thank Congressman Fascell for bringing these inequities to our attention, and if you have any further suggestions with respect to the problem which Mr. O'Hara pointed out of paying someone and it turning out later that the person was not entitled to it, we would certainly appreciate it.

Mr. FASCELL. I haven't given that really any thought, but I shall and maybe contact counsel on any suggestions.

Mr. HATHAWAY. Thank you.

Mr. FASCELL. Frankly, I have been out of that business so long I am afraid to tell you about any aspects of the law any more.

Mr. O'HARA. We find ourselves in a similar position, Mr. Fascell.

I am not only finding that I am forgetting what I once knew; I am finding that things are changing quite a bit since I practiced last.

Mr. FASCELL. Of course, that is one of the nice things about the position that you have, Mr. Chairman and members of the committee.

This job is a constant challenge educationally speaking. It keeps us from getting stale and certainly keeps us from getting bored.

I know that I find it equally as interesting as you do because we will be talking about this matter here today and then 30 minutes later we will be talking about something entirely different.

Mr. O'HARA. And we might spend a full day reading Journal some other day.

Mr. FASCELL. Yes, or be engaged in some other illuminating effort.

Mr. O'HARA. Yes, that's right.

I thank the gentleman very much.

Mr. FASCELL. Thank you very much and I certainly appreciate your consideration.

Mr. O'HARA. Thank you.

Mr. FASCELL. Thank you.

Mr. O'HARA. Without objection at this point, the statements of a number of Members who have submitted statements with regard to amendments to the Federal Employees' Compensation Act will be inserted in the record, to wit: the statements of the gentleman from New York, Mr. Multer, the gentleman from California, Mr. Miller, the gentleman from Maryland, Mr. Sickles, the gentleman from California, Mr. Dyal, the gentleman from Kentucky, Mr. Farnsley, the gentleman from California, Mr. Hosmer, and the gentleman from Illinois, Mr. Collier.

(Statements to be furnished follow:)

STATEMENT OF HON. ABRAHAM J. MULTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, early this year I introduced H.R. 596 to amend the Federal Employees' Compensation Act to cover civil defense workers. This act, as you know, is the Federal Government's workmen's compensation program for its employees and provides compensation for disability and death, medical care and rehabilitation services to those who are injured in the line of duty.

Workers who are concerned with civil defense and who are employees of the Federal Government, whether in Washington or elsewhere, of course, already are under the Federal Employees' Compensation Act. My bill would give this protection to civil defense workers who are under the jurisdiction of State and local governments and who are injured while engaged in, training for, or traveling to or from activities relating to civil defense as defined in the Federal Civil Defense Act. Not only does it seem to me that the risk of injury is greatest at these operational levels, but some of the workers at the State and local levels receive no pay but are motivated solely by a sense of patriotic duty.

State and local civil defense employees and volunteers may be covered by State workmen's compensation laws. Coverage, however, is spotty, varies greatly among the States, and may be limited to a certain category such as members of mobile support units. Also, in some States coverage is elective, not compulsory. I firmly believe that a program initiated by the Federal Government in the name of national defense should give uniform protection to the workers in the program.

The Federal Government already has demonstrated its awareness that it must take on more responsibility if there is to be an effective civil defense organization on a national scale. The original Civil Defense Act of 1950 has placed the responsibility for civil defense primarily on the States and their political subdivisions. In 1958 the act was amended to make civil defense the joint responsibility of the Federal Government and the States and their political subdivisions. Also, the Federal Government now pays half of the administrative and personnel costs for State and local civil defense workers and half of the travel expenses and per diem allowances of persons attending civil defense schools. An eligible civil defense agency's cost for State workmen's compensation benefits for civil defense employees is a qualified item for Federal matching; the cost of workmen's compensation awards to civil defense volunteers is not eligible for Federal matching.

There is adequate precedent for extending the protection of the Federal Employees' Compensation Act to groups who are not employed by the Federal Government. Such groups include Peace Corps volunteers, Job Corps enrollees, and members of the Reserve Officers Training Corps and of the Civil Air Patrol. The Civilian Conservation Corps, Works Progress Administration, American Citizens in the Philippines who were interned by the Japanese, and civilian reservists during their annual 2-week training course were among those covered by the act at one time or another.

Many States include relief work during natural disasters as a civil defense activity. Civil defense workers have proved indispensable during such emergencies as demonstrated during the Alaskan earthquake and the flooding of the Ohio River in 1964, to name but a few instances. Although my bill would limit Federal Employees' Compensation Act coverage to injuries sustained in the performance of defense oriented activities, it undoubtedly would attract more participants to civil defense work. Thus, it could have the incidental, but the none-

theless important, effect of giving the States a larger corps of trained personnel for meeting natural disasters and other emergencies.

In conclusion, I wish to recall to you that Secretary McNamara believes that civil defense is an integral and essential part of our total defense posture. We all pray that our country will never be attacked. We must recognize, however, that preparations to protect our people against such an eventuality are part of a necessary preventive program and anything to improve this program is vital to the national interest.

I ask, therefore, that you support H.R. 596.

STATEMENT OF HON. GEORGE P. MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman and members of the Select Subcommittee on Labor, I appreciate very much the privilege of appearing before you today in behalf of my bill H.R. 2624. This bill, very simply, extends to injured Federal employees the same right to utilize the services of optometrists that is now available to non-Federal employees under the workmen's compensation laws of our States and outlying territories.

Some of you may not be as familiar with the profession of optometry as I am, so I wish to take just a few moments to mention a few things of which you may be unaware.

There are some 17,000 full-time practitioners of optometry in the United States. They are currently taking care of the visual needs of some 80 million Americans. To engage in practice they must first take 6 years of training at the college level and be examined and licensed by the State in which they choose to practice. Each of the States and the District of Columbia have boards of optometry which license and regulate the practice of optometry.

There are 10 schools and colleges of optometry and I am proud to report that 2 of them, the School of Optometry at the University of California in Berkeley and the Los Angeles College of Optometry, are located in my home State. I personally know members of their faculties and can assure you that they are some of the finest professional educators of these United States, if not the very best. The dean of the school at the University of California, Dr. Meredith Morgan, is a true credit to the profession and to his Nation.

This subcommittee also has before it H.R. 6551, introduced by my friend the gentleman from Maryland, which provides for the establishment of a Federal employee accident prevention program. For years in California there has been a working agreement between the Northern California Federal Employee Safety Council and the California Optometric Association to provide Federal employees of that area with protective and corrective eyewear. This is only part of a much larger program in eye safety which optometry of California sponsors. For instance, optometrists in California annually screen the vision of junior riflemen before they receive hunting licenses. This service is provided gratuitously by members of the California Optometric Association. They train driver license examiners, who are responsible for passing upon the visual capabilities of all those who take to the roads and highways of my State. They provide industrial vision consultants to manufacturers in my State and similar consultants for the schools and the playgrounds.

Optometry is one of the most safety minded of all professions. The U.S. Chamber of Commerce recently gave the American Optometric Association its highest award for that association's membership participation in the field of traffic safety.

I was privileged, along with many other of my colleagues in the House of Representatives, to cosponsor the American Optometric Association's bill of 1963 calling upon the President to issue annually a proclamation for the observance of "Save Your Vision Week" the first week of each March.

Optometry is the profession which has done the most to enable the world's population to see and to bring the light of understanding through perception into the lives of us all. It does seem strange to me that they can do all these things for employees in the name of safety yet when the same employees are injured they are denied payment to their claims for vision service under the Federal Employees Compensation Act. It is more than strange. It is unfair to both the employees and these fine practitioners, and the act should be corrected.

Mr. Chairman, I respectfully request that your subcommittee amend the act to incorporate the provisions of my bill so that Federal employees may select the optometrist for vision service as do all other employees in California. For the information of your staff and subcommittee members I am leaving with the clerk section 3209.3 of the labor code, relating to workmen's compensation, wherein the term physician is defined as including optometrists.

Thank you for your courtesy and the opportunity to present this statement for H.R. 2624.

(The matter referred to follows:)

PHYSICIAN DEFINED—WORKMEN'S COMPENSATION INCLUDES OPTOMETRISTS

In section 3209.3 of the labor code, relating to workmen's compensation, physician is defined as including optometrists. This section reads:

"3209.3 Physician includes physicians and surgeons, optometrists, dentists, chiropodists, and osteopathic and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

"(Added by Stats. 1945, Ch. 629; amended by Stats. 1947, Ch. 620; Stats. 1949, Ch. 644.)"

DISABILITY BENEFITS—UNEMPLOYMENT COMPENSATION CLAIMS CAN BE SUPPORTED BY OPTOMETRISTS' CERTIFICATES

Section 2708 of the unemployment insurance code, relating to the payment of unemployment compensation disability benefits, provides that claims for such benefits must be supported by the certificate of a physician as defined by section 3209.3 of the labor code acting within the scope of his practice as defined by California State law.

[From the "How To" series, California Optometric Association, Jan. 15, 1959]

HOW TO HANDLE CLAIMS—STATE COMPENSATION INSURANCE FUND (WORKMEN'S COMPENSATION)

1. Eligibility for replacement of broken eye glasses:
   A. Workman must have broken or damaged his glasses coincident with an injury incurred on the job. This injury must have been severe enough for him to have visited a physician.
   B. There is no stipulated amount of time lost from work where glasses are covered but the worker must have seen a physician first.
2. This compensation will cover only the replacement of components of the glasses broken in the accident.
3. Refractions are not covered regardless of the age of the prescription, desires of the worker, etc., with the following one exception: If the physician who first saw the patient recommends a refraction because of possible changes in refraction as a direct result of the injury, such as injury to the eye or orbit, then and only then, will a refraction be covered. (This recommendation of the physician must be included in his report to the State compensation insurance fund.)
4. Whether or not the visual examination has been recommended by the physician first contracted, in the event that there is an injury to the eye or orbit and the visual examination reveals a marked change in refraction or other visual functions such as correctible acuity, binocular balance, etc., a complete report should be made of the condition including wherever possible a report of the patient's visual status prior to the accident. In this report explain the relationship between the injury and the visual changes.
5. Procedure on billing:
   A. Your statement should include the following:
      (1) Employee's (patient's name and address).
      (2) Employer's name and address.
      (3) Date of injury.
      (4) Name of physician first contracted after injury.
   B. Fees should be itemized as to lenses, frames, etc. The charge should be expressed as one fee for each part. (Do not separate your fees for services and your fees for materials—lab costs.)

6. Should the patient desire a visual examination by an optometrist, even though not recommended by a physician, he must assume the financial obligation for the examination. The amount charged to the insurance fund must be only the replacement cost of the lenses, or lens, or frames broken in the accident. Should the patient desire a more expensive frame than the one broken he must pay the difference. Where the lenses or frames which are to be replaced are unusual as to their cost, an explanatory note should be included with your statement. (Such as, compensated lenses, cataract lenses, myodisc, etc.)

STATEMENT OF HON. CARLTON R. SICKLES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, I appreciate this opportunity to file a statement on behalf of H.R. 6554 and H.R. 3826, two bills I have introduced which would amend the Federal Employees' Compensation Act.

I would like to comment first on H.R. 6554. The importance of consideration of new approaches to safety in the Federal Government is demonstrated by the September 1964 report on Federal work injuries sustained during 1963 which stated:

"The summary of civilian Federal employee work injury experience during calendar year 1963 shows no measurable overall improvement. Frequency of disabling injuries was the same as for 1962, while severity and cost rates advanced a significant 13 percent. The total of 190 employees fatally injured is 51 more than that for the year before. Catastrophic loss or unprecedented occurrences marred the records of many departments and agencies.

"Altogether there were 106,594 cases reported for 1963, up 3.4 percent from 1962; with 2.8 million days of chargeable disability; and $37.6 million total direct cost. The total direct cost is the highest ever recorded, and in large part is a direct reflection of the fact that the severity rate rose from 458 to a level of 522 chargeable days lost per million man-hours of work exposure."

When we add the untold cost in human suffering to the fact that the financial liability incurred each year represents only a portion of the actual safety cost of the Federal Government, we realize that the situation deserves our immediate attention.

In the last 7 years—

More than 1,200 Federal workers died from job injuries.
Nearly 300,000 sustained disabling injuries.
Over 18.5 million man-days of potential production were lost.
Costs to the Federal Government amounted to $1¼ billion.

This is not to say that nothing is being done to promote safety in the Government today. The President, on February 16, 1965, launched Mission Safety-70 to achieve a 30-percent reduction in injuries to employees of Federal agencies, by 1970. Many agencies have shown a continuing and substantial reduction in their frequency and severity accident rates. In 1961, the Veterans' Administration and the Department of the Army achieved their lowest frequency and severity accident rates in the past quarter of a century, as did the Department of Treasury, Department of State, and the Department of the Interior. In 1961, the Department of the Air Force achieved the lowest severity rate since it was established in 1947. There are examples of other agencies, such as the General Services Administration which has come a long way from the frequency rate of 21.2 in 1945 to a new low of 7 in 1961. However, in 1962 and 1963, even the splendid examples of safety consciousness lost some luster as the rates of their agencies began to creep upward again.

One can never be complacent because we must continue to strive for perfection. We must continue to reduce the accident rate and safety costs of the Government.

Frankly, I am just a little distressed at the apparent lack of interest shown by some administration officials in H.R. 6554. Enactment of H.R. 6554 would complement the efforts of the President in Mission Safety-70.

At the present time, there are no minimum standards for safety applicable throughout the Government, and no central focal point of responsibility for safety. There is great variation in agency safety programs and in agency safety results. Recent reports indicate that the safety performance of Government has lagged behind that of safety-conscious private firms. Because of

the limitations of present law, there is no labor representation on the existing Federal Safety Council. To improve the safety record of the Federal Government, H.R. 6554 would—

1. Require the head of each Federal agency to establish a safety program in conformity with the standards, programs, and regulations prescribed by the Secretary of Labor;
2. Give the Secretary of Labor authority to develop, promulgate, and promote minimum safety standards for Federal employees;
3. Provide for surveys and investigations of injury cases which would provide useful data for individual agencies to use in controlling injuries to their employees;
4. Provide a means for coordinating and collecting the information and data developed by each Federal agency and making it available for all to use thus preventing duplication of effort;
5. Provide an advisory staff of technicians for those agencies wishing to improve their safety efforts and upgrade the safety "know-how" of those responsible for the safety of Federal employees;
6. Establish a Federal Safety Advisory Committee which would include representatives from both labor and management; and
7. Establish a Federal Safety Council similar to the Council set up under Executive Order 10990.

In summary, the Government must lead, not lag, in the development of adequate safety standards and programs. I urge enactment of H.R. 6554 to accomplish this objective.

Now I'd like to comment on H.R. 3826 which amends the Federal Employees Compensation Act permitting injured employees to use the services of podiatrists.

Many enlightened States now have compensation laws permitting the employee to have a podiatrist treat a work-related injury. Most of the current health insurance programs provide payments for the services of podiatrists. The current Federal law frequently results in a situation whereby podiatrists can treat an injury not connected with the employees work while treatment of a similar injury sustained during working hours is not covered. I hope the Congress will correct this defect in the existing law.

STATEMENT OF HON. KEN W. DYAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I appreciate the opportunity of submitting this brief statement regarding my bill, H.R. 9648, to provide additional benefits under the Federal Employees' Compensation Act for certain disabled former employees of the Civilian Conservation Corps, and for other purposes. I requested the legislative counsel of the House of Representatives to draft this bill to increase the compensation and attendant benefits of those unfortunate emergency relief employees who sustained permanent and total physical disabilities during the performance of their work. While the cases may be few in number, I feel they are deserving and the introduction of H.R. 9648 was intended to call attention to needed additional benefits for those under the emergency relief programs.

My specific attention was called to the need for increased compensations by a former employee of the CCC who sustained an injury and as a result is a paraplegic. He is currently receiving a compensation rate of $150 per month and an attendant rate of $125 per month. These are the highest benefits paid to former CCC employees, but out of approximately 30 cases, only 2 are receiving these amounts. In the case of the paraplegic, it is obvious the benefits are inadequate. Also, other emergency relief personnel—those who were employed by the Civil Works Administration and Works Progress Administration—are receiving very meager benefits.

I am frank to admit I do not know the total number of cases which might be affected under the provisions of H.R. 9648. I believe there are approximately 100 nonfatal cases. However, while the Select Subcommittee on Labor is considering in general, amendments to the Federal Employees' Compensation Act, I am hopeful consideration can be given to the former emergency relief personnel who are experiencing great financial difficulty in their endeavor to pay the rent, buy the groceries, employ attendants, and purchase a few of the actual necessities to take care of themselves.

The present Job Corps is not unlike the Civilian Conservation Corps in that the CCC provided employment for our youth. Under present law, disability cases resulting from injuries sustained by employees of the Job Corps are computed at considerably higher rates.

Of course, the cost of such measure, if enacted, is important but I do not feel it should be the controlling factor. I am confident an equitable solution can be resolved by the subcommittee, and I thank you for your attention.

STATEMENT OF HON. CHARLES P. FARNSLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

On August 3, 1965, I introduced H.R. 10225 to correct a serious inequity. The purpose of my bill is to reduce the hardship that results from an unreasonably long delay in the payment of a valid claim to a Federal employee who becomes disabled in the line of duty or to the employee's survivors if death results from the injuries. H.R. 10225 proposes the payment of compound interest at no annual rate of 6 percent on accrued unpaid benefits. Computation of the interest would start 90 days after a valid claim was filed. I believe that this period of time should be sufficiently long for the processing of most claims and at the same time it is short enough that individuals and families suffering the loss of income probably would not be destitute. Many of them, I feel, could tide themselves over a 90-day period by borrowing, using savings, and buying on credit. Beyond this time period, however, the lack of any income to replace the wage loss can have serious consequences. The interest, of course, would cease after accumulated benefits were paid out to the beneficiary.

The experience of a constituent of mine points up clearly the need for H.R. 10225. The situation is rather involved but, in brief, this year my constituent received a check that represented 22½ years of accrued Federal employees' compensation benefits. She had filed for death benefits in 1942 when her husband, who had worked for the Works Progress Administration, died. Her claim was denied at that time and was not honored until she reopened the case 20 years later.

I assure you that the lump-sum payment that my constituent received this year does not erase the injustice she suffered through the years. She was so destitute that she has been on old-age assistance. Also, the cash she now receives to cover the benefits of past years does not have the purchasing power it had in the years the benefits were earned. For example, today prices are more than 50 percent higher than average consumer prices were in the period 1943–49, a period in which my constituent should have been receiving monthly benefit checks.

I ask, therefore, that you give your support to H.R. 10225.

STATEMENT OF HON. CRAIG HOSMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, this bill offers long-needed, definitive legislation which will establish once and for all whether a member of the uniformed services, who is employed as a civilian by the Federal Government, earning a salary for such work, and receiving retired or retainer pay, is entitled to retired or retainer pay, as well as disability compensation under the Federal Employees' Compensation Act, if he suffers an injury in the service of the Federal Government.

This question has been presented several times to the Comptroller General of the United States who has consistently ruled that compensation may not, under the statute, be paid concurrently with retired pay.

This creates an inequity and is a gross injustice. A retired military man can draw his retired pay and his civilian salary until he is injured in his civilian employment. Then he loses his salary from that position and, also, is called upon to elect whether he will accept disability compensation or his retired pay.

I call your attention to the inconsistency of the entire situation.

If a retired member of the uniformed services is permitted, under statutes, to take a Federal job and earn salary while still receiving his retired or retainer pay, why then is he not entitled to compensation during his period of disability from an injury sustained in the civilian job without being required to waive his retired pay?

On July 12, 1957, the U.S. Court of Claims, decided in favor of plaintiff, Albert Mulholland, who was drawing Navy retainer pay and was injured in the course of his Federal employment. He was entitled to compensation under the provisions of the Federal Employees' Compensation Act, but, until the decision by the Court of Claims, Mulholland was required to waive his retainer pay because of the ruling of the Comptroller General. Following the court's decision, the Comptroller General changed his tune and ruled that there is a difference between "retired pay" and "retainer pay." stating that a person receiving "retainer pay" also may receive disability compensation. He further pointed out that "retainer pay" was given because the man had status in a Reserve and was holding himself in readiness to serve when called upon. However, according to his ruling, a person receiving retired pay was in a different situation and was not allowed to receive concurrently that pay and disability compensation because the retired pay was not "for services actually preformed."

I call your attention now to section 7 of the Federal Employees' Compensation Act which provides that an employee who is in receipt of compensation under the provisions thereof "* * * shall not receive from the United States any salary, pay, or remuneration whatsoever except in return for services actually performed, and except in pensions for service in the Army or Navy of the United States * * *."

We have considered the decision of the Court of Claims on the case of *Mulholland* v. *United States* (139 Ct. Cl. 507). Now take a look at the decision in the case of *Tawes* v. *United States* (146 Ct. Cl. 500). Tawes was seeking retired pay as a retired Naval Reserve officer together with disability compensation. The court therein held, citing its opinion in *Tanner* v. *United States* (129 Ct. Cl. 792), that the plaintiff's disability compensation was "pay incident to such civilian employment" within the meaning of section 1(b) of the act of July 1, 1947, as amended, 10 United States Code 371(b), and that, therefore, plaintiff was entitled to receive both disability compensation and "pay and allowances" under the law relating to Reserve components of the Armed Forces. Tawes' retired pay was renamed by the court and became "pay and allowances." Thus the court permitted drawing of both disability compensation pay and retainer pay for Mulholland as a fleet reservist and for Tawes as a member retired under the laws relating to reservists.

Let's look at the decision of the Court of Claims on June 7, 1963, on the claim of the *Estate of Charlie Steelman* v. *United States* (No. 24–60).

Steelman enlisted in the Regular Navy on February 27, 1908. On July 7, 1922, he was transferred to the Fleet Naval Reserve and drew retainer pay until December 1, 1937, at which time he was placed on the retired list of the Regular Navy with retired pay. Later he was recalled to active duty with active duty pay and was returned to an inactive status on the retired list of the Regular Navy on October 30, 1944, with retired pay .

Following his return to the Regular Navy retired list, Steelman was employed by the Internal Revenue Service and drew his retired pay and civilian pay until February 27, 1951. He was injured on July 28, 1950, in the course of his civilian employment. Starting February 27, 1951, he was paid disability compensation under the Federal Employees' Compensation Act, in lieu of his retired pay as a Regular Navy retired enlisted man, pursuant to his election—an election which, in my judgment, he should not have had to make. He filed claims with the Comptroller General in 1955 and 1959 for retired pay, in addition to his disability compensation. They were denied, and Steelman's estate petitioned the Court of Claims on January 20, 1960, claiming that he was entitled to both his disability compensation and his Regular Navy retired pay under the provisions of the Naval Reserve Act of 1938.

The Court of Claims decision stated that (1) because the plaintiff (Steelman) was retired and drawing retired pay as a Regular enlisted man of the Regular Navy, section 4 of the Naval Reserve Act of 1938 has no application in his case; (2) for the same reason, title III of the act of June 29, 1948, which applies to Reserve retirement has no application in his case; and (3) for the Court of Claims to hold that the exception in section 7 applies to Regulars retired with 30 years of service would be to usurp a function of Congress. Therefore, the court barred the plaintiff from recovering retired pay as a Regular with 30 years' service while receiving disability compensation under the Federal Employees Act.

Your attention now is directed to the following portion of the dissenting opinion on this claim of Judge Whitaker, in which Chief Judge Jones joined:

"* * * The majority opinion says that a man may receive compensation for services being performed at the same time as he is receiving (disability) compensation, and he may receive a pension at the same time he is receiving (disability) compensation, but it says that he cannot receive retired pay and compensation at the same time. Why Congress should have permitted a man to receive a pension and denied him the right to receive retired pay, I do not know. * * * Section 7 does not require that the services be performed while receiving compensation. It merely says 'except for services actually performed.' I cannot escape the conclusion that retired pay is for services actually performed. I cannot ascribe to Congress to allow a person to draw pension and to deprive him of retired pay.

"* * * Plaintiff (Steelman) was recalled to duty on March 26, 1942, during World War II. He was subject to such recall by virtue of the provisions of law which provide that the Secretary of the Navy is authorized in time of war, or when a national emergency exists, to call any enlisted man on the retired list into active service for such duty as he may be able to perform. While so employed, such enlisted men shall receive the pay and allowances authorized by section 115 of title 37. (Mar. 3, 1916, ch. 83, 38 Stat. 941; Aug. 29, 1916, ch. 417, 39 Stat. 591.)

"Therefore, a part of the consideration for the payment to Steelman for retired pay was this obligation to render further naval service when called upon in time of war. It would seem, therefore, that a man drawing retired pay and a man drawing retainer pay are in practically the same category. It would seem to me that the proposed decision of the majority is in conflict with that part of the decision in the *Mulholland* case, which bases the plaintiff's right to recover on the ground that the payment of retainer pay was in part consideration of the man's holding himself in readiness to return to active duty when called upon."

These examples show without doubt the need for definitive legislation, such as set forth in H.R. 314. I direct your attention to statements made by former Director William McCauley, Bureau of Employees' Compensation, at hearings before the Subcommittee on Safety and Compensation, early in 1960, when H.R. 1196, as well as my bill, H.R. 811, which is similar to H.R. 314, were considered. At that time Mr. McCauley referred to the fact that possibly decisions of the Court of Claims on cases before it might solve the problem, but if they did not then legislation would be necessary to correct the inequity which I have pointed out. He further stated that the Bureau was paying compensation and "leaving it up to the branch of the armed services that is paying the other benefit to decide whether they will pay or not."

Therefore, I point out again, as I did in 1960, that the problem actually falls at the door of the military services which, under the ruling of the Comptroller General, take the attitude that a man, although entitled to civilian pay and retired pay, is not entitled to disability pay as a civilian employee and concurrently to his retired or retainer pay. This is the loophole that must be sealed through legislation. It is the only way to settle this matter and once and for all establish a law that will do away with the gross injustice and inequity that exist under the interpretation of the wording of subsection (a) of section 7 of the Federal Employees' Compensation Act.

I respectfully request favorable action on H.R. 314 without further delay and call your attention to the fact that I have had similar legislation before the House Education and Labor Committee each Congress beginning with the 86th.

STATEMENT OF HON. HAROLD R. COLLIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. CHAIRMAN. The intent of H.R. 4478 is to amend the Federal Employees' Compensation Act by removing certain inequities in rates of payments to survivors of Government employees who died from work-related injuries or diseases or were killed in the performance of their official duties.

In general, the bill intends to change three inequities. It will for educational purposes (1) provide for continuance of compensation payable to a surviving child from age 18 to age 21 if such child continues his education as a full-time student; (2) remove the monthly maximum survivorship annuity benefit of $525 which is no longer realistic, and (3) provide certain cost-of-living adjustments if

annual price index studies reveal such living costs to have risen 3 percent or more and to make comparable such increases.

In respect to surviving children (1) the bill would continue benefits to unmarried children after age 18 so they may pursue advanced educational programs. Many students graduate at age 17 from high school and desire to complete a 4-year college course thereafter. At present, compensation benefits to unmarried children terminate at age 18. It is socially and economically desirable that such children be financially able to complete their advanced educational plans rather than having them terminate by the unfortunate work-related death of their supporting parent. The bill would remedy this aspect and remove the inequity created when the Civil Service Retirement Act was amended to continue $50 monthly survivorship benefits to dependent children from age 18 to age 21 who qualify as full-time students.

Secondarily, the bill will remove the $525 maximum survivorship annuity benefit established in 1949 which is no longer realistic due to increased Government salaries and high cost of living. Present survivors of Government employees are penalized by the $525 maximum benefit because Government wages have increased 80 percent between 1949 and 1964 and there has been a 31 percent rise in the Consumer Price Index. The intent of the Federal Employees' Compensation Act was to permit Government employees injured on the job and survivors of Government employees killed in line of duty or who dies from work-related injuries or diseases to receive up to 75 percent of the gross monthly salary. The 1949 established maximum of $525 monthly now prevents making the 75 percent benefit possible because of salary increases in Government service creating an inequity for employees who now sustain work-related injuries and diseases and for survivors of Government employees killed in line of duty compared with benefits to survivors of employees killed when salaries and cost of living were low. There is no doubt that survivors of Government employees who dies from work-related injuries or diseases and particularly survivors of those employees who are killed in line of duty should reap greater rewards than survivors of Government employees who dies from natural causes.

Concerning cost-of-living adjustments (3) the bill authorizes an increase in previous awards on a basis related to increases in cost of living. The compensation awards would be periodically adjusted based on Consumers Price Index changes of 3 percent or more annually as determined by the Secretary of Labor. This aspect of the bill would benefit survivors by insuring that annuities would keep pace with any skyrocketing cost of living and permit widows and dependent children to maintain a standard of living comparable with the standard established by the deceased.

For the reasons which I have outlined, I strongly urge that the committee take prompt and favorable action on H.R. 4478 concerning this much-needed amendment.

Mr. O'HARA. Our next witness will be Mr. Jerome J. Keating, who is president of the National Association of Letter Carriers of the United States of America, who is accompanied by the vice president of that organization, Mr. James Rademacher.

Welcome, gentlemen; I am very happy to see you here because of the long and pleasant association I have enjoyed with both of you.

Mr. Keating will possibly remember that our first contacts here in Washington involved the amendments made to the Federal Employees' Compensation Act in the 86th Congress when he gave us very valuable assistance in understanding the provisions of this act. I know he gave very valuable assistance to me in doing so.

Mr. Rademacher, I am proud to state, is a former president of Branch 1 of the National Association of Letter Carriers in Detroit. His presence here in Washington is much appreciated by letter carriers, but missed by us somewhat in Detroit because we enjoyed having him out there. Gentlemen, if you would care to present your testimony I know that we would be very interested in hearing it.

STATEMENT OF JEROME J. KEATING, PRESIDENT, NATIONAL ASSOCIATION OF LETTER CARRIERS; ACCOMPANIED BY JAMES H. RADEMACHER, VICE PRESIDENT

Mr. KEATING. Thank you, Mr. Chairman.

I am happy to have the opportunity of working with you and the committee on further amendments to the Compensation Act. Mr. Rademacher and I are the heads of the National Association of Letter Carriers. We have 175,000 members located in all of the 50 States, the District of Columbia, and Puerto Rico.

The Federal Employees' Compensation Act was the first supplemental benefit program enacted on behalf of Federal employees. It was enacted in 1916. Our organization was formed in 1889.

The National Association of Letter Carriers supported the creation of the Compensation Bureau in 1916, or rather Commission, as it was called, and we have actively participated in securing all of the amendments to the act since that time.

We are much concerned with the bills pending before the committee, and feel that the provisions of several of the pending bills deserve the consideration of this committee at this time.

The representatives of the Department of Labor, in testifying before the committee, requested that the "equitable and long-range proposal to perfect workmen's compensation protection for Federal employees" should await the findings of the President's Cabinet Committee, which is due to report on December 1, 1965.

We do not believe that this is either necessary or desirable. We were requested to testify before that committee, but only on retirement. We did not have a chance to testify on compensation, nor was there any evidence that compensation was being considered.

There was no representative of the Bureau in evidence at the hearings, nor were there any questions or comments relative to workmen's compensation.

Furthermore, one would indeed have to be a blind optimist to believe that compensation legislation will be acted upon before adjournment of this session.

Congress is moving toward adjournment, and new legislation not yet out of committee in either House stands little chance of final enactment unless it is emergency legislation.

The report of the Cabinet Committee will be available on December 1, 1965, and can be fully considered before final action on pending legislation.

Consequently, it is our intention to recommend the enactment of "equitable and long-range proposals."

We want to congratulate the able chairman of this hearing, James O'Hara, for the fine bill he has introduced, and Congressman William Hathaway for the good bill he has introduced. Both bills contain important and necessary amendments.

With reference to H.R. 10865, introduced by Mr. O'Hara, we can support this bill in its entirety. The amendments to section 5, relating to a more equitable adjustment of scheduled disabilities, should be enacted.

The section providing for hearings before the Bureau is important and would make it possible for more complete development of necessary evidence.

We have found the officials of the Bureau to be fair and just; we have found the members of the Appeals Board to be considerate and just.

The Bureau is one of the better agencies in Government, but those who administer the act are bound by precedent. I do not believe that judicial review would serve to assist individuals in securing better adjustments—judicial procedure is slow and costly. It would, however, serve as a means of correcting bad precedents. It is in keeping with procedures in other compensation programs and has served well in those areas.

We are in favor of the provisions in Congressman Hathaway's bill, H.R. 10721, to adjust the maximum and minimum compensation, and appreciate the fact that the bill provides increases for those currently on the rolls.

However, we do not believe that the increases in compensation should be based solely on the Consumer Price Index, nor do we believe that the offset for increases made under previous acts should be included.

The Consumer Price Index merely measures the increases of certain products included in the market basket selected by the Bureau of Labor Statistics. It does not adequately measure changes in standard of living; it does not include increases in income taxes. It does not include income tax at all. It is merely for the purpose of measuring price changes.

In considering Federal salaries, we use a basis of comparability with salaries in outside industry. The retirement bill recently enacted by Congress goes beyond the Consumer Price Index figures and goes at least part way to comparability. The people on compensation are entitled to similar consideration.

The provisions in the Hathaway bill providing an increased age for dependent children and the restrictions on this section are just and adequate.

One of the grave problems in administering the Compensation Act is the length of time it takes to get the payment to the injured individual. On the average, it takes 49 days to get the compensation claim to the Bureau; and it takes an average of 79 days before the injured employee receives his first payment.

It has long been a source of wonderment to me how many of these people maintain themselves while waiting for the payment. The fault is not one of the Bureau's essentially—but certainly it is one of the Government's.

On occasions the appropriations are not sufficient to permit enough employees in the Bureau to promptly adjudicate claims. Too many officials in various departments and bureaus are not sufficiently acquainted with the act to promptly submit claims.

It is not regarded as a serious problem in some areas and men are left in the hospital for long periods without reports being filled out.

Doctors often do not furnish complete information. Claims have been delayed in securing payroll records, and the journey is often as torturous as the "Pilgrim's Progress."

The bill introduced by Congressman Dante Fascell, H.R. 5288, would correct this situation. Under the provisions of the Fascell bill, the employee would remain on the payroll until the claim was adjudicated, and any overpayment would be withheld from his compensation payments.

I do not believe in this discussion that you had here this morning that there would be any great problem of those whose claims were not allowed.

In practically all of the cases the employee would continue in the employment of the Government and the Bureau would be able to charge payment that was made.

It could be charged against his future salary or against his annual leave or even against sick leave. I think that could be taken care of very well in the legislation. The only possibility of loss would be is if somebody left the service or something of that sort, but I think that it would be minute and certainly not nearly as much a problem as that these individuals are confronted with when they have to go long periods without any pay.

The Fascell bill also provides that the employee shall continue to earn annual and sick leave while on compensation. I see no reason to deny the earning of sick and annual leave to an employee while on compensation. The employee who is on compensation is merely an employee who was disabled in his service to the Government, and he should not be discriminated against.

There is one other bill that was referred to the Committee on Post Office and Civil Service which, in my opinion, should be before this committee. This bill is H.R. 2460 by Congressman Arnold Olsen of Montana.

This bill creates a "presumption that certain impairments of health caused by hypertension or heart disease of a Federal or District of Columbia employee is incurred in the line of duty."

The bill states "in line of duty for purposes of certain retirement and disability compensation laws or systems".

Now, certainly it should be before the Compensation Bureau. It is not necessary in the case of retirement, but it is necessary in the case of compensation, and I would like to have this included with my testimony.

Mr. O'HARA. Could you please leave that with us and we will have it entered in the record. I have asked counsel to check with counsel of the Post Office and Civil Service Committee to see about referral of that bill to this committee.

(The bill referred to follows:)

[H.R. 2460, 89th Cong., 1st sess.]

A BILL To create a presumption that certain impairment of health caused by hypertension or heart disease of a Federal or District of Columbia employee is incurred in line of duty for purposes of certain retirement and disability compensation laws or systems

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any provision of law or regulation to the contrary, any condition of impairment of health occurring on or after the date of enactment of this Act and caused by hypertension or heart disease resulting in total or partial disability or death of any employee of the Federal Government or of the government of the District of Columbia shall, for the purposes of any Federal or District of Columbia law or system to which such employee is subject and which provides disability or death

compensation or retirement benefits, be held and considered to have been incurred in the course of his employment, subject to the following conditions:

(1) That such employee shall have passed an appropriate physical examination immediately prior to his entry into such employment or within six months after the date of enactment of this Act, whichever is later; and

(2) That it is not established by competent evidence that such condition of impairment of health was not incurred in the course of his employment.

(Mr. Olsen subsequently submitted the following statement to the subcommittee:)

STATEMENT OF HON. ARNOLD OLSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. Chairman and members of the committee, I have introduced a bill in the House of Representatives, H.R. 2460, which has been referred to the House Committee on Post Office and Civil Service, but it is also a proper subject for consideration by your committee. The bill refers to heart disease as an occupational ailment. The title pretty well sums up the subject matter of the bill; it reads: "To create a presumption that certain impairment of health caused by hypertension or heart disease of a Federal or District of Columbia employee is incurred in line of duty for purposes of certain retirement and disability compensation laws or systems."

The bill requires that the employee shall have passed an appropriate physical examination prior to entry into employment, and the presumption is that this examination would be of sufficient detail to determine whether or not there was a heart ailment present. When a Federal employee is found to have a heart ailment, it would be presumed that this came about because of mental or physical tensions in his work. If there is reason to believe that such is not the case, then the Bureau of Employees' Compensation can secure competent evidence to refute the conclusion that the impairment was incurred in the course of his employment and, if substantial evidence is presented, compensation can then be denied.

I believe it is more important to have this provision apply to compensation for injury than it is to retirement.

One of the facts that is little known when it comes to the Federal Employees' Compensation Act is that the Compensation Act provides benefits for those who suffer from disease caused by their employment, as well as those who suffer physical injury. Government administrators nationwide are not too familiar with this fact and many times employees who should be receiving compensation because of a heart attack do not have such claims established because they are told by their supervisors that the Compensation Act pays only for injury incurred on duty. In addition to this, it is often difficult to develop the causative factor because the doctors who examine the employee are reluctant to make an absolute statement that the heart attack came about because of the tensions and hard physical labor or exposure to which the employee was subjected in his work.

We find that employees such as letter carriers who are exposed to the elements and perform hard physical work have a high rate of heart disease—much higher than that indicated by the benefit payments made by the Bureau of Employees' Compensation.

The average employee, when told by the doctor that his heart condition developed as a result of strain, either mental or physical, assumes that such a report has been made to the Government and that he will receive compensation. Actually, this is not always a fact and, in order to receive compensation, the employee has to go to considerable lengths to establish the facts relative to conditions surrounding his employment and to secure positive statements from the doctor. As the law is presently constituted, I believe that these employees are frequently denied benefits they should have.

The proposal I am offering in my bill would certainly provide ample latitude where skilled administrators, supported by doctors skilled in the Compensation Act, could properly review all heart cases and, if there were evidence of the fact that the case was not due to employment, there would be ample latitude to deny the claim.

I believe this would correct an injustice that has long existed. I think it would be reflected as an honest decision by the Government to assume its responsibility and I hope that your committee will consider the provisions of H.R.

2460 and take favorable action to include these provisions in the recommendations you make for amendments to the Compensation for Injury Act.

Mr. KEATING. It seems to me that the jurisdiction should be in this committee on this particular bill.

The bill further requires that such employee shall have passed an appropriate physical examination immediately prior to his entry into such employment.

It also provides that, if competent evidence is presented that such condition of impairment was not incurred in the course of his employment, the compensation can be denied.

This legislation is necessary because of the numerous roadblocks presently existing when attempts are made to establish compensation claims where heart attacks occur.

One of the roadblocks is caused by the reluctance of doctors to make absolute statements on causative factors. Men in the medical profession are prone to equivocate when it comes to putting things on paper.

Many who have excellent cases for compensation fail to receive compensation benefits because of the lack of knowledge on the part of Government supervisors when it comes to illness due to occupational hazards. To many of them, compensation is due only in case of broken bones.

I have a letter here from a letter carrier in Waterloo, Iowa, which I think proves the case; the man was finally awarded compensation, but only after 1½ years had passed.

The officials at the post office told him he was not entitled to compensation. Fortunately for him, the officers of NALC branch knew better.

He relates the story leading up to and after the attack as follows:

During the pay period which ended March 27, 1964, I worked a total of 100 hours.

That's 50 hours a week.

This was due largely to the damp early spring weather which necessitated many carriers to use sick leave. On Friday, March 27, I was assigned to route 60. This particular foot route is in a new section of town and is all open area with no sidewalks.

There was over an inch of newly fallen wet snow on the ground and the going was exceptionally rough as there was also an extra heavy volume of mail that day. As I carried the mail that day, I could feel a tightening on both sides of my neck and a shortness of breath.

After finishing the foot route, I was assigned to parcel post and then night collections. I worked a total of 12 hours and 13 minutes that day.

Saturday, March 28, I was assigned to parcel post for routes 15 and 30. These routes are primarily business routes where parcel post must be delivered before noon on Saturdays.

Parcels for these business houses are heavier than normal and delivery was again harder because of the wet slick snow. While on the route I had a severe coughing spell which lasted from 8 to 10 minutes and I had to stop the truck.

A passerby stopped to inquire if I was OK—if I had only known then what I know now. A short time later I became involved in a minor accident with the truck. I was quite concerned and upset because I have had previous minor accidents and feared that I might lose my Government license. When I retired that Saturday evening, I was exhausted, both physically and mentally.

Easter Sunday, March 29, I awoke coughing at 6:30. I had the same tightness on both sides of my neck as I had while delivering mail 2 days previous. The tightness was now in my arms also. My cough continued and the pain increased until Dr. Hartman was called and he promptly ordered me to the hospital where my heart attack was diagnosed.

Dr. Hartman feels that any or all of the above factors could have caused my heart attack. He also believes that stress caused by my truck accident could have caused the attack. Less than 3 years ago I had a physical before entering Post Office and was found in good health. Such extensive damage to my heart could only be suffered since the time of that checkup.

Branch 512, Waterloo, Iowa, and myself, contend that heart disease of letter carriers, especially under rigorous conditions, is an occupational disease and request that I receive fair and just compensation under the Federal Employees' Compensation Act.

I was not capable of making out report at the time of my attack. During my 6-week stay in the hospital, Dr. Hartman would permit no visitors outside of my immediate family. He wanted nothing discussed which would bring tension and possibly affect my condition.

After my release from the hospital I consulted the Letter Carriers Union and they agreed that my heart attack definitely was a result of my carrier duties and that I should apply for Federal employees' compensation.

This, of course, I think, indicates one reason why some of the delays occur, where a person is in the hospital. They have a severe injury and are not able to complete the necessary papers.

I had a case related to me just the other day where a fellow was in an automobile accident. He was taken to the hospital and he was there 12 days and the officials in the post office did not send him the forms, and he wasn't able to fill them out, anyway.

All of these things add up to the delay, but the difficulty for the family still persists even if the delay is due to being tied up in the hospital.

The proposal contained in the Olsen bill would require the Bureau to establish the fact that the illness was not due to the employee's occupation. We believe that this proposal is a fair one and would provide more justice than is provided under present regulations.

There are several important problems relating to the compensation law that are not covered by any bills pending before the committee.

We believe that the committee should give consideration to including artificial limbs, glasses, hearing aids, and any other similar aids that are required to bring a person to an adequate physical capacity.

If an employee wearing an artificial limb is injured in an accident, and the limb is destroyed, the loss is not compensable. We believe that these items should be paid for when destroyed in an accident.

We also believe that agencies should be compelled to reemploy employees when they recover from a disability. At the present time, employees who have recovered in whole or in part are often refused reemployment, even in cases where jobs are available in the department or agency.

I must commend the Bureau of Employees' Compensation because they make every effort to place those people and the fault, where it does lie, lies in the individual agency rather than in the work of the Bureau.

Finally, we endorse the provisions of the Sickles bill, H.R. 6554. This is a bill to provide an accident prevention program. This is a positive and constructive approach, as compared to present safety programs.

Present programs place departments and agencies on a competitive basis. The agencies frequently keep employees on the job when they should not be working, in order to establish a good safety record.

The safety record, of course, depends on numbers of days lost. We should be more interested in safety than in safety records.

Mr. Chairman and members of the committee, we want to express our appreciation to you for giving us this opportunity to appear and testify on behalf of the much needed improvements in the compensation for injury law.

Mr. O'HARA. Thank you very much, Mr. Keating. Mr. Rademacher, do you have anything to add to Mr. Keating's statement?

Mr. RADEMACHER. I believe, Mr. Chairman, that the very able president of the letter carriers has stated the position of our organization very well. I would just like to mention something that is very timely. A committee that the Post Office Department has set up between management and the unions to discuss sick leave has brought out very forcefully at a recent meeting that one of the reasons why the Post Office Department's sick leave has been so extensively used is because of the fact that employees are using sick leave rather than wait for many weeks, as President Keating has described here, and also as Congressman Fascell has stated, for their BEC check. It is only natural that if a person does have sick leave and even annual leave he is going to use this rather than to wait many weeks for payment of his claim.

One of the problems is the Post Office Department's problem. We feel that the claim form ought to go directly from the employee to the postmaster and to the BEC, but it is routed through regions, and in discussing these matters with officials at the BEC, who have been extremely helpful and sympathetic, we must agree with them that they can't process a claim that they don't have and so perhaps a lot of redtape could be eliminated if the problem was exposed and explored.

Just one other thing to substantiate Mr. Keating's claim concerning other benefits, such as artificial limbs, and glasses, and so on.

I have just answered correspondence from a small town in Alabama—Roanoke, Ala.—where a letter carrier was inspected by his postmaster, and they counted 218 dogs and this carrier had complained—he had written in to me complaining—that he has gotten accustomed now to warding off dogs, and they are using this dog repellant and all these things, but he said who is going to replace the glasses that have been broken twice when dogs have chased him and he has fallen and the glasses have fallen off and been broken.

I certainly concur in what Mr. Keating has stated in this regard, that certainly it isn't the employee's fault when his glasses fall and are broken as a result of a dog bite, and I certainly concur that the BEC ought to be paying for such things as this.

I want to just conclude by stating that I appreciate your kind remarks concerning our officers and also compliment all those that are here this morning after such a rugged day and night on the House floor.

Mr. O'HARA. I think that if anyone ought to be complimented it is you gentlemen whom I saw in the gallery yesterday, seemingly, I think it is safe to say, more interested in the proceedings than some of those on the floor.

I am pleased that we adopted those four resolutions at least, although I would have wanted to go on and take up the other three, too.

You have presented some very stimulating and interesting suggestions with respect to some of the problems of the act. This problem

of heart disease is really a very difficult one. It is extremely difficult for an employee to prove work connection in a heart disease case.

On the other hand, it would be equally difficult for the Government to prove nonconnection. It is always difficult to prove a negative, that is, to prove that it wasn't work-connected, and I am wondering, and I hope the counsel will perhaps attempt to ascertain, if we couldn't do something in between those two positions in this act, that is, set some criteria, give the Bureau of Employees Compensation some criteria to use, some reasonable criteria to use that would be fair to the employee and to the Government in determining work connection.

I don't think there is enough known about it, but I don't think it is safe to assume that everybody who has a heart attack has that attack related to his employment, nor is it safe to assume that nobody's heart attack is related to his employment.

I don't know just how we go about doing that. With respect to your suggestion about the procedures used by the Post Office Department, I shall ask the chairman if he will send a letter to the new Postmaster General with respect to their procedures in handling these matters, and the committee, I can assure you, will interest itself in the expeditious handling of these claims by the Department.

(Chairman Holland's letter and the Post Office Department's reply are as follows:)

SEPTEMBER 15, 1965.

Hon. LAWRENCE F. O'BRIEN,
Postmaster General,
Washington, D.C.

DEAR MR. POSTMASTER GENERAL: In the course of hearings now in progress before my subcommittee, representatives of Federal employees' organizations have testified to the effect that procedures now in force in the Post Office Department result in serious delays in the receipt of claims by the Bureau of Employees' Compensation, and therefore, in the receipt by injured employees of the compensation to which they are entitled.

To make the record complete, I would appreciate it if you could provide me with a detailed list in writing of the steps involved in the processing of compensation cases in your Department. It is our hope to close the hearing record on this legislation by September 24, and it would be very helpful to have that information by that time.

With best personal regards,

Sincerely,

ELMER J. HOLLAND,
Chairman, Select Subcommittee on Labor.

POST OFFICE DEPARTMENT,
ASSISTANT POSTMASTER GENERAL,
BUREAU OF PERSONNEL,
Washington, D.C., October 5, 1965.

Hon. ELMER J. HOLLAND,
Chairman, Select Subcommittee on Labor, Committee on Education and Labor, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN: This is in further reply to your letter of September 15, requesting a detailed list of the steps involved in the processing of Bureau of Employees' Compensation cases.

Our procedures are as follows:

1. At the time of injury, or at most, within 48 hours, the employee or someone on his behalf completes form CA–1, employee's notice of injury or occupational disease. This completed form is submitted to the employee's immediate supervisor.

2. Form CA–2, official supervisor's report of injury, is prepared immediately for every injury which is likely to result in any medical charge against the compensation fund or in any disability for work beyond the day, or which appears likely to require prolonged treatment or result in future disability or result in any permanent disability.

3. If the employee has received medical treatment for the injury and upon medical advice is instructed to remain off duty, he files form CA–4, claim for compensation on account of injury, and CA–4A, application for augmented compensation for disability, with his employing office. These forms are submitted to Bureau of Employees' Compensation, Department of Labor, after 14 days absence without pay, in accordance with the regulations of the Department of Labor. If the employee returns to duty in less than 14 days, form CA–4, and CA–4A are submitted to the Department of Labor immediately upon return to duty.

The Federal Employees' Compensation Act requires these forms to be submitted after expiration of 18 days from the day pay stops. However, in an effort to speed up the process, the Post Office Department has entered into an agreement with the Department of Labor, to permit the Department to submit the forms after 14 days.

To assure prompt submission of claims to the Bureau of Employees' Compensation in order that payment of claims will be expedited, we have instituted a new procedure. The Department's new procedure provides that the installation head forward the executed form CA–4 directly to the Bureau of Employees' Compensation rather than through the postal data center. This has saved approximately 1 week's time in processing.

I hope this information will be helpful to you.

Sincerely yours,

RICHARD J. MURPHY,
Assistant Postmaster General.

Obviously the Bureau of Employees' Compensation, as Mr. Rademacher pointed out, can't act on claims it hasn't received yet. It is more than a little distressing if they are lying in somebody's in-basket in the Post Office Department during a period when the employee and his family are suffering. I think that this is something the Department can correct and ought to correct and we will try to help them correct that situation. I am glad you mention that in your testimony.

The Sickles bill providing for an accident prevention program is one I think it would certainly be wise to consider seriously. Certainly we ought to have as effective an accident prevention program as we possibly can. Not only does it make sense in cost terms, but it makes sense in relation to the interest of the employee.

It is much better to be healthy and working than disabled and drawing compensation, no matter how good a compensation system you have.

Another problem that Mr. Keating and I wrestled with about 5 or 6 years ago is this rehabilitation question. We weren't able to do anything with it at that time, and I would hope that things have changed a little bit.

Mr. KEATING. Yes.

Mr. O'HARA. It just makes sense to me that if an employee is partially disabled, but still able to work, every effort should be made to get this fellow back on a job that he can perform because it is so much better for him, and for the Government and for everybody concerned.

You will recall we ran into some difficulty with some other organizations when we tried to do that.

Mr. RADEMACHER. Yes.

Mr. O'HARA. I am going to explore that situation and see if we can't do something about that this time in providing some sort of

additional assistance to partially disabled employees in regaining employment with the Federal Government.

Mr. KEATING. There has been talk about a retraining program. That has never been adequately developed where it is necessary, but certainly where there are 2½ million jobs in Government it seems unfair because a man is impaired to some extent that he can't find work and, of course, in some instances where with complete recovery they are not allowed to work.

Mr. O'HARA. I think that is really ridiculous. We will explore that quietly for a while and see if we can't do something about it. We may be in touch with you about it later.

Mr. Hathaway?

Mr. HATHAWAY. Mr. Keating and Mr. Rademacher, we certainly appreciate your testimony and constructive suggestions. At the hearing last week in regard to your objection which you cited on page 3 of your testimony, using the Consumer Price Index for raising the compensation payable to those who are already receiving compensation when this goes into effect, we asked the counsel for the Department of Labor to supply us with cost figures to see just how much additional cost there would be simply to pay those employees the going rate when this is put into effect.

In view of the fact that we are not affecting any employers insurance rate, as you would be under State laws, we thought this would probably be an equitable provision and it would, of course, eliminate the consumer price index.

I presume that you would go along with that. Do you have any comments on that?

Mr. KEATING. It seems to me that in connection with compensation it should bear a relationship to pay and it should bear a continuing relationship to pay.

Where a man is disabled, if Congress doesn't take action, he doesn't have his compensation adjusted, and I don't think the Consumer Price Index is adequate. What you propose is good, but I think it ought to be explored a little bit more and see if you can't just have some sort of a comparable tie-in where it would be directly related to Federal pay. After all, that is what they are suffering the loss of, and if there is a continuing disability the fact that they were disabled 10 years ago shouldn't mean that they ought to get less than a man who is disabled today.

Mr. HATHAWAY. Correct.

Mr. RADEMACHER. I believe, Mr. Chairman, there is a glaring inequity in that section of the law. I believe you will find it is true that those who are suffering long injuries are being denied a benefit which is being paid to a person who is fortunate enough to go back and then suffer a recurrence and come back at the higher pay, but the person who has been out all this time and can't go back has to suffer the less pay.

Mr. HATHAWAY. Right.

Mr. RADEMACHER. It is an inequity definitely.

Mr. HATHAWAY. That is exactly what we had in mind when we asked those questions. You commented on Congressman Fascell's bill which seems designed to correct some inequities. Just sitting here thinking about it, wouldn't it be better to, rather than give the employee full compensation, compensate him to the maximum he would be compen-

sated for if his adjudication came at the instant of his injury; in other words, give him say, two-thirds of his pay.

Then in the event it turns out he was not entitled to it he won't have as much to pay back.

Mr. KEATING. It would result in less difficult adjustment certainly if it was placed on that basis.

Mr. HATHAWAY. And in regard to Congressman Olsen's bill, I agree with the chairman that perhaps we should have medical testimony before us before we make any judgment on that because it is a very complicated field that I frankly know very little about.

Mr. KEATING. One of our big problems in that area is the fact that we have many small units in the Post Office Department. Of course, we have many post offices and we have a post office where there are 6 or 10 people working.

They go along for years and years without an injury, so when one does occur they don't know what to do.

They don't know anything about the Compensation Act and if a fellow has a heart attack, they say that is illness. The fact that there is an occupational factor involved is very little understood in many areas and for that reason I think more people who are entitled to compensation or should be entitled to compensation because of a heart failure don't even have a claim presented.

I think that we have to have a little more education. Of course, it is in the postal manual, but there are an awful lot of other things in the postal manual and the person in the small installation doesn't keep up on compensation.

Waterloo, Iowa, is a pretty good installation, but the officials weren't up on occupational ailments; so we thought that the Olsen approach would place the responsibility upon them to present other testimony.

If the man has, by self-abuse, brought on the condition or if he had a previous existing condition, it ought to be reasonably easy to establish.

It is easier to establish that than to establish the occupational factor.

Mr. HATHAWAY. Yes. Are employees required to take periodic physical examinations?

Mr. KEATING. No; just an entrance.

Mr. HATHAWAY. So there are no records.

Mr. KEATING. No. They have other records. In the larger offices there are medical units, and employees report to the medical unit if they are ill and, of course, a record is kept on that.

They are not very thorough but they are records. If a person is suffering some particular disease it will probably show up on his card. That program is limited.

Mr. HATHAWAY. Of course, your suggestion with respect to providing new glasses and artificial limbs I think is a commendable one and certainly one that we shall consider.

Thank you very much.

Mr. KEATING. That has been up and I know one time that I argued a case before the appeals board in behalf of the glasses and they went along with the precedent, so the precedent is pretty thoroughly established within the Bureau, and I think it would take legislation. But if a person has a very expensive pair of glasses or he has an artificial leg that is smashed in an accident, certainly he should not be compelled to pay that loss.

In many cases without glasses the fellow can't see. They are just as much a part of his seeing as his eyes. The eyes aren't efficient or effective and he can't work without the glasses.

If they are smashed up I think the Government ought to pay for replacing those glasses.

Mr. RADEMACHER. Mr. Chairman, I had a case in New York City where a letter carrier was accosted by a person who was suffering a mental breakdown and he came up to him without any provocation and knocked the plate from his mouth. The man had to pay $160 and after many long months of arguing the point with the Post Office Department we won, not through the BEC, of course.

We won on the fact that the supervisor was neglectful in not taking action to assist that mentally deranged employee. He knew of the condition. That's the only way we won. Here is another example of a man doing his job through no fault of his own and being charged $160 for a broken plate.

This points up the seriousness of this problem.

Mr. O'HARA. I think it is very serious.

Mr. HATHAWAY. Just one more question.

I have had some experience under State laws. One of the complaints made by workmen is that their cost of legal fees is sometimes prohibitive.

Has this been the case? Have you had any complaint?

Mr. KEATING. There is no legal appeal on the compensation. The decision of the Bureau of Employees Compensation is final and actually occasionally somebody hires an attorney to try to establish a claim.

They do pay certain legal fees and the Bureau tries to maintain them on a reasonable basis where they are responsible for such fees, but there are very little legal fees involved in the Compensation Act, very seldom that they become involved.

Mr. RADEMACHER. I have seen situations, Mr. Chairman, where the BEC would recommend an attorney and his fee would be 30 percent. You people being lawyers, you would have to judge whether that is reasonable.

Mr. O'HARA. That is higher than the typical State limitation. As attorneys we would be reluctant to say that any attorney's fees were too high, but that is high.

Mr. KEATING. The legal fees are involved when there are third-party cases, when they sue somebody else, and it is in the interest of the Government as well as in the interest of the individual.

The Government recovers their payment to the individual in those third-party cases.

Mr. HATHAWAY. This third-party procedure only the Government could institute; isn't that correct? It could institute proceedings in the name of the individual employee?

Mr. KEATING. No, the individual employee can institute, but the BEC claims part of the settlement if the defendant pays him compensation. The Bureau claims reimbursement of what is paid.

They have a prior claim to any settlement that he secures.

Mr. RADEMACHER. The employee must initiate the action, you are correct. He must initiate it and if he refuses he loses the compensation benefit.

Mr. HATHAWAY. The employee.

Mr. RADEMACHER. The BEC orders him to sue so they can regain what they have paid.

Mr. HATHAWAY. If the Government is lax and doesn't bring the claim does the employee have any right to bring the claim?

Mr. RADEMACHER. Many employees sue, Mr. Hathaway. Many employees sue on their own and then after they receive settlement they find out it comes right back to the Government.

Mr. HATHAWAY. In our State law we have a provision where if you notify the employer that you are going to sue and if he doesn't do anything in 30 days you can go ahead on your own and sue.

I notice, that a similar provision is not in this law.

Mr. KEATING. Here the employee often goes ahead on his own and then the Bureau enters the picture and in some cases if there is evidence that there is a good third-party claim the Bureau instructs them to sue.

Mr. HATHAWAY. That is all. Thank you.

Mr. O'HARA. Thank you very much, gentlemen.

I wish to state for the record that I think your members' interests are being well protected in this area by international officers and I know that you will make a constructive contribution to whatever legislation comes out of this committee as you have in the past.

I thank you.

Mr. KEATING. Thank you.

Mr. RADEMACHER. Thank you.

Mr. O'HARA. Our next witness will be Mr. John A. McCart, who is operations director of the Government Employes' Council, AFL–CIO, of Washington, D.C.

Mr. McCart, welcome back before our committee.

STATEMENT OF JOHN A. McCART, OPERATIONS DIRECTOR, GOVERNMENT EMPLOYES' COUNCIL, AFL–CIO, WASHINGTON, D.C.

Mr. MCCART. Thank you, Mr. Chairman.

Mr. O'HARA. You are a rather frequent visitor and it is always a pleasure to have you because your testimony is always enlightening and well presented.

Mr. MCCART. Thank you.

Mr. Chairman, my name is John A. McCart. I am the operations director of the Government Employes' Council, AFL–CIO. The council represents 31 unions with members in the wage board, postal, and classified services of the Federal Government.

We have presented to the subcommittee, Mr. Chairman, copies of our formal statement. If it meets with your approval I would like to request that this be included as a part of the record in text and that I be able to proceed to summarize some of the more important features of the statement.

Mr. O'HARA. Without objection, your statement will be entered into the record at this point. You may proceed in whatever manner you wish.

(Statement referred to follows:)

STATEMENT OF THE GOVERNMENT EMPLOYES' COUNCIL, AFL–CIO

Mr. Chairman and members of the subcommittee, The Government Employes' Council and its 31 affiliated AFL–CIO unions representing employees in the classified, postal and wage board services of the Federal Government desires to extend its gratitude to you and your colleagues for arranging this hearing on desirable changes in the Government's program for its employees who experience on-the-job injuries and the prevention of additional accidents, which result in compensation claims.

The last revision of the Federal Employees' Compensation Act occurred in 1960. Five years have elapsed. It is most appropriate that Congress undertake a comprehensive review of the statute to determine its applicability to the current needs of employees covered by the compensation statute and the Federal Government as the employer.

We propose to comment first on H.R. 10721, the bill offered by Representative William D. Hathaway to improve benefits with respect to maximum and minimum payments, benefit increases geared to the Consumer Price Index for those now on the compensation rolls and continuation of benefits for surviving children through the post high school years. The council appreciates Congressman Hathaway's sponsorship of these proposals.

While these are highly desirable improvements, they represent interim adjustments. Department of Labor spokesmen have advised the subcommittee that more substantial changes in the FECA must be deferred until the President's Cabinet Committee on Federal Staff Retirement Systems makes its report. Hence, we feel it appropriate to comment on some of the other bills involving the Compensation Act, which are pending before the subcommittee.

It is fitting to note also that the Council was invited to offer its views to the President's Committee in July of this year. However, we were informed that our comments should be confined to changes we believe are needed in the Civil Service Retirement Act. We were unaware prior to this hearing that the President's Committee was considering FECA also.

Representative Hathaway's bill offers needed updating of the compensation program.

In 1949, Congress fixed the maximum compensation payment available to injured Federal workers at $525 a month. At that time, the $525 figure was adequate to cover more than 99 percent of all Federal employees. A disabled Federal employee receives two-thirds of his monthly pay. If he has dependents, compensation payments may attain three-fourths of his salary. But in no case can they exceed $525. Thus, today, less than 86 percent of the workers are covered.

From 1949 to the present, maximum salaries of Federal employees have advanced from $10,330 to $24,500. Yet the maximum compensation is limited to $6,300 annually.

H.R. 10721 increases the present limitation to $685 a month. The Council believes this change is fully justified in the light of a basic principle of compensation—to restore to an injured worker a reasonable portion of his income.

The bill adjusts from $420 to $546 the portion of an individual's base pay available for determining the additional benefit he may obtain because of dependents. Why that figure should not be under the same fundamental principle as is used to compute the basic compensation benefit is not clear. We advocate that this dollar limitation be discontinued, and that the augmented benefit be figured on three-fourths of the employee's base pay. However, the proposal in the bill represents the minimum step which should be taken.

Another feature of H.R. 10721 increases from $180 to $210 the minimum compensation available to Federal employees incapacitated by on-the-job injuries. It is unnecessary to emphasize the sheer inability of compensation recipients to even subsist on $180 monthly or $2,160 a year. Official administration sources have designated $3,000 as the line between poverty and economic existence. From this standpoint, the adjustment to $210 is modest, indeed.

The economic plight of beneficiaries now on the compensation rolls is serious. There has been no adjustment since September 1960. Even that amendment to FECA was applicable only to injuries which occurred prior to January 1, 1958. H.R. 10721 provides that these benefits be recomputed on the basis of annual average consumer price index changes since the awards were made minus any increases granted by Congress. This action represents simple justice to injured Federal employees and their survivors, many of whom are wholly dependent upon compensation payments as their only source of income. I need not recite in detail the financial difficulties faced by the numerous citizens existing on fixed incomes geared to earnings many years ago. Compensation beneficiaries can certainly be counted in this number.

As a matter of fact, the time is appropriate for Congress to consider a permanent method of adjusting compensation benefits for those cases already adjudicated so that the recipients will be able to maintain a decent standard of living. Adoption of such a formula would enable these disabled workers and their families to plan their future income to meet the ever-increasing costs of necessities. It will also eliminate the necessity of piecemeal action by Congress every 4 years. Relating the adjustment in compensation to the pay changes of active employees merits consideration by the subcommittee.

One of the most desirable provisions of H.R. 10721 extends to age 23 the age at which surviving dependents may continue to receive compensation payments. Present law limits these benefits to age 18. With the increasing number of boys and girls continuing their education into college, 18 is somewhat unrealistic. In addition, loss of benefits at that time may discourage or make it impossible for children of these disabled Federal employees to fully utilize their potential by higher education.

Generally, the Federal Government has recognized this principle in recent enactments by extending beyond 18 the age limits for benefits for surviving children under veterans' service, income tax, social security, civil service retirement, and the health insurance program available to employees of the Federal Government.

Now, Mr. Chairman, the Council desires to address itself to the proposals advanced by Representative James G. O'Hara, the ranking majority member of the subcommittee, in his H.R. 10865. We are most grateful to Congressman O'Hara for his longstanding interest in the compensation law and his introduction of that bill.

The provision for a hearing on compensation claims while they are under adjudication by the Bureau of Employees' Compensation is most desirable. Under the existing statute, a hearing is available to an employee only if he appeals to the board of appeals. And such hearings are conducted only in Washington. As a consequence, many appellants throughout the country are physically unable to present their cases. For others it is impossible for them to afford the time and expense involved in traveling from their homes to Washington. Acceptance of this provision would enable the Bureau of Employees' Compensation to secure necessary information at firsthand, and should reduce the necessity for employees carrying their claims to the appeal stage. Our information indicates that a similar hearing process is common throughout the State compensation systems.

H.R. 10865 remedies an inconsistency in the present FECA. An individual who incurs a total or partial loss of a member of his body only is entitled only to a scheduled award for a specific number of weeks as described in the act. His claim is fully satisfied. There is no compensation for permanent loss of wage-earning capacity. If, on the other hand, he suffers a total or partial loss of a member and other parts of his body are affected, he can be compensated indefinitely for loss of wage-earning capacity, but not a scheduled award for the member.

Representative O'Hara's proposal corrects this deficiency by enabling the employee to secure compensation for loss of wage-earning ability in either case. We believe the revision is highly meritorious.

The bill removes another conflicting provision by providing a lump-sum payment to a widow or dependent widower beneficiary upon remarriage. The language is designed to eliminate the present discrepancy, which permits such individuals to continue receiving compensation benefits upon the death of the legal spouse by simply omitting the formal marriage procedure and continuing to live with another spouse.

Finally, H.R. 10865 introduces into the Federal compensation system the concept of judicial review. Under section 37 of the present law, the decision of the Secretary of Labor on claims is final and binding. H.R. 10865 permits claimants to seek a review in the Federal district court upon meeting specified conditions.

The Council is convinced such a procedure would prove more costly and more time consuming to Federal employees without insuring greater justice. That is not to say that the unions associated with the GEC find all the decisions of the Bureau of Employees' Compensation and the board of appeals acceptable. In general, however, we find the FECA is fairly administered. While we quarrel occasionally with specific findings, these cases usually hinge on medical evidence or factual establishment of causal relationship.

Another bill under consideration by the subcommittee warrants early, favorable action. I refer to Representative Carlton R. Sickles' H.R. 6554.

The fundamental purpose of the measure is twofold: (1) To vest in the Department of Labor authority to develop and enforce the application of safety standards by Federal agencies; (2) to provide a statutory basis for the participation of employee unions in developing the Federal Government's safety program.

During the past 20 years, considerable improvement has been achieved in the safety record of the Federal Government. But the prevention of accidents and injuries and consequent reduction in the suffering and cost involved must be a never-ending quest for the ideal.

President Johnson's inauguration of Mission "Safety-70" on February 16, 1965, is an evidence of his personal concern about the suffering and cost involved in injuries to Federal employees. The Government Employes' Council and the AFL–CIO have endorsed this program. We commend the President for his initiative in developing this plan to reduce accidents by 30 percent in the next 5 years.

But the fact is that in each of the 8 years from 1956 to 1963 alone the frequency rate of injuries in private industry has been considerably below the Federal Establishment. Moreover, the reduction in the frequency rate has been much less in the Federal Government than in the private sector.

While the Federal Government's performance in the field of severity rates is generally better than industry, progress in reducing this rate is much more substantial in private firms than in Federal agencies.

In its report for 1963—the latest material available—the Bureau of Employees' Compensation made this significant comment:

"The summary of civilian Federal employee work injury experience during calendar year 1963 shows no measurable overall improvement. Frequency of disabling injuries was the same as for 1962, while severity and cost rates advanced a significant 13 percent."

The introductory remarks to the report then note that the total direct cost of injuries "is the highest ever recorded"—$37.6 million. This, of course, does not include indirect expenses, such as damage to machinery and equipment, and the value of lost production time.

In comparison with 1962, the total number of cases handled by the Bureau, the number of nonfatal disabling injuries and the number of lost days chargeable to on-the-job accidents for 1963 all increased over the previous year.

Deaths of Federal workers attributable to job-related injuries in 1963 reached the second highest point in 8 years. Fatal injuries were experienced by 190 employes in that year.

With the exception of general language in section 33(c) of the Compensation Act, there is no specific statutory charter governing the activities of the Secretary of Labor in the Federal safety field. And there is no general statute describing objectives for Federal agencies in developing their safety programs.

H.R. 6554 remedies this situation by outlining the responsibilities of the Secretary of Labor and Federal agencies in providing minimum safety standards and safe working conditions.

It reconstitutes the Federal Safety Council and authorizes union membership on it and a Federal Safety Advisory Committee to assist the Secretary of Labor in attaining the objectives of the bill.

During the President's Conference on Occupational Safety in March 1962, Mr. L. B. Worthington, president of the United States Steel Corp., made this pertinent comment:

"Certainly the very nature and importance of safety suggest a mutual interest on the part of business, labor, and Government in the effectiveness of injury prevention programs."

We concur completely with this view.

H.R. 6551 is not a panacea for all the safety problems existing in Federal agencies. However, we feel strongly that it provides the mechanism for achieving a much more satisfactory rate of progress in reducing worker injuries, material and property losses, and the large expenditures involved. It offers a highly effective tool in President Johnson's Mission "Safety-70" campaign to reduce substantially the suffering and loss of money resulting from job-related accidents.

Other desirable improvements in the FECA are embodied in H.R. 5288 introduced by Rep. Dante B. Fascell. The Council appreciates Congressman Fascell's reintroduction of a measure to alleviate financial hardship to employes while awaiting compensation benefits after injury and to accumulate annual and sick leave during periods of disability.

An individual who presents a compensation claim for adjudication is not entitled to his regular salary or compensation benefits until his claim is processed. He may use leave during the waiting period, but his normal salary is discontinued. In addition, the employee may not receive compensation for the first 3 days of temporary disability unless the disability continues for more than 3 weeks or becomes permanent.

A Federal employee who is paid compensation benefits is not entitled to earn sick and annual leave during the period he is on the rolls of the Bureau of Compensation.

Both of these inequities are corrected by Mr. Fascell's bill.

Despite successful efforts of the Bureau of Employees' Compensation to speed adjudication of claims, the average period between injury and the date the claim is received by the Bureau of Employees' Compensation is now 49 days. In many cases the time between submission of the claim and completion of the Bureau's consideration is precisely the period when the individual is experiencing considerable financial strain. H.R. 5288 authorizes the claimant to continue receiving his regular pay while the case is under consideration. We believe this basic principle is a desirable and justified improvement in the Compensation Act.

The existing Annual and Sick Leave Act permits Federal workers to continue earning these two types of leave while away from work using their leave. However, an individual who is on a leave-without-pay status and is also receiving compensation payments may not earn annual or sick leave. Obviously, an employee who is unable to work because of an injury incurred on the job should not suffer a reduction in his working conditions because of an occurrence beyond his control. The present laws are inconsistent in their treatment of Federal employees. An individual who has no leave available and must rely solely on payments under FECA is penalized. The Council concurs fully with Congressman Fascell's view that it is inequitable to apply a different rule on earned leave to the worker who has been injured on the job.

Mr. Chairman, the Government Employes' Council is convinced that with the bills pending in the subcommittee there exist the roots of a comprehensive revision of the Compensation Act. For years, that statute has been viewed as one of the model laws throughout the entire world for individuals who suffer the misfortune of on-the-job injuries. We believe it is a landmark in Federal personnel policy of which we can all be proud. But to maintain that position, it is essential that the act be thoroughly reviewed and revised. We urge that the subcommittee take favorable action at an early date on the bills we have discussed.

Mr. McCART. To you and your colleagues, Mr. Chairman, we want to express our appreciation for arranging these hearings. We are aware of the continued interest you have taken in the Federal Employees' Compensation Act and particularly the prodigious work that you did on the 1960 amendments.

I propose to base my presentation on four bills, Mr. Chairman, and then make a few extemporaneous remarks about some others.

First, with respect to the bill introduced by Congressman Hathaway, H.R. 10721, we are grateful to him for presenting that measure.

It came as somewhat of a surprise at the hearing last week to learn that the Department of Labor spokesmen feel that any comprehensive action on compensation must be deferred until next year, and we were

equally surprised to learn that the President's Cabinet Committee on Federal Retirement Systems has this matter under study.

We were not aware of this. Our council was asked to testify before this President's Committee in July, which we did, and we were told that our comments should be confined to the retirement program.

Nevertheless, since the administration feels that a comprehensive review of the compensation statute is in order, we feel free to direct our comments to various aspects of the existing law.

The first important feature of Congressman Hathaway's bill is the increase in the present maximum from $525 to $685 a month.

The current maximum was fixed in 1949. At that time it covered some 99 percent of all the employees who could be affected. Today, because of salary increases, that percentage has declined to 86 percent. Meanwhile, the salaries of Federal employees, justifiably, have doubled and yet the maximum remains the same.

We feel, therefore, that this proposal in H.R. 10721 is fully justified.

On the other end of the scale we have the increase in the minimum advocated in Congressman Hathaway's bill, increasing the minimum from $180 to $210 a month; $180 a month yields $2,160 a year. The proposal in Mr. Hathaway's bill would increase that minimum to $2,520 a year. When we understand that the poverty line has been drawn at $3,000 a year, Mr. Chairman, the effort to increase this minimum is modest indeed and so we heartily endorse it.

With respect to the economic plight of the current beneficiaries of compensation, those who have been injured and have received awards, I don't think it is necessary for me to engage in extended statistics.

The last time the act was improved in this respect was in 1960 and the increase in the awards at that time related only back to 1958. It is rather clear that these folks are in deep need of some financial help.

In that connection then the relation of the current awards to the rise in the Consumer Price Index is fully justified.

However, we seriously suggest to the subcommittee that they give consideration to eliminating this need for a piecemeal approach to increasing these benefits for those already on the compensation rolls by relating these awards to the pay of active employees in some fashion. We propose some formula so that these adjustments can be made automatically without having to resort continually to changes in the law.

The provision increasing the maximum age at which dependents can be eligible for compensation benefits to 23 we heartily endorse. Let me simply say that this matter has been recognized in other Federal laws with respect to dependents.

I cite veteran's benefits, income tax law, social security law, civil service retirement, and health benefit programs. All of them permit dependent children to continue to receive benefits beyond age 18 if they are in school.

Mr. Chairman, I would like to address a few comments to the bill you have introduced, H.R. 10865. We support the provision you have advanced for hearings by the Bureau of Employees' Compensation.

These, of course, would be available at the request of the employee, not mandatory. We feel that this would enable the Bureau to secure a better basis in fact for making its decisions.

As a matter of fact, the only place that a hearing is available now is at the Board of Appeals level and all of these hearings are conducted in Washington.

Obviously many appellants find it physically and economically impossible to travel to Washington. Hence the records may be deficient because they are not able to present factual material.

This proposal would bring it closer to the scene and we feel would improve the compensation system.

The provision in your bill, Mr. Chairman, for eliminating the inconsistency between the employee who suffers a total or partial loss of a limb without any related compensable injury and the employee who suffers the total or partial loss of limb with related compensable injuries to other parts of his body deserves very serious consideration.

It is somewhat complex, but I think the intent is to provide uniformity in the treatment of these two types of injuries and, therefore, we concur with your proposal.

As to the matter of judicial review, Mr. Chairman, I think in theory this is a very desirable idea. A fine case can be made for it as a matter of providing individuals with legal rights.

From the practical standpoint, however, we believe that the benefit that you would derive theoretically might very well be offset by the time and expense involved to the claimant in securing a final adjudication of his claim.

That is not to say that we are completely satisfied with all the decisions of the Bureau of Employees' Compensation or all of the decisions of the Board of Appeals, but we feel that they are being administered fairly. Any quarrel we have is a matter of evidence, a matter of fact, or a matter of medical opinion. So we hesitate to suggest that you move immediately to a judicial review.

One of the other bills that our council feels is quite important, Mr. Chairman, is Congressman Sickles' bill H.R. 6554. We have endorsed similar legislation over a number of years. Let me preface my comments in this connection by telling you that we and the AFL–CIO have endorsed President Johnson's "Mission Safety–70," a program designed to reduce by 30 percent the accidents in Federal service by 1970, but having said that, we must emphasize that this kind of legislation is still essential.

This desire to attain perfection in eliminating accidents must be continuous. The simple fact is in the Federal service that improvement has not been the most desirable. In the 8 years, from 1956 to 1963, the frequency rate of injuries in private industry has been considerably below that in the Federal agencies.

The reduction of the frequency rate in the two sectors has been favorable to private industry. When we consider severity rates, the Federal Government has had a better record on the basis of numbers alone, but again, the rate of reduction of severity rates has been better in private industry than in the Federal Government.

The last report that is available by the Bureau of Employees' Compensation is for calendar 1963 and I would like to just read this brief excerpt:

> The summary of civilian Federal employee work injury experience during calendar year 1963 shows no measurable overall improvement.
>
> Frequency of disabling injuries was the same for 1962, while severity and cost rates advanced a significant 13 percent.

And the report continues by noting that the $37.6 billion spent under the Compensation Act was the highest ever recorded.

Well, it is in this light, Mr. Chairman, that we ask your favorable consideration of H.R. 6554, not that we want to cast criticism at anyone, but that the Government's record can be improved. We feel that H.R. 6554 will really assist the program that President Johnson has inaugurated of "Mission Safety–70."

It will do it in two ways:

First, by outlining clearly the responsibilities of the Department of Labor and the other agencies in the field of accident prevention and the development of safety standards.

Second, it will reconstitute the Federal Safety Council and will establish a Federal Safety Advisory Committee with union membership on both groups, so that the know-how of the employee organizations will be available to the Department in carrying out this important function.

I don't think it is necessary for me to emphasize that on the union side many of the international organizations—Mr. Keating's experience here is one case in point—have had tremendous experience in the matter of safety and accident prevention over a long number of years.

The present law does not permit statutory membership by employees on the Federal Safety Council and it is these two points that H.R. 6554 is designed to remedy.

In 1962 Mr. L. B. Worthington, president of United States Steel Corp., made this comment at the President's Conference on Occupational Safety: "Certainly the very nature and importance of safety suggest a mutual interest on the part of business, labor, and Government in the effectiveness of injury prevention programs."

We concur completely and it is in this light that we suggest your favorable reaction to H.R. 6554.

The Council endorses also Mr. Fascell's bill, H.R. 5288. Despite the fact that the Bureau of Employees' Compensation exerts strenuous efforts to reduce the amount of time required to process claims and despite the fact that they have made substantial progress, the fact remains that the time elapsing between the injury of an employee and the return of his claim by the Bureau of Employees' Compensation averages 48 or 49 days.

I was very much interested, Mr. Chairman, in your remarks relative to improving this situation in the Post Office Department. I think this is highly commendable and I would suggest that, after acquiring all the evidence available, any comment the committee makes on this score will be most helpful to the agencies in advising their field components that Congress is concerned about this matter of delay. It occurs at the field level, at the local installation level.

Mr. Fascell's bill, of course, would remedy this situation. I think the details of recovery by the Federal Government in cases where that is necessary can be worked out if there is agreement on the principle of not having these employees go without any income during this waiting period.

The matter of employees earning leave while they are receiving compensation I think is rather clear and certainly the basic intent of a compensation law is to make employees as whole as possible when they have been injured through no fault of their own.

H.R. 2460, Congressman Olsen's bill, we commend to your serious consideration. Admittedly, this is a very difficult and complex field, but I think we can all recognize that from the medical standpoint there is a growing recognition that job stress, job tension, and even physical accidents such as Mr. Keating has recited can contribute to serious heart seizures and hypertension. From this standpoint we don't want to miss any opportunity of making the Compensation Act operate as it was originally intended as a liberal statute.

The suggestion that has been offered for replacing employees glasses, teeth, limbs, certainly is good. We endorse it. While the doctor may indicate that an employee has recovered sufficiently to return to duty on a light-duty basis, we find all too often that he is told by his agency "we have no light duty available" and it is a question of "or else."

Our Federal Government, not this year, not last year, not the year before, but for the past decade, has embarked on a program of employing the physically handicapped and certainly there is no better place to practice the policy than in the Government service itself. We must make certain not only that these employees with job-related injuries are not denied employment for themselves, but that their skills are not lost to the Federal Government.

With these suggestions, Mr. Chairman, we again want to commend you and your colleagues for your serious consideration of this important statute. Since it was revised 5 years ago, we feel the time has now arrived for a comprehensive review and comprehensive amendments to the Compensation Act.

Thank you.

Mr. O'HARA. Thank you, Mr. McCart. With respect to your comments dealing with the subject of judicial review of final decisions of the Secretary in compensation cases it is my thought that the judicial review provision would not be exercised very often and it would be exercised only under two circumstances, since we follow the substantial evidence rule.

Mr. MCCART. Yes, that is right.

Mr. O'HARA. It wouldn't be a rehearing really of the claim. One situation in which it is contemplated in my bill that this would be used would be where it was felt by the claimant and by others interested in his claim that the decision had been arbitrary.

I don't think that happens very often, if ever, under our present Compensation Act, but nevertheless this provides a safeguard against an arbitrary decision on the basis of facts. The second circumstance under which it might be used would be a circumstance in which an interpretation of a provision was given by the Secretary that the claimant and others interested in the claim might feel was contrary to the intent of Congress, so that we could get that intent question cleared up in the legislation.

And no one would have to use it. It would be an additional procedure available to claimants and for that reason I really can't understand why there should be any opposition to it on the part of persons representing Federal employees.

Mr. MCCART. As you may be aware, Mr. Chairman, this is a proposal that has been offered over the last decade at least. Not having a legal background myself I find a little difficulty in understanding the

substantial evidence principle, but I think from the legal standpoint a very fine case can be made for the judicial review process.

I think there are two things that we have to consider. How is the present system working? Is there denial of people's rights under the law in the light of facts and legalities?

Two, what is the alternative if equity is not being given in the cases considered by the Board of Appeals and we propose to a review by the courts?

We have been talking now about the delay in processing claims. I am told that under the State compensation acts cases are in process in the courts for months on end before an appellant can secure a decision.

Furthermore, if the delay involved is not going to provide greater justice—I am not saying that it won't but if it doesn't, then the employee can suffer a serious financial impact because the attorney's fees, of course, would have to be paid. I think our position is basically that we have confidence in the present system.

We disagree with findings, in specific cases, don't misunderstand us, but we have confidence in the present system and we don't see that the advantage offered by the judicial review improves substantially the situation that we have now under the Compensation Act.

Mr. O'HARA. Well, let's put this a different way.

The claimant would face the same question a litigant always faces and he decides it in cooperation with whomever is counseling him; that is, are his chances on appeal worth the effort involved in making the appeal? He has to make that decision if he is not fully satisfied with the original decision of the Bureau when he decides if he is going to go to the Appeals Board.

Mr. MCCART. That is right.

Mr. O'HARA. And he would have to make that decision under my proposal a second time if he went to the Appeals Board and still was not satisfied, that is a problem that all attorneys are accustomed to facing: is the game worth the candle? Are the chances of prevailing on appeal worth the effort and difficulty involved?

Without going into the subject extensively, but referring back to my conversation with Mr. Keating and Mr. Rademacher, having to do with the rehabilitation and reemployment of partially disabled employees, I would gather from your remarks that you, too, feel this is an important area that the Congress might look into with the idea of improving the present practice in that regard.

Mr. MCCART. Mr. Chairman, my interest in that matter stems originally from my knowledge of the Civil Service Retirement Act and what happened to disability annuitants. I have very strong feelings about the inadequacy of the Federal Government's program in retaining disabled Federal workers rather than see them go off the rolls.

What I have said with respect to retirement applies equally with respect to the Federal Employees' Compensation Act. From the humanitarian standpoint there is no reason that the Federal Government should not do its level best to see that these employees are rehabilitated.

From the standpoint of economics it is good for the Federal Government because they retain the skills that they have invested in these employees over a number of years.

Mr. O'HARA. Right. I think it makes a great deal of sense and I would suggest, as I suggested to Mr. Keating, that we may be in touch

with you later with respect to how we can do this best after we explore the problem a little further.

Mr. McCART. I think the emphasis and perhaps the experience that the Federal Government has already acquired under its retraining programs in the private sector might be beneficial.

Mr. O'HARA. Yes; I think so, too.

Mr. Pucinski?

Mr. PUCINSKI. Mr. McCart, I don't see anywhere in your statement any reference to the possibility of taking this ceiling off altogether. There has been some discussion on that point.

Perhaps I missed it.

Mr. McCART. I treated it very lightly, Mr. Pucinski. I dealt with it in relation to the augmented compensation on page 3: "We advocate that this dollar limitation be discontinued and that the augmented benefit be figured on three-fourths of the employee's base pay."

I did propose it there, but I certainly see no reason why that comment shouldn't apply equally to the basic compensation award because from the standpoint of cost it is minimal. From the standpoint of not having to deal with this maximum piecemeal, I certainly think it would be much better to eliminate the ceiling altogether.

I was trying to devise a formula short of outright repeal of the present maximums, but it is very difficult, so I would advocate the discontinuance.

Mr. PUCINSKI. As you know, the administration, the Bureau of the Budget, is staying with that $685 figure. Would you have any idea what the additional cost would be if we were to remove the limitation?

Mr. McCART. No, I don't, but $685 would bring it up into the super grades. There are 4,000 or 5,000 at most in the super grades. The rate of injury among those executives is somewhat rare and so I wouldn't think that the cost would present any great difficulty.

Mr. PUCINSKI. I think you made a good point on the judicial review and it is my hope that the author of the bill will not press that point.

In one of our other committees we have had a considerable discussion and there is a great effort being made to amend the Davis-Bacon Act to provide judicial review there in wage determinations.

Mr. McCART. Yes.

Mr. PUCINSKI. And I can see the sincerity of the gentleman from Michigan in trying to put this in because obviously he is trying to give the employee the greatest degree of protection. This is commendable, but with judicial review there is a growing tendency to rely heavily on judicial review to the extent that the backlog in the courts is becoming a very serious problem. I believe your point of the long delays is a very meritorious one.

We can only look and see what happens in the NLRB where we apply judicial review and how the action of the Board, whatever efforts they make to move along determinations, can become frustrated in the legal delays that are built into the system.

I think this is certainly something the committee wants to consider. I want to congratulate my colleague from Michigan for introducing this aspect because it is obvious his intention is to give the employee the greatest degree of protection. Perhaps we can find a compromise in

nailing down exactly what it is that the Congress intends on these laws.

I think that there is a great danger in this country in the importance being assumed by these regulatory agencies. They are the fourth branch of government today. There is no question that they are creating a serious problem for this country. I am not surprised that there are pressures for judicial review of their findings because their findings frequently in my judgment are capricious and arbitrary, certainly way off the path of what the Congress intended. I have often felt, and I wondered if you would have any comment on this, Mr. McCart, that we can eliminate a great deal of this arbitrary rulemaking power by the administrators of these agencies by being more careful here in Congress in spelling out more precisely in the legislation and in our reports exactly what is it that we intend and what are the criteria.

I am disturbed about legislation that goes through my committee and other committees of Congress, to a lesser degree. We often pass a broad guideline bill and then we say the administrator shall promulgate the appropriate rules and regulations for the enforcement of this act.

Well, this is where the trouble begins. I think that the Congress should do that. I think that the Congress ought to spell out as precisely as it can the rules to be followed so that we leave to the administrator the responsibility of administering the very concepts that the legislative branch of Government has created.

What would your comment be on that, sir?

Mr. McCART. Mr. Pucinski, the comments you have just made remind me of the administrative theory that is currently popular in personnel circles and that is administrative flexibility. It runs directly counter to what you have just described.

Certainly the good administration of any law depends, it seems to me, on two things:

First, how well the law is written, and, secondly, how well the law is administered. Much can be done by capable administrators.

I am not speaking now about the regulatory commissions and bodies. I am talking about those that work under the aegis of department or agency heads. Much depends on the attitude and the desire of the administrator of the agency, particularly where he has review groups under his jurisdiction.

In the Federal service I think our basic attitude has been that we prefer to exhaust all of the administrative machinery available.

Our unions have not hestitated to move to the courts where that has been indicated, but we do so only when we feel that the existing machinery is completely inadequate to solve the problem. For this reason we would be reluctant to establish an additional judicial mechanism unless we find that employees generally or a majority of them are not receiving fair and just consideration of their claims.

Mr. PUCINSKI. I am for administrative flexibility, once the Congress defines its intentions. The only difficulty with that, and I feel sorry for most of the people who work for the Federal Government, is that in the Government there is very little room for the luxury of being wrong.

We are all human, and we are all obviously going to err, and I would hate like heck to count up all the times I have been wrong.

I have been wrong many, many times. But the average Federal administrator and all of his subordinates are afraid to make a decision often because they are afraid if they are wrong it is going to militate against their promotion or some advancement.

Mr. McCART. As a consequence of the situation you have just described, the unions in the Federal service often insist that laws be drawn tightly.

I can remember the pay acts that were enacted in the past 10 years as a prime example, page after page of specific regulation because they had not been administered well in the first instance.

Mr. PUCINSKI. Thank you very much, Mr. McCart.

Mr. O'HARA. Mr. Quie?

Mr. QUIE. I have no questions, Mr. Chairman.

Mr. O'HARA. Mr. Hathaway?

Mr. HATHAWAY. I want to thank you very much for your comprehensive statement and state to you that I agree with your statement on page 4 that if we can devise some permanent method of adjusting compensation so that we don't have to continuously go back it would be advisable, and perhaps we can work out something where rather than having a ceiling we would have a fixed percentage and that would also apply to those who are now receiving compensation.

Mr. McCART. Yes.

Mr. HATHAWAY. With respect to your criticism of Mr. O'Hara's suggestion for appeal, it seems to me that it is necessary to have some court review so that we can establish a body of law with respect to this act made by competent judges and not simply leave it up to the last review board that we have presently in the act.

I realize that there are expenses of litigation that the normal employee does not want to incur and perhaps we could make some adjustment for that in our appeal procedure.

Mr. McCART. You will recall that part of Mr. O'Hara's bill provides for a hearing procedure at the Bureau level, something that has been absent until now.

Mr. HATHAWAY. Correct.

Mr. McCART. We would hope that this would permit a much better method of gathering factual evidence and even medical evidence on the scene which would result in improving the decisions that the Bureau makes.

In addition, I am not exactly certain as to whether the Compensation Appeals Board recognizes precedent as such, but I recall that in the past 6 or 8 years they have published their opinions and I am sure that this is for reason of citation.

I am a little bit confused between the Compensation Appeals Board and the Civil Service Commission Appeals Board. My recollection is that the Compensation Appeals Board does accept references to similar cases with similar facts and similar findings, so that it would seem to me that the question of precedent is applicable in the Compensation Appeals Board now.

However, my comment on the hearing at the Bureau level leads me to this conclusion: if the basis for the change to the judicial review is justifiable criticism of the present procedure, it might be well to let

the hearing at the Bureau level operate for a year or two to see how that works in developing decisions by the Bureau and the Board and then determine whether the legal review is still warranted.

Mr. HATHAWAY. Except, of course, the threat of legal review makes the review board a little more conscientious in its application of the law.

Mr. MCCART. I recognize that, Mr. Hathaway. You are correct.

Mr. PUCINSKI. Will you yield?

Mr. HATHAWAY. Certainly.

Mr. PUCINSKI. Isn't the converse very often true, though? It relieves them of a difficult decision because it can be reviewed by the courts?

Mr. MCCART. Yes, that is certainly correct. I would imagine, though, that the situation described by Mr. Hathaway is more prevalent. It reminds me of these matters that are brought to the attention of members of the executive branch by Members of Congress.

These receive prompt and preferred treatment because there is another branch of Government involved, so that your comment is well taken.

On the other hand, it might be that the appellants or their representatives too might not have the incentive that they would have to present the case to its full extent at the board level, realizing that there was always another level of appeal. Thus it can be considered both ways.

Mr. HATHAWAY. Thank you very much.

Mr. O'HARA. Thank you very much, Mr. McCart, for your interesting and helpful statement.

Mr. MCCART. Thank you, Mr. Chairman.

Mr. O'HARA. Our last witness will be Mr. Lawrence Smedley, who is assistant director, Department of Social Security, AFL–CIO, Washington, D.C.

Mr. Smedley, we are very pleased to have you with us and I am sure that you will be helpful. You may proceed in any manner that you wish.

STATEMENT OF LAWRENCE SMEDLEY, ASSISTANT DIRECTOR, DEPARTMENT OF SOCIAL SECURITY, AFL–CIO, WASHINGTON, D.C.

Mr. SMEDLEY. Thank you, Mr. Chairman. May I say first that the AFL–CIO is deeply appreciative of the opportunity to appear here today to testify in behalf of H.R. 10721, introduced by Congressman Hathaway to revise the benefit structure of the Federal Employees' Compensation Act.

The AFL–CIO believes that H.R. 10721 will do much to update the benefit structure of the Federal Employees' Compensation Act to bring it in line with the economic and social changes that have occurred in the last 16 years.

We urge favorable action.

I will submit a statement for the record, Mr. Chairman, and I will try to summarize the main points of that statement because I know that the members of the committee have pressing work and I understand today they are particularly feeling overworked after last night's session.

Mr. O'HARA. I would say that is a fair assessment of the situation, Mr. Smedley. I thank you, and without objection your written statement submitted to the committee will be entered in the record at this point and you may proceed to summarize and make whatever additional comments you wish.

(Statement referred to follows:)

STATEMENT OF LAWRENCE T. SMEDLEY, ASSISTANT DIRECTOR, DEPARTMENT OF SOCIAL SECURITY, AFL–CIO

Mr. Chairman, my name is Lawrence Smedley. I am assistant director, Department of Social Security, AFL–CIO and I am appearing here today on behalf of that organization.

The American Federation of Labor and Congress of Industrial Organizations is deeply appreciative of the opportunity to testify in support of H.R. 10721, a bill to revise the benefit structure of the Federal Employees Compensation Act.

The oldest workmen's compensation system in the United States is the one that covers civilian employees of the Federal Government. After the 1949 revisions, the Federal Employees Compensation Act was considered one of the most advanced workmen's compensation laws in the world. Unfortunately, there has not been a major revision since that time. In this era of rapid change, there is little that is not obsolete in a decade. The AFL–CIO believes that H.R. 10721 does much to update this act to bring it in line with the economic and social changes that have occurred during the last 16 years. We urge its enactment and it is hoped the following comments will be helpful in appraising the objectives of the bill.

Section 201. Section 6(a)(1).—When a disabled employee has one or more dependents, his basic compensation of two-thirds of wages is augmented by an additional 8⅓ percent of his monthly salary. The proposed amendment increases the amount of an employee's basic pay which may be considered in computing this additional compensation from $420 to $546 per month. The percentage increase in this maximum amount is less than the increase in the Consumer Price Index since the last time this figure was revised. This change simply means some injured Federal employees with dependents could receive additional supplementation up to a maximum of $10.50 a month. The small additional relief afforded disabled workers with dependents by this change would cost little but would mean a great deal to those workers involved.

Section 202. Section 6(c).—The proposed amendment increases the minimum compensation paid per month in cases of total disability from $180 to $210 per month and maximum compensation for disability from $525 to $685 per month.

Except for those whose average monthly wage is less than $210 per month, the proposed increase places a floor below which benefits to the totally disabled cannot fall. To the totally disabled employee this is certainly less than adequate to underwrite an adequate standard of maintenance.

Monthly pay is the basis for computing compensation for disability under the Federal Employees Compensation Act. The fairest way to achieve equity in the benefit structure is to revise benefit levels to conform with the increase in wage levels. The existing maximum for disability was established in 1949. Since that time, there have been unparalleled changes in the economy. The earnings of Federal employees have increased 80 percent and the Consumer Price Index roughly 31 percent. The time is long overdue to bring the benefit structure of the act in line with these changes.

This is a modest revision since it reflects only changes in the cost of living. To for disability about 31 percent. Thus, the proposed increase would simply bring the maximum benefit in line with the cost-of-living increase since 1949. This is a modest revision since it reflects only changes in the cost of living. To adjust benefit amounts in accordance with the cost of living renders the welfare of injured workers static while the rest of society advances. A fairer method would be to raise benefits in accordance with the increase in wage levels since the last adjustment.

The maximum in the Federal Employees Compensation Act was designed so as to insure that the overwhelming majority of Federal employees could receive 75 percent of wages if occupationally injured in Federal service. A new maximum is imperative in view of the pronounced changes in the employment

pattern of the Federal Government. There has been a substantial decrease in the proportion employed in the lower grades and a growth in the higher grades. In 1939, 31 percent of all Classification Act employees were in grades 1 and 2; 57 percent were in the first four grades. By July 1963, only 3 percent were in grades 1 and 2 and 33 percent in grades 1 through 4. Over the same period, the proportion of employees in grade 12 or above rose from about 4 to 17 percent. The growth in demands for Government services and the changing character of the economy has created a demand for new kinds of workers and higher salaries. The growing complexity of our economy and our Government services insures that not only will this trend continue but that it will likely accelerate.

The proposed maximum would permit all employees in step 8, GS–11 or step 3, GS–12 and above to receive the 75-percent maximum of basic monthly compensation specified in the act. Approximately 17 percent of Federal classified employees are in salary grades 12 through 18 and, even under the new maximum, about all of these employees would be denied full advantage of the benefit formulas stated in the law.

The Congress should enact the new maximum with a view toward the future. If adopted, the new maximum should stand for some time. The present maximum was enacted in 1949 and although we hope that revisions will occur before the lapse of another 16 years, it is reasonable to expect the new maximum to continue unchanged for a significant length of time.

Amendment to section 203. Section 10(k).—Section 10 deals with compensation for death resulting from an injury. In determining present minimum death benefits, the law assumes that a worker shall be considered to be earning not less than $240 a month. When interpreted to benefits for a widow, this simply means that the minimum allowance is $108 a month. The proposed amendment will place the minimum benefit for a widow at $126 a month.

The amendment raises the maximum compensation that can be received in death cases from $525 to $685 per month. This simply adjust the maximum benefit to bring it in line with the cost-of-living increase since enactment of the present maximum. The comments made concerning the increase in the maximum benefit for disability apply here—the obvious modesty of an increase that only adjusts for the cost of living.

Section 204. Section 10(c).—This amendment continues benefits in survivor cases to unmarried children after age 18 up to the age of 23 when enrolled in a program of education or training. This proposed change is in keeping with the educational developments that have occurred in our society—the ever-increasing need for education and training to cope with the complex demands of our modern economy. This provision corrects an obvious injustice. The restriction of benefits to age 18 creates a barrier that effectively prevents surviving children from achieving the kind of educational attainments essential to successful competition in the economic marketplace. It effectively makes second-class educational citizens of the children of occupationally killed workers by depriving the family unit of benefits at the time they are most needed—when the children should begin their most expensive and vital education.

Amendment to section 301.—Under the Federal Employees Compensation Act the amount of compensation paid for disability and death is computed on the basis of the monthly pay received by an injured employee at the time of injury. As a result, compensation payments to beneficiaries on account of injuries sustained in prior years fail to reflect the sharp rise in pay and living costs in recent years and are substantially less than benefits paid on present wage levels. The proposed amendment corrects the injustices created by the changing value of the dollar by adjusting past benefits by the Consumer Price Index. It is written in terms of human understanding. Congress, over the years, has rightly improved benefits for social security beneficiaries. It should do no less for the occupationally injured and their dependents.

The victims of an industrial society are particularly entitled to share in the economic gains of that society. As previously stated, wages are the most accurate measure of a worker's standard of living and benefit increases should be related to that measure. However, this bill is to be commended for its humane intent to adjust benefits for those who sustained injuries in prior years to reflect the rise in living costs since that time.

In addition to our support of H.R. 10721, there are a number of bills referred to this committee which we support—none of which are in direct conflict with H.R. 10721 but which contain desirable supplementary features.

H.R. 5288

H.R. 5288 permits a worker who has filed a claim for workmen's compensation to receive any accumulated salary, pay, or remuneration he is entitled to until his claim is processed. These payments are recovered from the compensation benefits when the payments begin.

This provision is an attempt to avoid the hardship worked upon claimants and their families who may be deprived of income for extended periods before the compensation claim is resolved. An injured worker with a family to support and house and car pa ments to make should not be required to endure this hardship when the obvious and fair remedy provided by this bill is available.

H.R. 5288 also permits an occupationally injured employee who returns to work to receive credit for annual and sick leave during the period of his disability. A worker on annual or sick leave can earn leave credits when away from the job. It seems only fair to accord injured employees equal treatment. This provision would help injured workers at the time they need it the most.

H.R. 10865

H.R. 10865 attempts to rectify the problem of loss of wage-earning capacity when an injury does not result in a major impairment. At the present time, an injured worker can be compensated for loss of wage-earning capacity in addition to the scheduled loss only when there is a total and permanent loss or loss of use of a major bodily member. The economic injustice that this can cause is best illustrated by an actual example.

An accountant who loses a hand may suffer no loss of earning capacity. A watchmaker who suffers a patrial loss of use of a hand incurs a severe wage loss and is physically and vocationally handicapped. Under existing provisions of the law, the accountant would receive a much larger amount of compensation. H.R. 10685 would rectify this problem by permitting payment for loss of earning capacity in situations of the kind illustrated by the watchmaker.

H.R. 10685 also provides for the payment of 2 years' compensation in a lump sum to a widow upon remarriage. There is a precedent provision in the Longshoremen's and Harbor Workers' Compensation Act. It would be a very inexpensive item and would remove an impediment to remarriage and would remove the unintended inducement now in the act for more informal arrangements.

H.R. 6554

H.R. 6554 would amend section 33 of the Federal Employees Compensation Act so as to provide for the establishment of a Federal employee accident program.

The need for a new safety program in the Federal Government is demonstrated by the fact that the 109,623 work injuries reported by civilian Federal employees in fiscal 1964 established an 18-year record high—10.6 percent higher than the average of 99,138 cases for the base period of 1957–59. Scheduled awards for permanent injuries increased 8 percent, rising from 1,822 to a total of 1,960, and the number of deaths increased from 351 to 388. Though white-collar and clerical-type occupations account for the bulk of the 2.5 million civilian Federal employees, there are 600,000 blue-collar workers whose duties encompass many inherently high-risk operations.

There is no central safety authority or minimum safety standards applicable throughout the Federal Government at the present time. Agency safety programs and safety results show great variation. Surveys have indicated that the safety performance of the Federal Government lags that of safety-conscious private firms. In addition, there is no labor representation on the existing Federal Safety Council. The H.R. 6654 embodies many proposals for improving safety in the Federal Government. However, we would like to single out for special commendation the requirement that the head of each Federal agency establish a safety program in conformity with standards prescribed by the Secretary of Labor, and the establishment of a Federal Safety Advisory Committee which would include representatives from both labor and management.

CONCLUSION

The Congress of the United States was a pioneer in workmen's compensation, having passed the first workmen's compensation law in the Nation. This legislation served as a model and stimulant for similar action by the States. Injured

workers and their families owe an eternal debt to those farsighted Members of Congress who passed this early legislation.

The major revision of the Federal Employees Compensation Act that took place in 1949 made it an outstanding workmen's compensation statute. Unfortunately, there has been no major revision of the act for 16 years—a period of time when economic and social progress has been unparalleled in human history. What was outstanding social legislation is no longer so by the more enlightened standards of the future.

We urge the committee to report favorably on H.R. 10721 and many of the supplementary features of other workmen's compensation bills before this committee so that Federal employees and their families can once again receive workmen's compensation protection commensurate with the economic and social advances of our society.

Mr. SMEDLEY. Thank you, Mr. Chairman.

The proposed bill, H.R. 10721, increases the maximum compensation for total disability from $525 to $685 per month. This maximum was established in 1949. As I understand, Federal employees salaries have increased about 80 percent and the cost of living about 31 percent, so this increase in the maximum benefit simply roughly approximates the increase in the consumer price index since 1949, so in a sense this is a very, very modest revision since it reflects only the cost of living and we feel that to adjust benefits in accordance with the cost of living tends to render the welfare of injured workers static while the rest of society advances.

We think a much fairer method would be to revise benefits in accordance with the rise in the wage levels since the last revision. The bill also increases the amount of an employee's basic pay which may be considered in computing the additional compensation when he has dependents from $420 to $546 per month.

In other words, the employee is entitled to an 8⅓-percent augmentation of his basic compensation of two-third when he has dependents.

Actually, in terms of the actual amount of money that a worker can receive it means that a Federal employee with dependents would receive up to $10.50 additional per month, so this is a very modest increase, wouldn't cost much, and certainly could be of immense benefit to disabled workers with dependents.

The bill also raises compensation in death cases in the same manner as in total disability cases from $525 to $685 per month. I need not comment here since the comments that apply to total disability apply equally as well to death benefits.

The bill also would permit the continuation of benefits in survivor cases to unmarried children after 18 up to age 23 when enrolled in a program of education and training.

This change just basically keeps in tune with the educational developments that have occurred in our society in recent years. There is an ever-increasing need for higher education to compete with the complex demands of our society.

I think this provision corrects an obvious injustice where actually the age 18 restriction on benefits in effect creates an arbitrary barrier for the surviving children to receive the kind of educational attainments necessary to compete in the economic marketplace.

In a sense it may effectively make second-class citizens of children of occupationally killed workers by depriving them of benefits and the family unit of benefits at the time they need it most, at the time they are going to begin the most expensive and the most important education.

The bill also corrects the injustices created by the changing value of the dollar by adjusting benefits of past beneficiaries to the change in the Consumer Price Index since they started to receive those benefits.

As previously stated, we feel it would be much fairer to adjust this benefit by the increase in wage levels since the time they started to receive these benefits because, after all, I think the victims of an industrial society are particularly entitled to share in economic gains of that society.

However, we wish to commend the bill for its humane intent to adjust the benefits of these past beneficiaries.

In addition to H.R. 10721, there are a number of bills before this committee we would like to specifically single out for our support.

These are H.R. 5288 by Congressman Fascell, H.R. 10865 introduced by Congressman O'Hara, and H.R. 6554 introduced by Congressman Sickles.

None of these bills, may I add, is in conflict with H.R. 10721, but would be of considerable supplementation in areas that the Federal Employees' Compensation Act could be improved.

H.R. 5288 permits disabled workers to receive their regular pay until they receive their first compensation benefit. I understand there are some technical problems here in regard to the question of liability, but I think we have to remember, too, that there are lots of workers where there is no question of liability as to compensation—in other words, it might be a question of partial disability: Is he 15 percent disabled, 20 percent disabled, or 40 percent disabled? So, this worker will receive compensation in time.

It is a question of determining the amount of disability, so there would be no problem of recovering overpayments in these cases.

I think, as the president of the Letter Carriers has pointed out, in the other cases the overwhelming majority of employees will return to their work and the overpayments could be deducted from salaries, so I think the administrative problems here could be ironed out.

We also urge favorable action on the bill introduced by the chairman, Congressman O'Hara, H.R. 10865. We particularly urge favorable action on the provision with regard to compensating for loss of wage earning capacity in those cases where there is less than major impairment.

As I understand it now under the act, the worker receives a schedule loss for a major impairment. Then if he suffers a loss of wage earning capacity, he also receives compensation for that.

Now, as I understand it under your bill, Mr. Chairman, you might have a man, for example, who is a watchmaker who would have rather what is a minor disability in a sense that a couple of fingers were injured. This effectively prevents this individual from going back to his occupation. He receives a small schedule loss, but he cannot ever generally serve in the skill that he spent maybe a lifetime in, so he is not only physically handicapped; he is vocationally handicapped, and the chairman's bill corrects this economic injustice.

There is one provision, however, of the chairman's bill which we do not support and that is the question of judicial review.

There may be differences as to decisions of the appeals board. There is certainly some. But these are the kinds of reasonable differences that one should expect in adversary proceedings and the cost and

delay that might arise from judicial review provided by the bill would probably outweigh the benefits intended by that review.

We also urge favorable action on H.R. 6554 introduced by Congressman Sickles which would amend section 33 of the act to provide for a comprehensive safety program.

At the present time there is no central safety authority or minimum safety standards applicable throughout the Federal Government. There were 109,000 work injuries reported by civilian Federal employees in fiscal 1964. This established an 18-year record.

We urge enactment of this bill because, after all, no compensation act, no matter how generous, can compare with a healthy productive worker supporting a family.

In conclusion, I would say there has been no major revision since 1949. The 1949 revision did make the Federal Employees' Compensation Act one of the outstanding workmen's compensation acts in the country.

There has been no major revision for 15 years in a period of time when I think economic and social progress has been unparalleled in human history, and so what was outstanding social legislation for one period is no longer so by the more enlightened standards of the future.

We urge the committee to report favorably H.R. 10721 and many of the other supplementary features of other workmen's compensation bills before this committee so that Federal employees and their families can once again receive workmen's compensation protection commensurate with the economic and social advances of our society.

Thank you.

Mr. O'HARA. Thank you very much, Mr. Smedley. One thing that has been made very clear in your testimony and that of Mr. McCart is that the Federal Employees' Compensation Appeals Board must be doing a pretty good job, and I will ask counsel to send the members of the Board copies of the hearings when we are all through and directing their attention to these statements. We ought to recommend them for awards of merit.

I think they are fine gentlemen and I am pleased to know that they are doing that well.

Mr. SMEDLEY. I, of course, rely pretty much upon the opinions of the Government employee unions here who are closer to the workers and they feel that, while the Bureau of Employees' Compensation Board is not perfect, it does under the circumstances a reasonably good job, and the day that they don't, that they can be sure that the Government employees unions will be in here supporting legislation of the kind that you have introduced.

Mr. O'HARA. I think they could be greatly aided really by a hearing procedure, shaping the record that is before them. As I understand their procedure, while they hear appeals, their appeals are not on the record, that is, they don't hear witnesses or adduce any additional or new evidence in the appeals procedure, so I would say the most important procedural change in my bill is that providing a hearing procedure at the request of the employee, because it would, I think, tend to provide a record both for the Bureau and for the Appeals Board that would be more reliable and fuller and better in terms of how you conduct your appeal procedure.

I thank you very much for your testimony.

Mr. QUIE. Mr. Chairman?

Mr. O'HARA. Yes.

Mr. QUIE. I would like to ask a question on this because I can't understand why you, Mr. Smedley, or Mr. McCart either, do not like to have judicial review. I can well understand this in private employment because the employee and the unions don't want the employer to be able to appeal the case, and this is understandable because evidently they feel that the employee usually has the greatest sympathy felt toward him and he wouldn't be using this as much as the employer would, but here, as I understand in looking at the bill, it is only the claimant that can bring this to the court.

The individual doesn't have to if he doesn't want to. He can accept what they do, but then if he feels that this wasn't the kind of decision that ought to have been given, it says that he may take this to the U.S. district court.

Why do you want to deny an individual this right that Mr. O'Hara is providing him under this bill?

Mr. SMEDLEY. Well, I would say, in the first place, you must remember this is a rather abrupt departure from past procedure that has worked quite well from the viewpoint of the people most closely involved.

In the second place, if the procedure of judicial review were to operate as the chairman stated his bill would operate, I think perhaps there would not be so much objection to it.

What generally has happened in many cases—it has happened in the social security disability program—once it gets to court, and we have tremendous legal talents available in the United States today, you tend to bog down the system with a considerable amount of litigation and really if you are interested in an administrative system, once litigation becomes operative to the point that it tends to bog down the system the administration suffers, and though a few workers will gain by the appeals decision, many others might suffer by the poor administration that results.

This has happened, in our opinion, in a number of States. I think that Mr. McCart made some points on the need for some modifications in the appeals procedure of the Employees' Compensation Appeals Board. I would agree with this, but I think at this time a rapid departure from past procedure that has worked pretty well might lead to things that we do not intend to lead to, and once you have entered this area you are never going to turn back.

Mr. QUIE. I always thought I was a conservative.

Mr. O'HARA. I will say that I share the gentleman's mystification.

Mr. QUIE. Mr. Chairman, as long as I am asking the questions, let me ask another question.

Mr. Smedley, I don't fully understand on page 2, which is on a different subject, and that is on the bottom where you say in the second sentence of your last paragraph:

> If adopted, the new maximum should stand for some time.

Do you mean it would likely stand for some time, or do you believe it really ought to?

Mr. SMEDLEY. No; would be likely to stand, because the last revision of this act, the revision of maximum benefits, took place in 1949.

It has been 16 years. What I am pointing out here is when the members adopt a new maximum they ought to have their eye toward the future, that this maximum will undoubtedly stand while I don't think another 16 years, but a sufficient length of time, and during that period of time because of the nature of Government employment, need for higher skills, scientists, and mathematicians and statisticians, a larger and larger percentage of the Government employees are going into the higher grades and may go beyond the maximum, and so I am asking that you set your eye on the future when you set this maximum in order to protect the people in this situation.

Mr. QUIE. Would you have any objection to taking the maximum off?

Mr. SMEDLEY. No; I would have no objection to taking the maximum off; no.

Mr. QUIE. Because I personally feel that we don't need a maximum.

Mr. SMEDLEY. In the Federal Government with the maximum you have had in the past and smaller number of employees in the top grades, I think this new maximum would cover up to step 3 in GS–12, and you have in your classified schedule 17 percent of your employees in GS–12 and above, so you could take off the maximum and cover pretty much everybody without great additional cost that you might have in another compensation system.

Mr. QUIE. Thank you.

Mr. O'HARA. Mr. Pucinski.

Mr. PUCINSKI. Mr. Smedley, I think you testified on a very important point on this question of compensating an employee who suffers a loss of ability to continue his normal employment.

This is a problem that we find not only at the Federal level, but I think we find this also in social security and some other areas.

I am very much interested in that. I am glad that H.R. 10865 attempts to correct this injustice. How would you see this working in other areas than the Government employees?

Do you think that we could look forward to seeing similar changes ultimately in the social security structure? If a man is a carpenter and could no longer serve as a carpenter and becomes a janitor, he should have some compensation for the fact that he lost ability to practice his normal craft or trade.

Mr. SMEDLEY. I think in time we will probably go along these lines. As you know, with respect to the Social Security Disability Act, because of the stringent requirements, there has long been advocacy of this kind of approach and the Social Security Administration in the administration of that program did modify their determinations for those individuals who had spent all of their life in hard manual labor.

It has come to a limited extent even in the social security program, as I previously mentioned, that an employee who has worked all his life in hard manual labor, and has the kind of eighth-grade education where he is not apt to be able to be retrained for another skill, if his disability prevents him from working in his former kind of work, they will give him his disability amendment.

It has been recognized to a very limited extent. I think the time will come, and I think they have it in a number of social security acts in a number of foreign countries. I think the time will come, but I do

think perhaps a number of improvements in the Social Security Act in other areas should take place first.

Mr. PUCINSKI. Perhaps it would be a good idea to start this in this Federal bill. I said here the other day at the hearing that we have to view this bill in a larger perspective than just what it does to Federal employees.

There is no question that the standards and the concepts that we write into the Federal act sooner or later are going to find their way to the bargaining table in negotiations, sooner or later are going to find their way in the form of amendments to the Social Security Act, and sooner or later will find their way into amendments in State legislatures to State workmen's compensation acts, so that perhaps this is a good beginning.

Maybe this would be the place to start and see how it works out at the Federal level. I was particularly interested in your analogy between the accountant and the watchmaker, and in my judgment the present doctrine is perhaps one of the most cruel doctrines that we have on the books today.

I know of any number of people who have suffered a disability and thus could not carry on their normal job who have been reduced to a much inferior grade of employee. Only upon showing that they can't do even that kind of work are they eligible to receive compensation.

I think this is cruel, inhuman, unfair, and perhaps we ought to start in this Federal act to correct that concept and then see it go down range in all the other agencies. I don't know of anything that creates a greater injustice to the working man than this present doctrine in this law, and the social security law, and also in many of the workmen's compensation laws.

Mr. SMEDLEY. I agree entirely with Congressman Pucinski and I would like to see the Federal Government set an example for the States.

Mr. PUCINSKI. Thank you very much.

Mr. O'HARA. Mr. Hathaway.

Mr. HATHAWAY. Mr. Smedley, thank you very much for your very comprehensive statement. The only question I have is also on judicial review.

I want to get your position straight. It is your position that judicial review would be superfluous, or that it would actually be detrimental?

Mr. SMEDLEY. I think that we at this time would probably feel in the long run the judicial review would be detrimental as a whole to Federal employees.

Mr. HATHAWAY. And you base that on the fact that cases would tend to bog down and so forth?

Mr. SMEDLEY. Costs would be increased. I think delays would creep into the system. I think it would be harder to administer and I think these problems would outweigh the gains.

Individuals might gain by judicial review, but as an overall picture for all Federal employees, I think judicial review would probably act to the detriment of the system.

Mr. HATHAWAY. As a practical matter wouldn't it only be used in questions of law where the review board had not applied the law properly?

Mr. SMEDLEY. Yes; if there is substantial evidence the courts would have to accept the findings of fact and they would only decide questions of law, but this is true in a number of States and true in the Social Security Act in regard to the disability amendment and when it gets to court it doesn't always work that way.

I am concerned by the fact if you want an administrative system you can't bog down the courts with all these decisions, and they are ending up making all the decisions and it makes the system difficult to effectively administer.

Mr. HATHAWAY. That depends, too, on how complicated the law is. Many State laws are much more complicated than the Federal law.

Mr. SMEDLEY. Yes. This would not present the problems in many other areas that it does in the area of workmen's compensation because workmen's compensation is probably the most litigious area of social insurance, there is no question about it, so this kind of judicial review causes more problems in workmen's compensation where it wouldn't in other instances, in other areas of legislation.

Mr. HATHAWAY. You are basing it on the States' experiences?

Mr. SMEDLEY. Yes; there has been a tremendous amount of litigation in the States.

Mr. HATHAWAY. Where the laws are to the best of my knowledge more complicated than the Federal law.

Mr. SMEDLEY. Some are; some aren't. Some States have appeals, of course, on fact and law. The courts hear de novo; a lot of States just on law, as what pretty much was described in Congressman O'Hara's bill.

Mr. HATHAWAY. Of course, the former case would be unwieldy. I mean if you had a de novo hearing.

Mr. SMEDLEY. De novo would be very difficult.

Mr. HATHAWAY. It would be ridiculous in this instance.

Mr. SMEDLEY. Yes. So often what happens is, even though it is on law supposedly, you end up pretty much de novo actually in the court.

I am sure that it is Congressman O'Hara's intent not to do this, but theoretically you tend to end up hearing de novo in many instances.

Mr. HATHAWAY. Thank you.

Mr. PUCINSKI. One question, Mr. Chairman.

Just so I understand you correctly, Mr. Smedley, are you suggesting that we give consideration to some concept of providing a compensation or at least a partial compensation, on the difference in the earning capacity of the work who is disabled, but not totally and permanently disabled? Is that what you are suggesting?

Mr. SMEDLEY. Yes, right. There are a few States that have this. I understand, Congressman Pucinski, in the Federal law they do compensate for loss of earning capacity of major impairment.

If the man has a major impairment and suffers a wage loss a percentage of what he loses is given to him to compensate for loss of earning capacity, but the problem being that if you have an accountant who loses a hand, he is entitled to a loss of earning capacity, but he doesn't suffer any because the accounting skill is readily usable even though he has lost a hand.

However, if a man is a watchmaker or a musician, for example, in a symphony orchestra, damage to a couple of fingers severely handicaps him occupationally. He is not going back to his former occupation.

So, the loss of earning capacity is not provided in the Federal act in these kinds of cases. I understand that Congressman O'Hara's bill would correct this injustice.

Mr. PUCINSKI. You are supporting a concept of making up in some way for that loss in earning capacity?

Mr. SMEDLEY. Yes, absolutely, I would advocate this for all workmen's compensation laws.

Mr. PUCINSKI. Thank you very much.

Mr. O'HARA. Thank you very much, Mr. Smedley.

Mr. SMEDLEY. Thank you very much, Mr. Chairman.

Mr. O'HARA. The committee will resume these hearings tomorrow morning in this room at which time we will hear testimony from representatives of the American Federation of Government Employees, the National Federation of Federal Employees, the United Federation of Postal Clerks, the National Postal Union, the National Association of Postal Supervisors, the National Association of Special Delivery Messengers, the American Podiatry Association, and the American Optometric Association, and I might add that all of these witnesses will be asked to submit their statements for the record and keep their oral presentations brief.

Mr. PUCINSKI. Five minutes.

Mr. O'HARA. Yes.

We will have to or we won't get through.

At this point the Select Subcommittee on Labor will stand adjourned until 10 o'clock tomorrow morning in this room.

(Whereupon, at 12:07 p.m., the hearing was recessed to reconvene at 10 a.m. on Wednesday, September 15, 1965.)

IMPROVEMENT OF BENEFITS UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT

WEDNESDAY, SEPTEMBER 15, 1965

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2261, Rayburn House Office Building, Hon. James G. O'Hara presiding.

Present: Representatives O'Hara, Daniels, Gibbons, Hathaway, Quie, and Gurney.

Also present: Jim Harrison, assistant staff director; Michael J. Bernstein, minority counsel; and Susan M. Parry, clerk.

Mr. HATHAWAY. The Select Subcommittee on Labor is now in session.

We have approximately an hour and in view of that fact we will have to confine each witness to about a 3-minute statement.

Rather than ask questions at the end of each statement, I think it would be better if all the witnesses testify and then, if there is time remaining, the members of the committee will question the witnesses afterward.

Our first witness is Mr. John F. Griner, president of the American Federation of Government Employees, AFL–CIO, Washington.

Mr. Griner.

STATEMENT OF JOHN F. GRINER, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO; ACCOMPANIED BY W. J. VOSS

Mr. GRINER. Mr. Chairman and members of the committee, for the benefit of the record I am John F. Griner, national president of the American Federation of Government Employees, and to my left is Dr. W. J. Voss, our director of research.

Mr. Chairman, I am just going to point out some of the highlights, as requested, in my statement, and I wish to file the statement if I may.

Mr. HATHAWAY. Without objection the statement will be entered in the record.

(Statement referred to follows:)

STATEMENT OF JOHN F. GRINER, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

The bill H.R. 10721 is approved by the American Federation of Government Employees for the critically needed improvements to the Federal Employees Compensation Act which it would provide. It should be enacted without delay, because the changes it would bring about involve several basic provisions of the act.

The sponsor of this bill, Representative Hathaway, is performing a valuable service by proposing amendments of the law which is of vital importance to the Federal employee who is injured on the job.

There are several other bills pending which I commend to the attention of this subcommittee and at a later point in my statement I will direct attention to those measures which I believe merit the approval of the House.

I wish to emphasize the need for early action on these bills. The time to act is now. It would be a serious mistake to wait until the Cabinet Committee on Federal Staff Retirement Systems has developed its findings and formulated its recommendations. It would be early in the next session of Congress before these recommendations are transmitted to Congress. They will no doubt deal with basic principles and with long-range modification of the compensation program. Such suggested changes will require more than casual study before they can receive consideration as specific legislative proposals. Even if they were ready when the second session of the 89th Congress gets underway next year, it is unlikely that legislation would be enacted to amend a law which had been amended during the preceding session.

H.R. 10721 would effect changes which are in the order of interim correction of existing maximum and minimum payments which, if delayed, mean only continuing hardship to many employees now on the compensation roll or who will be unfortunate enough to be included in that roll during the next year.

The maximum dollar limit of $525 a month, or $6,300 annually, has been in effect for 16 years during which Government earnings have nearly doubled and the Consumer Price Index has advanced more than 32 percent. Whether the need for the amendments proposed in H.R. 10721 is to bring certain benefits into proportion with current earnings or to reflect changes in living costs it is no less urgent. The bill would raise this maximum of $525 to $685 monthly, or $8,220 annually, which is more nearly a reasonable proportion of a salary in the upper grade ranges.

The bill would also increase from $420 to $546 the limit on that part of basic compensation for disability on which the augmentation for dependents may be computed. It would also raise the present minimum payment from $180 to $210 a month. All these dollar amounts are to be increased on a modest scale, which emphasizes the urgency for their adoption.

In addition to these dollar changes, the bill proposes the raising of the age limit at which compensation payments for a dependent child must be terminated. At present they would cease at 18 years. The bill would increase this age to 23 years, which is both reasonable and realistic, since it would allow continuance of such payments until a child dependent has finished his college education.

Monthly payments for disability or death already awarded under the Federal Employees Compensation Act at the time H.R. 10721 is enacted would be increased by the annual average percentage changes in the Consumer Price Index which have occurred since the year in which the award was made. We must object to the further provision that the increase so provided would be reduced on a percentage basis by any increase heretofore authorized by Congress. The last increase authorized for previously adjudicated compensation awards applied to awards for injuries which occurred prior to January 1, 1958. Since that time there have been five salary increases for classified employees and seven wage increases for the majority of the Government's blue-collar employees.

The bill H.R. 4478, introduced by Representative Collier, has one outstanding feature, namely, the proposal to remove the limitation of $525 as the monthly payment in cases in which death results from a compensable injury. This is a commendable proposal and consideration should be given to raising the limit beyond the $685 provided in the Hathaway bill or removing any restriction and simply fixing the payment as two-thirds or three-fourths of salary or wage at the time of injury.

The Collier bill also provided for increasing compensation payments if the Consumer Price Index has advanced 3 percent from 1962 and by the percentage which occurs in any year thereafter. This provision conforms to that which was made in the retirement increase formula by H.R. 8469 recently enacted. This bill also would raise the age limit of 18 at which payments to a dependent child presently end to the age of 21. The limit should be raised to 23 years, as provided in the Hathaway bill.

H.R. 7288, sponsored by Representative Fascell, provides two desirable changes in existing law. One would permit an injured employee to remain on the payroll until his claim for compensation has been approved. The other change would

entitle him to annual and sick leave during a period in which he was receiving compensation payments. We approve these proposals but suggest amending the Leave Acts rather than the Compensation Act.

We suggest that the subcommittee give serious consideration to adoption of a mandatory provision for returning an injured employee to active-duty status as soon as he is able to perform any productive duties in keeping with his injury. This would restore the employee to maximum earning capacity as soon as practicable. At present the employing agency can refuse to return him to active-duty status on the ground that he is unable to do the work he was doing at the time of injury. The agency should be required to return him to any job he can do.

The bill H.R. 10865, introduced by Representative O'Hara, contains several worthwhile amendments to the Compensation Act. However, section 3 should be modified to permit payments to a dependent child to continue until age 23, as in the Hathaway bill. While review by a U.S. district court of administrative decisions made pursuant to the Compensation Act may seem desirable, there is no certainty that a court that is not fully informed concerning the act will necessarily dispense justice to a greater degree than the Bureau of Employees Compensation. It is a proposal which should receive extensive examination before approval.

It should not be overlooked that providing for a court review also will add to the expense to which an injured employee will be put. In many cases it will mean travel for a considerable distance plus attorney's fees and court costs. The decision still must be made on the same set of facts.

The American Federation of Government Employees indorses the bill H.R. 6554 introduced by Representative Sickles. The Federal employee accident prevention program is sorely needed. The Federal Safety Council now established by Executive Order 10990 has an advisory function, but the urgent need is for a program which will include positive sanctions which can compel compliance with safety standards established for all Federal agencies to observe.

Another desirable amendment to the Compensation Act is to provide for the replacement of appliances needed to compensate for an injury or to improve the injured person's condition. At present an employee supplied with such items as eyeglasses or artificial limbs may receive only the initial appliance. If it is damaged or broken, the law does not permit its replacement at Government expense.

As already stated, Mr. Chairman, the changes in the Compensation Act which have been proposed, particularly in the Hathaway bill, should be approved as quickly as possible. They are long overdue and their adoption will go a long way toward updating dollar limitations written into the law 16 years ago.

Thank you, Mr. Chairman, for the opportunity to present this statement.

Mr. GRINER. Mr. Chairman, I find that there have been a number of bills that have been introduced regarding this matter, and most of the bills contain some good points.

I don't think any one bill would take care of the entire subject matter.

First, we are definitely opposed to laying over until next year any part of this problem to be decided later based upon recommendations of the President's Cabinet Committee. We believe now is the time to make any changes that are necessary in this bill, and we think there are a number of changes necessary.

Based on past experience, gentlemen, we find it is rather difficult in any year to get Congress to enact amendments to a piece of legislation in which amendments to the same have been enacted the year before.

Among the things we would like to see changed in this bill, Mr. Chairman, is that there be no limitation as to the amount of money that may be payable. I believe under Mr. O'Hara's bill the limitation would be $685, which is three-fourths of some $11,511 and, of course, that is only in grade 11.

We think that the people who are occupying positions above the grade 11 should have the same right to three-fourths of their earnings as a person below it.

Another thing we would like to see is the limitation for children raised to 23 years. We find this: that the average child starts to school between the age of 6 and 7. He finishes his schooling about the time he is the age of 19, and if he goes to college he is about 23 years old before he finishes college. Certainly these people should be protected until they do finish college and have an opportunity to compete with their fellow workers' children.

We have also found a number of cases in which an individual's leave, both sick and annual, has run out prior to the time that his claim is approved, leaving him with nothing to go on.

I believe it takes 80 days on an average from the time a person is hurt or injured until his claim is approved. Taking into consideration the fact that this legislation applies to the man who just enters service of the Federal Government as well as the man who might have 35 years, and the fact that the man who has just entered service would not have time to accumulate sufficient leave to carry him over until he can have some income from the Bureau, we believe that leave should be advanced to him during the time that it takes to take care of his claim.

We believe the enactment of Mr. Sickles' bill, H.R. 6554, would, let us say, cut down on the number of injuries that we have in the Government, because at the present time our safety laws or regulations within the Government are very loose.

No one has the authority to police them. The Government can only recommend.

Gentlemen, I believe those are the highlights of my statement. Some question has been raised, for instance, about whether or not the courts should be allowed to review these cases. We don't want to see the right to review taken away from the BEC.

On the other hand, we think that if there is a question of law involved, surely an individual should have a right to go to the courts and have the law defined by the proper authority.

Of course, in the definition of the law the facts must be shown. I believe that is all, Mr. Chairman, other than one other thing, and that is the fact that under our present regulations or law—I don't know just now which it is—the employee who might be injured is supplied with such items as eyeglasses or artificial limbs, but that is only the initial appliance.

I think provisions should be made that in cases of a change of those appliances, which occur so often, the compensation board should take care of such changes. In other words, that should be a matter of expense that is chargeable to a man's claim.

I want to thank this committee for the opportunity of appearing before it. This is a very important piece of legislation. It is something that affects or could affect the lives and the welfare of each and every individual that is now employed by this Federal Government.

Thank you again, sir.

Mr. HATHAWAY. Thank you very much, Mr. Griner. I appreciate your cutting your testimony down to within almost the time limit.

As I mentioned earlier, we will question the witnesses after we have finished with all of them.

Thank you.

Mr. GRINER. May I ask this, Mr. Hathaway?

Mr. HATHAWAY. Certainly.

Mr. GRINER. I probably won't be here, but Mr. Voss will be here in my place and understands my testimony. Would you favor me in questioning him in case you have any questions regarding my testimony?

Mr. HATHAWAY. Certainly. We would be glad to.

Mr. GRINER. Thank you very much.

(Mr. O'Hara entered the room.)

Mr. O'HARA. Our next witness will be Mr. Nathan Wolkomir, who is president of the National Federation of Federal Employees.

Mr. Wolkomir, you have heard the conditions under which we must operate today. We would appreciate your briefly making the main points that you wish to make before us.

Without objection, your statement will be entered in the record in full.

STATEMENT OF NATHAN WOLKOMIR, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES; ACCOMPANIED BY BEN MARTIN, ASSISTANT TO THE PRESIDENT

Mr. WOLKOMIR. Thank you very much, Mr. Chairman. I think you will find that my full statement is very short. I timed it. It takes exactly 3 minutes.

Mr. O'HARA. Please proceed.

Mr. WOLKOMIR. If you don't mind I will stick to the prepared statement. Most of the material you notice is merely something that we added as an attachment which will not be read, and I will appreciate the subcommittee looking through the attachments at a later date.

For the record, I am Nathan T. Wolkomir, president of the National Federation of Federal Employees. To my right is the president's assistant, particularly on legislation, Mr. Ben Martin.

Our organization has members in almost all Federal departments and agencies in this country and also at various U.S. installations overseas.

Mr. Chairman, I want to express the support of the National Federation of Federal Employees for the purposes and objectives of H.R. 10721 and the very deep and long-term interest of our organization in the Federal Employees' Compensation Act.

This act was originally passed by the Congress in 1916, in the Administration of President Woodrow Wilson. Just a year later, the National Federation of Federal Employees was formed and at the very beginning of our organization career we recognized the need for liberalization and improvement of the act which had so recently been adopted.

It is significant that this pioneer piece of employee legislation—which, for example, antedated the Federal retirement law by some 4 years and the basic Classification Act of 1923 by 7 years—has failed so signally to keep pace with the very urgent needs of changing times and conditions.

Whereas the retirement, classification, pay, and many other laws have been repeatedly amended to keep them at least reasonably abreast of changing times and needs, the Federal Employees' Compensation

Act has been to a very considerable and deplorable degree neglected and allowed to lag not merely by years but actually by decades.

Thus, we find that when the act was passed in 1916, the maximum monthly payment for total disability was $66.67. It was not until 1927, 11 years later, that this maximum was raised to $116.65. Twenty-two years elapsed before the maximum was increased to $525—and there it has remained until the present time.

Mr. Chairman, while we support the purposes and objectives of H.R. 10721, and are encouraged by the interest and support it has received, we would be derelict if we did not point out that its provisions remain inadequate in the light of present-day costs.

Thus, the dollar maximum of $685 a month obviously falls short of what is required under present-day conditions, as are the provisions for augmentation in the case of dependents.

The limitations continue to be unrealistic in the light of high living costs, which continue to grow from month to month. We therefore take the position that the ceiling is far too low in the case of service-connected total disability or death.

Testimony has been submitted to this subcommittee showing what this means in the light of the world in which we live. For example, many civilian employees today are working under conditions of great hazard, and some actually under hostile fire.

Regardless of their present salaries and family obligations, total disability would find them and their dependents, even under the terms of the present proposed legislation, inadequately compensated for total disability or death.

Moreover, wherever they live and work, Federal employees inevitably are possible victims of service-connected disabilities. The limitations prevailing in the present act and in the proposed legislation thus are, in varying degrees, out of touch with the realities of life and costs in the 1960's.

The provision of H.R. 10721 to adjust previous compensation awards of persons already on the rolls on a basis consistent with increases in the Consumer Price Index is praiseworthy as in the provision extending benefits of surviving children from age 18 to 23 if the child is still attending school.

The NFFE recognizes that H.R. 10721 is essentially an interim measure to provide immediately and urgently needed upward revision and liberalization of the Federal Employees' Compensation Act and an effort to alleviate some of the hardship and some of the lag resulting from failure to amend the law since 1949.

As such, we strongly urge its prompt enactment. However, there also is a long-range need for a thoroughgoing overhaul of the act and we will await with great interest recommendations on this subject by the Cabinet Committee on Federal Staff Retirement Systems.

This legislation should not wait on the report, however, for later sessions of Congress could adjust predictable lags outlined by the Cabinet Committee.

In connection with the pending legislation, I desire to invite the attention of the subcommittee to certain proposed amendments to the Federal Employees' Compensation Act contained in sections 1, 2, 5, and 6 of H.R. 10865 and H.R. 5288.

We believe that these provisions merit the subcommittee's favorable consideration in conjunction with H.R. 10721 and strongly urge that these provisions be included in the bill to be reported.

With regard to H.R. 10865, section 1 is designed to authorize payment of compensation based on loss of earning capacity whether or not disability also involves other impairments of the body.

Section 2 would authorize payment of a lump sum to a widow or widower upon remarriage, thereby avoiding possible criticism of the Government for condoning extra-marital relations.

Section 5 would guarantee a hearing before the Bureau of Employees' Compensation, and section 6 would afford a claimant the right of appeal to the U.S. courts from a decision of the Bureau.

And we emphasize that NFFE believes that it is vital to provide the right of jurisdictional review and I cannot emphasize this too much based on our experiences.

H.R. 5288 proposes, in section 1, to continue payment of salary to an injured-on-duty employee until his claim has been approved by the Bureau of Employees' Compensation. This provision, in our view, is a highly desirable one and essential in order to avoid hardship due to delay in the Bureau in the adjudication and approval of the claim.

In this connection, I am including in my testimony herewith text of a resolution touching directly on this point which was adopted by the 1964 Biennial National Convention of the NFFE.

That resolution, introduced by NFFE Local No. 687, San Bernadino, Calif., reads as follows:

Whereas unfortunate Federal civilian employees who are injured while at their jobs often must await adjudication of their claims and undergo many months of financial hardship to themselves and their families; and

Whereas these same civilian employees are often without recourse or alternative to exhausting sick and annual leave balances awaiting such adjudication; and

Whereas these unfortunate civilian employees are often forced to the brink of bankruptcy to add to their physical miseries, after exhausting sick leave and annual leave, while not being eligible for unemployment benefits by reason of their job incurred injury; and

Whereas investigation and adjudication often require many months: Therefore be it

Resolved, That the National Office of the NFFE discuss this problem area with appropriate officials of the Department of Labor to determine the cause of, and solution for, this serious problem.

Mr. Chairman, section 2 of H.R. 5288 also is very necessary since under present law an employee unable to work because of injury due to no fault on his part, cannot be credited with annual or sick leave covering the period of his absence due to the injury, which leave the employee would have earned had he not been injured on duty.

Because of the many cases which involve this type of a situation, to the obvious and unfair detriment of the employee, our national convention also adopted a resolution on that subject.

The resolution, introduced by NFFE Local 331, Belleville, Ill., is as follows:

Whereas Federal employees injured on the job receive initial emergency treatment on the base where employed; and

Whereas they are required to obtain subsequent treatment for the same injury from a civilian doctor on leave status, if visit is during working hours: Be it

Resolved, That the National Federation of Federal Employees urge enactment of legislation that would permit injured Federal employees to secure treat-

ment, subsequent to initial treatment, during regular tour of duty when proven necessary, without charge to leave.

In connection with the foregoing, to illustrate the point, I am attaching to my testimony a sample letter which we have had with the Department of the Army which typifies and exemplifies the need for legislative action on leave.

Mr. Chairman, in concluding my testimony, I wish to again cite our support for H.R. 10721, to emphasize the merit of its proposals with the understanding that they represent a stop-gap approach pending a more thorough overhaul and updating of the act, and to urge a favorable report, with the inclusion particularly of those features of H.R. 10865 and H.R. 5288 to which I have alluded.

The NFFE wishes also again to express its appreciation to the subcommittee and to all Members of the Congress who have taken a constructive and forward-looking position with respect to this very important matter.

(Information referred to follows:)

Miss MARGARET A. HANNON,
Member, Local No. 1051,
Allentown, N.J.

DEAR MISS HANNON: I have received a formal decision requested from the Department of the Army, which I mentioned in my letter to you of August 3, 1965, on the question of charging to sick leave for your absence while taking treatment for an injury which occurred while you were in the performance of your duties.

Enclosed is a copy of letter, August 10, 1965, from the Director of Civilian Personnel, Department of the Army.

For your information, my letter to the Department concluded:

"Although we appreciate the language of the regulation, it seems to me that the employee's absence was, in fact, 'forced' and she had no alternative but to comply with the instructions of the Bureau of Employment Compensation."

However, the Department is unable to construe the regulations in your favor, notwithstanding my efforts. In this connection, I have been orally advised that the regulation for many years has been adhered to without exception. Moreover, since the regulation is not inconsistent with civil service laws and regulation, regretfully I am obliged to tell you that it would be useless to pursue the matter further.

Fraternally,

N. T. WOLKOMIR, *President.*

DEPARTMENT OF THE ARMY,
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR PERSONNEL,
Washington, D.C., August 10, 1965.

Mr. N. T. WOLKOMIR,
President, National Federation of Federal Employees,
Washington, D.C.

DEAR MR. WOLKOMIR: This will reply to your letter of August 3, 1965, in behalf of Miss Margaret A. Hannon, a civilian employee of Fort Dix, N.J.

In her letter dated July 20, 1965, Miss Hannon stated that she was injured during employment in January 1964. On several occasions since that time she has been directed by the Department of Labor to report to a U.S. hospital at Stapleton, Staten Island, N.Y., for physical checkup in connection with adjudication of her claim for injury compensation. Her absence from duty for this purpose has been charged to sick leave. It is her belief that such absence should be excused without charge to leave or loss of pay.

In this regard the Department's regulations provide that an employee injured in the performance of his duties will be considered in a duty status for the time required to obtain emergency treatment to the extent that it falls within his prescribed hours of work on the day of injury. Absence from duty beyond the date of injury is chargeable to sick leave, annual leave, or leave without pay, as appropriate.

Under the circumstances present in Miss Hannon's case, charging her absence to sick leave was consistent with the Department's regulations. It is regretted that a more favorable reply may not be made.

Sincerely,

D. S. RUBENSTEIN
(For C. F. Mullaly, Director of Civilian Personnel).

AUGUST 3, 1965.

MR. WALTER F. MEYER,
Chief, Procedures and Regulations Division, Directorate of Civilian Personnel, Department of the Army, Washington, D.C.

DEAR MR. MEYER: Reference recent telephone conversation with Mrs. Evelyn G. Streng regarding a complaint of a member of the National Federation of Federal Employees at Fort Dix against the charging to sick leave her absence while taking treatment for an injury which occurred while in the performance of her duties.

Our inquiry was prompted by a letter of July 20, 1965 (copy enclosed). Following our conversation of July 23 with Mrs. Streng, we advised Miss Margaret A. Hannon, in pertinent part, as follows:

"Under the leave regulations, civilian personnel, Department of the Army, an employee injured in performance of her duties is entitled to pay without charge to leave for the time required to obtain emergency treatment. Upon discussion today with an official of the Department, I am advised that the term "emergency treatment" is restricted to the day on which the emergency occurred. For your information, I enclose a copy of CPR L1, 3and call your particular attention to subparagraph *h*(6)."

In reply we received a letter of July 30, 1965 (copy also enclosed). Because of the involuntary nature of Miss Hannon's visits to the hospital, may I ask further consideration of this complaint.

Although we appreciate the language of the regulation, it seems to me that the employee's absence was, in fact, "forced" and she had no alternative but to comply with the instructions of the Bureau of Employment Compensation.

I am hopeful that you can so construe the regulations as to permit the absence of Miss Hannon to be recorded as administrative or excused leave.

Sincerely,

N. T. WOLKOMIR, *President.*

ALLENTOWN, N.J., *July 30, 1965.*

Re National Federation of Federal Employees Local No. 1051, Fort Dix, N.J.

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
Washington, D.C.
(Attention of Mr. Nathan T. Wolkomir, president).

DEAR MR. WOLKOMIR: I am in receipt of your letter dated July 23, 1965 (copy attached), but it appears that the question that I had requested has been evaded. The problem is "simple" and the answer should be "simple."

Question. Inasmuch as I have been directed by correspondence to make several visits to the hospital without voluntarily requesting them (in other words, "ordered" by the Department of Labor, New York), I consider that this leave should be charged to excused leave, and not charged to sick leave as has been done in this case.

Request reply or advice.

Very sincerely,

Miss MARGARET A. HANNON.

ALLENTOWN, N.J., *July 20, 1965.*

Re National Federation of Federal Employees, Local No. 1051, Fort Dix, N.J.

THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
Washington, D.C.
(Attention of Mr. Nathan T. Wolkomir, president).

DEAR MR. WOLKOMIR: I am a member of the National Federation of Federal Employees, Fort Dix, N.J., for a number of years.

Mr. Wolkomir, since you are the president of the organization, I feel as though I would rather take this matter up with you personally by explaining in detail the problem that I am now confronted with as follows:

In January 1964, I was injured at the office where I am employed by an employee and the case has never been cleared up. Naturally, the U.S. Department

of Labor became involved. At the request of the U.S. Department of Labor I was asked to report to a U.S. hospital at Stapleton, Staten Island, N.Y., for a physical checkup. This I have done on two occasions and next week I have to make another trip.

The problem that I am up against now is regards the charging of leave for this time that I have to make for these trips. In the office where I work, the administrative assistant checked with the civilian personnel office and was told that this leave should be charged to sick leave for me and not administrative. Since this seems unfair to me and I did not request to go, I am humbly asking if you will have someone in your office look into this matter for me; that is, the U.S. Civil Service Commission Regulations, Washington, D.C., surely has the correct answer. Certainly I do not believe that I have received the right answer.

May I have a reply as soon as possible and would also appreciate a copy of the civilian personnel regulation governing this rule.

Very sincerely,

Miss MARGARET A. HANNON.

Mr. WOLKOMIR. Thank you very much.

Mr. O'HARA. Thank you very much, Mr. Wolkomir.

For those members of the committee who have arrived since your testimony began, I would like to restate that we are asking each witness, because of the full committee meeting at 11, to keep his statement short, and we are reserving questions of members until all the witnesses scheduled today have had an opportunity to summarize their statements.

Thank you very much, Mr. Wolkomir.

Mr. WOLKOMIR. Thank you, sir.

Mr. O'HARA. I think I indicated that your statement will be entered in full in the record with attachments.

Mr. WOLKOMIR. Yes, sir.

Thank you very much, gentlemen.

Mr. O'HARA. Mr. Patrick J. Nilan, legislative director, United Federation of Postal Clerks, AFL-CIO, will be our next witness.

Mr. Nilan, we wish to apologize to you also for the procedure we are forced to follow today, but the building trades department of your organization would be very disappointed in us if we did not, since I understand the situs picketing bill is coming before an executive session of the full committee at 11 and we have to conclude before then.

Please proceed, Mr. Nilan.

STATEMENT OF PATRICK J. NILAN, LEGISLATIVE DIRECTOR, UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO; ACCOMPANIED BY JOSEPH F. THOMAS, DIRECTOR OF ORGANIZATION

Mr. NILAN. Mr. Chairman and members of the subcommittee, we certainly want to cooperate with the committee because we understand you have plenty of work up here on the Hill and it is not our desire to hold you up on other business.

I am not going to read the entire statement since the chairman has indicated that it will be included in the record.

Mr. O'HARA. Without objection, it will be included in the record at this point.

(Statement referred to follows:)

STATEMENT OF UNITED FEDERATION OF POSTAL CLERKS, AFL–CIO, PATRICK J. NILAN, LEGISLATIVE DIRECTOR

Mr. Chairman and members of the committee, for the record, I am Patrick J. Nilan, national legislative director of the United Federation of Postal Clerks, AFL–CIO, with headquarters at 817 14th Street, NW., Washington, D.C. I am accompanied this morning by Joseph F. Thomas, our director of organization.

We are the exclusive national bargaining representatives for the 245,000 clerical employees in the postal establishment under the terms of our national agreement with the Post Office Department.

As one of the oldest groups of organized employees in Government—clerks were first organized in 1890—I can assure you that our members are vitally interested in the efforts of this committee to upgrade obsolete provisions of the Federal Employees' Compensation Act. We would like to express our appreciation to the chairman and members of the committee for scheduling these hearings.

This interest dates back to the beginning of such concepts when in 1916 we supported the Kern-McGillicuddy Federal Workmen's Compensation law—climaxing a 7-year fight to bring Federal employees for the first time under the protection of compensation laws already enjoyed by private employees in many States.

It is interesting to note that our legislative director at that time—then on extended leave of absence—was fired by the Post Office Department shortly thereafter for his vigorous advocacy of legislative reforms. Fortunately, things have changed a great deal since then.

But change, as previous witnesses before this committee have shown, has been slow in catching up with the times as far as workmen's compensation is concerned, and particularly for compensation of Federal employees.

Back in 1916, the maximum payments allowable under the new law were $66.67 per month. Today that maximum has risen to $525—but even that figure, dating from 1949, is far below what today's equity demands.

This committee already has heard considerable evidence that the existing rates fail substantially to carry out the intent of the basic law to provide up to 75 percent of basic compensation for the totally disabled.

You have before you Representative William Hathaway's bill, H.R. 10721, adjusting maximum and minimum compensation, and also the bill, H.R. 10865, sponsored by the distinguished chairman of this committee, Representative James O'Hara. Both of these measures contain basic provisions which we heartily endorse—and we are grateful for their thoughtful and constructive approaches.

We do have reservations about gearing compensation increases solely to the very limited Consumer Price Index as proposed in H.R. 10721 which by itself would fail to provide a measure close to the general principles of comparability now guiding the whole Federal pay structure. And we have doubts about the value of the judicial review concept (as proposed by H.R. 10865)—doubts which have been clearly stated by previous witnesses on both counts.

To save time, however, I do not propose to cover again areas of discussion which previous witnesses have presented or to burden you with a repetition of facts and figures already well established by others and by the findings of the Government's own experts in the Civil Service Commission and the Labor Department, and to which we add general endorsement.

Instead we will concentrate on several procedural details of particular concern to our members.

Before leaving the subject of rate revision I wish, if I may, to stress one point which has not, so far as I know, been covered; namely, the strong feeling among our own members that some thought be given to a more proportionate flexibility in upgrading compensation.

For example: employees on compensation ought to receive as a matter of equity upward FECA adjustments based on automatic in-step increases they would normally have received as a consequence of automatic raises or general salary increases by law during regular employment. We feel that employees disabled or prevented from carrying on their normal duties through no fault of their own should not be deprived of routine career upgradings of income to which they would otherwise be entitled.

On another score altogether, our members have voiced an overwhelmingly unanimous conviction as recently as our last national convention at Miami, Fla., in August 1964. At that time, they called urgently for revisions of law to protect injured employees eligible for FECA benefits against the disastrous losses being sustained as a result of delays in adjudicating their claims.

Our convention conceived that the Government might create a new classification such as "injury leave" as a supplement to annual or sick leave—once these benefits have been used up during the waiting period.

These waiting periods, running nearly 3 months on the average, impose an intolerable burden on families whose very existence depends on the regular receipt of their wages. As a matter of fact, the loss of even a week or 2 weeks' income to a family man earning only $5,000 or $6,000 a year can be catastrophic.

Loyal Government servants ought not to be required to hang suspended in an economic limbo or to forego their FECA benefits altogether—as some have done—relying solely on sick leave—just because the bureaucratic process of handling claims, for whatever variety of reasons, cannot move at a faster pace than Ulysses' Odyssey.

Happily, Representative Dante B. Fascell has recognized this costly procedural shortcoming and has offered corrective legislation in H.R. 5288, which we prayerfully hope will be made an integral part of any revisions recommended by this committee.

Specifically, we urge that any employee who has been granted an FECA award and who then returns to Federal employment be granted annual and sick leave credits for the period he was on the FECA rolls. And, we also urge that an employee be allowed to continue to receive his regular pay between the time of injury and the receipt of his first compensation check under provisions permitting the Government to recover any excess through an equitable system of withholding sums from the subsequent compensation.

Perhaps it is beyond the competence of this committee or any committee to devise guidelines that will insure a faster handling of settlement and initial payment, but at least the provisions suggested by Representative Fascell's bill would help make the existing slack tolerable.

Our convention last year also adopted a resolution urging the creation of an impartial board of licensed physicians to review claims of employees, regardless of the disease, caused in whole or in part by employment, such as hypertension, heart disease, and mental disorders.

Most of you are aware, I am sure, of the present difficulties in relating heart attacks to employment. I am told that only one out of three such cases, on the average, is presently allowed. Doctors are notoriously equivocal about causative factors and Government supervisors are not expert enough in judging the true range of occupational hazard.

A bill by Representative Arnold Olsen of Montana, H.R. 2460, is currently pending before the House Post Office Committee on this subject. It would create a presumption that certain impairments of health caused by hypertension or heart disease are incurred in line of duty. The presumed impairment would not be valid without a required physical examination immediately prior to employment. It seems to us that the substance of that bill might well be captured by this committee and included in legislative proposals by this committee.

We would further suggest the following recommendations which represent a distillation of many ideas advanced from the field by our members over a period of years:

Payment of salary to injured personnel should be continued in those instances of delay arising from the failure of a supervisor to make a proper report of injuries validly brought to his attention.

Safety officers in particular should be penalized for delaying injury or accident reports, particularly when this lag is motivated by its possible effect on the safety record.

Employees recovering from service-connected injury should be guaranteed light duty assignments, when appropriate, while recovering. Too many are currently dropped from the rolls on grounds that no such jobs are available.

Payments should be allowed for repair or replacement of prosthetic devices such as artificial limbs or hearing aids which the Government supplies in the first place and for glasses under the same circumstances.

Mr. Chairman and members of the committee, we appreciate your kindness and patience in giving the United Federation of Postal Clerks an opportunity to be heard on a subject which is close to the hearts of many of our mem-

bers and their families. We are grateful to those Members of Congress whose interest and concern is mirrored here today in the pending legislation. And we are hopeful that this body and the Congress will act speedily to update a law which has deep roots in our culture and which has been regarded throughout the work as a model of humanity in establishing protection against the innate risks of labor for the men and women whose devotion has made our Nation great.

Mr. NILAN. Thank you, Mr. Chairman.

I would like to introduce the gentleman accompanying me this morning, Mr. Joseph F. Thomas, our director of organization.

As I believe most of the committee members know, we are the exclusive representatives for the 245,000 clerical employees in the postal service and we are speaking on their behalf before the committee today.

It is interesting to notice that when our organization originally supported the first compensation act in 1916, one of my predecessors, our legislative director at that time, Mr. Flaherty, was subsequently fired by the Post Office Department for his representations before the Congress on behalf of this legislation.

I am very pleased I don't have to worry about that today as legislative director of our organization.

Mr. Chairman, I do want to just comment briefly on page 3 in regard to one of the recommendations we want to make which we feel is most important, and I don't believe it has been mentioned to date in other testimony.

For example, employees on compensation in our opinion ought to receive, as a matter of equity, upward FECA adjustments based upon automatic indepth increases they would normally have received as a consequence of automatic raises or general salary increases by law during regular employment.

We feel that disabled employees prevented from carrying on their normal duties through no fault of their own should not be deprived of routine career upgradings of income to which they would otherwise be entitled.

In other words, we feel the committee might consider recommending some procedure whereby employees that are on disability would perhaps have their compensation rate adjusted based on the normal progression of salary they would have received had they been actively employed in the Government service.

Some of the other items have already been covered. I will just mention them for the record.

We, of course, are very interested that our people have their annual or sick leave restored when they return to duty. We do feel this is something, again, that they should not be penalized for as far as a lack of annual or sick leave as a result of injuries.

We, of course, would also suggest the committee consider very seriously H.R. 5288 by Representative Dante B. Fascell and also the bill by Congressman Arnold Olsen, H.R. 2460, which our organization also supports and recommends for your consideration.

Mr. Chairman, we do have a number of other items in here, but knowing that the committee will consider them in their deliberations I would like to conclude by just stating that we appreciate the kindness and patience of the committee and the chairman in giving the United Federation of Postal Clerks an opportunity to be heard on a subject which is very close to the hearts of many of our members and their families.

We are very grateful to those Members of Congress whose interest and concern is mirrored here today in the pending legislation, and we are hopeful that this body, and the Congress will act speedily to update a law which has deep roots in our culture and which has been regarded throughout the world as a model of humanity in establishing protection against the innate risks of labor for the men and women whose devotion has made our Nation great.

Thank you, Mr. Chairman, and members of the committee for the opportunity for Mr. Thomas and myself to appear before you this morning.

Mr. O'HARA. Thank you very much, Mr. Nilan, and you, too, Mr. Thomas. If you have time to wait we may have an opportunity to ask some questions.

Mr. NILAN. Thank you very much, Mr. Chairman.

Mr. O'HARA. Our next witness will be Mr. Sidney A. Goodman, the president, and Mr. David Silvergleid, the secretary-treasurer, of the National Postal Union.

STATEMENTS OF SIDNEY A. GOODMAN, PRESIDENT, AND DAVID SILVERGLEID, SECRETARY-TREASURER, NATIONAL POSTAL UNION

Mr. SILVERGLEID. Thank you, Mr. Chairman.

I am David Silvergleid, secretary-treasurer. Mr. Goodman is on vacation and he won't be here this morning. I was asked to limit myself to a 3-minute oral presentation and I will try to keep it even within that.

Mr. O'HARA. Mr. Silvergleid, without objection, your full statement will be entered at this point in the record.

(Statement referred to follows:)

STATEMENT OF SIDNEY A. GOODMAN, PRESIDENT, NATIONAL POSTAL UNION

Mr. Chairman and members of the subcommittee, my name is Sidney A. Goodman, and I am privileged to serve as president of National Postal Union, located at 509 14th Street NW., Washington, D.C. I am accompanied here by our secretary-treasurer, David Silvergleid. We represent over 53,000 postal employees, organized in excess of 500 local affiliates in 50 States, including Alaska, Hawaii, Puerto Rico, and the District of Columbia.

We are grateful, Mr. Chairman, for your action in scheduling these hearings on H.R. 10721, a bill to amend the Federal Employees' Compensation Act to improve its benefits, and for other purposes. We sincerely appreciate this opportunity to submit our opinions on this vital and important subject.

In his statement of September 8, 1965, before this subcommittee, Solicitor of Labor Charles Donahue requested immediate consideration of H.R. 10721, although he pointed out, "as to an equitable and long-range proposal to perfect workmen's compensation protection for Federal employees, we are awaiting the finding of the President's Cabinet Committee on Federal Staff Retirement Systems which is making a collateral study of the Compensation Act." Inasmuch as it has become routine for administration spokesmen during the 1st session of the 89th Congress, to advocate deferment of proposals within the scope of the studies of this Cabinet Committee, it would appear that some urgency exists with relation to current workmen's compensation benefits.

We endorse the provisions of H.R. 10721 as fully justified and warranted, although it is our considered opinion they fall far short of what is necessary. The Federal Employees' Compensation Act is so infrequently reevaluated and overhauled, it would appear that improvements should be projected to include pending and anticipated changes in the economy.

We fully subscribe to the proposed increases in the maximum and minimum dollar limits for injured employees, dependents, and survivors. We support the provision that previous compensation awards be increased on a basis which is consistent with increases in the Consumer Price Index. We also believe the extension of benefits for surviving children from age 18 until age 23 if the child is still attending school, is long overdue.

We would like to call to the attention of the subcomittee H.R. 5288, introduced by Congressman Dante B. Fascell, Democrat, of Florida, and request consideration be given to adding its provisions as an amendment to H.R. 10721.

H.R. 5288 recognizes that under present procedures, an injured Federal worker remains without salary while disabled, until his claim is processed. Therefore, it provides that the injured Federal employee could continue to receive his regular pay, with any differences subsequently adjusted by withholding portions of the compensation payments in such a manner as may be equitable to the employee and the Government. It has been our experience that injured postal employees frequently must resort to credit unions, banks, or welfare funds to tide them over until such time as they receive their first compensation payments.

A further provision in H.R. 5288 would allow an employee injured on the job to be credited with annual and sick leave for the period he is on the compensation rolls. Under present procedures, an injured Federal employee does not earn annual and sick leave credits unless he is performing actual service. In many cases where the employee has already used up his annual leave, he must either pay it back in cash or in deductions from future credits.

We wish to thank the subcommittee for this opportunity to present our views.

Mr. SILVERGLEID. Thank you, Mr. O'Hara. I must admit I was a bit surprised in reading the statement of the administration spokesmen to find that they were particularly advocating the provisions of H.R. 10721, introduced by Congressman Hathaway, in view of their attitude during the entire 1st session of the 89th Congress.

We support the provisions of H.R. 10721. We believe they are justified and they are warranted. However, we also have developed in our union a full-fledged program on workmen's compensation.

Anything that takes 17 or more years to redevelop or amend in any form certainly requires a considerable adjustment.

As Congressman Daniels is well aware, the administration's attitude has been up until now to defer action on all fringe benefits dealing with retirement, health benefits, life insurance, workmen's compensation, until the President's Cabinet Committee on Retirement Systems reports.

That is why I was a bit surprised to find that the administration is pushing hard for this particular measure. I feel that they consider it urgent and, of course, we are all for it.

However, we do believe very strongly that while we cannot at this point present our comprehensive program, we must urge serious consideration of the bill introduced by Congressman Fascell, H.R. 5288.

I was president of a postal employees welfare group for 15 years back in Brooklyn, N.Y., and I can assure the members of this committee that the most pressing problems injured employees had was knowing where they could get a couple of weeks pay to live on before the compensation bureau processed their claims.

We used to advance them $100 every 2 weeks with the understanding that this money would be refunded as soon as they received their first compensation checks.

I think it is important that these lower paid people be given immediate consideration as long as there appears to be an element of urgency about H.R. 10721.

I believe also very strongly that, as has been pointed out here, consideration for earning of annual and sick leave while an employee is injured should be given by this committee.

Too frequently a man has already used his annual or sick leave, and the Government says to him in effect "you must pay it back because you haven't earned it inasmuch as you lost it while you were away injured on duty."

This, I believe, is not fair and certainly consideration ought to be given to restore that privilege.

Mr. O'Hara, I am going to conclude now, thanking the committee for this privilege of presenting our opinion, and I am very hopeful that there will be some action during this session of the Congress.

Mr. O'HARA. Thank you, Mr. Silvergleid. I might just add that we hope to go beyond, or at least I hope to go beyond, the provisions of Mr. Hathaway's bill. I think Mr. Hathaway hopes that we will, too.

Mr. SILVERGLEID. Thank you.

Mr. O'HARA. And not just stop there.

Mr. SILVERGLEID. Thank you very much.

Mr. O'HARA. If you could remain, we may have some questions when we complete the list of witnesses.

Mr. SILVERGLEID. Thank you.

Mr. O'HARA. Mr. Daniel Jaspan, legislative representative, National Association of Postal Supervisors, will be the next witness.

Mr. Jaspan, did you submit a statement for use here?

STATEMENT OF DANIEL JASPAN, LEGISLATIVE REPRESENTATIVE, NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

Mr. JASPAN. Yes, sir.

Mr. O'HARA. Without objection, your statement will be entered in full at this point in the record.

(Statement referred to follows:)

STATEMENT OF DANIEL JASPAN, LEGISLATIVE REPRESENTATIVE, NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

Mr. Chairman and members of the Select Subcommittee on Labor, House of Representatives, my name is Daniel Jaspan. I am the legislative representative of the National Association of Postal Supervisors, composed of more than 28,500 supervisors in the postal field service. Our members are employed in post offices, post office vehicle installations, railway and highway post offices located in all of the 50 States and in Guam, Puerto Rico, and the Virgin Islands.

I appreciate the opportunity to testify in support of H.R. 10721, a bill to provide improvements in the Federal Employees' Compensation Act. In our opinion, the increase in the monthly rate of compensation for disability from the present $525 to $685 is a step in the right direction. However, we believe that a dollar ceiling is not the right answer. We respectfully suggest that the dollar amount be deleted from the bill and just the percentage figure be retained.

Regardless of the employee's income in the Federal service, a 25-percent loss of pay is penalty enough for being injured on duty. If one of our level-17 members, earning $20,705 per year were injured on duty, his income would be reduced to slightly more than that of a level-7 employee earning $8,190 per year. In addition to the physical suffering, he and his family would have even a more tangible suffering due to the loss of income. Even without the dollar limitation, the 75-percent ceiling would reduce his income to approximately an income of a level-14 employee.

Because salaries have increased considerably since the $525 ceiling was imposed, we believe that this subcommittee should give special consideration to

the elimination of the dollar ceiling before reporting the bill. When we consider that the $525 ceiling was placed in effect in 1949, we realize that the proposed $685 ceiling is much too little in view of the substantial salary increases since that date.

In view of the present thinking that an income of $3,000 per year is just above a starvation income, we also respectfully suggest that the minimum compensation be increased from $180 per month to no less than $250 per month. Even this amount would be bare subsistence.

We commend Mr. Hathaway for the provision for extending compensation payments on account of a child, or to a child, to permit him to continue his education or training until age 23. We recommend, however, that the committee eliminate the age ceiling completely and continue the compensation payments as long as the child is a qualified student. We base our request on the fact that for income tax purposes a child is continued as a dependent child as long as he is a full-time student at an educational institution which maintains a regular faculty and curriculum and has a body of students in attendance.

We are in agreement with the provision for increasing the monthly pay for disability or death based on the annual average percentage change in the consumer price index. This is a necessary improvement and is in line with other adjustments.

There is a provision in H.R. 10865, introduced by Mr. O'Hara, which we believe should be considered at this time. In the first section of his proposed bill he would strike out "solely" and add "and regardless of whether the disability also involved other impairment of the body."

We have had a recent case illustrating the unfairness of the present law. One of our members was injured on duty in 1951. He suffered a leg injury and was given a scheduled award based on a 30-percent loss of the use of his leg.

The injury gradually became worse and, upon a recent examination, the conclusion was reached that the leg injury was about 40 percent but that the disability now involves part of his back. Because of this finding he has been asked to return almost $4,000 to the Government because the leg injury is not the "sole" injury resulting from his disability.

It can be seen very easily that this is an unfair condition. There is no doubt that his leg injury has worsened with the years, but because of the possibile involvement of his back in the injury, which could easily be a direct result of the original injury, he has been asked to return this money. The adoption of this section of H.R. 10865 would eliminate such gross inequities as occur in the present laws on account of this regulation. We hope that the subcommittee will take immediate action on this proposed change.

We thank the members of this committee for taking the time to hold these hearings, and for permitting us to express our opinions and suggestions.

Mr. JASPAN. Mr. Chairman, my name is Daniel Jaspan. Of course, I will keep my presentation short as you requested.

I am the legislative representative of the National Association of Postal Supervisors, representing more than 28,500 postal supervisors in the postal field service.

We are very much interested in the enactment of H.R. 10721 or any bill to liberalize the present compensation act.

We do hope, though, that you will take into consideration the elimination of the dollar ceiling, even though this bill is a step in the right direction in increasing the dollar ceiling.

I give you an example of what would happen to some of our members. Our highest level supervisor is level 17; with the dollar limitation his earnings would be reduced to that of a level 7, and even without the dollar limitation would be reduced to that of a level 14.

Each of those is quite a comedown considering that he was injured in carrying out his duties. This is especially true since the $525 ceiling was put into the law in 1949, and there is quite a little difference between $525 and $685.

We are very happy to see the limitation lifted on the age of a child receiving compensation. We do suggest that the committee look into

doing the same as they do under the income tax laws, whereby a student is considered a child as long as he is in an institution of higher learning, rather than having an age limit of 23.

We hope that will be taken into consideration.

Even more important, Mr Chairman, is your bill, H.R. 10865. The first section would strike out the word "solely" and add "and regardless of whether the disability also involved other impairment of the body."

We just had a case last week where one of our members was injured in 1951. He had a leg injury, was declared 30-percent disabled, and he was receiving a schedule award. Now the leg injury became worse. It is between 40 and 50 percent. But his back is involved, and he must pay back $4,000 that he already received because his injury became worse, and your amendment would take care of that kind of treatment.

We sincerely hope that you will consider that before the reporting out of a bill. That is very important to our members because most injuries do deteriorate over the years, especially if it is an arm or leg injury.

With that, Mr. Chairman, all we can say is we hope you will act as fast as possible in reporting out a favorable bill.

Mr. O'HARA. Thank you very much for your testimony, Mr. Jaspan. If you can remain I think we may want to ask a few questions.

Mr. JASPAN. Thank you.

Mr. O'HARA. Our next witness will be Dr. Seward Nyman, who is the executive director of the American Podiatry Association.

Dr. Nyman, will you please favor us with your testimony and follow the rules that we have laid down for other witnesses?

Without objection your statement will be entered in full at this point.

STATEMENT BY DR. SEWARD P. NYMAN, EXECUTIVE DIRECTOR, AMERICAN PODIATRY ASSOCIATION

Mr. Chairman and members of the committee, I am Seward P. Nyman, D.S.C., a doctor of podiatry and executive director or the American Podiatry Association.

This bill is to amend the Federal Employees' Compensation Act so as to permit injured employees entitled to receive medical services under such act to utilize the services of podiatrists. This bill would be in keeping with the intent of the act which is to provide benefits likely to cure or to give relief or to reduce the degree or the period of disability or to aid in lessening the amount of monthly compensation.

Many significant advances have been made in medical science since the Congress approved the Federal Employees' Compensation Act in 1916 and unfortunately the improvements in the act have not kept pace with this progress. The States now provide care for work-connected injuries and these programs permit the employee to have a podiatrist treat him. Also, over half the people in the United States, including Federal employees, have some form of health insurance and most of these programs also provide for the services of podiatrists.

The act refers to "scope of their practice as defined by State law." This wording recognizes that scope of practice is determined by State law rather than the act or any other Federal statute. Therefore, since the act is designed to provide medical and surgical services and podiatrists are licensed in every jurisdiction to provide medical and surgical services, the act should be amended to include the podiatrist.

It is of interest that State legislatures, attorneys general, and insurance commissioners have consistently designated the podiatrist as a "physician" for workmen's compensation, use of drugs, scope of practice, health insurance, and

school accident programs. In 1961 the Bureau of Retirement and Insurance of the Civil Service Commission approved the podiatrist as a "physician" and "doctor" for the Government-wide service and indemnity benefit plans under the Federal Employees' Health Benefit Act of 1959. The doctor of medicine, doctor of osteopathy, and doctor of dental surgery are included in this definition.

Obviously, it is most difficult for Federal employees to rationalize how the podiatrist can treat an injury not connected with the employee's work when the treatment of a similar injury which would be connected with his work is not covered. This seems all the more inconsistent when the services of medical doctors, osteopaths and dentists at present are included under the Federal Employees' Compensation Act.

Since the early days of World War II commissioned podiatrists have been serving in various branches of the armed services. Within the past 3½ years the number of podiatrists serving in the Army has doubled. The Veterans' Administration new employs 73 podiatrists and additional VA hospitals have expressed the need or desire for these services. Recent surveys indicate that podiatric care is being provided in over 3,000 hospitals, clinics, and nursing homes.

On two occasions during the past 10 years Federal employees have requested the Employee's Compensation Appeals Board to reconsider the decision of the Bureau which had not recognized the services of podiatrists under the act. In both cases the determination as to whether a podiatrist was considered a physician within the meaning of the act was not dealt with. It was rather the opinion of the Appeals Board that the treatment of these Federal employees was no authorized.

It is recognized that in most metropolitan areas the Bureau has designated certain Federal health facilities and except in emergencies, no doctor in private practice may treat injuries of Federal employees. It is, however, in small communities where no health facility has been designated that the problem of recognizing the services of podiatrists is present. Many cases are on file which clearly indicate that Federal employees have received treatment of their injuries by podiatrists in private practice since they normally would seek these services. In each case these services have not been compensated due to the interpretation of the word "physician" as used in the act. I do not think that the Congress intended this act to be a means of imposing distinctions between different practitioners of the healing arts. The determination of who is qualified to practice the various branches of medical science was wisely left to the legislatures of the States.

Podiatrists are today an important part of the health team and their role in meeting the health needs of the Nation is established and recognized.

It definitely would be in the public interest to amend the act so that in appropriate cases the services of the 8,000 podiatrists in private practice would be made available to Federal employees.

Mr. Chairman, I appreciate the opportunity to appear before you in support of H.R. 3826 and at this time I will be glad to answer any questions which you or members of the subcommittee may have.

STATEMENT OF DR. SEWARD NYMAN, EXECUTIVE DIRECTOR, AMERICAN PODIATRY ASSOCIATION

Dr. NYMAN. Thank you, Mr. Chairman.

I am Dr. Seward Nyman and I am executive director of the American Podiatry Association, and I am here to provide some brief remarks on H.R. 3826, which would amend the Federal Employees' Compensation Act so as to permit injured employees entitled to receive medical services under such act to utilize the services of podiatrists.

Many significant advances have been made in medical science since the Congress approved the Federal Employees' Compensation Act of 1916 and, unfortunately, the improvements in the act have not kept pace with this progress.

The States now provide care for work-connected injuries and these programs permit the employee to have a podiatrist treat him. Also,

over half the people in the United States, including Federal employees, have some form of health insurance and most of these programs also provide for the services of podiatrists.

The act refers to "scope of their practice as defined by State law." This wording recognizes that scope of practice is determined by State law rather than an act or any other Federal statute.

Therefore, since the act is designed to provide medical services and podiatrists are licensed in every jurisdiction to provide medical and surgical services, the act should be amended to include the podiatrists.

It is of interest that State legislatures, attorneys general, and insurance commissioners have consistently designated the podiatrists as physicians for workmen's compensation, use of drugs, scope of practice, health insurance, and school accident programs.

In 1961 the Bureau of Retirement and Insurance of the Civil Service Commission approved the podiatrists as a physician and doctor for the Government-wide service and indemnity benefit plans under the Federal Employees' Health Benefits Act of 1959.

The doctor of medicine, doctor of osteopathy, and doctor of dental surgery are included in this definition. Obviously it is most difficult for Federal employees to rationalize how the podiatrists can treat an injury not connected with the employee's work when the treatment of a similar injury which would be connected with his work is not covered.

This seems all the more inconsistent when the services of medical doctors, osteopaths, and dentists at present are included under the Federal Employees' Compensation Act.

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Many cases are on file which clearly indicate that Federal employees have received treatment of their injuries by podiatrists in his private practice since they normally would seek these services.

In each case these services have not been compensated due to the interpretation of the word "physician" as used in the act.

I do not think that the Congress intended this act to be a means of imposing distinctions between different practitioners of the healing arts.

The determination of who is qualified to practice the various branches of medical science was wisely left to the legislatures of the States.

Podiatrists today are an important part of the health team and their role in meeting the health needs of the Nation is established and recognized.

This definitely would be in the public interest to amend the act so that in appropriate cases the services of the 8,000 podiatrists in private practice would be made available to Federal employees.

Mr. Chairman, I appreciate the opportunity to appear before you in support of H.R. 3826.

Mr. O'HARA. Thank you very much, Dr. Nyman. I am sure the committee will give serious consideration to your suggestion. I think perhaps we ought to review that entire section to which you referred.

Thank you.

Mr. NYMAN. Thank you.

Mr. O'HARA. Our last witness today will be Dr. Eugene McCrary, President, American Optometric Association.

Dr. McCrary?

STATEMENT OF DR. V. EUGENE McCRARY, PRESIDENT OF THE AMERICAN OPTOMETRIC ASSOCIATION

Dr. MCCRARY. Thank you, Mr. Chairman. I will, as you requested, file the statement.

Mr. O'HARA. Without objection your statement will be entered in the record in full at this point.

(Statement referred to follows:)

STATEMENT BY V. EUGENE MCCRARY, O.D., PRESIDENT, AMERICAN OPTOMETRIC ASSOCIATION

Mr. Chairman and members of the select subcommittee, my name is V. Eugene McCrary. I practice my profession at 4500 Beechwood Road, College Park, Md. I am president of the American Optometric Association, which represents the profession of optometry in all of the 50 States and the District of Columbia. Seventeen thousand practicing optometrists in the United States provide more than 75 percent of the vision services rendered to the American public, including those in Government service, both civilian and military.

While we are interested in all of the bills begin considered by your committee, our primary interest is in H.R. 2624, introduced by Congressman George P. Miller of California. The purpose of this bill is to accord Government workers entitled to vision care under the Federal employees compensation laws the freedom to choose an optometrist if he or she so desires.

Some 15 years ago, under the leadership of Congressman Doughton of North Carolina, chairman of the House Ways and Means Committee, Congress amended title X of the social security law so as to accord the beneficiaries of the aid-to-the-blind program the freedom to have their eyes examined by either an optometrist or a physician skilled in diseases of the eye. One of the results of this farsighted amendment was the subnormal vision clinic established by the Industrial Home for the Blind in Brooklyn, N.Y. Since then, similar clinics have been established in various parts of the country. Among the better known is the Lighthouse for the Blind in Chicago, Ill.

One of the beneficiaries of the first clinic, Peter J. Salmon, spoke to the awards luncheon at our annual meeting in New York City slightly more than a year ago. I am going to take the liberty of reading excepts from the transcript made on that occasion. At the beginning, he ran his fingers over his manuscript and said:

"The method I am using right now in addressing these few remarks to you is the one used by totally blind persons throughout the world. It is braille. I read braille with my fingers for some 40 years, and then something wonderful happened to me—I became the first legally blind person to benefit from the use of optical aids—so much so that I was able to discontinue using my braille and to read everything with my sight, even to looking up a name and number in the telephone book."

The remainder of his remarks were read from a manuscript typed with an ordinary typewriter, and now I quote again:

"The thrill I experienced was not only because of what the low-vision service has meant to me, but more because there are now some 50 clinics in the United States modeled after the first one pioneered by the Industrial Home for the Blind.

"As you know, we look to the optometrist to carry on his painstaking, exact, and, I must say, very fruitful service on behalf of these persons who are classified as blind but who have some remaining sight. The original statistics which we announced, of being able to help approximately 70 percent of those who are treated through this service, has held and thousands of blind persons have benefited through this service.

"Optometry has played the key role in this development, and your thoughtfulness in presenting this award to me today gives me the opportunity to thank you publicly for having the vision and technical knowledge, as well as the ingenuity, to develop the best use of remaining sight for these legally blind persons. We have been willing, with your cooperation, to overcome the skepticism which existed back in 1953 when this program was first announced, and the years that have elapsed have proved the worth of this very meaningful service so that today it has become a part of the on-going rehabilitation process in a number of agencies for the blind and in teaching universities as well as hospitals.

"It has profoundly affected blind persons economically, socially, and, indeed, spiritually; spiritually because it has given them for the first time an opportunity to be doubly sure of the extent to which their remaining sight can be used, and because of your dedicated skill and painstaking examination, real progress has been made in a field that hitherto was considered a closed book.

"It is with this in mind that I can express to you thanks to all of those who helped us in the early days of the low-vision service at the IHB."

With a record like this, we feel fully justified in recommending to Congress that Federal employees who sustain eye injuries which are covered by the Federal Employees Compensation Act should be free to avail themselves of optometric services if they so desire.

It was in 1960 that Congress amended the veterans law so as to accord veterans entitled to outpatient vision care the privilege of going to an optometrist if they so desired. In the Social Security Amendments of 1965, this Congress again provided freedom of choice to the beneficiaries wherever vision services are specifically named in the bill.

On July 17 of this year New York State, one of the last States to do so, amended its work men's compensation law to expressly make available to employees injured in that State the services of optometrists.

California is another large State which for years has afforded its injured employees the right to seek optometric services when problems that affect their vision are involved. There are large numbers of Federal employees in both of these jurisdictions working alongside of State employees. There is no reason why optometrists' services should be available to one and not the other.

These are not the only jurisdictions by any means. Other States expressly mention optometry in their compensation laws. Some States authorize replacing eyeglasses but do not specify who should prescribe them. And in still others, the term "remedial care" is used and construed to include optometric services.

State legislatures, attorneys general, and insurance commissioners, however, consistently designate the optometrist as a physician for purposes of workmen's compensation. Only the Federal employee cannot avail himself of this service.

We would like to believe that no Federal employee would ever need compensation under the act because of sound safety prevention programs such as proposed by our Maryland Representative at Large, Congressman Carlton R. Sickles. The American Optometric Association enthusiastically endorses the type of safety services listed in his bill, H.R. 6554. Our members would like to participate in making its objectives a reality.

The American Optometric Association, representing a profession serving 80 million Americans, devotes much of its efforts to safety programs. With your permission, I would like to leave with you a collection of posters, booklets, and other materials on both industrial and highway vision for your further information.

The 88th Congress authorized Federal funds for the improvement of our schools and colleges of optometry and also provided loans for optometry students. It hardly seems consistent to foster and support optometric education and then to deprive Government employees under the Federal Workman's Compensation Law the right to avail themselves of optometric services.

This amendment will not involve any additional expense to the Federal Government. In fact, it will probably effect savings, particularly in those cases where the skill of our profession is utilized to improve the visual capabilities of Federal employees who sustain eye injuries.

It is often stated that the gift of sight is one of God's greatest gifts. Certainly, any Federal employee whose vision is impaired in line of duty so as to bring him within the benefits of the Federal Employees' Compensation Act ought to be accorded the freedom to choose an optometrist to improve his vision if he so desires.

Before closing, I want to express my personal appreciation and that of our membership for the recognition which Congress has accorded us during the past 20 years. It was in 1945 that Congress passed the Optometry Corps bill to provide commissions for optometrists in the Army. Today, there are close to 500 optometrists on active duty with commission status in the Army, Navy, and Air Force. Their ranks range from ensign to captain in the Navy, and second lieutenant to colonel in the Army. The Surgeons General of each of the three services has a civilian optometric consultant. Two of them are past presidents of our association and the third is a member of our board of trustees. I, myself, hold a commission as an optometrist in the Naval Reserve Medical Service Corps.

Your attention is greatly appreciated, and I will be pleased to answer any questions you would like to propose.

Dr. McCRARY. Thank you.

My name is Dr. V. Eugene McCrary and I am here today representing the American Optometric Association. While we are interested in all of the bills being considered by your committee, our primary interest is in H.R. 2624, which was introduced by Congressman George Miller of California.

The purpose of this bill is to accord Government workers entitled to vision care under the Federal employees' compensation laws the freedom to choose an optometrist if he or she so desires and I would like to just quote directly from the proposed bill:

The term "physician" includes surgeons, optometrists, and osteopathic practitioners within the scope of their practice as defined by State law.

The term "medical, and hospital services and supplies" includes services and supplies by optometrists, osteopathic practitioners, and hospitals within the scope of their practice as defined by State law.

We recommend to Congress that Federal employees who sustain eye injuries which are covered by the Federal Employees' Compensation Act should be free to avail themselves of optometric services if they so desire.

State legislatures, and attorneys general, and insurance commissioners, however, have consistently designated the optometrist as a physician for the purpose of the Workmen's Compensation Act.

Only the Federal employee as it stands today cannot avail themselves of this service. We would like to believe also that no Federal employee would ever need compensation under the act because of sound safety prevention programs, such as introduced by our Maryland Representative at Large, Congressman Carlton Sickles.

The American Optometric Association also enthusiastically endorses the type of safety services listed in his bill, H.R. 6554, and our members would like to participate in making its objectives a reality.

The American Optometric Association represents a profession serving 80 million Americans and we devote much of our time and effort

to safety programs, and at this point I would like to comment on my concept of where we fit into this program.

It seems to me that there are four basic phases involved in the administration of this act. There are four considerations. One would be the preventive phase, which is the one that Congressman Sickle's bill would help to foster, the idea of preventing accidents in the first place and laying a great deal of stress on prevention. Then, of course, the second phase is the occurrence of accidents, in terms of sequence. Then there is the treatment phase which is primarily the physician's function, and then fourth is the rehabilitation phase, which is the desire to restore this employee to as high a functional level of ability as possible, so that he can become a productive worker once again, and we feel that the optometric services should be available.

We have a role to play in the preventive phase, particularly in terms of preventing industrial accidents and this type of thing, and in terms of vision, as it affects accident proneness--and the fourth phase, the rehabilitative phase, in helping this employee to get back to a good level of functional efficiency, so we feel that we do have a role to play and something to offer in this matter.

I appreciate very much the opportunity to appear before your committee. I realize that you are pressed for time. I just want to express my appreciation and that of my colleagues for the privilege of appearing before your committee and would be very happy to try to answer any questions that you or the committee may have.

Mr. O'HARA. Thank you very much, Doctor McCrary. If you could stay right where you are and if the other witnesses who have testified this morning could step forward and take seats at the witness table I will ask my colleagues if they have any questions to direct to any of you or to all of you en banc.

Mr. QUIE. I find it interesting that the optometrists are in favor of farsighted amendments. It reminds me of the State legislature where the dentists didn't like their dental bill because there wasn't enough teeth in it.

Mr. GIBBONS. Mr. Chairman, I think all of that should be stricken from the record.

Mr. MARTIN. Mr. Chairman, I regret that Mr. Wolkomir was obliged to attend another hearing and I am here in his stead.

Mr. QUIE. I would like to ask one question, this one serious.

Mr. O'HARA. Proceed. We liked your last question, though. See if you can match it.

Mr. QUIE. I just want to ask, Mr. Nilan, on page 3 of your testimony you say that you have doubts about the bill. You note the use of the Consumer Price Index and the judicial review concept in Mr. O'Hara's bill and you leave it with that, by saying that these doubts have been clearly stated by previous witnesses on both counts.

I think that the use of the Consumer Price Index as proposed in H.R. 10721 was clearly stated by previous witnesses to be inadequate, but I don't think the same is true with judicial review. After listening to the testimony I came to the conclusion it was a good idea and you can see that it wasn't very clearly stated to convince me.

I wish you would write me a letter or a statement giving your views on it, because I think as a person looks into this in this context that judicial review is a very good idea, and I strongly support Mr.

O'Hara's bill on it, so because I feel that you have given good testimony to other committees of this Congress and respect it, I would appreciate it if you would go into a little more depth on this for me.

Mr. NILAN. Mr. Chairman, I would be happy to submit a supplementary statement going into more detail on this.

Mr. O'HARA. I wonder if you could do that.

Mr. NILAN. I could just comment in response at the moment. You notice we suggest doubts. We feel, just picking one example, that the judicial review gets involved in additional cost and expenses as far as our people are concerned in being represented before such a judicial review.

We would like to believe that it can be accomplished a lot more simply without that. The present review system has been very fair and reasonable in our opinion.

Understand, we are not opposed to this principle, but we do have some doubts as to whether it would perhaps accomplish what it is intended to. I would be happy to submit an additional statement.

(Information to be furnished follows:)

UNITED FEDERATION OF POSTAL CLERKS, AFL-CIO,
Washington, D.C., September 28, 1965.

Hon. ELMER J. HOLLAND,
Chairman, Select Committee on Labor, Committee on Education and Labor of the U.S. House of Representatives, Washington, D.C.

MY DEAR CONGRESSMAN: On September 15, 1965, I appeared before your Select Committee on Labor which was considering H.R. 10721, and related bills to amend the Federal Employees' Compensation Act. During my presentation several members of the committee indicated an interest in a more detailed position statement concerning our testimony and some doubts we suggested as to potential benefits of the judicial review concept as proposed in H.R. 10865.

We agreed to submit an additional statement on behalf of our organization, and as concerned with the judicial review concept in response to requests by members of the committee, as soon as possible.

However, please accept my apologies for the delay in writing you in this regard. Because of other legislative commitments and travel outside of Washington on union affairs this letter necessarily has been delayed until now.

I would like to reiterate our original position in our testimony on September 15, 1965, that we are not opposing the judicial review concept as such, but rather suggested that the committee study the disadvantages, as well as the advantages to employees of establishing judicial review of employee compensation decisions, as I am sure the committee will do, before recommending legislative action.

It has been suggested that an agency serving the public through administrative boards of review should not, ordinarily, be placed in an adversary position, much less becoming involved as an opposing litigant, with respect to claimants, which could follow from establishing judicial review of compensation appeal board decisions. This consideration is based on the premise that no matter how carefully one guards against it, the philosophy of judicial review would filter down through existing administrative adjudication processes to the disadvantage of the individual claimant.

It may further be argued that since one purpose of a judicial review would be to make a final disposition of points at issue, any existing liberality of procedure in reopening or reconsidering claims would be impaired. Another consideration which necessarily must be recognized in judicial review of administration actions is that rigid procedures would be established as a result of judicial decisions which the Secretary of Labor and the administrators of the Federal Employees' Compensation Act would inevitably be forced to accept and follow in future consideration of employee compensation claims and appeals.

Also, a new area of uncertainty could be created by the introduction of judicial review of employee compensation decisions with the possibility always existing that the courts may overturn or strike down regulations or instructions affecting literally thousands of compensation cases with consequent large-scale damage to the best interests of claimants.

In addition, the consideration of additional expense to an employee utilizing the judicial review for appeal of a compensation decision could be considerable and such a court, in considering compensation cases, could find itself confronted with a tremendous workload and subsequent extended delays in rendering decisions within reasonable periods of time.

Finally, unless the judicial review concept would also have access to expert medical counsel for analyzing and interpreting medical findings such a court might be severely limited in its ability to effectively consider and evaluate claims with equity and justice to both the claimant and the Government.

We appreciate this opportunity to submit these additional thoughts for consideration by the committee, and as mentioned in my opening statement, it is these considerations which prompt us to question the desirability of judicial review.

Sincerely yours,

PATRICK J. NILAN, *Legislative Director.*

Mr. QUIE. If a person has been turned down he would like to have some different faces to appeal to. Thank you, Mr. Chairman.

Mr. O'HARA. I certainly want to state my appreciation for the way the gentleman from Minnesota has been going on this issue. I couldn't add anything to it. That is bipartisanship, you see.

Dr. NYMAN. I might add, Mr. Chairman, that I also happen to come from the great State of Minnesota so I am very pleased to cooperate with the gentleman from Minnesota.

Mr. O'HARA. You have a real good one there.

Mr. DANIELS. Mr. Chairman?

Mr. O'HARA. Mr. Daniels.

Mr. DANIELS. With respect to the professional witnesses who appeared here this morning on behalf of the podiatry association and the optometrists, I would like to direct my question to both of you gentlemen.

Are you licensed in each of the 50 States of the Union?

Dr. NYMAN. Congressman Daniels, speaking for podiatrists we are licensed in every State to provide a medical and surgical service.

Mr. DANIELS. And in each State you are considered or classified in the role of a physician in that you may not only diagnose, but also prescribe?

Dr. NYMAN That is right.

Mr. DANIELS. Is that true in your case also?

Dr. MCCRARY. Speaking for optometrists, Mr. Daniels, optometrists are licensed in all 50 States and the District of Columbia. The last law which was enacted I believe was the District of Columbia bill in 1924, so there is statutory regulation for the practice of the profession.

Mr. DANIELS. Has any reason ever been given by the Government as to why you may not treat an injured person for his injury that is related to your field of activity?

Dr. MCCRARY. No reason except that the word "optometry" did not appear in the statute and that by administrative directive we were excluded from inclusion.

Mr. DANIELS. Just for the record, could you give this committee the necessary requirements or basic requirements in your education in order to qualify to be licensed?

Dr. MCCRARY. To practice optometry?

Mr. DANIELS. In both cases.

Dr. MCCRARY. Yes, sir; I will be very happy to. In the present curriculum in the schools and colleges of optometry, we have both a

5- and a 6-year program at college level in operation at the present time.

All of our schools are in the process of moving to a 6-year level at the college level. We have 10 schools of optometry in the United States, several of them associated with very great universities. Ohio State University and the University of California have colleges of optometry which are training institutions for our profession.

The minimum requirement to matriculate, to enter a school of optometry, is 2 years college level. Most of our graduates are entering with a bachelor's degree and then are completing the 4-year optometric curriculum, so that we are speaking at college level of about a total of a minimum of 5 years and now in most instances 6 years, and in the very near future the standard is going to be 6 years of education at the college level.

Mr. DANIELS. Upon the completion of your college work, is there a requirement in each of the 50 States as well as the District of Columbia that you submit to an examination and be licensed by the State?

Dr. MCCRARY. Yes, sir; there certainly is. I had the privilege of serving on the Maryland Board of Examiners on Optometry two terms under appointment by Governor Tawes. We do have in every State and in the District of Columbia an examining board which requires a new graduate to take examinations in order to determine his proficiency and to obtain a State license in order to practice, and the board in most States has some power to do the followup work that is necessary in terms of infractions of the law, that sort of thing.

(The following letter was submitted for the record:)

SEPTEMBER 16, 1965.

HON. ELMER J. HOLLAND,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN HOLLAND: During hearings yesterday on H.R. 2624 Representative Daniels asked about the profession of optometry and the education needed to practice the profession. The following information is furnished in answer to his question:

The optometrist, doctor of optometry (O.D.), is a person specifically educated, trained and licensed in all 50 States and the District of Columbia to examine the eyes and related structures to determine the presence of vision problems, eye disease, or other abnormalities. He prescribes and adapts lenses and other optical aids and may use visual training when indicated to preserve or restore maximum efficiency of vision.

Optometry is a distinct profession, separate from medicine, because the vast majority of refractive errors and anomalies of vision occur in healthy eyes. Ophthalmologists and oculists, who are licensed physicians, specialize in the medical and surgical care of the eyes and may prescribe drugs and other treatments.

At the present time there are about 17,000 optometrists in full-time practice in the United States, an average of 1 per 11,400 population. While ophthalmologists also provide optometric services, the number of medical doctors trained in this specialty is only about one-sixth as large as the number of optometrists, and they must carry the burden for surgery and treatment of diseases of the eye.

Recent advances in the field of optometry have been so numerous and extensive that the regulation 5 years of college-level training has been stretched to its limit in order to incorporate these advances. Seven of the ten schools and colleges of optometry in the United States have already increased their programs to 6 years of university training beyond high school and the other three have announced plans to go from 5 to 6 years within the next year.

These programs represent 2 years of preoptometry university education and 4 years in professional courses leading to the doctor of optometry degree, which degree is granted by all schools and colleges of optometry. Course subjects typically include geometric, physical, physiological, mechanical, and ophthalmic optics; general and ocular anatomy; general and ocular physiology; general and ocular pathology, physiology; bacteriology; theoretical and clinical optometry; orthoptics and visual training; and industrial and occupational vision.

To become a licensed optometrist today it is necessary to pass a rigorous State board examination in the State or States where one wishes to practice. Such examinations are open only to graduates of the 10 schools of optometry, all of which are accredited by the American Optometric Association's Council on Optometric Education, the official accrediting agency recognized by the National Commission on Accrediting. The license of an optometrist must be renewed annually. In a number of States renewal of a license is dependent upon the optometrist completing a stipulated number of hours of postgraduate education.

Over half of the students now enrolled in optometry schools completed more than 2 years of college before matriculation and approximately one-third earned bachelor's degrees before entering optometry schools.

The two booklets with this letter, "What Is An Optometrist?" and "Your Eyes and Optometry" provides further information about the profession for those that are interested. In addition, I am sending one each of AOA's kits of materials on motorists' vision and occupational vision, which illustrate the profession's great interest in accident prevention and worker efficiency.

It was a pleasure to appear before your subcommittee yesterday. I look forward to learning that the members have acted favorably upon H.R. 2624 as introduced by Congressman George P. Miller.

If you believe there is a need for additional information, please do not hesitate to contact our Washington office. The telephone number is ST 3–4010 and it is located at 1026 17th Street NW.

Thanks for your interest in the profession of optometry and your concern for the visual welfare of our Federal employees.

Sincerely yours,

V. EUGENE MCCRARY, O.D., *President.*

Mr. DANIELS. Dr. Nyman, would you care to respond to the same question?

Dr. NYMAN. The training program for podiatrists is standardized at 6 years in all our colleges with 2 years of prepodiatry courses followed by a 4-year, degree-conferring course.

All our colleges are accredited by our Council on Education which is recognized by the Office of Education, Department of Health, Education, and Welfare, as the national accrediting body for podiatrists.

Mr. DANIELS. What are the State requirements?

Dr. NYMAN. The State requirements are that one must have graduated from one of our accredited colleges in order to take any one of the 50 State boards or here in the District of Columbia.

Mr. DANIELS. In other words, each State makes it mandatory to pass a State board examination before you can qualify for a license.

Dr. NYMAN. Yes, sir.

Mr. DANIELS. As well as the District of Columbia?

Dr. NYMAN. Yes, sir.

Mr. DANIELS. Thank you.

Mr. O'HARA. Mr. Hathaway.

Mr. HATHAWAY. Mr. Quie and Mr. Daniels have preempted my questions. I am concerned with both matters and will appreciate the statement of Mr. Nilan with respect to judicial review and I appreciate the answers given by representatives of the podiatrists and optometrists.

Mr. O'HARA. If I may ask, during the statement made by Dr. McCrary with respect to the role of the optometrist under the Federal Employees' Compensation Act, he divided the phases of the act into

four and suggested the optometrists' role was in the field of prevention and also in the field of rehabilitation and he excluded the optometric role from the field of actual treatment of a traumatic eye injury.

I wondered if the podiatrists, accepting Dr. McCrary's analysis of the law, would agree with the optometrists with respect to their role?

Dr. NYMAN. Yes; we would feel it is quite similar in these various parts of the program, not only in treatment, but prevention, safety programs, and so forth.

Mr. O'HARA. With respect to the judicial review question, I have noticed that some employees' organizations have endorsed my proposal, while others have either been silent or expressed opposition, or at least concern. I think we are going to have to really look into that question and analyze it thoroughly.

Obviously I favor judicial review or it wouldn't have been in the bill. I am willing to reexamine it, but I suspect my conclusions will be the same as it was the first time.

I notice there seems to be a good deal of agreement on this question of the schedule injury, as to making uniform the treatment of a schedule injury involving the loss or loss of use of a limb, whether or not there is other bodily injury accompanying it.

Directing this to the employees organizations representatives, are there any of you that find any disagreement with the provisions of my bill that propose to do that?

(Witnesses shook their heads.)

Mr. O'HARA. Well, gentlemen we are due downstairs in the other hearing in 5 minutes and I want to really thank you for putting up with our rather summary proceedings today and I apologize to you again for not giving you an opportunity to express yourself as fully as I know you are capable of doing.

I do assure you, however, that your positions will be given careful consideration by the subcommittee.

Thank you very much.

Dr. MCCRARY. Thank you, Mr. Chairman.

Mr. O'HARA. The Select Subcommittee on Labor of the House Committee on Education and Labor will stand in adjournment at the call of the Chair.

(Whereupon, at 10:57 a.m., the hearing was recessed, subject to call.)

IMPROVEMENT OF BENEFITS UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT

THURSDAY, SEPTEMBER 16, 1965

HOUSE OF REPRESENTATIVES,
SELECT SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9 a.m., pursuant to recess, in room 2261, Rayburn House Office Building, Hon. James H. Scheuer presiding.

Present: Representatives Scheuer, Daniels, and Gibbons.

Staff present: Jim Harrison, staff director; Michael J. Bernstein, minority counsel; and Susan M. Parry, clerk.

Mr. SCHEUER. The committee will come to order.

This is a hearing of the Select Subcommittee on Labor concerning the amendments embodied in H.R. 10721, introduced by Congressman Hathaway on behalf of the administration, and H.R. 10865, introduced by Congressman O'Hara.

The first witness will be Mr. Samuel Horovitz. Mr. Horovitz, would you identify yourself and then proceed with your testimony?

You can give your statement in full if you wish or, if you wish, your statement will be printed in full in the record and you can summarize your remarks orally, at your discretion.

(Statement referred to follows:)

STATEMENT BY SAMUEL B. HOROVITZ, WORKMEN'S COMPENSATION SPECIALIST AND COFOUNDER OF THE AMERICAN TRIAL LAWYERS ASSOCIATION, BOSTON, MASS.

H.R. 10721

The obvious intent of this bill is to do the following:

(1) Increase the weekly payments to Federal employees under the Federal Employees' Compensation Act (as amended). (Secs. 201, 202, and 203.)

(2) In death cases, to allow orphaned children who are students actually being educated or trained, on a full-time basis, to continue to receive the benefits as a child of the deceased until 23 years of age, instead of 18 years. (Secs. 204 and 205.)

(3) To give the Secretary of Labor additional power to determine the nature and extent of proofs and evidence required to establish an old or new case. (Sec. 206).

(4) Hereafter benefits are to increase in accordance with the cost of living, for the older cases by providing for automatic increases according to the annual change in the Consumer Price Index published by the Bureau of Labor Statistics. (Sec. 301.)

(5) To limit these increases to Federal employees and not to extend them to military personnel, etc., but to extend them to employees of the government of the District of Columbia, other than pensionable members of the police and fire department. (Sec. 401.)

(6) To allow such increases according to the Consumer Price Index, but not to permit decreases. (Sec. 402.)

(7) These increases generally are not to be retroactive, but are to apply to such continuing or future payments (on old or new injuries) as are due from the date of enactment. (Sec. 403.)

VIEWS OF ATTORNEY SAMUEL B. HOROVITZ

Money increases

Throughout the country, notably under State workmen's compensation acts, as well as under Federal acts, the weekly payments generally have been too low to provide for subsistence of the injured worker and his family.

The present payments consisting of a maximum of $525 per month and a minimum of $180 per month (unless the employee's monthly payment is less) was put into effect on October 14, 1949, and there has been no increase since.

It is self-evident that a maximum to the employee of $525 monthly (or $121.15 weekly) in 1949 is clearly inadequate 16 years later. The same applies to payments to dependents (maximum, $420 monthly, raised to $546 monthly).

Whether the maximum to dependents should be increased merely to $546, and for the employee himself to $685 is for your Select Subcommittee on Labor to say. Personally, I think it is inequitable for a high wage employee of the Government, receiving (for example) $16,000 per year, to receive a maximum of $685 per month, or about $8,200 per year, which is only about one-half of his wages when the statute (sec. 2) uses the measurement of two-thirds of his wages, but this $685 per month will be the most any injured employee can obtain (see sec. 6c). An employee whose pay today is $60 weekly, even with this new amendment, will continue to be paid $40 weekly only. This amendment helps merely the highly paid worker.

Labor leaders nationwide have long been requesting a straight two-thirds of full wages, and I would suggest that the only maximum which should be put on the Federal Employees' Compensation Act is that wages in excess of $25,000 per year shall not be considered in computing the two-thirds due the injured employee.

Educational benefits—to age 23

The provision to help students and trainees is obviously a just one, and follows the administration's clear intent to help students and trainees hereafter. Personally, I would not limit educational help to 23 years of age, because some of these parentless children may want to become doctors or enter other professions, where the average age of finishing is nearer 25 to 26 years of age. I would make the age limit 26 instead of 23, but certainly feel that the administration is modest in being satisfied with an increase from 18 to a maximum of 23 years of age.

Retroactivity

The provision of section 403 to allow future payments as they become due and give the benefits of the increases, even for old injuries on or after the enactment of this new amendment, is certainly a fair one.

In my own practice (covering 43 years as a workmen's compensation trial attorney, I also have been assistant professor of law, and as a lecturer on workmen's compensation throughout the world), I have been appalled by the number of cases coming to my attention in which the employee is receiving far less than subsistence, because the compensation payable in 1965 remains the same as his early injury, for example, in 1940 when $22 a week was the maximum. To illustrate: the Massachusetts workmen's compensation rate at the present time is $53 per week, plus $6 for each child and $6 for the wife. High wage men with many children, therefore, can receive $80 to $100 per week. However, my office (Horovitz, Petkun, Rothschild, Locke & Kistin) has numerous cases where the injury goes back 15 or more years ago when the weekly rate was very low, and in some no provision was then made for the wife and children, and the poor employee is receiving $30 per week or less, and cannot possibly support his wife and children, and has to have help from local charities. In short, the taxpayers are called upon to support an employee, instead of the industry in which he was injured.

Miscellaneous

All of the rest of the provisions of the bill H.R. 10721 are, in my opinion, needed and I think Congressman Hathaway and the administration ought to be congratulated on filing such a modest bill; although, personally, I would recommend even higher monthly payments and a longer period for those parentless students whose future education will probably run to 26 years of age.

H.R. 10865

This bill, filed by Congressman O'Hara, concerns an entirely different matter. Briefly, it provides for the following:

(1) It clarifies a matter relating to disfigurement. (Sec. (a), p. 1.)

(2) It provides, in effect, that after the period for which the employee has received scheduled compensation if he still remains totally or partially disabled, he shall continue to get further periodic disability compensation payments. (Sec. (b), pp. 1 and 2.)

(3) It gives a widow (or a dependent widower) who remarries, 2 years of compensation and stops all further compensation payments. (See sec. 2.)

(4) It gives a minor time until he reaches his majority before he is bound by the clause that he has to file a claim within 60 days, and it widens the group of latent disabilities which justify a late claim. (See sec. 3.)

(5) It permits the Secretary of Labor to make regulations governing hearings to be held.

(6) It provides, in effect, that if an employee's claim is denied hereafter by the Federal Bureau, he shall have a right to a hearing, and at the hearing evidence may be introduced, and the decision shall be based on the evidence adduced at the hearing. (See sec. 5.)

(7) It also provides that if the employee finally loses out, there may be a review in the U.S. district court which cannot change the facts if they are supported by substantial evidence, but presumably the court on appeal has the right to reverse any rulings of law. However, the Secretary can have the case remanded right after it is entered in court, to take additional evidence, and then modify or affirm his findings, and both sides can then appeal from the lower court, on questions of law, to higher courts, as in other civil actions. (See sec. 6.)

(8) These amendments, if enacted, will be retroactive in some respects and not in others. (See sec. 7.)

VIEWS OF ATTORNEY SAMUEL B. HOROVITZ

Permitting formal hearings for first time in Federal employees' cases

Every workmen's compensation act in the United States, except this Federal employees' act, provides for a formal hearing, with both sides allowed to produce witnesses, held before an impartial commissioner or hearing officer (or, in a few States before a judge) in the first instance. In most jurisdictions (except the Longshore Act), if a claimant loses below, he can have a review before 3 to 5 impartial commissioners, both on questions of fact and of law.

Beyond that, he can appeal to the courts, usually on questions of law only. Such procedure is considered essential to "due process of law" both under State and Federal constitutions.

However, for nearly 50 years, employees of the Federal Government who receive injuries while in the performance of their duties, have been considered as inferior citizens, so far as having the right to a hearing and to use the courts.

Up to now, in nearly every case, the so-called hearing consists of papers (forms of various kinds) being filled out and mailed to the Bureau. Medical reports must (where needed) be sent to the Bureau, and some official, acting in the name of the Secretary of Labor, then hands down a decision, and if he rules that payments should be made, they are made. Twenty years ago, if that official signed a decision denying payments, there was no appeal to any higher body.

As a result of protests, most of them asking for formal hearings and court appeals, a compromise was reached. On July 16, 1946, an Employees' Compensation Appeals Board was established, in Washington. Most employees have since found that they were unable to pay the expense to go to Washington, or even to hire attorneys. Furthermore, there was no provision in the Bureau for taking testimony, and the Employees' Compensation Appeals Board decided the case on the same record sent to them by the officials of the Bureau. Originally, all the officials were located in Washington, but during the last few years, the work has been decentralized, and there are 10 regional offices throughout the United States—but the local regional official is still final, unless the Appeals Board in Washington reverses him on the facts or on the law.

Why formal hearings and court appeals are provided in this bill

During the last few years, the Employees' Compensation Appeals Board has, in substance, affirmed at least 90 percent of all the decisions below. Their rulings on the facts and on the law are final, and the employee has no right to go to any court, according to rulings made by the Bureau of Workmen's Compensation handling Federal cases.

There are State workmen's compensation acts in all of the 50 States. There is also a Federal Longshore Act. As indicated above, under each one of these acts, an employee who has been denied compensation has the right to have a full hearing before an impartial hearing officer who has no relation to and who is in no way tied up with either the insurer (or fund which does the paying) or the employer involved, or with the employee. Most States also provide that if the impartial hearing officer denies payments, the employee or dependent can appeal to a reviewing board of three or more impartial persons. If the employee loses again, he can go before the court, and in most States the courts are bound by questions of fact if supported by substantial evidence, but no court is bound by any ruling on the law made below.

After 50 years of experience, it is clear that the courts have been far more liberal on law questions than have the industrial commissions or hearing officers, and the courts have reversed the industrial commissions time and time again and have liberalized the law. See "Workmen's Compensation: Half Century Judicial Developments," in the December 1961 issue of the Nebraska Law Review (vol. 41, No. 1, pp. 1-100), by Samuel B. Horovitz.

In short, employees of private employers have been given due process of law to wit: the right to an impartial hearing, and the right to the use of the courts.

For years, there have been criticism of the Federal act for Federal employees because of the lack of an impartial open hearing with the right to produce witnesses and later to appeal to the courts. See "Horovitz on Workmen's Compensation," page 177, note 9.

Bureau attorneys (under the Federal Employees' Compensation Act) used to claim that it was perfectly constitutional and legal to give inferior procedural rights to Federal employees, because the giving of Federal compensation was a "gift" for which the employee paid nothing. At that time, in 1916, when the act first was inaugurated, the Federal Government could not be sued for negligence or otherwise, either by its employees, his kin, or by other "third parties." "The King could do no wrong," and therefore it was thought perfectly proper not to give the injured employees an impartial hearing or any procedure except merely a paper one. Hence so-called informal trials, by written reports and other documentary evidence became the sole procedure. As far back as 1944, when my textbook, "Horovitz on Workmen's Compensation," was issued, it stated that, "* * * this should be changed by Congress to allow formal evidence at the employee's request and to allow appeal." Horovitz, supra, page 177, note 9.

There are stronger reasons for doing this in 1965. The Federal Government has now permitted itself to be sued and has passed the Federal Tort Claims Act. The Federal Employees' Compensation Act, however, takes away the right of the employee and his next of kin, dependents, and spouse (even though legally "third parties") to sue for any injury he receives "while in the performance of his duty" for his employer, the Government. See section 7(b). Today, the Federal employee as well as his kin, etc., loses valuable common law rights and all rights of every kind to sue the Government. The moment he becomes a Federal employee he and his kin must take exclusively the niggardly weekly amounts (with nothing for pain and suffering) specified in the Federal Employees' Compensation Act.

Therefore, the part of H.R. 10865 which provides for hearings with evidence taken, and later court appeals, is excellent; but it does not state or make clear in section 5 of this bill, whether the Secretary of Labor can appoint the very man who denied the award to then become the hearing officer. This obviously would be unfair, as the hearing officer should certainly be an impartial, disinterested person, not connected with the Bureau or the person who made the original denial of compensation.

An appeal on law questions to the U.S. district court is proper. But section 6 (p. 5) of the bill permits the Secretary of Labor (and in this case, it really means the man in the Bureau who denied the claim) to take back the file and order

additional evidence. It means that after the employee has hired a lawyer, and gone to court, the Bureau, or whoever decided the case, can take the case back, cause great delays, make changes in the decision, without paying the court costs or the claimant's lawyer. This may be corrected in part by a provision (which is found in many of the State workmen's compensation acts) to the effect that if the employee eventually wins his case in whole or in part, the court shall add to the award the reasonable costs of attorneys and the other expenses involved. This is also done by the Federal courts in appeals in longshore cases.

I recommend that Congress direct the Secretary to arrange (1) for impartial hearing officers in the 10 regional offices, and that these regional officers be in no way connected with the Bureau; (2) that the hearings procedure shall be similar to that provided by State industrial commissions, and under the longshore act, that is, the hearings shall be *de novo* (based solely on the evidence produced at this hearing), with the employee presenting his side, and the Bureau presenting its side.

Schedule compensation, supplemented

The amendment relating to further compensation after the employee has received his scheduled compensation and is still disabled (sec. 5a) is an excellent one. It follows a ruling made by the U.S. Supreme Court, and it is discussed at length in my article, "*Workmen's Compensation: Half Century of Judicial Developments*," on pages 94–98. See *Alaska Industrial Board* v. *Chugach Electric Association* (356 U.S. 320 (1958)). See also *Van Dorpel* v. *Haven-Busch Co.* (350 Mich. 135, 85 N.W. 2d 97 (1957)).

In short, there is no reason why, if a man has lost his arm or leg, or the use of another part of his body, and at the end of the period, specified for such a loss, he is still totally and permanently disabled, he should be thrown on charity. Industry destroyed his earning capacity, and industry, not charity, should carry the financial burden.

Remarriage amendment

The provision to give a widow or dependent widower 24 months of compensation, on remarriage, is common throughout workmen's compensation acts in the United States. Many widows have failed to remarry because they would lose all of their compensation, and continue to live with "boy friends," or do other things which have resulted in bad side effects. Allowing 2 years' compensation, in my opinion, is the minimum that should be given, as the Government saves a great deal of money by the remarriage.

CONCLUSION

In short then, H.R. 10865 is an excellent bill, but the matter of who shall conduct the hearings and thus provide for an impartial hearing, should be spelled out more clearly. In addition, it is not clear whether the bill intends to do away with the Employees' Compensation Appeals Board. It is essential to have impartial hearing officers to hear the case de novo, if it has been turned down by the Bureau. The Bureau can be considered in the same light as a private insurance company, to wit: it simply decides whether it will pay in the first instance, and if it pays there is no need for any further action, and the hiring of lawyers.

If, however, it denies an award, then the employee should have the right to an impartial, independent hearing; and it can be provided that the Employees' Compensation Appeals Board or a similar tribunal, should travel to the various regional offices and act as a reviewing board both on the facts and the law, before the case goes to the courts. This is what happens in nearly all of the 50 States' workmen's compensation acts. Or local appeals boards can be set up in each of the 10 regions. If the present Appeals Board is kept, it will necessitate extensive travel. Employees should not be compelled to go to Washington (as they cannot afford to do so) to argue their reviews; and it would be much better to have the Employees' Compensation Appeals Board (if not abolished) come to the various regions if there are appeals from the impartial hearing officers.

If and when this is done, Federal employees for the first time in nearly 50 years will begin to receive due process of law.

Respectfully submitted.

STATEMENT OF SAMUEL B. HOROVITZ, FORMER WORKMEN'S COMPENSATION ATTORNEY, MASSACHUSETTS FEDERATION OF LABOR, AND COFOUNDER OF THE AMERICAN TRIAL LAWYERS ASSOCIATION

Mr. HOROVITZ. Gentlemen, I am glad to be here at the request of the Honorable Elmer J. Holland, the chairman of the Select Subcommittee on Labor, and to try to help the 2½ million Federal employees who now come under what is known as the Federal Employees' Compensation Act.

Two of your members have filed bills to help them. Congressman Hathaway has filed a bill to try to help them in the amount of money that they receive, to see that if they are injured they get enough so they can live, not comfortably, but on subsistence.

Congressman O'Hara has filed what to me is an equally important, if not more important, bill to see that they do get the money to give them justice, to see that they get a hearing if they are denied money improperly.

I will take up the two bills. The easier one, of course, is Congressman Hathaway's bill. At one time the Federal Employees' Compensation Act, way back in 1916, used to be regarded as quite a model.

It was quite an act when it started. I am acquainted with it because I spent the last 43 years of my life exclusively in workmen's compensation. I have written 15 books on the subject, mostly for a large organization originally called NACCA, a bar association, now called the American Trial Lawyers Association with 20,000 members in it, and my specialty has been workmen's compensation.

I have been for 33 years the attorney for the Massachusetts Federation of Labor in workmen's compensation. I am that old that I was attorney for President Green of the AFL in workmen's compensation.

I spent my life on it. I was fortunate to hear the unions talk. Unions generally suspect lawyers. They think that lawyers mix into compensation when they shouldn't be there. I am going to address myself to that subject. That is some were a little bit afraid of this judicial review business, though I have explained it to them since and they are in favor of what I am going to tell you.

I have always felt that the 1916 act that you passed for Federal employees was a very fair act. At that time it was ahead of any act in the country because you not only gave a man two-thirds of his wages, but you added a little over 8 percent so between him and his wife and children if he was married he got 75 percent of his wages.

There is no State in the Union in 1916 that had the courage to go up to 75 percent.

Mr. SCHEUER. Excuse me. How did that compare with comparable statutes abroad, in England or in the Scandinavian countries?

Mr. HOROVITZ. I have lectured abroad. I have lectured in 17 countries abroad. I just got back from lecturing in nine countries in Africa. This has been my lifework. There, of course, money is entirely different. If Federal employees got as high as $20,000 as you get here, they would just be amazed.

Their standard of living is much lower.

Mr. SCHEUER. I understand that, but back in the early days how did our first statute that you just described compare with the statutes in effect at that time in Western Europe, for example?

Mr. HOROVITZ. Germany was the first to have a statute in Western Europe.

Mr. SCHEUER. In terms of the percentage of the compensation that they gave an injured worker.

Mr. HOROVITZ. Higher.

Mr. SCHEUER. It was higher then?

Mr. HOROVITZ. Yes.

Mr. SCHEUER. How much higher was it?

Mr. HOROVITZ. The usual standard was one-half of wages, but Germany went up to 100 percent of wages if you had total and permanent disability.

Mr. SCHEUER. When did that law pass?

Mr. HOROVITZ. Way back, in 1900, long before we had compensation.

Mr. SCHEUER. Half a century ago they gave injured workers 100 percent for total permanent disability?

Mr. HOROVITZ. Yes. Workmen's compensation originally started in Germany with Bismarck, in 1884.

Mr. SCHEUER. Under Bismarck?

Mr. HOROVITZ. Under Bismarck. Then this spread to England in 1897 and then in 1902 we in Massachusetts heard about it.

Mr. SCHEUER. Bismarck once said that God looks after babies, drunks, and the United States of America. He apparently felt that the German Government had to take care of disabled workers.

Mr. HOROVITZ. If I had the time I would go into his reasons. I don't think his reasons were really to help workers. He wanted to kill the growing labor party, but he created the compensation action.

Mr. DANIELS (presiding). Mr. Horovitz, you were just mentioning the matter of time. I would like to point out to you that our committee this morning is meeting 1 hour earlier than we had originally scheduled these hearings and that is for the express purpose of enabling the members of the committee to get to executive sessions of other committees that are holding meetings this morning at 10 a.m., so, therefore, in the interest of saving time, and we have another witness scheduled and we would like to accommodate both of you witnesses and hear what you have to say, I suggest you proceed with your testimony.

Mr. HOROVITZ. I will come to the point.

Originally, when you passed the act, it was felt that Federal employees should not get workmen's compensation. There was no need for it because the Government could not be sued. The king could do no wrong. In the other States the employers got something out of it, because when they put them under workmen's compensation the employee lost the right to sue them.

It was different in the States. When it came to the Federal Government they said, "Don't give them any compensation. We can't be sued, anyway."

So, when they passed the act they said, "We are not going to give you any judicial review. You are getting a gift from us. We don't have to give this to you, so we are going to provide that the Federal bureau shall pass on it and if they don't give it to you that is the end."

In 1916 that may have had some sense, but since that time things have changed completely. Every State in the Union has a compensation act. We have a longshore act and you passed the Federal Tort Claims Act.

The Government has said, "Now we can be sued, just like a private employer," so you are no longer doing a favor to the 2½ million Federal employees to give them a compensation act.

It is no longer a gift to them. Today it is not fair to say that you are doing a favor to the Federal employees. They work for you like they work for private employers and there are 2½ million.

Therefore, No. 1, you should see that they get subsistence. You know plenty of employees of the Federal Government who are getting $16,000 a year. I take that figure because your act says two-thirds and then up to 75 percent if they get married.

The highest any human being can get under your present act now is $7,000, $7,020—585 times 12.

The appropriation is to increase them to $156 a week. It isn't a tremendous increase, to $8,220. That is the maximum. You say two-thirds up to 75 percent, but not exceeding $600-and-some-odd, even in this bill, so that the man who gets $16,000 a year is only going to get 50 percent, under this brandnew bill, and, therefore, I suggest you go one step further.

Have a straight two-thirds. Why put a limitation on it? Why not a straight two-thirds? If a man had gotten $18,000 a year, a paraplegic, working for the Government, why shouldn't he get $12,000 a year, a straight two-thirds, and if he is married give him the additional amount. Bring him up to 75 percent.

Massachusetts too has gone to 100 percent of worker's wages—100 percent of wages. Unfortunately, we have had a limit of $53 for a single man and $6 for the wife and $6 for each child not exceeding the maximum amount, so it doesn't do the high wage man any good, but percentagewise we are higher than that.

There is one State that gives $150. Arizona gives $150 plus something for his wife and children. I say the time has come when you should go even beyond Mr. Hathaway's bill and give a straight two-thirds without limitation.

He has made a couple of other suggestions which I think are excellent, one being educational benefits. When a man is killed or the wife is killed they pay the children a certain amount of money, but stop it at 18 years of age, and that is universal throughout the United States.

He has come up with a good idea. These children are entitled to an education and he says give it to them up to 23. Well, I think that is very helpful, but suppose that child wants to be a doctor or a lawyer. You don't get through in the United States now at 23.

It is nearer 26. And I think if you are going to make the change you should make it not from 18 to 23, but from 18 to 26. This helps only those who are truly students or in training and are truly working full time, so my suggestion is to go a step beyond him and make it 26.

Why limit them just to an ordinary college education? If you are going to do things do it and let's do it right, because it has taken since 1949.

That was the last time you upped the money, and it may take another 16 years till you up it again, so why not make it now? In my opinion it should be 26 years of age.

I will jump to the more important bill, the bill that caused me to come here at my own expense at the request of your committee to speak.

I have always been interested in Federal employees' cases. I hate to give statistics. I suppose statistically I can prove I am the worst lawyer in the United States because no lawyer that I know of has lost 3,300 workmen's compensation cases in his lifetime, but statistically I am supposedly the best lawyer.

No lawyer has won 6,700 cases. I have actually tried 10,000 cases, many of them under your act. I have tried more than any human being so far as I know, and we stopped trying Federal cases a number of years ago, because if a man is injured—I want to get this clear—in private employment and the insurance company won't pay him, then we can ask for a hearing, before an impartial tribunal, usually known as the industrial accident board.

I don't care what they call them. That exists in 44 States. If that industrial tribunal turns us down, we can go to the courts on questions of law.

Now, Mr. O'Hara's State has a trial before a single commission, as we call them, then an appeal to three commissioners on review, and then to the courts, but the courts on questions of law.

When it comes to cases before your Bureau of Workmen's Compensation—this is going to amaze some of you—but this is the truth and I hope the chairman will be here and he will tell you it is the truth—heaven forbid, if he a week ago was injured, badly injured, what would he do?

He would get hold of his chief and his chief would file a report with the Bureau. It would take an average of 79 days before they would give him his money if he had a clear case. If an investigator went out and found that the case was a clear case it would take 79 days and he would get his money.

Suppose they turned him down. Suppose they said, "No, we are not satisfied," and they turned him down.

Could he then go before an impartial tribunal? No. There has never been any provision. The Bureau was final. I came down here many years ago to protest that we wanted to have a hearing before an impartial tribunal, and I will tell you why.

Because I found that every time I had a case involving heart disease, cancer, multiple sclerosis, meningitis, encephalitis, leukemia, traumatic epilepsy, or arthritis—I am going to give you my book, "Nebraska Review," page 44, showing that we have established every one of those diseases as having been precipitated, aggravated, or in some way connected before State industrial commissions.

But with your people we were unable to establish that, because all we could do was send in our doctor's report. Then they would have their doctor, and I am telling you gentlemen in the old days, and I have lived through it, doctors don't agree on heart disease or cancer or anything.

Mr. SCHEUER. I think we can take judicial notice of the fact that no doctors anywhere agree on anything ever.

Mr. HOROVITZ. So they would have their doctor examine the claimant and he would say no relationship. I would take him to three doctors who would say there was.

Disallowed. Henry Cabot Lodge and I were close friends and I came down to Washington to try to change it, to try to go from them to an impartial bureau. We have a compensation act.

Consider the Bureau like an insurance company. They turn you down all right. Let's have an impartial tribunal. We finally had to compromise for an appeals board. When the appeals board was in the Social Security Department we got somewhere.

We had a fellow by the name of Henry Iler who became chairman. And he reversed the Bureau below 50 percent of the time. Your records will show it.

But then it was taken back in the Labor Department, so that now a man turned down goes to the appeals board, appointed by the same Labor Department, and, gentlemen, take my word for it.

I have read the cases for years. In 90 percent of the cases they follow the board below. Why? If you were in their circumstances you might do the same thing. The only thing they have before them, gentlemen, is the record that is made below, the record made by the Bureau, their investigator's report, and when I say 90 percent I am conservative.

In 10 percent of the cases they do reverse them, and, gentlemen, I will say this for the record: you will find in the 10 percent of those cases a great many are cases where some Senator is interested and has gone to see them and pointed out the error of their ways, error of the Bureau, or my own organization, the AFL-CIO.

If somebody important comes up, there is a chance that you may get a reversal.

Mr. DANIELS. How about a Congressman?

Mr. HOROVITZ. Yes; if he is an important Congressman there is a chance.

I hate to say this, but it is so, yes. They are human, too, you know. They want to keep their jobs. Therefore, gentlemen, it is absolutely essential for the first time in history that you establish an impartial hearing.

Let the Bureau continue as it does. It is like an insurance company. Let them pass on the case. If they pay on the case, well and good. You don't want a lawyer in the case unless they turn a man down. Now, they have 110,000 people injured every year, 100,000 out of 2½ million. They say they only turn down 3 percent. I think I can show you it is nearer 15 percent, but even 3 percent is over 3,000 people who are turned down.

Those people are entitled to a hearing. Heaven forbid, if you became a paraplegic and they turned you down, wouldn't you want a hearing? Wouldn't you want an impartial tribunal?

I therefore suggest that this bill which says there should be a hearing, but leaves it to the Secretary of Labor, be changed to an impartial tribunal.

I don't want someone in the same department. Would you feel you are getting a fair trial if you had somebody in the same department?

Mr. DANIELS. You recommend then a hearing examiner?

Mr. HOROVITZ. Yes, sir; and not within the same department, absolutely an impartial person. Then if you want to have a review by your appeals board, that is going to be expensive because now the cases are heard in 10 different districts.

They are not heard in Washington. They will have to travel around. You can either have an impartial appeals board travel around or have an appeals board in each of the 10 districts if you want to have an appeal, but you then must go to the courts, and I will tell you why, and if Mr. Larson is here I think he will agree with me. The courts are the ones who decide the law questions. I don't want the courts to decide any questions of fact the impartial man has decided.

That's the end of it. But on questions of law we have to have the courts. And I have written an article and I have shown here that the courts have been far more liberal on the meaning of workmen's compensation over the last 50 years than industrial commissions, including the State ones.

Mr. GIBBONS. Are you going to leave that?

Mr. HOROVITZ. I will leave that. I will mark the page.

Mr. SCHEUER. Without objection, let us direct the stenographer to print in the record under excerpts of Mr. Samuel Horovitz' article from the Nebraska Law Review the date of issue and the specific pages that he mentioned. Will you mark them clearly in the article?

Mr. HOROVITZ. Yes.

Mr. SCHEUER. And then these pages shall be reprinted after your testimony.

Mr. HOROVITZ. I then requested that we have a real hearing before an impartial and court appeal.

Mr. SCHEUER. Would you like that note to appear?

Mr. HOROVITZ. Yes.

Mr. SCHEUER. All right.

Mr. HOROVITZ. I will give the committee both of these articles. I shall also give him something about our organization of 20,000 lawyers and it may be in the property of the committee when you are through.

Thank you very much.

(Information to be furnished follows:)

INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS

(By Samuel B. Horovitz)

"The Federal act (for ERA, WPA, etc., workers) is the one used for regular Federal employees, and the Commission provides no formal hearings (decisions are made usually upon ex parte written reports) and absolutely no right of appeal. As the Government is the employer, the Commission assumes that formal hearings may be denied, and that it can refuse to be subject to all court proceedings." [b]

[b] As the U.S. Employees' Compensation Commission (even though its chief attorney is able and liberal), is often hundreds or even thousands of miles away from the injured employee, who cannot even if near the New York commission, bring his witnesses to a hearing or have counsel do anything but write letters, the whole procedure is highly unsatisfactory, in the opinion of the author. Informal trial by official reports and other documentary evidence under this act of Sept. 7, 1916, is the rule of the Commission, and, if constitutional (see Dahn *v.* Davis, 258 U.S. 421 (1922)), should be changed by Congress to allow formal evidence at the employee's request, and to allow appeals.

Hearings before State boards are more in accord with the modern social and legal viewpoint.

[From Nebraska Law Review, Vol. 41, No. 1, December 1961]

EXCERPTS FROM WORKMEN'S COMPENSATION: HALF CENTURY OF JUDICIAL DEVELOPMENTS

(By Samuel B. Horovitz)

* * * * * * *

Courts recognize that in close or borderline cases it is better to put the loss on the employer (or the insurer), and hence on the ultimate consumer of the product or services, than upon the injured employee or his family who rarely can pay and who must therefore pass it on to charity. Since one of the purposes of workmen's compensation is to keep workers from becoming public charges,[11] a reasonable, liberal, practical common-sense construction is preferable to a narrow one.[12] These acts are for the giving of compensation; they are not for its denial.[13]

* * * * * * *

Fortunately, the modern weight of reason and the current weight of authority permits awards for injuries from falls onto level floors, due to nonindustrial disease or unexplained causes.[175] These courts do not distinguish between falls onto the level floor and falls onto boxes two inches above the floor or into machinery—all falls are compensable where the injury results from contact with the floor or other objects.[176]

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[11] Baltimore Steel Co. v. Burch, 187 Md. 209, 213, 49 A. 2d 542, 544 (1946) (It was the intention "to relieve workers from the hazards of industrial employment and to protect the public from the care and expense resulting from human derelicts due to accidents" in industry).

[12] Clark v. Village of Hemingford, 147 Neb. 1044, 1056, 26 N.W. 2d 15, 22 (1947) ("liberally construed and its beneficient purposes not to be thwarted by technical refinement or interpretation"); *accord,* O'Leary v. Brown-Pacific-Maxon, Inc., 340 U.S. 504, 509 (1951) (Minton, J., dissenting) ("common-sense, everyday, realistic view"); Brookhaven Steam Laundry v. Watts, 214 Miss. 560, 589, 55 So. 2d 381, 386 (1951) ("liberal and sensible interpretation"); Schechter v. State Ins. Fund, 6 N.Y. 2d 506, 510, 160 N.E. 2d 901, 903, 905, 190 N.Y.S. 656, 660 (1959) ("common-sense viewpoint" of the average man); *In re Jensen,* 63 Wyo. 88, 100, 178 P. 2d 897, 900 (1947) ("to be reasonably and liberally construed").

[13] Everett, Book Review, 62 L.Q. REV. 300, 301 ("[C]ertainly the higher tribunals both in England and in America seemed to have lived up to the dictum 'that this is an Act for the giving and not the withholding of compensation.'").

[175] Employers Mut. Liab. Ins. Co. v. Industrial Acc. Comm'n, 41 Cal. 2d 676, 263 P. 2d 4 1953) (idiopathic seizure, fell on concrete floor, head injury—compensable. Modern trend recognized); Savage v. St. Aeden's Church, 122 Conn. 343, 189 Atl. 599 (1937) (no difference for floor falls—turns out that there was hazard from the fact that the accident happened—painter found on floor; it would make no difference if cause of fall was fainting spell or heart attack); Protectu Awning Shutter Co. v. Cline, 154 Fla. 30, 16 So. 2d 342 (1944) (fell on concrete floor due to idiopathic heart disease, fractured skull. Excellent discussion of purposes of compensation act, and the desire to spread the cost to consumers—if deceased had fallen onto a piece of machinery, an award would hardly be questioned the fact that he chanced to fall on the floor and lost his life should not preclude an award); American Mut. Liab. Ins. Co. v. King, 88 Ga. App. 176, 76 S.E. 2d 81 (1953) ("blacked out"—court said no difference between falling on the floor or against machines—even if exertion did not produce the stroke found in puddle of blood on floor in water-house, died of subarachnoid hemorrhage); A. C. Lawrence Leather Co. v. Barnhill, 249 Ky. 437, 61 S.W. 2d 1 (1933) (dizzy, fell on premises near driveway, broke leg—compensable); Pollock v. Studebaker Corp., 97 N.E. 2d 631 (Ind. App. 1951) (contrary view "not favored by a majority of recent cases"—but superceded in Pollock v. Studebaker Corp., 230 Ind. 622, 105 N.E. 2d 513 (1952)—as a question of fact, as industrial board had found against the worker—dissent said it was a question of law, and decision below was correct on law); Burroughs Adding Mach. Co. v. Dehn, 110 Ind. App. 483, 39 N.E. 2d 499 (1942) (on public street on duty—had he been sitting on a chair at home when the attack occurred he probably would not have been injured); Barlau v. Minneapolis-Moline Power Implement Co., 214 Minn. 564, 9 N.W. 2d 6 (1943); American Gen. Ins. Co. v. Barrett, 300 S.W. 2d 358 (Tex. Civ. App. 1957) ("blacked out" fell on hard pavement of gravel and shell, fractured skull—fall on hard surface, was a hazard to which he was exposed by the employment); General Ins. Corp. v. Wickersham, 235 S.W. 2d 215 (Tex. Civ. App. 1951); Wilson v. Chatterton, [1946] 1 K.B. 360 (C.A.) (a leading case, overruling an earlier *contra* case, Lander v. British United Shoe Mach. Co., 26 B.W.C.C. 411 (1933) as "bad law"); Wright & Greig, Ltd. v. M'Kendry, 11 B.W.C.C. 402 (1918) (in fit, fell on concrete floor of store—not risk common to humanity, but was specially connected with the worker's employment, as he had to work on a hard floor).

[176] See cases in notes 172 and 175, *supra.*

On this reasoning the modern courts properly have upheld awards involving cancer,[182] heart disease,[183] multiple sclerosis, [184] meningitis,[185] encephalitis,[186] leukemia,[187] traumatic epilepsy [188] and arthritis.[189]

* * * * * * *

A half century has passed since the earliest acts received their first judicial interpretations. The early legislatures held the hope that payments, though small at the start, would subsequently be made sufficient for subsistence and would keep up with the rising cost of living. In most jurisdictions this hope has been tragically unrealized.[383]

But the history of judicial decision has been an entirely different one. The early courts construed the acts with caution and erroneously inserted into workmen's compensation cases inapplicable common-law doctrines in disguised garb.[384] But step by step these courts uncovered their own errors and righted

[182] Boyd v. Young, 193 Tenn. 272, 246 S.W.2d 10 (1951) (cancer, lifting box, sharp pain in base of neck, hospitalized, cancer later found in neck); see review in 10 NACCA L.J. 60 (1952) and list of recent cancer cases. For cancer cases, see Locke, *Problems Arising in the Trial of a Cancer Case*, in NEW ENGLAND NACCA BAR ASSOCIATION, WINTER SEMINAR, DECEMBER 1959, at 138 (1960).

[183] Madden's Case, 222 Mass. 487, 111 N.E. 379 (1916); Harding Glass Co. v. Albertson, 208 Ark. 866, 187 S.W.2d 961 (1945) (heat prostration hastened heart disease and contributed to death eight months later); see Petkun, *Problems Arising in a Heart Disease Case*, in NEW ENGLAND NACCA BAR ASSOCIATION, WINTER SEMINAR, DECEMBER 1959, at 159 (1960).

[184] Mechanics Universal Joint Div. v. Industrial Comm'n, 21 Ill. 2d 535, 173 N.E.2d 479 (1961) (multiple sclerosis, compensable, though there is limited medical knowledge of this disease); Stella v. Mancuso, 7 App. Div. 2d 673, 179 N.Y.S.2d 169 (3d Dep't 1958) (multiple sclerosis precipitated by trauma).

[185] Gilham v. Department of Labor & Indus., 14 Wash. 2d 359, 128 P.2d 645 (1942) (meningitis related to a fall).

[186] Hazlik v. Interstate Power Co., 67 S.D. 128, 289 N.W. 589 (1940) (encephalitis after unusual exertion, exposure and exhaustion helping to restore company's service).

[187] *In re* Crowley, 130 Me. 1, 153 Atl. 184 (1931) (carbon monoxide poisoning leading to leukemia).

[188] White v. Louisiana W. Ry., 18 La. App. 544, 135 So. 255 (1931) (epilepsy).

[189] Sporcic v. Swift & Co., 149 Neb. 246, 30 N.W.2d 291 (1948) (traumatic arthritis); Enkel v. Northwest Airlines, 221 Minn. 532, 22 N.W.2d 635 (1946) (long list of cases of aggravation or acceleration of arthritic conditions given).

[383] "Implicit in the law and explicit in the decisions is the principle that industry should take care of its own casualties. Yet even with the best that under the law can be done for this plaintiff, the discrepancy between what he will have gained and what he has lost is rather shocking." Kitts v. American Mut. Liab. Ins. Co., 133 F. Supp. 937, 941 (E.D. Tenn. 1955) (compensation rate mere fraction of the wage; must fight ill health and poverty the rest of his life). In this case the employee's hospital bill was $2,369.92 to 1955. In 1960 the maximum weekly payment in Tennessee reached thirty-four dollars, with medical compensation stopping at $1,800 and all compensation at $12,500.

"[I]t is high time that the legislatures investigate the fate of the families in which the breadwinner has suffered a permanent disability . . . .

"[T]he law relating to the structure and level of benefits shows the distressing signs of legislative lethargy and patching and repatching . . . ." Riesenfeld, *Basic Problems in the Administration of Workmen's Compensation*, 8 NACCA L.J. 21, 32–33 (1951).

As long ago as 1954 Max D. Kossoris of the U.S. Dep't of Labor warned: "There is a need today for stronger public concern with the inadequacies of workmen's compensation legislation and administration. In spite of the tremendous forward strides in other social and economic areas our compensation legislation and administration on the whole lag far behind." Kossoris, *Workmen's Compensation in the United States*, U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. NO. 1149 (1954).

Hawaii has made some strides forward because a courageous administrator dared to become a politician for a time and fight the lobbyists. U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. NO. 186, at 12 (Rev. 1959).

Ceilings and limitations on the benefits have caused "compensation payments to fall so sadly behind the rise in wages and living costs" that it "has brought the whole system into disrepute." Riesenfeld, *Contemporary Trends in Compensation for Industrial Accidents Here and Abroad*, 42 CALIF. L. REV. 531 (1954). *Accord*, Pollack, *A Policy Decision for Workmen's Compensation*, 372 INS. L.J. 14 (1954) (since 1940, benefits have become even less adequate, especially where the need is greatest); Somers & Somers, *Workmen's Compensation—Unfulfilled Promise*, 7 IND. & LAB. REL. REV. 33 (1953).

[384] "[C]lare must be exercised lest long judicial habit in tort cases allows judicial thought in compensation cases to be too much influenced by a discarded or modified factor of decision." Hanson v. Robitshek-Schneider Co., 209 Minn. 596, 598, 297 N.W. 19, 21 (1941). *Accord*, Beran's Case, 336 Mass. 342, 145 N.E. 2d 726 (1957) (compensation allowed for a stray bullet; overruling an old case); Cunning v. City of Hopkins, 258 Minn. 306, 103 N.W. 2d 876 (1960) (defense of horseplay has no place in workmen's compensation cases).

One of the greatest changes has occured in the reversal of many aggressor-assault cases where common-law doctrines appeared in disguised garb to mislead the early courts. See cases cited in notes 8, 93, 97–102, and 111 *supra*.

their decisions.[385] They rejected the doctrine that their mistakes were forever embalmed in the law because of the doctrine of legislative acquiescence by silence. It was aptly stated that: "We reject as both un-Christian and legally unsound the hopeless doctrine that this court is shackled and helpless to redeem itself from its own original sin, however or by whomever long condoned."[386]

The history of judicial developments in the field of workmen's compensation is a history of growth, of commendable imagination, and of improvement in the administration of justice[387] for the victims of industrial accidents, 2 million of whom look annually to the courts for understanding and help. The spirit of liberal and broad interpretation is now engrained in the warp and woof of workmen's compensation, as clearly shown by the above review of the words "personal injury by accident arising out of and in the course of employment" and the additional important word "disability."

Judicial developments have given hope to those who desire to improve the lot of industry's casualties the injured workers.

Mr. SCHEUER. Thank you very much for coming, Mr. Horovitz. We appreciate the time and effort that you have made to come here.

Mr. DANIELS. I have no questions.

Mr. GIBBONS. Off the record.

(Discussion off the record).

Mr. SCHEUER. On the record.

Thanks ever so much.

Mr. SCHEUER. Mr. Arthur Larson, please. We are very honored to have you with us this morning, Mr. Larson. Let the record show that Mr. Larson was former Under Secretary of Labor and the head of the U.S. Information Agency.

Please proceed, Mr. Larson.

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[385] See, *e.g.*, State Compensation Ins. Fund v. Industrial Acc. Comm'n, 38 Cal. 2d 659 242 P. 2d 311 (1952), 9 NACCA L.J. 64 (1952). See also Pacific Employers Ins. Co. v. Industrial Acc. Comm'n, 26 Cal. 2d 286, 158 P. 2d 9 (1945) (a horseplay case overruling thirty year old decision). See 22 NACCA L.J. 175 (1958).

[386] Van Dorpel v. Haven-Busch Co., 350 Mich. 135, 147, 85 N.W. 2d 97, 103 (1957). Recalling Justice Cardoza's views concerning stare decisis, the court stated: [W]hen a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment." *Id.* at 151, 85 N.W. 2d at 105.

[387] Dean Roscoe Pound, former Editor-in-Chief of the NACCA LAW JOURNAL, in V JURISPRUDENCE 345 (1959) concludes: "But, on the whole, most of the courts have increasingly come to appreciate the purpose and spirit of the [workmen's compensation] act . . . in its interpretation and application."

Prof. Riesenfeld in *Contemporary Trends in Compensation for Industrial Accidents Here and Abroad*, 42 CALIF. L. REV. 531, 552 (1954), states: "All in all it can be said that American courts in a liberal spirit have steadily extended the scope of protection under workmen's compensation."

In recent years courts have openly encouraged injured claimants to be represented in contested cases by experts in workmen's compensation: Miner v. Industrial Comm'n, 115 Utah 88, 202 P. 2d 557 (1949), 3 NACCA L.J. 188 (1949). "From our experience in a number of recent cases, we are convinced that applicants would fare better in contested cases if they were timely informed by the Commission that while it was not necessary for them to employ counsel, such assistance in the presentation of their case might be desirable." *Id.* at 92, 202 P. 2d at 559. And when attorneys' fees are chargeable to insurers, these courts have allowed reasonable and substantial fees: see Neylon v. Ford Motor Co., 27 N.J. Super. 511, 99 A. 2d 664 (App. Div. 1953), 13 NACCA L.J. 95 (1952) ($2,850 fee upheld although only $296.43 compensation awarded to injured worker).

Industrial commissions also are granting substantial as well as reasonable fees: see Anderson v. Bituminous Cas. Corp., No. 1-636, Claim No. U-97588, Fla. Sept. 30, 1957 ($7,500 fee of claimant's attorney charged to insurer). And in a recent hard fought case which involved a payment of over $100,000 to a paraplegic, the attorney for the claimant was awarded $20,000. Maryland Cas. Co. v. Marshall, 108 So. 2d 655 (Fla. 1958), (mem.) (author's information on fees from claimant's attorney, by letter dated Aug. 14, 1961).

STATEMENT OF ARTHUR LARSON, FORMER UNDER SECRETARY OF LABOR AND HEAD OF THE U.S. INFORMATION AGENCY

Mr. LARSON. I want to express my gratitude for this opportunity to comment on the proposed amendments to the FECA.

I have no prepared statement. With your permission I thought I would run down the list of suggested changes and comment briefly on them, taking up each one of the bills that was sent to me as pending, and making at least a very small comment.

In H.R. 10721 the first item is the raising of the maximum benefit. I am definitely in favor of that. I think I would only go a bit further and say that in the particular case of the Federal Employees' Compensation Act, because of its unique character, it would be perfectly justifiable to remove the maximum limit altogether.

Mr. SCHEUER. You mean the dollar limitation, not the percentage limitation?

Mr. LARSON. Not the percentage, no.

Mr. SCHEUER. Would you stick to the two-thirds, or would you go to the 100 percent as Mr. Horovitz suggested?

Mr. LARSON. I hadn't heard that suggestion. I came in just a few minutes ago. However, the percentage of average wage that is usually adopted is somewhere between 60 and 75 percent. I think two-thirds is the commonest. I would certainly not go to 100 percent for a number of reasons. No, I don't think that I would change the percentage figure, but the maximum, the fixed dollar maximum is a source of most of the difficulty with compensation acts because it obviously doesn't rise automatically as wages and costs-of-living figures rise.

In the particular case of the Federal Employees' Compensation Act, it strikes me that you do not have the distinctive reason why a fixed dollar maximum was thought necessary in compensation acts in the first place.

I think I can best illustrate this by something that happened, I believe, in Arizona. Generally, of course, the theory of workmen's compensation is that the injured workman automatically should receive something related to his previous earning level, and the arbitrary figure of two-thirds or something of that sort is adopted.

The minute you impose a fixed dollar maximum you disturb and distort that relationship. But I think a moment's thought will show that, if you have people earning millions of dollars and they are covered by the act as they are in many acts, it might be thought necessary here and there to do something about the fact that you might have some rather startling looking compensation benefits.

This, I believe, actually happened. I am trusting my memory now, but I seem to recall a case out in Arizona at a time when they had no maximum at all.

Mr. DANIELS. The idea primarily was to take care of the poor workman and a man that was receiving a high salary wasn't considered to be in the same category or classification as the ordinary workingman.

Mr. LARSON. That is correct.

Mr. DANIELS. So that was the reason for the dollar limitation?

Mr. LARSON. Yes, sir; but, of course, in modern acts the corporate executive and many others are apt to be covered. So I think in connection with private employment you do need some kind of a maximum. What happened in this instance was that a little movie starlet making, I think, $6,000 a week, fell off a horse in Arizona. Without a limitation she would be entitled to $1,000 a week.

I understand that Federal salaries have been going up from time to time. But I don't think we are at $6,000 a week yet.

Mr. SCHEUER. It gives you something to shoot for.

Mr. LARSON. This type of problem can't very well exist under a system where the levels of wage and compensation are fairly systematic and orderly and don't have these extremes. So with that side comment that one might just go a step further and remove the maximum altogether I would certainly approve of this feature of the amendment.

I am simply following H.R. 10721 down. I next find the provision which would permit the continuance of dependent benefits.

Mr. SCHEUER. Excuse me, Mr. Larson. Do I understand you would remove the dollar limitation and just leave it the flat two-thirds percentage limitation?

Mr. LARSON. Yes.

Mr. SCHEUER. Thank you.

Mr. DANIELS. One further point on that question.

Do you have any recommendations to make with respect to total and permanent disability?

Mr. LARSON. In what respect?

Mr. DANIELS. As to how much can be paid. You stated previously that you recommend 66⅔ or a maximum of 75 percent.

How about an employee who is totally and permanently disabled?

Mr. LARSON. I would not disturb the general pattern of the act in that respect. He gets benefits for life and I don't think that needs any particular change. As to the provision permitting benefits to children who are still attending school after the age of 18, that I think is an excellent change, a very important and desirable one. I would only go a bit further here, too. I would say that the age ought to be up to 25 rather than 23. Maybe that is just because I have had a son and son-in-law just graduate from law school and they don't do that nowadays at the age of 23. I think that 25 is certainly a much more realistic figure in view of the amount of professional training, graduate work, and so on that takes place these days.

There are some other tiny things in this that I didn't quite understand.

Mr. GIBBONS. May I interrupt there?

Mr. LARSON. Yes.

Mr. GIBBONS. I think this shows the wisdom of combining the Education and Labor Committees. The education side of this committee is working on the problem that you have just discussed and I think that this Congress will turn out some legislation that will help in the education.

I think it is appropriate to put in the record here because I know people are interested in education now and we will provide in other legislation what you have advocated, maybe not as direct a benefit, but ways and means by which people who really want a college education can get it.

Mr. SCHEUER. I think it is fair to say that within a short period of time we will have a complex of benefits available, either loans or grants, that will enable any student in good standing at a college or university to finance his tuition and living expenses through completion of his B.A. degree and his graduate work and if the benefits were in the form of a loan to pay back such a loan over a period of perhaps 10 years at an interest rate that would be zero until a year or so after he finished school and then perhaps not more than 3 percent.

We haven't quite arrived at that point yet, but I think Mr. Gibbons would agree with me——

Mr. GIBBONS. Next few weeks.

Mr. SCHEUER (continuing). Before very long any qualified student maintaining a satisfactory average——

Mr. GIBBONS. We are sorry it is too late to help you.

Mr. SCHEUER (continuing). Will be able to finish his university work.

Mr. LARSON. I am feeling pretty good just as it is. I might point out one very small thing—perhaps there is an explanation for this, but in the same paragraph there is a reference to unmarried students in the second half and no such reference in the first half.

I don't know whether this was intentional or not.

Mr. DANIELS. What bill are you referring to?

Mr. LARSON. This is 10721, section 204. The section speaks of any child without reference to whether he is married or not, whereas in the second part, which is the retroactive part, it applies only to a child if he is unmarried. The relevance of marriage in this connection could be debated. I would suggest a solution perhaps something like this, which is what we have adopted in the Council of State Government's draft, that the provision applies to a married student only if receiving substantially full support.

If a person gets married there is a kind of presumption I suppose that he has assumed his place as a responsible and self-supporting person, but that isn't necessarily the case or realistic these days.

This is a minor matter. It is perfectly all right the way it is, but I thought I would point it out just in case it was inadvertent rather than intentional.

The other main feature of 10721 is the increase in past awards for increases in the consumer price index, which I think is a very good move.

As I read the change it applies only to past awards. It doesn't seem by its terms to be an ongoing adjustment. Again, I am not quite sure whether that was intentional, but it struck me that the principle here involved of a kind of a sliding scale constantly relating or adjusting benefits to changes in the consumer price index might be something that could be built in for future benefits as well as past benefits.

H.R. 4478 also deals with this problem and has a little feature which might be considered, which I don't think is present in this one, and that is that it applies only if there is a change of as much as 3 percent.

I think it might be a desirable addition, because you don't want to have to tinker with benefits on small percentage points.

Every so often when the change amounts to enough to go to the bother of making the adjustment, and you can pick a figure like 3 percent, then I think it would be a good thing to have.

Mr. DANIELS. So the record may be clear on that point, Mr. Larsen, your recommendation is that where the Consumer Price Index increases by 3 percent or more it then would be reflected in the previous award or in the future awards?

Mr. LARSON. Yes. I don't really want on my own motion to suggest 3 percent. I notice that another bill had selected this figure and I think the principle of making the adjustment only when some substantial identified change has taken place is certainly correct.

The exact amount I haven't studied. This is generally comparable in principle to something we did in the Council of State Government's draft. We recommended a sliding scale dollar maximum tied to average earnings in the State, but in order to prevent this constant adjustment for very small amounts we broke the figure I think at a change of $3 in the average wage and at that point it would be adjusted appropriately.

In H.R. 10865, the first proposed amendment has to do with the revision of the treatment of schedule injuries. I think it can be summed up by saying that in effect it does away with the principle of the exclusiveness of schedule benefits or schedule benefit recoveries.

I think this is a reasonable proposal. I would approve of it. It reaches its result in two principal ways. First of all, the proposal removes the limitation of definition of schedule injury to injuries that affect only that member, by removing the word "solely" in the first part here.

I think that is a wise change. As matters now stand, taking the provision at its face value, if you had an arm neatly and cleanly severed you would come under the schedule provision and you would get the schedule amount. If you had an arm severed with shooting pains and other involvements this would not be schedule injury.

This is a distinction that is hard to justify, and for many reasons that I think are quite self-evident, I think that change is clearly defensible.

Then the amendment goes on to provide in effect that if there is actual disability remaining after the period of the schedule disability has expired, benefits will be paid for the actual disability. This is now done only as to the more severe injuries and disabilities.

The amendment would do it as to all disabilities. This I think too is justifiable. For example, suppose a man has a schedule injury now—let's say he is a violinist and he loses several fingers of his left hand. He is getting on in years and is in no position to learn a new profession. He will collect the appropriate number of weeks or dollars for the loss of his fingers, but when he is through he is just as disabled as he was before and the question is: now what do you do with him.

Now he has a provable factual disability, and it seems to me that it is quite appropriate under the purpose of the compensation act to pay the benefits for actual disability when, in fact, it is there.

The next thing I find in H.R. 10865 is a provision for lump-sum payment to widows on remarriage, which is a very good provision.

I hadn't realized it wasn't already in here. This is becoming a fairly familiar provision. It is in our Council draft and I would strongly support that.

The reason is that a widow drawing dependency benefits confronted with a decision whether to remarry or not may just be helped along to make a decision to remarry if she gets this little wedding present from the system.

It will save money so far as the compensation system itself is concerned because she is taken off the dependency rolls on becoming married.

Now, continuing with H.R. 10865, section 3, there is a desirable change which takes out the words "due to radiation or other causes" in dealing with the statute of limitations.

This present provision as it now stands was a partial attempt to deal with a grave injustice in quite a few compensation acts. The problem of latent injury, including radiation injury, which is not discovered or even perhaps discoverable until after the statute of limitations has run.

The only trouble with the present provision is no reason to limit to latent injuries or to radiation injuries.

This is one of the most common and one of the most tragic injustices but this is not the only one.

I first became acquainted with this problem when I was practicing in Milwaukee and had a case involving a young lady about 18 years old who acquired tuberculosis in a tuberculosis sanitarium, but nobody seemed to know it was tuberculosis for some reason. No doctor ever told her it was tuberculosis. She became disabled, and the insurance company thereupon contended that her claim was barred because more than, I think it was, 2 years had elapsed since she first acquired this disease—in spite of the fact that she didn't know what she had and the doctor didn't know what she had.

She was supposed to be barred. The court, however, did not sustain this opinion. The court adopted what is now the accepted correct rule on this subject, which is that the statute of limitations should never run until the claimant knows or reasonably ought to know the nature of his disease and its relation to his employment.

The amendment would simply adopt that general rule without this unnecessary reference to latent or radiation diseases.

The other part of section 3, as to the statute's not running against minors until majority or until a guardian is appointed or legal representative is a desirable provision.

I come to the portion of H.R. 10865 which deals with judicial review of decisions under the system. There are two ways you could approach this: one theoretical, one practical.

The theoretical approach would be to say that judicial review under compensation systems generally is routine. In fact, this is the only system in which you don't have judicial review, because of its unique character. You could also say that judicial review is a desirable change because you are dealing with a legal system, a statute, and you could argue that you ought to have a judicial tribunal as the last authority on the system.

The practical approach would be to make careful factual analysis of the decisions of the present Appeals Board and see whether they are satisfactory or not.

I would think that the second approach would be the more profitable in this case. I think if this kind of change is to be considered seriously, and it has been considered from time to time over the years, in all fairness to the present administration of the system one should make a careful analysis of the quality of the decisions that are emerging from the system before changing it.

I haven't done this with the thoroughness that I would want to apply to it if I were going to make this kind of change. I was quite familiar with the decisions of the Board when I was at the Labor Department, and I have the familiarity with them in the meantime which goes with the fact that I have to read all workmen's compensation cases that come out every year in order to prepare an annual supplement to my two-volume treatise, and this means something like 1,300 cases a year now. But I don't think that qualifies me to pass judgment on the standard of performance that is going on as to deciding cases.

My impression is that the Appeals Board for some years now has been doing a very good job by almost any standard. If that is the case, then I don't think I would change the system because of any theoretical arguments about the desirability of judicial review.

Judicial review will have one undesirable effect which is simply to protract and prolong the process of disposing of the cases.

If it would add something substantial to the quality of the decisions, that is another question, but I personally am not prepared at this moment to say that I know it would.

I am sure everybody is familiar with the curious reason why you have this problem before you; that is to say, the theory of the present system is that, unlike private compensation, workmen's compensation for Federal employees is not a quid pro quo for the giving up of a common law rate to recover damages for personal injury.

That right never did exist because of the immunity of the sovereign. Under the State acts it has been held repeatedly such as in *Meunier's* case in Massachusetts, 319 Mass. 421, 66 N.E. 2d 198 (1948), that it would be unconstitutional not to have judicial review.

You couldn't take away a man's common law rights to sue his employer and give him in its place a right under a statutory system with an administrative procedure and not somewhere along the line let him vindicate his legal rights.

So, he has to have judicial review in order to make the whole system constitutional. This is not so of the Federal system and was so held in *Calderon* v. *Tobin*, 187 Fed. 2d 514. That is why the Federal Employees' Compensation Act has this unique system.

I would say no more than that, that before a change of this gravity is undertaken, it seems to me one should be armed with the most exhaustive analysis of the character and the quality of the decision-making that has been going on.

I might touch briefly on some of the other amendments that have been proposed. My very good friend, Congressman Dante Fascell,

has introduced an amendment here, H.R. 5288, under which as soon as a claim is filed the claimant would be entitled to continue to draw his salary or compensation until the disposition of the case.

On principle I think this would be a very doubtful procedure. If you wanted to push it to the extreme it would come to this: That every time anybody had an accident of any kind, an automobile accident or a fall in the bathtub or anything else, there would be nothing to stop him from filing a compensation claim and continuing to draw his salary until the case had run its course.

Then you would have the problem of getting the money back again if it turned out it was not a valid claim. This sort of thing doesn't happen now because it wouldn't be worth any one's while to do it. But I think it is very questionable in principle to assume that every claim is meritorious until the opposite is proved.

You might cite present statistics, but they wouldn't mean much because it doesn't show you the kind of flood of claims you might get if this procedure were installed.

H.R. 596 adds all civil defense workers to the Federal act.

This, too, I would question.

Mr. SCHEUER. Off the record.

(Discussion off the record.)

Mr. LARSEN. I would like to add this one thing. I would not approve of sweeping all civil defense workers under the Federal Employees' Compensation Act. It would be a fiction. They are not employees of the Federal Government and to put them into the maximum could raise all kinds of complications.

In summary I then find myself in strong accord with the increasing of the benefits, the change of the schedule provision, and so on. I have reservations about the installation of judicial review unless a factual case is made out for the review indicating that it would improve the quality of the decisions.

Mr. SCHEUER. Thank you very, very much for your most stimulating testimony.

Mr. DANIELS. It has been brought out by some witnesses that the present appeals board is not really an independent board and therefore it is recommended that we have the judicial review.

Do you care to make any comment on that?

Mr. LARSEN. Yes. I think in practice it is independent. In the organization chart, of course, it is within the Labor Department. In fact, at least in my experience, it has operated independently.

Nobody ever attempted to influence its decisions. It was, at least in my time, composed entirely of very competent lawyers. Mr. Schwartz, whom I know, and who was brought here while I was here, is in that category, and we have had some of the best people in the country on the board.

In practice it is independent, whatever the theoretical relation to the Secretary of Labor may be.

Mr. DANIELS. Thank you, sir, so much.

Mr. SCHEUER. The committee is adjourned until further call by the Chair.

(Whereupon, at 10:30 a.m., the hearing was recessed, subject to call.)

(The following material was submitted for the record:)

STATEMENT OF ROSS A. MESSER, LEGISLATIVE REPRESENTATIVE OF THE NATIONAL ASSOCIATION OF POST OFFICE & GENERAL SERVICES MAINTENANCE EMPLOYEES

Thank you, Mr. Chairman, and members of the committee, for the opportunity to appear before you today. I am Ross A. Messer, legislative representative of the National Association of Post Office & General Services Maintenance Employees, with headquarters at 724 Ninth Street, NW., Washington, D.C.

This association is the national exclusive representative with the Post Office Department for all maintenance employees in the postal field service, under a national election held in 1962.

This association has also formal recognition with the General Services Administration, representing maintenance employees in the Public Buildings Services, GSA. This association has locals in the 50 States, Puerto Rico, Virgin Islands, and the District of Columbia.

It is a pleasure for me to have this opportunity to testify before the Select Subcommittee on Labor on the proposed amendments to the Federal Employees' Compensation Act. We wish to extend our thanks to you, Mr. Chairman, for scheduling hearings on this all important subject, and to Congressman Hathaway for the introduction of H.R. 10721, setting forth the administration's proposed amendments to the Federal Employees' Compensation Act.

It has been several years since the Federal Employees' Compensation Act was amended. Due to the changing times, the increase in the cost of living and the rise in Federal salaries, it is time for a look at the provisions of the Federal Employees' Compensation Act.

This association strongly endorses the provisions of H.R. 10721, to liberalize certain provisions of the Federal Employees' Compensation Act. We strongly endorse--

1. Increasing the limit for computing augmented compensation for dependents from $420 to $546;

2. An increase in the maximum monthly compensation to $685 from the present $525 and a new minimum of $210 from $180, unless the employee's monthly pay is less than the newly established minimum; in which case, his monthly rate of compensation for total disability would equal his full monthly pay;

3. In survivorship cases, the extension of benefits for educational purposes to unmarried children up to age 23, to permit their continued education or training on a full-time basis; and

4. Increased benefits for present beneficiaries of the act commensurate with the rise in the cost of living since the year the benefits were awarded, offset by any increase authorized by Congress since the date of the award.

We fully realize that the special presidential panel studying the retirement systems of the Federal Government is considering the provisions of the Federal Employees' Compensation Act and its connection with the retirement system. At the present time, employees receiving disability compensation under this act, receive 75 percent of their base pay if they have dependents. If they have no dependents, they receive 66⅔ percent of base pay.

Considerable discussions have taken place in the Government relative to the extensive use of sick leave by employees in some agencies. In averaging out the amount of sick leave used by the employees, it is our understanding that sick leave used for any purpose, including on-the-job injuries, is included in the average. This makes a higher rate of sick leave usage.

Under the present provisions of the Federal Employees' Compensation Act, it is advantageous to the employee to use his sick leave instead of compensation, due to the difference in pay, 25 percent for an employee with dependents and one-third for employees without dependents.

It is our belief that any employee injured in the line of duty who is off duty due to the injury for more than 3 days, should be placed under the Federal Employees' Compensation Act, retroactive to the first day of his injury and that he should be paid full pay until he has sufficiently recovered to return to his former position.

Mr. Chairman, it is realized that this is a change in an established law which has been in existence for many years. However, it is our belief that any employee injured in the line of duty is entitled to full compensation, the same pay that he would draw if he were on the job, during the entire period of recovery.

I wish to again thank you, Mr. Chairman, for the opportunity to appear before you and your committee members today.

STATEMENT OF FLOYD E. HUFFMAN, PRESIDENT NATIONAL RURAL LETTER CARRIERS' ASSOCIATION

Mr. Chairman, members of the committee, I am Floyd E. Huffman of the National Rural Letter Carriers' Association, an organization with a membership of 42,000 representing the regular, substitute, and retired rural carriers of the Nation.

May I first express the appreciation of this association to this committee for scheduling public hearings on proposals to improve the Federal Employees' Compensation Act. It has been 5 years since any changes have been made and a much longer period since any major revisions have been adopted.

This hearing is late in this session of Congress, and, although it appears unlikely that bills on compensation would be enacted prior to adjournment, we appreciate the fact that the views and opinions of interested parties will be made available for consideration. We are advised that the President's Cabinet Committee is studying an "equitable and long-range proposal to perfect workmen's compensation protection for Federal employees."

It would appear that the recommendations of the Cabinet Committee would be available to Congress before final enactment of new legislation in this area.

There is no question but that improvements are both needed and desirable. We commend Representative William D. Hathaway for the introduction of H.R. 10721 which would increase compensation payments to those now on the compensation rolls in line with the increase in the consumer price index, continue benefits for surviving children who are furthering their education to age 23 and improve the maximum and minimum limitations of present law. We endorse this bill because it does provide for decided improvements in the act. We do not believe, however, that this fully meets the present day need for objective changes.

Many proposals have already been placed before the committee for consideration. The minimum which would be provided under H.R. 10721 still falls far short, in our opinion, of guaranteeing an adequate compensation benefit payment to an injured worker. It is also felt that the maximum benefit should be increased to more nearly conform to the higher salary schedules which have been enacted since the present formula was adopted.

We would also recommend that the provisions of H.R. 10865, introduced by Representative James G. O'Hara be carefully considered. The recommended change in this bill providing for a hearing on compensation claims while they are under adjudication by BEC would greatly improve the opportunity for all facts to be properly presented for consideration. It would likely eliminate many subsequent appeals. The additional provision of this bill, which would permit an injured employee to receive compensation for permanent loss of wage-earning capacity should also be carefully considered. There is an inconsistency in the present act.

We would also ask consideration of the provision of H.R. 10865 which provides a 2-year, lump-sum payment to a survivor beneficiary upon remarriage. It is desirable that some change in law be made to correct the problem which presently exists which is preventing marriage in many cases.

Mr. Chairman, we would also ask that H.R. 5288 be considered by this committee. This bill, introduced by Representative Dante B. Fascell would correct a present serious failing in the present act. Injured workers today frequently experience lengthy delays in processing and final determination of his claim. During this period he frequently uses all sick and annual leave and then goes on leave without pay. This works a severe hardship on the employee and his family. By using leave the employee is preventing loss of current income, which is frequently necessary to meet current financial obligations. The use of sick leave, however, to cover required absence from duty due to a compensable injury results in the employee liquidating a valuable protection which might be badly needed at some later period of illness. The provisions of H.R. 5288 would allow an injured employee to continue to receive his regular pay between the time of his injury and the time he receives his first compensation payment. The bill would provide for recovery of any amounts due the Government under a withholding procedure equitable to the employee and the Government. This bill would constitute a major improvement in the act and we do strongly urge that its provisions be incorporated in any bill drafted and reported by this committee.

Mr. Chairman, this association urges that the committee reports favorably H.R. 10721 and we trust that the meritorious provisions of some of the other bills pending before the committee may be made a part of that bill.

In closing, may I again express our appreciation for the opportunity to submit this statement in regard to the bills pending before the committee to amend the Federal Employees' Compensation Act.

STATEMENT OF EVERETT G. GIBSON, PRESIDENT OF THE NATIONAL FEDERATION OF POST OFFICE MOTOR VEHICLE EMPLOYEES, AFL–CIO,

Mr. Chairman and members of the subcommittee, my name is Everett G. Gibson. I am president of the National Federation of Post Office Motor Vehicle Employees. We are affiliated with the American Federation of Labor and Congress of Industrial Organizations, and the Government Employees' Council, AFL–CIO, with offices at 412 Fifth Street NW., Washington, D.C.

We have national exclusive recognition under Executive Order 10988, and are the sole bargaining representatives for all motor vehicle employees under the terms of the national agreement (POD 53) with the Post Office Department. Our membership consists of garagemen, automotive mechanics, technical mechanics, vehicle and tractor-trailer operators of the rank-and-file employees. We also have locals with formal recognition for all MVS supervisors of both the maintenance and operation divisions of our service. Our personnel maintain the maintenance of all Government-owned vehicles used by the Post Office Department, and haul all bulk mails from terminals, airports, and post offices.

Mr. Chairman and members, we appreciate this opportunity to express our views on H.R. 10721 introduced by Congressman William D. Hathaway, and H.R. 10865 introduced by Congressman O'Hara that would amend the Federal Employee's Compensation Act. Our national convention has adopted resolutions that would provide a comprehensive review of the Federal Employees' Compensation Act, which would meet the needs of our membership.

We wholeheartedly endorse H.R. 10721 which will liberalize certain provisions of the Federal Employees' Compensation Act that will improve benefits with respect to maximum and minimum payment, benefit increases geared to the consumer price index for those now on the compensation rolls.

H.R. 10721 would increase the limit for computing augmented compensation for dependents from the present $420 to $546; would increase the maximum monthly compensation from the present $525 to $683; and a new minimum of $210 from the present $180, unless the employee's pay (monthly) is less than the newly established minimum, in which case his monthly rate of compensation for total disability would equal his full monthly pay. In survivorship cases, the extension of benefits for educational purposes to unmarried children up to age 23, to permit continued education or training on a full-time basis; increased benefits for present beneficiaries of the act commensurate with the rise in the cost of living since the year the benefits were awarded, offset by any increase authorized by Congress since the date of the award.

We also endorse H.R. 5288 introduced by Congressman Dante B. Fascell, that would alleviate financial hardship to employees while awaiting compensation benefits after injury and to accumulate annual and sick leave during periods of disability.

Mr. Chairman and members of the committee, I want to thank you for allowing me to appear before you on this most important legislation and we urge that the subcommittee take favorable action at an early date on all bills that will meet the needs of employees covered by the Federal Employees' Compensation Act.

STATEMENT OF HAROLD MCAVOY, NATIONAL PRESIDENT, POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS & GROUP LEADERS, AFL–CIO

Mr. Chairman and members of the select subcommittee on labor, for the record my name is Harold McAvoy. I am national president of the Post Office Mail Handlers, Watchmen, Messengers & Group Leaders. We are members of the AFL–CIO and the Government Employees' Council.

Our national organization would like to go on record as fully endorsing H.R. 10721 and H.R. 5288. Both of these bills, if enacted into law, would be a giant step in the right direction. H.R. 10721 and H.R. 5288 would amend the Federal Employees' Compensation Act. The increase in compensation from $525 to $686, and the minimum from $180 to $210 would be a tremendous help for our people on all injuries.

In your considerations, all postal employees will be grateful if the benefits received would be in line with the cost of living.

The benefits to complete the education of children of survivors to age 23, with benefits stopping at age 23, or the completion of their education is fully endorsed by our national organization.

In closing this statement, I wish to go on record for speedy and favorable consideration to the worthy pieces of legislation before your committee, H.R. 10721 and H.R. 5288, and to add "thank you" for the privilege of appearing before you whereas I was able to give you and the members of your committee the thinking of our national organization.

WOODROW WILSON SCHOOL OF PUBLIC AND
INTERNATIONAL AFFAIRS, PRINCETON UNIVERSITY,
Princeton, N.J., September 13, 1965.

HON. ELMER J. HOLLAND,
Chairman, Select Subcommittee on Labor, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN HOLLAND: I appreciate your letter of September 1 sending me a copy of H.R. 10721 for comment.

It seems to me a meritorious bill deserving the support of your subcommittee and of the Congress.

I believe, however, that the bill would be greatly improved if the increase of compensation for present beneficiaries, provided in title III, section 301, were related to changes in the index of weekly wages rather than the Consumer Price Index. It is clearly the intent of the original law that compensation benefits be related to the injured worker's wage level. I presume that it is the intention of H.R. 10721 that this relationship be maintained rather than eroded by the passage of time. However, adjustments based on the Consumer Price Index will not maintain the desired relationship. Since wage increases tend to outrun price increases, the injured worker would be put to still further disadvantage compared to the more fortunate majority of labor.

Section 301 also appears to have an ambiguity. It seems to provide that all current recipients of compensation will have their monthly payments increased by the annual average percentage change in the Consumer Price Index since the year in which the award was first made. Thus, if the annual average change over the past 6 years was, for example, 2 percent, and the change during the last year was also 2 percent, a worker who first received an award 6 years ago would receive the same increase as a worker who received an award only last year, although there had been a price increase of over 12 percent since the first award in one case and only 2 percent since the award in the other case. I doubt that this is the intention of the author. The wording of the bill may need some clarification. We have, of course, not seen the last of price increases or wage increases. Would it not, therefore, be well to make provision for automatic adjustments to take care of such changes in the future as well as in the past?

With all good wishes to you,

Faithfully,

HERMAN M. SOMERS,
Professor of Politics and Public Affairs.

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS
Washington, D.C., September 17, 1965.

HON. ELMER J. HOLLAND,
Chairman, Select Subcommittee on Labor, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR MR. HOLLAND: Thank you for your letter of September 7, inviting the society to present its views on amendments proposed to the Federal Employees' Compensation Act. As an organization with many of its 64,000 members employed by the Federal Government, the National Society of Professional Engineers has for a number of years maintained an interest in questions of policy and legislation affecting the interests of engineers in Government.

The society strongly supports H.R. 10721, which proposes several needed amendments to the Federal Employees' Compensation Act, and believes that you

and the other members of your subcommittee are to be commended for the prompt attention given it. The society has one suggestion which we feel would improve somewhat the administration's recommended amendments.

Of particular interest to engineers employed by the Federal Government is the provision of H.R. 10721, which would increase the maximum monthly benefit authorized, currently set at $525. Since the career patterns of engineers normally extend into the upper grades, they are likely to be affected by the present limitation, which we believe to be clearly inadequate.

However, the society questions both the necessity and equity of imposing any absolute dollar limitation on maximum benefits, as proposed by H.R. 10721. From the small minority of employees involved, it does not appear possible that the Government could save enough to justify such discrimination. It is generally true that financial obligations rise in more or less direct proportion to income, and it would not appear equitable to impose a greater burden of readjustment upon 7 percent of employees affected, than upon the other 93 percent who would receive the full allowance of 75 percent of basic monthly compensation.

An additional consideration stems from the certainty that this discriminatory limitation will affect a greater proportion of disabled individuals as time goes on, thus requiring additional legislation every few years. Although it has been stated that this is intended as an "interim" measure, it must be pointed out that "temporary" legislation is frequently longer lived than originally intended.

With these thoughts in mind, the society urges that your subcommittee take prompt action on H.R. 10721, and that it remove the dollar limitation on maximum monthly benefits.

Thank you again for your consideration of our views on this subject.

Very truly yours,

PAUL H. ROBBINS, P.E., *Executive Director.*

STATEMENT OF MICHAEL J. CULLEN, PRESIDENT, THE NATIONAL ASSOCIATION OF SPECIAL DELIVERY MESSENGERS

Mr. Chairman and members of the subcommittee, by way of identification, I am Michael J. Cullen, president of the National Association of Special Delivery Messengers. We are affiliated with the American Federation of Labor-Congress of Industrial Relations and have been accorded national exclusive recognition for the employees of our craft by the Post Office Department under Executive Order 10988.

We welcome this opportunity to present the views of our membership on H.R. 10721 and related bills which are before this committee for consideration. We fully support the provisions of H.R. 10271 to increase the augmented compensation limit, to increase the maximum and minimum compensation and the amendment to the base for computing the death benefit under the Federal Employees Compensation Act.

We also endorse the proposed change in paragraph C of section 10 of the act to provide more liberal education benefits for surviving children.

We also support the provisions of title III of H.R. 10271 which would raise compensation payments for disability or death by the increase in BLI figures since the date of the award, less any adjustment previously authorized by Congress.

We subscribe to the intent and purpose of H.R. 5288 which would continue the pay of an injured employee until such time as he receives his compensation checks. Under the present system, it takes several weeks to process a claim. An injured employee is without income for at least 4 weeks and in many cases for much longer periods of time . The provision of this bill to accrue sick and annual leave for an injured employee, who returns to work, is also a noteworthy one. We solicit your favorable consiration of these two very important matters.

We also favor the provisions of H.R. 6554 to provide for the establishment of a Federal employee accident prevention program.

Mr. Chairman and members of the committee, we deeply appreciate the interest and concern that you have demonstrated for the welfare of the postal and Federal employees. We thank you for the privilege of being able to express our views to you on these vital subjects.

MIDDLETOWN, PA., *October 1, 1965.*

Congressman ELMER J. HOLLAND,
House of Representatives,
Washington, D.C.

DEAR MR. HOLLAND: I strongly urge you to vote for the passage of H.R. 2624, the optometry amendment.

Generalities may be misconstrued, and in order to avoid this, please consider voting for this bill.

Thank you.

Sincerely yours,

MOREY X. POWELL, O.D.

AMERICAN OPTOMETRIC ASSOCIATION,
St. Louis, Mo., September 30, 1965

Hon. ELMER J. HOLLAND,
U.S. House of Representatives,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN HOLLAND: I am writing to you concerning H.R. 2624 to urge your support of the optometric amendment that has been suggested. It is extremely important that the legislative intent of the bill be made clear.

Your consideration of the request is requested most respectfully.

Sincerely,

MELVIN D. WOLFBERG, O.D.

PENNSYLVANIA OPTOMETRIC ASSOCIATION,
Hershey, Pa., September 29, 1965.

Congressman ELMER J. HOLLAND,
Chairman, Education and Labor Subcommittee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HOLLAND: On behalf of the Pennsylvania Optometric Association I would urge favorable reporting of H.R. 2624 along with optometry's amendments.

Too many times in the past we find officials administrating differently than the legislative intent. We feel that being specific about optometric care will alleviate these problems and thus ultimately give better visual care to the public.

Sincerely,

RAY L. KINCH, O.D., *President.*

THE WESTERN PENNSYLVANIA OPTOMETRIC SOCIETY, INC.,
McKees Rocks, Pa., September 29, 1965.

ELMER J. HOLLAND,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. HOLLAND: Thank you for your letter of September 16, 1965, and for your consideration of testimony of Dr. Eugene McCrary in behalf of H.R. 2624. We believe that inclusion of the freedom to select optometric service will represent a significant improvement—at no cost—to the Federal Employees' Compensation Act.

We respectfully urge your support toward the reporting out and enactment of this legislation.

Sincerely yours,

LEONARD J. SCHMIDT, O.D., *President.*

[Telegram]

DILLSBURG, PA., *September 29, 1965.*

Hon. ELMER J. HOLLAND,
Chairman, Education and Labor Subcommittee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HOLLAND: I am taking this opportunity to write you in regard to H.R. 2624. I ask that you vote favorably for this bill along with the amendments to include optometry. As vice president for legislative affairs of

the Pennsylvania Optometric Association, I have often seen legislative intent go unheeded because it was not spelled out in the bill. For this reason I would urge that you favor specifically adding optometry's amendments to this legislation to ultimately insure the freedom of choice of practitioners for all people.

Sincerely yours,

ALVIN LEVIN, O.D.,
Vice President, State Legislative Affairs of the Pennsylvania Optometric Association.

LATROBE, PA., *September 16, 1965.*

Re H.R. 2624.

Hon. ELMER J. HOLLAND,
House of Representatives,
Washington, D.C.

DEAR SIR: As a member of the Select Subcommittee on Labor, I would appreciate your help and support of the action on H.R. 2624. This act as it now stands shows discrimination and amending H.R. 2624 will give freedom of choice to the Federal employee.

I am asking for your support to help advance my profession. Thank you.

Respectfully yours,

ROBERT J. JOHNSON, O.D., F.A.A. O.

MEADVILLE, PA., *September 11, 1965.*

The Honorable ELMER J. HOLLAND,
House of Representatives, House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE HOLLAND: In your position as chairman of the important Select Subcommittee on Labor, Committee on Education and Labor, and a fellow Pennsylvanian, I would like to urge your serious consideration of H.R. 3826.

As our Congressman, representing the Commonwealth of Pennsylvania, I know that you are aware that Federal employees may receive podiatry treatment, by podiatrists, under the two Government-wide health benefit plans.

It appears to me that it is incongruous that a Federal employee may avail himself of podiatry services to correct a foot injury which occurs after working hours, and yet this same Federal employee is not covered if the accident happens on the job.

H.R. 3826 will amend the Federal Employees' Compensation Act to allow the employee a free choice of doctors in situations described in the above paragraph.

Again I respectfully request your favorable consideration of H.R. 3826.

Very truly yours,

JOHN C. PANKRATZ, D.S.C.

SEPTEMBER 27, 1965.

Hon. WILLIAM D. HATHAWAY,
House of Representatives,
Washington, D.C.

MY DEAR MR. HATHAWAY: This letter concerns your measure H.R. 10721 which would amend the Federal Employees' Compensation Act. It particularly is in regard to section 204 as found on page 3 with regard to the definition of an educational or training institution at lines 12 and 13.

Most respectfully I would urge you to consider utilizing the definition of an educational institution as defined in the recent social security amendments contained in Public Law 89-97 which states:

"An educational institution is defined under section 202(d)(8)(C) as follows:

"(C) An 'educational institution' is (i) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (ii) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally recognized accrediting agency or body, or (iii) a nonaccredited school or college or university whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited."

This would be in lieu of the administrative authority which the bill, as introduced, would repose in the Secretary of Labor. The definition in Public Law 89-97 is a good workable definition that is already developing administrative authority.

If it is possible and timely I would like your permission to file a statement to this effect in the record of the hearings on H.R. 10721.

Sincerely yours,

R. A. FULTON,
Executive Director and General Counsel.

SEPTEMBER 27, 1965.

HON. CHARLES DONAHUE,
Solicitor of Labor,
U.S. Department of Labor, Washington, D.C.

MY DEAR MR. DONAHUE: This letter concerns your most pertinent testimony on September 8, 1965, before the House Select Subcommittee in support of H.R. 10721.

Enclosed is a carbon copy of my letter of September 27, 1965, to Congressman Hathaway concerning our views on the definition of an educational institution in the measure.

From your testimony it is obvious that you are familiar with the definition of an educational institution as contained in the Social Security amendments of Public Law 89-97 and you refer to them in your testimony on page 6. I feel it appropriate that you have for your files our recommendation to Congressman Hathaway.

So often people are prone to think solely in terms of a "college education" rather than all types of postsecondary education. I notice the last sentence of the first paragraph of your testimony on page 6 refers only to "college."

H.R. 10721 is a most worthy measure and I feel that the quality business schools would like to lend their support to it. I feel that support would be even stronger if the measure were to be amended to include the statutory definition of an educational institution as outlined in section 202(d)(8)(C) of Public Law 89-97.

Ir there is other information which you may desire about quality private business schools, please do not hesitate to have a member of your staff contact me.

Sincerely,

R. A. FULTON,
Exectuive Director and General Counsel.

BURLINGTON, VT., *March 7, 1965.*

HON. ELMER J. HOLLAND,
Chairman, Subcommittee on Labor,
Washington, D.C.

DEAR CONGRESSMAN HOLLAND: I am one of those 6,800-plus forgotten men who are receiving total disability compensation from the Bureau of Employees' Compensation due to injuries while under civil service in the Internal Revenue Service.

I was operated on in 1953—have been receiving total disability compensation since 1955. I had a bad ruptured disk in my back, also lost control of my left leg.

When the Weir-Prouty bill was signed into law in August of 1960, we received a small increase. Since that time the cost of living has gone up at least 10 percent, so we feel we should be considered for an increase in compensation.

The regular and retired civil service group have had several increases since 1960—also the military and the social security group are being considered for another increase which they should have.

That is the reason I say we seem to be the forgotten men.

I wonder if there is a bill in the House now or if one will be introduced soon to give those of us who are receiving compensation through BEC an increase this year.

I will be 70 years old in September. I would appreciate hearing from you at your convenience.

Very truly yours,

FRANK J. MULLINS.

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(Excerpts from "Workmen's Compensation and Rehabilitation Law," suggested State legislation, council of State Governments, provided by Dr. Arthur Larson.)

WORKMEN'S COMPENSATION AND REHABILITATION LAW

(From suggested State legislation of the Council of State Governments)

FOREWORD

Each year a volume of "Suggested State Legislation" is developed and approved by the Committee of State Officials on Suggested State Legislation of the Council of State Governments. Members of the committee—State legislators, attorneys general or their deputies, members of commissions on interstate cooperation, uniform law commissioners, legislative service agency personnel, and other State officials—meet annually to consider proposals from individual State officials, organizations of State officials, State agencies, legislative committees, and professional and public service associations. When approved by the committee as being of interest to the States, proposals appear in "Suggested State Legislation." While generally cast in the form of legislation, proposals constitute suggestions posed for consideration, rather than recommendations.

This entire act has been drafted over a period of 4 years by a special Advisory Committee on Workmen's Compensation, under the chairmanship of Arthur Larson, of the Duke University School of Law. This group, consisting of members from State and Federal agencies, law schools, industry, labor, and the medical profession, but acting in their private capacities, met with a Subcommittee on Workmen's Compensation of the Committee of State Officials on Suggested State Legislation on an average of 2 or 3 days every 3 or 4 months. As is true with all legislation including suggested legislation the draft act represents compromises. Necessarily, individual members of the drafting group have reservations about certain provisions. Nevertheless, the act as a whole represents the consensus of its drafters and is presented as a proposal which merits the earnest consideration of the States.

The Committee of State Officials on Suggested State Legislation and the Council of State Governments are grateful to the advisory committee. Its members gave unstintingly of their time and talents over a long period of time. Their product—a comprehensive, integral draft act in an area of major interest to the States—represents a great public service.

BREVARD CRIHFIELD,
Executive Director, Council of State Governments.

ADVISORY COMMITTEE ON WORKMEN'S COMPENSATION

Arthur Larson (chairman), School of Law, Duke University

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Samuel D. Estep, Law School, University of Michigan
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Donald L. Ream, Bureau of Labor Standards, U.S. Department of Labor.
James J. Reid, member, Industrial Commission, South Carolina
Lawrence Smedley (1963–64), American Federation of Labor-Congress of Industrial Organizations
Oscar Smith, U.S. Atomic Energy Commission
Ashley St. Clair (formerly with Liberty Mutual Insurance Co.)

INTRODUCTION

(By Arthur Larson)

It may be helpful to make several general observations at the outset which apply to the draft as a whole. The committee which prepared the draft had several main purposes by which it was guided at every point where a major choice between conflicting or competing provisions was analyzed.

The first objective was completeness. This means that a good workmen's compensation act should be complete as to coverage of employers and employees, as to kinds of injuries and diseases covered, as to work-connected circumstances under which liability arises, and as to range and duration of benefits supplied. Departures from this concept of completeness are tolerable only when overpowering administrative considerations or considerations of public policy require an exception. The reason for the importance of completeness in a workmen's compensation act is that this class of legislation has been entrusted with one segment of the total job of protecting workers against wage loss. The Federal Social Security Act has assumed the main task of handling old-age retirement, as well as survivorship and total permanent disability without respect to industrial origin. The unemployment compensation system is designed to take care of economically caused wage loss. But as to industrial injury and death, the basic responsibility has been placed upon the workmen's compensation acts, and to the extent that these acts fail to provide complete coverage or protection, there is a strong possibility that that protection is not provided at all by any public system. At best, the cases missed by an adequate compensation coverage are perhaps picked up by public assistance, with the result that the public ultimately pays the bill anyway, and the protection is afforded in much less dignified and less satisfactory form. For example, the draft's provision of benefits for life to a totally permanently disabled worker is more generous than the provisions of many States; but the draft's allowances for the least serious injuries—such as those causing less than 1 week's disability which normally give rise to no social problems—are less generous than in some States. Similarly, the draft's provisions of dependency benefits to widows for life or until remarriage are more generous than the corresponding provisions of many acts; but the draft also initiates a new type of provision under which a person (other than wife or minor child) will not be deemed dependent if his dependency is the result of failure to make reasonable efforts to secure suitable employment. Other illustrations of this kind will appear in the section-by-section analysis which, it is hoped, will indicate that the draftsmen have been just as concerned to avoid the frittering away of the compensation dollar in ways which serve no valid compensation purpose as they have been to insure the full carrying out of objectives of the compensation and rehabilitation system.

The second major purpose was to achieve efficiency. That is, the idea was to get the maximum achievement of the important purposes of workmen's compensation out of the compensation dollar, with a minimum of expenditure of that dollar on matters not centrally related to the purpose of workmen's compensation.

The third major purpose was to emphasize that rehabilitation is a normal and essential function of the workmen's compensation system. This affects the compensation process from the moment of injury, and involves the handling of medical services, the entire process of administration, and various special provisions about benefits and services.

The fourth general objective was to minimize litigation by putting to rest as many known controversies as can be best handled by a deliberate choice of statutory language. If under a particular type of provision, litigation has arisen in several States because of uncertainty about the meaning of the provision, an attempt has been made here to answer the question one way or another, so that the same litigation need not be repeated in other States. In addition, where particular words and phrases have acquired a large body of interpretative case law, they have been disturbed as little as possible, so as to avoid the necessity of creating a fresh body of decisional law to interpret some new and unfamiliar phrase.

The fifth purpose has been to call attention of all States to certain provisions that may be expected to anticipate problems not now covered by most statutes. In a number of instances, one or two States may have found it necessary to devise a somewhat novel provision to deal with a specific problem, and, although the same problem can be expected to arise in other States, these other States may

not as yet have been under the necessity of dealing with the same problem. In such cases, a great deal of injustice, hardship, and unnecessary litigation can be avoided by profiting by the experience of the State which has already dealt with the question, and putting in the provision in advance.

In short, the object of the suggested workmen's compensation and rehabilitation law is to bring to the attention of all the States the best provisions and the best experience of all other States, with the addition of a sustained and intensive analytical treatment by a group of experts, who, where necessary, made modifications, innnovations, and adaptations that seemed essential to achieve the major purposes just described and to relate the parts of the draft into a consistent whole.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act to provide for workmen's compensation and rehabilitation."]

(Be it enacted, etc.)

PART I

COVERAGE AND LIABILITY

Section 1. Liability for Compensation. (a) Every employer subject to this act shall be liable for compensation for injury or death without regard to fault as a cause of the injury or death.

(b) A contractor who subcontracts all or any part of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this act. Any contractor or his carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another (1) to have work performed consisting of (a) the removal, excavation or drilling of soil, rock or minerals, or (b) the cutting or removal of timber from land, or (2) to have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation or profession of such person, shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture who contracts for removal of timber from such land.

(c) Liability for compensation shall not apply where injury to the employee was occasioned solely by his intoxication or by his willful intention to injure or kill himself or another.

Section 2. Definitions. As used in this act unless the context otherwise requires:

(a) "Injury" means any harmful change in the human organism arising out of and in the course of employment, including damage to or loss of a prosthetic appliance, but does not include any communicable disease unless the risk of contracting such disease is increased by the nature of the employment.

(b) "Death" means death resulting from an injury.

(c) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liabilities of employers under this act and includes a self-insurer.

(d) "Self-insurer" is an employer who has been authorized under the provisions of this act to carry his own liability to his employees covered by this act.

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(e) "Agency" means the [name of state administrative agency].
(f) "Director" means the director of the [name of state administrative agency].
(g) "Board" means the [Workmen's Compensation Appeals Board].
(h) "Disability" means, except for purposes of subsection (c) of Section 16 relating to schedule losses, a decrease of wage earning capacity due to injury. Wage earning capacity prior to injury shall be the average weekly wage as calculated under Section 19. Wage earning capacity after the injury shall be presumed to be actual earnings after the injury. This presumption may be overcome by showing that these earnings after injury do not fairly and reasonably represent wage earning capacity, and in such cases, wage earning capacity shall be determined in the light of all factors and circumstances in the case which may affect the injured worker's capacity to earn wages.
(i) "Income benefits" means payments made under the provisions of this act to the injured worker or his dependents in case of death, excluding medical and related benefits.
(j) "Medical and related benefits" means payments made for medical, hospital, burial and [illegible] services as provided in this act other than income benefits.
(k) "Compensation" means all payments made under the provisions of this act, representing the sum of income benefits and medical and related benefits.
(l) "Medical services" means medical, surgical, dental, hospital, nursing and medical rehabilitation services.
(m) "Person" means any individual, partnership, firm, association, trust, corporation, [state compensation insurance fund], or legal representative thereof.
(n) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer.
(o) "Agriculture" means the operation of farm premises, including the planting, cultivating, producing, growing and harvesting of agricultural or horticultural commodities thereon, the raising of livestock and poultry thereon, and any work performed as an incident to or in conjunction with such farm operations. It shall not include the processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market.
(p) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone and the Territories of the United States.
(q) "Alien" means a person who is not a citizen, a national or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(r) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this act.

(s) "Actually dependent" means dependent in fact upon the employee, and refers only to a person who received more than half of his support from the employee and whose dependency is not the result of failure to make reasonable efforts to secure suitable employment. When used as a noun, the word "dependent" means any person entitled to death benefits under Section 18, or any person for whom added benefits for disability are provided under Section 16.

(t) As used in Sections 16 and 18.

(1) "Wife" or "widow" means only the employee's wife living with or actually dependent upon him at the time of his injury or death, or living apart for justifiable cause or by reason of his desertion.

(2) "Widower" means only the deceased employee's husband living with and actually dependent upon her.

(3) "Child" means a child under 18 years of age; or a child 18 years of age or over and physically or mentally incapable of self-support; or any child 18 years of age or over who is actually dependent; or any child between 18 and 25 years of age who is enrolled as a full-time student in any accredited educational institution. The term "child" includes a posthumous child, a child legally adopted or for whom adoption proceedings are pending at the time of death, an actually dependent child in relation to whom the deceased employee stood in the place of a parent for at least one year prior to the time of death, an actually dependent stepchild or an actually dependent acknowledged illegitimate child. "Child" does not include a married child unless receiving substantially entire support from the employee. "Grandchild" means a child, as above defined, of a child, as above defined, except that as to the latter child, the limitations as to age in the above definition do not apply.

(4) "Brother" or "sister" means a brother or sister under 18 years of age, or 18 years of age or over and physically or mentally incapable of self-support, or 18 years of age or over and actually dependent. The terms "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption; but the terms do not include married brothers or married sisters unless receiving substantially entire support from the employee.

(5) "Parent" means a mother or father, a stepparent, a parent by adoption, a parent-in-law, and any person who for more than one year immediately prior to the death of the employee stood in the place of a parent to him, if actually dependent in each case.

(6) All questions of relationship and dependency shall initially be determined as of time of injury for purposes of income benefits for injury, and as of the time of death for purposes of income benefits for death.

Section 3. Coverage of Employers. The following shall constitute

employers subject to the provisions of this act:

(a) Every person that has in the state one or more employees subject to this act.

(b) The state, any agency thereof, and each county, city, town, township, incorporated village, school district, sewer district, drainage district, public or quasi-public corporation, or any other political subdivision of the state that has one or more employees subject to this act.

Section 4. Coverage of Employees. The following shall constitute employees subject to the provisions of this act, except as exempted under Section 5:

(a) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer.

(b) Every executive officer of a corporation.

(c) Every person in the service of the state or of any political subdivision or agency thereof, under any contract of hire, express or implied, and every official or officer thereof, whether elected or appointed, while performing his official duties. Every person who is a member of a volunteer fire or police department shall be deemed, for the purpose of this act, to be in the employment of the political subdivision of the state where the department is organized. Every person who is a regularly enrolled volunteer member or trainee of the civil defense corps of this state as established under the [State Civil Defense Act] shall be deemed, for the purposes of this act, to be in the employment of the state.

(d) Every person performing service in the course of the trade, business, profession or occupation of an employer at the time of the injury, provided such person in relation to this service does not maintain a separate business, does not hold himself out to and render service to the public and is not himself an employer subject to this act.

(e) Subject to the proviso in subsection (d) of this section, every person regularly selling or distributing newspapers on the street or to customers at their homes or places of business. For the purposes of this act such a person shall be deemed an employee of any independent news agency for whom he is selling or distributing newspapers, or, in the absence of such independent agency, of each publisher whose newspapers he sells or distributes.

Section 5. Exemptions. The following employees are exempt from the coverage of this act:

(a) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed 40 or more hours a week in such employment.

(b) Any person employed, for not exceeding 10 consecutive work

days, to do maintenance, repair, remodelling, or similar work in or about the private home of the employer, or, if the employer has no other employees subject to this act, in or about the premises where such employer carries on his trade, business or profession.

(c) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(d) Any person for whom a rule of liability for injury or death is provided by the laws of the United States.

(e) Any person employed in agriculture by an employer who has in service less than three employees in such employment.

(f) Any person employed by a religious or charitable organization having less than four employees.

Section 6. Voluntary Coverage. (a) An employer who has in his employment any employee exempted under Section 5 may elect to be subject to this act. Such election on the part of the employer shall be made by the employers securing the payment of compensation to such exempted employees in accordance with Section 47. Any employee, otherwise exempted under Section 5, of such employer shall be deemed to have elected to come under this act, if, at the time of the injury for which liability is claimed, such employer has in force an election to be subject to this act with respect to the employment in which such employee was injured and such employee has not, either upon entering into the employment or within five days after the filing of an election by the employer, given to such employer and to the Director notice in writing that he elects not to be subject to this act.

(b) Such employer, within five days after securing the payment of compensation in accordance with Section 46, shall give the Director written notice of his election to be subject to this act. Such employer shall post and keep posted on the premises where any employee or employees, otherwise exempted under Section 5 works, printed notices furnished by the Director stating his acceptance of this act. Failure to give the notices required by this paragraph shall not void or impair the employer's election to be subject to or relieve him of any liability under this act.

(c) Any employer who has complied with subsection (b) of this section may withdraw his acceptance of this act by filing written notice with the Director of the withdrawal of his acceptance. Such withdrawal shall become effective 60 days after the filing of such notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The employer shall theretofore post notice of such withdrawal where the affected employee or employees work or shall otherwise notify such employees of such withdrawal.

Section 7. Extraterritorial Coverage. (a) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents,

would have been entitled to the benefits provided by this act had such injury occurred within this state, such employee, or in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by this act, provided that at the time of such injury

(1) his employment is principally localized in this state, or

(2) he is working under a contract of hire made in this state in employment not principally localized in any state, or

(3) he is working under a contract of hire made in this state in employment principally localized in another state whose workmen's compensation law is not applicable to his employer, or

(4) he is working under a contract of hire made in this state for employment outside the United States and Canada.

(b) The payment or award of benefits under the workmen's compensation law of another state, territory, province or foreign nation to an employee or his dependents otherwise entitled on account of such injury or death to the benefits of this act shall not be a bar to a claim for benefits under this act; provided that claim under this act is filed within [two years] after such injury or death. If compensation is paid or awarded under this act:

(1) The medical and related benefits furnished or paid for by the employer under such other workmen's compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this act had claim been made solely under this act;

(2) The total amount of all income benefits paid or awarded the employee under such other workmen's compensation law shall be credited against the total amount of income benefits which would have been due the employee under this act, had claim been made solely under this act;

(3) The total amount of death benefits paid or awarded under such other workmen's compensation law shall be credited against the total amount of death benefits due under this act;

(c) If an employee is entitled to the benefits of this act by reason of an injury sustained in this state in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this act, the employer or his carrier may file with the Director a certificate, issued by the commission or agency of such other state having jurisdiction over workmen's compensation claims, certifying that such employer has secured the payment of compensation under the workmen's compensation law of such other state and that with respect to said injury such employee is entitled to the benefits provided under such law.

In such event:

(1) The filing of such certificate shall constitute an appointment by such employer or his carrier of the Director as his agent for acceptance of the service of process in any proceeding brought by such employee or his dependents to enforce his or their rights under this act on account of such injury;

(2) The Director shall send to such employer or carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the Director by the employee or his dependents in any proceeding brought to enforce his or their rights under this act;

(3) (i) If such employer is a qualified self-insurer under the workmen's compensation law of such other state, such employer shall, upon submission of evidence, satisfactory to the Director, of his ability to meet his liability to such employee under this act, be deemed to be a qualified self-insurer under this act;

(ii) If such employer's liability under the workmen's compensation law of such other state is insured, such employer's carrier, as to such employee or his dependents only, shall be deemed to be an insurer authorized to write insurance under and be subject to this act; Provided however, that unless its contract with said employer requires it to pay an amount equivalent to the compensation benefits provided by this act, its liability for income benefits or medical and related benefits shall not exceed the amounts of such benefits for which such insurer would have been liable under the workmen's compensation law of such other state;

(4) If the total amount for which such employer's insurance is liable under (3) above is less than the total of the compensation benefits to which such employee is entitled under this act, the Director may, if he deems it necessary, require the employer to file security, satisfactory to the Director, to secure the payment of benefits due such employee or his dependents under this act, and

(5) Upon compliance with the preceding requirements of this subsection (c), such employer, as to such employee only, shall be deemed to have secured the payment of compensation under this act.

(d) As used in this section:

(1) "United States" includes only the states of the United States and the District of Columbia;

(2) "State" includes any state of the United States, the District of Columbia, or any Province of Canada;

(3) "Carrier" includes any insurance company licensed to write workmen's compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workmen's compensation law;

(4) A person's employment is principally localized in this or another state when (1) his employer has a place of business in this or such other state and he regularly works at or from such place of business, or (2) if clause (1) foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other state;

(5) An employee whose duties require him to travel regularly in the service of his employer in this and one or more other states may, by written agreement with his employer, provide that his employment is principally localized in this or another such state, and, unless such other state refuses jurisdiction, such agreement

shall be given effect under this act;

(6) "Workmen's compensation law" includes "occupational disease law."

Section 8. Inmates of Public Institutions.[1] For purposes of this section, the term "inmate" includes any person confined against his will in a public institution, whether the institution is a penal institution or not. The term does not apply to students in schools for the deaf and blind or other similar institutions; it does apply to inmates of state mental institutions, homes for the feeble minded, reformatories, state prisons, county and local jails and the like. If an inmate, in the performance of his work in connection with the maintenance of the institution, or with any industry maintained therein, or with any highway or public works activity outside the institution, is injured so as to incapacitate him permanently or materially reduce his earning power, he may, upon being released from such institution either upon parole or upon final discharge, be awarded and paid compensation under the provisions of this act. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate. The time limit for filing a claim under this section shall date from the death or from the time of parole or final discharge or from the time specified in subsection (a) of Section 26, whichever is later. If any person who has been awarded compensation under the provisions of this section shall be recommitted to an institution covered by this section, such compensation shall immediately cease, but may be resumed upon subsequent parole or discharge. Payment shall be made from the appropriation for the operation of the particular industry or activity, but if there is no such appropriation, payment shall be made from the general fund of the state.

Section 9. Presumption. In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify, and where there is unrebutted prima facie evidence that indicates that the injury arose in the course of employment, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury arose out of the employment, that sufficient notice of the injury has been given, and that the injury or death was not occasioned solely by the employee's intoxication or by his willful intention to injure or kill himself or another.

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1. There was not complete agreement among the members of the Committee on Suggested State Legislation concerning the inclusion of this section. Those who opposed its inclusion felt that injury suffered in the course of work done in a public institution was suffered not in the course of working for hire, but in a course of therapy or rehabilitation.

Section 10. Exclusiveness of Liability. (a) If an employer secures payment of compensation as required by this act, the liability of such employer under this act shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death. For purposes of this section, the term "employer" shall include a "contractor" covered by subsection (b) of Section 1, whether or not the subcontractor has in fact, secured the payment of compensation. The liability of an employer to another person who may be liable for or who has paid damages on account of injury or death of an employee of such employer arising out of and in the course of employment and caused by a breach of any duty or obligation owed by such employer to such other shall be limited to the amount of compensation and other benefits for which such employer is liable under this act on account of such injury or death, unless such other and the employer by written contract have agreed to share liability in a different manner. The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employees, officers or directors of such employer or carrier, provided the exemption from liability given an employee, officer or director of an employer or carrier shall not apply in any case where the injury or death is proximately caused by the willful and unprovoked physical aggression of such employee, officer or director.

(b) If an employer fails to secure payment of compensation as required by this act, an injured employee, or his legal representative in case death results from the injury, may claim compensation under this act and in addition may maintain an action at law or in admiralty for damages on account of such injury or death, provided that the amount of compensation shall be credited against the amount received in such action, and provided that, if the amount of compensation is larger than the amount of damages received, the amount of damages less the employee's legal fees and expenses shall be credited against the amount of compensation. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, that the employee assumed the risks of his employment, or that the injury was due to the contributory negligence of the employee.

Section 11. Third Party Liability. (a) The right to income and other benefits under this act, whether for disability or death, shall not be affected by the fact that the injury or death is caused under circumstances creating a legal liability in some person (other than the employer or another person exempt from liability under Section 10 of this act) to pay damages therefor, such person so liable being hereinafter referred to as the third party. The respective rights and interests of the injured employee, or, in case of his death, his dependents and [any person entitled to sue therefor], and of the

employer or person, association, corporation or carrier liable for the payment of compensation benefits under this act, hereinafter called "the carrier," in respect to the cause of action and the damages recovered shall be as provided by this section.

(b) The injured employee or, in event of his death, his dependents, shall be entitled to receive the income and other benefits provided by this act and to enforce by appropriate proceedings his or their rights against the third party, provided that action against the third party must be commenced not later than [six months] [2] after the carrier accepts liability for the payment of compensation or makes such payment pursuant to an award under this act, except as hereinafter provided. In such case the carrier shall have a lien on the proceeds of any recovery from the third party whether by judgment, settlement or otherwise, after the deduction of reasonable and necessary expenditures, including attorneys' fees, incurred in effecting such recovery, to the extent of the total amount of compensation paid, and to such extent such recovery shall be deemed to be for the benefit of the carrier. Any balance remaining after payment of necessary expenses and satisfaction of the carrier's lien shall be applied as a credit against future compensation benefits for the same injury or death and shall be distributed as provided in subsection (g) of this section. Notice of the commencement of such action shall be given within 30 days thereafter to the Director, the employer and carrier upon a form prescribed by the Director.

(c) If, prior to the expiration of the six months period referred to in subsection (b), or within 60 days prior to the expiration of the time in which such action may be brought, the injured employee, or, in event of his death, [the person entitled to sue therefor] shall not have commenced action against or settled with the third party, the right of action of the injured employee, or, in event of his death, [the person entitled to sue therefor] shall pass by assignment to the carrier; Provided, that such assignment shall not occur less than 20 days after the carrier has notified the injured employee or, in the event of his death, [the person entitled to sue therefor] in writing, by personal service or by registered or certified mail that failure to commence such action will operate as an assignment of the cause of action to the carrier. Prior to the expiration of 90 days after such assignment, the carrier shall give the Director, the injured employee, or, in event of his death, his dependents and [the person entitled to sue therefor] notice, upon a form prescribed by the Director, that action has been or will be commenced against the third party. Failure to give such notice, or to commence such action at least 30 days

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2. The language in this section should in each state be modified to fit (1) in reference to an action for injury, the state statute of limitations applicable thereto and (2) in reference to an action for death, the death statute, including limitations, of that state.

prior to the expiration of the time within which such action may be brought, as fixed by [state statute of limitations], shall operate as a reassignment of such right of action to the injured employee, or, in event of his death, [to the person entitled to sue therefor], and the rights and obligations of the parties shall be as provided by subsection (b) of this section.

If the carrier as such assignee recovers in an action (1) for injury, an amount in excess of the sum of the total of compensation paid or provided the injured employee and the reasonable expenses, including attorneys' fees, incurred in making such recovery, or (2) for death, an amount on behalf of the dependents of the employee in excess of the sum of the income benefits paid such dependents, and the reasonable expenses, including attorneys' fees, incurred in making such recovery, such excess shall be applied as a credit against future compensation benefits for the same injury or death and shall be distributed in accordance with subsection (g) of this section.

(d) If the persons entitled to share in the proceeds of an action brought under subsections (b) or (c) for death of the employee include any person who was not a dependent of the deceased employee, such person's share of any recovery made in such action, less a rateable share of the reasonable expenses incurred in making such recovery, shall be paid to such person or to the personal representative of the deceased.

(e) The injured employee, or, in event of his death, his dependents, and the carrier may, by agreement approved by the Director, or in event of a settlement made during actual trial of the action against the third party, approved by the judge presiding at such trial, provide for a distribution of the proceeds of any recovery in such action different from that prescribed by subsection (b) or (c) of this section.

(f) If the third party, with notice or knowledge of the carrier's lien, and the employee, or, in the event of his death, [the person entitled to sue therefor] make a compromise settlement without the written consent of the carrier for an amount less than the total of the compensation to which he or they are entitled under this act because of such injury or death, such settlement shall be invalid as against the carrier, which shall be entitled to maintain an action against the third party to recover the amount of compensation for which the carrier is liable under this act, less the amount actually inuring to the benefit of the carrier from the proceeds of such settlement.

At the trial of such action the fact of such settlement shall be prima facie evidence that the injury was proximately caused by a breach of duty owed to the employee or a warranty given by the third party.

The carrier shall not unreasonably refuse to approve a proposed compromise settlement with the third party. The injured employee or his dependents may make written application to the Director for a finding that a proposed compromise settlement with the third party

is reasonable and fair to all parties. If the Director, after such inquiry as he deems necessary, and after hearing if demanded by either the carrier, the injured employee or his dependents, finds the proposed settlement reasonable and fair, it shall be deemed to have been approved by the carrier.

(g) When there remains a balance of $5,000 or more of the amount recovered from a third party by the beneficiary or carrier after payment of necessary expenses, and satisfaction of the carrier's lien and payment of the share of any person not a beneficiary under the act which is applicable as a credit against future compensation benefits for the same injury or death under either subsection (b) or subsection (c) of this section, the entire balance shall in the first instance be paid to the carrier by the third party. The present value of all amounts estimated by the Director to be thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Director, shall be held by the carrier as a fund to pay such future compensation as it becomes due, and to pay any sum finally remaining in excess thereof to the beneficiaries.

As soon as the Director has fixed the amount to be held by the carrier in such fund, or determined that no future compensation will be due, any excess of the third party recovery over the total amount necessary for payment of necessary expenses, satisfaction of the carrier's lien, and payment of the share of any person not a beneficiary under this act and creation of such fund, if any, shall be paid forthwith to the beneficiary, but shall continue to constitute a credit against future compensation benefits for the same injury or death as to any compensation liability that may exist after such fund has been exhausted.

(h) If death results from the injury and if the employee leaves no dependents entitled to benefits under this act, the carrier shall have a right of action against the third party for any amounts paid into the Special Fund established by Section 55, for reasonable funeral expenses and medical benefits actually paid by the carrier, and such cause of action shall be in addition to any cause of action of the legal representative of the deceased. Such right may be enforced in action at law brought against the third party within two years after the death of the employee.

PART II

MEDICAL, REHABILITATION AND BURIAL SERVICES

Section 12. Medical Services, Appliances and Supplies. (a) For any injury covered by this act, the employee shall be entitled to all medical services, appliances and supplies which are required by the nature of his injury and which will relieve pain and promote and hasten his restoration to health and employment. The employer shall furnish such services, appliances and supplies and necessary replacements or repairs of such appliances unless the need for such replacements or repairs is due to lack of proper care by the employee. In addition to the income benefits otherwise payable, the employee, who is entitled to income benefits, shall be paid an additional sum as for a medical benefit of not more than $50 weekly, as may be deemed necessary, when the service of an attendant is necessary constantly to be used by reason of the employee's being totally blind or having lost both hands or both feet or the use thereof or being paralyzed and unable to walk, or by reason of other disability resulting from the injury actually rendering him so helpless as to require constant attendance. The Director shall have authority to determine the necessity, character and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital or rehabilitation facility when in his judgment such change is desirable or necessary.

(b) (1) The employer shall maintain a list of physicians (to be known as the Panel of Physicians) who are reasonably accessible to the employees. The employer shall post this list in a place or places easily accessible to his employees.

(2) The employee shall have the right to accept the services of a physician selected by his employer or to select a physician from the Panel of Physicians. The employee shall have the right to make an alternative choice of physician from such Panel if he is not satisfied with the physician first selected. If due to the nature of the injury or its occurrence away from the employer's place of business, the employer or the employee is unable to make a selection as outlined above, the selection requirements of this paragraph shall not apply as long as the inability to make a selection persists. The physician selected under this paragraph may arrange for any consultation, referral, extraordinary or other specialized medical services as the nature of the injury shall require. The employer shall not be responsible for the charges for medical services furnished or ordered by any physician or other person selected by the employee in disregard of the provisions of this paragraph nor for compensation for any aggravation of the employee's injury attributable to improper treatment by such physician or other person.

(3) The Director may order necessary changes in a Panel of

Physicians if he finds that it fails to contain a sufficient number of physicians who are conveniently available to or in the community in which the medical service is required and who are qualified to perform services necessary to meet the particular needs of employees of the employer. The Director may suspend or remove a physician from a Panel of Physicians under rules and regulations adopted by the Director.

(4) If the employer has knowledge of an injury to an employee and the necessity for treatment and shall fail to maintain the Panel of Physicians, or permit an employee to make choice of his physician from such Panel, the injured employee may select a physician to render service at the expense of the employer. No claim for such medical treatment shall be valid and enforceable against such employer, unless within 10 days following the first treatment the physician giving such treatment furnish the employer and the Director a report of such injury and treatment on a form prescribed by the Director. The Director may, however, excuse the failure to furnish such report within 10 days when he finds it to be in the interest of justice to do so, and may, upon application by a party in interest, make an award for the reasonable value of such medical treatment so obtained by the employee.

(5) All physicians attending injured employees shall comply with all the rules and regulations adopted by the Director, and shall make such reports as may be required by him at any and such times as required by him upon the condition or treatment of any injured employee, or upon any other matters concerning cases in which they are employed. Generally all medical information relevant to the particular injury shall, on demand, be made available to the employer, employee, carrier and the Director. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication. When a physician willfully fails to make any report required of him under this section the Director may in his discretion order the forfeiture of his right to all or part of payments due for services rendered in connection with the particular case and may suspend or remove the physician from one or more Panels of Physicians.

(6) If the employee unreasonably refuses to submit to medical examination or treatment, the Director shall, by order, suspend the payment of further compensation and his right to further proceedings during such time as such refusal continues.

(7) Whenever the Director deems it necessary, in order to assist him in resolving any issue of medical fact or opinion he shall cause such employee to be examined by a physician or physicians selected by the Director from the panel provided in paragraph (2) of subsection (d) and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The Director shall have the power, in his discretion, to charge the cost of such examination to the carrier, or to pay it from the Workmen's Compensation Administration Fund provided by Section 63. The cost

of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

(8) All fees and other charges for such medical services shall not be higher than such charges as prevail in the same community for similar services to injured persons and shall be subject to regulation by the Director.

(c) The Director, after consultation with the [official name of state medical society or association] shall appoint a Medical Director [who shall devote full time to the duties of his office]. The Medical Director shall be Executive Secretary of the Medical Advisory Committee and shall perform the following functions for which he shall be responsible to the Director:

(1) Institute administrative procedures that will enable the Director to evaluate medical care in order to effect optimal medical treatment and rehabilitation in workmen's compensation cases.

(2) Inquire into instances where the medical treatment or the rehabilitation provided in workmen's compensation cases appears to be deficient and to recommend corrective action when indicated.

(3) Advise on the disposition of complaints of a physician's failure to furnish adequate medical care as required by this act or by rules and regulations adopted by the Director, the disposition of complaints concerning other aspects of the medical management of a workmen's compensation case or the failure to render required reports and the disposition of complaints of unreasonable interference with the medical management of a workmen's compensation case.

(4) Gather data and maintain records necessary to fulfill the Medical Director's responsibilities.

(5) Conduct studies and prepare and issue reports on the medical and rehabilitative aspects of workmen's compensation cases.

(6) Expedite the submission and processing of medical reports necessary to the processing of claims.

(7) Develop procedures to achieve impartiality in medical testimony in workmen's compensation cases.

(8) Keep physicians currently informed of this act and of rules and regulations thereunder adopted by the Director and of their responsibilities thereunder.

(9) Undertake such other functions as may be delegated to him by the Director.

(d) The Director shall appoint a Medical Advisory Committee of [ ] members after consultation with the [official name of state medical society or association]. The Director shall assign to the Medical Advisory Committee such powers and duties as he deems necessary, including the following:

(1) Advise with the Director as to rules and regulations under which the Director may remove a physician from an employer's Panel of Physicians.

(2) Advise the Director with respect to the constitution of im-

partial medical panels from among whose members the Director shall select a physician to make a report to him whenever, in his opinion, an independent medical opinion is necessary.

(3) Advise on the gathering of statistics, the maintaining of records and the rendering of reports under this act and under rules and regulations adopted by the Director.

(4) Assist in keeping physicians currently informed of this act and of rules and regulations adopted by the Director and of their responsibilities thereunder.

(5) Advise and assist in the achievement of impartiality in medical testimony in workmen's compensation cases.

(6) Encourage the expansion and improvement of existing rehabilitation facilities and the development of additional facilities to insure optimal rehabilitation in workmen's compensation cases.

(7) Recommend improvement in the methods of measuring physical impairment in workmen's compensation cases.

(8) Recommend improvements in this act and in rules and regulations adopted by the Director and in their administration to insure optimal medical care and rehabilitation.

Section 13. Rehabilitation. (a) One of the primary purposes of this act shall be restoration of the injured employee to gainful employment. To this end there is hereby created a Rehabilitation Panel which shall be composed of the Director, the Medical Director, and specialists in medical and vocational rehabilitation to be appointed by the Director.

(b) The Panel shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public. The Director in consultation with the Panel, shall approve as qualified such facilities, institutions and physicians as are capable of rendering competent rehabilitation service to seriously injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped to provide rehabilitation services for persons suffering either from some specialized type of disability or general type of disability within the field of occupational injury and is staffed with trained and qualified personnel, and with respect to physical rehabilitation, unless it is supervised by a physician qualified to render such service. No physician shall be considered qualified unless he has had the experience and training specified by the Director.

(c) An employee who has suffered an injury covered by this act shall be entitled to prompt medical rehabilitation services. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. If such services are not voluntarily offered and accepted, the Director on his own motion, or upon application of the employee

or carrier, after affording the parties an opportunity to be heard by the Panel, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of such report, and after affording the parties an opportunity to be heard by the Panel, the Director, in consultation with the Panel, may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service he may deem necessary, be provided at the expense of the employer. Vocational rehabilitation training, treatment or service shall not extend for a period of more than [26] weeks except in unusual cases when by special order of the Director, after hearing, the period may be extended for an additional [ ] weeks.

(d) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his board, lodging or travel shall be paid for by the employer.

(e) Refusal to accept rehabilitation pursuant to an order of the Director shall result in loss of compensation for each week of the period of refusal.

(f) The Director and the Rehabilitation Panel shall cooperate on a reciprocal basis with the vocational rehabilitation section of the [Department of Education] and the employment service of the [Division of Employment Security].

Section 14. Burial Expense. If death results from the injury, the employer shall pay the cost of burying in an amount not to exceed [$] to any person who performed such service or incurred the liability for the service, whether or not the employee leaves dependents within the meaning of this act. Any such person is hereby authorized to file a petition with the Director for the fixing of the amount of the service and for an order requiring the employer to pay the cost of the service. If death occurs while the employee is away from his usual place of business or residence, the employer will be liable for the reasonable cost of transportation of the body to the employee's place of residence within the United States or Canada.

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PART III

INCOME BENEFITS

Section 15. Waiting Period. No income benefits shall be allowed for the first seven (7) days of the disability; Provided, however, that in case the injury results in disability of more than twenty-eight (28) days, income benefits shall be allowed from the date of the disability. The day on which the injury occurred shall be included in computing this waiting period unless the employee has been paid full wages for that day.

Section 16. Income Benefits for Disability. Income benefits for disability shall be paid to the employee as follows, subject to the maximum and minimum limits specified in Section 17.

(a) Total Disability: For total disability, 55 per cent of his average weekly wage during such disability, and 2-1/2 per cent of his average weekly wage for each dependent, up to a maximum of five (5), specified in subsection (t) of Section 2, except a wife living apart from her husband for justifiable cause or by reason of his desertion unless such wife is actually dependent on the employee.[3]

(b) Partial Disability: For partial disability, 55 per cent of his decrease in wage-earning capacity during the continuance thereof, and 2-1/2 per cent of his average weekly wage for each dependent, up to a maximum of five (5), specified in subsection (t) of Section 2, except a wife living apart from her husband for justifiable cause or by reason of his desertion unless such wife is actually dependent on the employee.[3]

(c) Scheduled Income Benefits: For total permanent bodily loss or losses herein scheduled, after and in addition to the income benefits payable during the period of recovery, scheduled income benefits in the amount of 55 per cent of the average weekly wage as follows:

BODILY LOSS	WEEKS OF DISABILITY[4]
(1) Arm	[240 - 360]
(2) Leg	[160 - 240]
(3) Hand	[216 - 324]
(4) Foot	[112 - 168]

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3. An alternative formula would be 66-2/3 per cent with no addition for dependents.

4. The numbers of weeks in which scheduled income benefits are payable are based on 400 and 600 weeks respectively for the whole man and the American Medical Association's evaluation of the relationship of total loss or impairment of the particular member to the whole man.

(5) Thumb	[86 - 130]
(6) Index Finger	[54 - 81]
(7) Middle Finger	[43 - 65]
(8) Ring Finger	[22 - 32]
(9) Little Finger	[11 - 16]
(10) Great Toe	[20 - 30]
(11) Second Toe	[10 - 20]
(12) Third Toe	[5 - 15]
(13) Fourth Toe	[5 - 8]
(14) Fifth Toe	[5]
(15) Total loss of binaural hearing	[156 - 208]
(16) Total loss of vision of one eye	[100 - 150]
(17) Total loss of bilateral vision	[520 - 750]
(18) Total loss, or total loss of use, of both hands, both arms, both feet or both legs	[520 - 750]

(19) Phalanges: For loss of distal phalanx, one half of the income benefits for loss of the entire digit. For loss of more than the distal phalanx of a digit, the same as loss of the entire digit.

(20) Amputated arm or leg: For an arm or leg amputated to a point no greater than one-third the distance from the wrist to the elbow joint or from the ankle to the knee joint scheduled income benefits shall be the same as those for the loss of the hand or foot.

(21) Two or more digits: For loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot, scheduled income benefits may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the scheduled income benefits for loss of a hand or foot.

(22) Total loss of use: Scheduled income benefits for permanent total loss of use of a member shall be the same as for loss of the member.

(23) Partial loss or partial loss of use: Scheduled income benefits for permanent partial loss of use of a member shall be for a period proportionate to the period benefits are payable for total loss or total loss of use of the member as such partial loss bears to total loss.

(24) Loss of hearing or partial loss of bilateral vision: Scheduled income benefits for partial loss of vision in one or both eyes, or total loss of hearing in one ear, or partial loss of hearing in one or both ears shall be for a period proportionate to the period benefits are payable for total bilateral loss of vision or total binaural loss of hearing as such partial loss bears to total loss. The provisions of paragraphs (4) through (8) inclusive of subsection (e) of this section shall apply to scheduled losses of hearing.

(25) In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member set forth in paragraphs (1) to (24) of this subsection, scheduled income benefits shall be for the loss or loss of use of each such member or part thereof, with the periods of benefits to run consecutively, except that where the injury affects only two or more digits of the same hand or

foot, paragraph (20) of this subsection shall apply.

(26) Other losses: Proper and equitable scheduled income benefits shall be paid for serious permanent disfigurement of face, head, neck or other area normally exposed and for loss or loss of function of a major member or organ when such disfigurement or loss is of a kind likely to handicap the employee in securing or holding employment, not to exceed 100 weeks, in addition to other scheduled income benefits payable under this section. However where scheduled income benefits are paid or payable for a particular member or organ, no additional benefits shall be made under this paragraph.

(27) In any case of total or partial loss of use of a member or organ, of hearing or vision, or in any case of disfigurement, determination of the period for which scheduled income benefits are payable shall not be made until the maximum of healing and of restoration of function has been attained.

(d) Scheduled Income Benefits: Scheduled income losses for bodily loss or losses, or loss of use, partial or total, shall be exclusive and in lieu of all income benefits payable after and in addition to the income benefits payable during the period of recovery except as otherwise provided in subsection (e) of this section.

(e) Major Member Losses: For total loss, or total and permanent loss of use, of an arm, hand, leg, both feet, or total loss of vision of both eyes, whether or not the injury also involves other impairments of the body, income benefits for such major member loss shall be for the period specified for such loss or loss of use in subsection (c), and with respect to any subsequent period of actual disability, income benefits shall be payable as provided in subsection (a) or (b) of this section, as long as the major member loss continues as a total loss and as long as actual disability as defined in subsection (h) of Section 2 continues.

(f) Scheduled Income Benefits for Occupational Deafness: Occupational deafness means permanent partial or permanent total loss of hearing of one or both ears caused by prolonged exposure to harmful noise in employment. The following provisions shall apply exclusively to loss of hearing compensable under this subsection:

(1) No claim for scheduled income benefits shall be filed until the lapse of six full consecutive calendar months after the termination of exposure to harmful noise in employment. The time limitation for the filing of claims for occupational deafness shall not begin to run earlier than the day following the termination date of such six months' period. The time for filing claim as provided under this paragraph shall be applicable not only in respect of the last employer, but also in respect of any prior employer who may have liability to pay compensation for the occupational deafness.

(2) No employer shall be liable for the payment of scheduled income benefits for occupational deafness unless the employee claiming benefits shall have worked for such employer in employment exposing the employee to harmful noise for a total period of at least ninety (90) days.

(3) An employer, otherwise liable under this subsection, whose employment has contributed to any extent to an employee's occupational deafness shall be liable for the full extent of the deafness of the employee, unless such employer shall establish by competent evidence (including the results of a professionally controlled hearing test) the extent of the employee's deafness as it existed prior to exposure to harmful noise in the employer's employment. Upon such showing the employer shall be liable to the employee only for the proportion of the deafness attributable to employment by him. An employer liable to the employee for the full extent of the employee's occupational deafness may implead, in a compensation proceeding on the employee's claim, any prior employer or employers in whose employment the employee had been exposed to harmful noise, and if it should be found that the impleaded employer would have been liable to the employee under this subsection, had the employee proceeded against him, under the claim being adjudicated, the employer held liable shall be entitled to an award against the impleaded employer. The impleading of an employer shall be accomplished by notice on a form prescribed by the Director. Such notice shall be sent to the impleaded employer and to the Director. An award may be made in favor of the employer liable to the employee, and against the impleaded employer or employers, which award may be enforced in the same manner as awards to employees. The impleaded employer or employers shall bear equal shares with the employer of the employer's liability to the employee, unless the evidence warrants a different apportionment.

(4) Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1000, and 2000 cycles per second. Loss of hearing ability for frequency tones above 2000 cycles per second are not to be considered as constituting disability for hearing.

(5) The per cent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1000, and 2000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 15 decibels or less in the three frequencies, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 82 decibels or more in the three frequencies, then the same shall constitute and be a total or 100 per cent compensable hearing loss.

(6) In measuring hearing impairment, the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 15 decibels an allowance of one and one-half (1-1/2) per cent shall be made up to the maximum of one hundred (100) per cent which is reached at 82 decibels.

(7) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five (5). The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six (6). The final percentage shall represent the binaural hearing impairment.

(8) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss, one-half (1/2) decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise.

(9) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

(g) The period of any scheduled income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under such schedule on account of a prior injury if scheduled income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the scheduled income benefits payable on account of the subsequent disability in whole or in part would duplicate the scheduled income benefits payable on account of the preexisting disability.

(h) When an employee, who has sustained disability compensable under subsection (c), and who has filed a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after such death, for the period specified in this subsection, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this subsection and in the order named.

(1) To the widow or wholly actually dependent widower, if there is no child under the age of 18 or incapable of self-support; or

(2) If there are both such a widow or widower and such a child or children one-half to such widow or widower and the other half to such child or children; or

(3) If there is no such widow or widower but such a child or children, then to such child or children; or

(4) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (7) of subsection (a) of Section 18 or to both, in such proportions as the Director may provide by regulation.

Section 17. Weekly Maximum and Minimum Income Benefits for Disability. (a) The minimum weekly income benefits for total disability shall not be less than 20 per cent (computed to the next higher

multiple of $1.00) and the maximum weekly income benefit for disability shall not exceed 66-2/3 per cent (computed to the next higher multiple of $1.00) of the average weekly wage of the state as defined herein. In any event, income benefits shall not exceed the average weekly wage of the injured employee.

(b) For the purpose of this act the average weekly wage in the state shall be determined by the Director as follows: On or before June 1 of each year, the total wages reported on contribution reports to the [agency administering Employment Security Act or Unemployment Compensation Insurance Act] for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported for the preceding year by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage as so determined shall be applicable for the full period during which income benefits are payable, when the date of occurrence of injury or of disablement in the case of disease falls within the calendar year commencing January 1 following the June 1 determination.

(c) The minimum or the maximum weekly income benefits shall not be changed for any calendar year unless the computation herein provided results in an increase or decrease of two dollars ($2.00) or more, raised to the next even dollar in the level of the minimum or the maximum weekly income benefits.

Section 18. Income Benefits for Death. If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (c) and (d) of this section:

(a) Benefit Amounts for Particular Classes of Dependents.

(1) If there is a widow or widower and no children of the deceased, as defined in Section 2, to such widow or widower 50 per cent of the average weekly wage of the deceased, during widowhood or widowerhood.

(2) To the widow or widower, if there is a child or children living with the widow or widower, 45 per cent of the average weekly wage of the deceased, or 40 per cent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 per cent for each child. Where there are more than two such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.

(3) Two years indemnity benefits in one lump sum shall be payable to a widow or widower upon remarriage.

(4) To the children, if there is no widow or widower, 35 per cent of such wage for one child, and 15 per cent for each additional child, divided among such children share and share alike.

(5) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen, or when a child over such age ceases to be physically or

mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 25. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.

(6) To each parent, if actually dependent, 25 per cent.

(7) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 per cent to each such dependent. If there should be more than one of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.

(8) The income benefits of each beneficiary under paragraphs (6) and (7) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.

(9) A person ceases to be actually dependent when his income from all sources exclusive of workmen's compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workmen's compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workmen's compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection and subsection (s) of Section 2.

(b) Change in Dependents. Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

(c) Maximum Income Benefits for Death. For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in Section 17. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefits that was or would have been payable for total dis-

ability to the deceased.

(d) Maximum Total Payment. The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 per cent of the average weekly wage of the deceased as calculated under Section 19, subject to the maximum limits in subsection (c) above. The maximum aggregate limitation shall not operate in case of payment of two years' income benefits to the widow or widower upon remarriage, as provided under subsection (a) (3) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (b) of this section, but the weekly income benefits as recalculated to such remaining beneficiaries shall not exceed the weekly benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (1), (2) and (4) of subsection (a) shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (6) in another class.

Section 19. Determination of Average Weekly Wage. Except as otherwise provided in this act, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(a) If at the time of the injury the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(b) If at the time of the injury the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve and divided by fifty-two;

(c) If at the time of the injury the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two;

(d) (1) If at the time of the injury the wages are fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen the wages (not including overtime or premium pay) of said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen consecutive calendar weeks in the fifty-two weeks immediately preceding the injury.

(2) If the employee has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, his average weekly wage shall be computed under the foregoing paragraph, taking the wages (not including overtime or premium pay) for such purpose to be the amount he would have earned had he been so employed by the employer the full thirteen calendar weeks im-

mediately preceding the injury and had worked, when work was available to other employees in a similar occupation.

(e) If at the time of the injury the hourly wage has not been fixed or can not be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees.

(f) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth of the total wages which the employee has earned from all occupations during the twelve calendar months immediately preceding the injury.

(g) In the case of volunteer firemen, police, and civil defense members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.

(h) If the employee was a minor, apprentice or trainee when injured, and it is established that under normal conditions his wages should be expected to increase during the period of disability, that fact may be considered in computing his average weekly wage.

(i) When the employee is working under concurrent contracts with two or more employers and the defendant employer has knowledge of such employment prior to the injury, his wages from all such employers shall be considered as if earned from the employer liable for compensation.

Section 20. Payment for Second Injuries from Special Fund.[5]

(a) If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability by injury arising out of and in the course of his employment resulting in compensation liability for disability that is substantially greater by reason of the combined effects of the preexisting impairment and subsequent injury or by reason of the aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall in the first instance pay all awards of compensation provided by this act, but such employer or his insurance carrier shall be reimbursed from the Special Fund created by Section 55 for all compensation payments subsequent to those payable for the first one hundred and four (104) weeks of disability.

(b) If the subsequent injury of such an employee shall result in the death of the employee and it shall be determined that the death would not have occurred except for such preexisting permanent physical impairment, the employer or his insurance carrier shall in the first instance pay the compensation prescribed by this act, but he or his insurance carrier shall be reimbursed from the Special Fund

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5. The Special Fund referred to here is the second or subsequent injury fund that all but four states have established.

created by Section 55 for all compensation payable in excess of one hundred and four (104) weeks.

(c) In order to qualify under this section for reimbursement from the Special Fund, the employer must establish by written records that the employer had knowledge of the permanent physical impairment at the time that the employee was hired, or at the time the employee was retained in employment after the employer acquired such knowledge.

(d) As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed. No condition shall be considered a "permanent physical impairment" unless it is one of the following conditions:

(1) Epilepsy
(2) Diabetes
(3) Cardiac disease
(4) Arthritis
(5) Amputated foot, leg, arm or hand
(6) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than 75 per cent bilaterally
(7) Residual disability from poliomyelitis
(8) Cerebral palsy
(9) Multiple sclerosis
(10) Parkinson's disease
(11) Cerebral vascular accident
(12) Tuberculosis
(13) Silicosis
(14) Psychoneurotic disability following treatment in a recognized medical or mental institution
(15) Haemophilia
(16) Chronic osteomyelitis
(17) Ankylosis of joints
(18) Hyperinsulism
(19) Muscular dystrophies
(20) Arteriosclerosis
(21) Thrombophlebitis
(22) Varicose veins
(23) Heavy metal poisoning
(24) Ionizing radiation injury
(25) Compressed air sequelae
(26) Ruptured intervertebral disk

or unless it would support a rating of disability of 200 weeks or more if evaluated according to standards applied in compensation claims.

(e) The Special Fund shall not be bound as to any question of law or fact by reason of an award or an adjudication to which it was not

a party or in relation to which it was not notified at least three weeks prior to the award or adjudication, that it might be subject to liability for the injury or death.

(f) An employer or carrier shall notify the Director and the Director of the Special Fund of any possible claim against the Special Fund as soon as practicable, but in no event later than one hundred weeks after the injury or death.

Section 21. Benefit Adjustment.[6] When the maximum weekly income benefit rate is changed as provided for in Section 17, any person who has been totally and continuously disabled for over two years, or any widow or widower who is receiving payments for income benefits under this act in amounts per week less than the new maximum for total disability or death shall receive weekly from the carrier, without application, an additional amount calculated in accordance with the provisions of this section. The carrier shall be entitled to reimbursement from the Special Fund created by Section 55 for the additional amount so paid.

(a) In any case where a totally disabled person, or a widow or widower is presently receiving the maximum weekly income benefit applicable at the time such award was made, the supplemental allowance shall be an amount which, when added to such award, will equal the new maximum weekly benefit.

(b) In any case where a totally disabled person, or a widow or widower is presently receiving less than the maximum weekly income benefit rate applicable at the time such award was made, the supplemental allowance shall be an amount equal to the difference between the amount the claimant is presently receiving and a percentage of the new maximum determined by multiplying it by a fraction, the numerator of which is his present award and the denominator of which is the maximum weekly rate applicable at the time such award was made.

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6. Because of the unavailability of data on the cost of providing the increased benefits to persons on the rolls at the time of enactment of this section, the timing and financing of this provision as to this group must be adjusted in the light of results of studies in individual states.

PART IV

PROCEDURES

Section 22. Record of Injury or Death. Every employer shall keep a record of each injury to any of his employees as reported to him or of which he otherwise has knowledge. Such record shall include a description of the injury, a statement of any time during which the injured person was unable to work because of the injury, a description of the manner in which the injury occurred, and such other information relating to the injury or its occurrence as the Director may by regulation require. These records shall be available for inspection by the Director or by any governmental agency at such reasonable times and under such conditions as the Director may prescribe. Upon willful failure or refusal of the employer to keep the record required under this section, the Director may assess against such employer a civil penalty not exceeding [$500], which penalty shall be paid into the Special Fund established under Section 55.[7]

Section 23. Report of Injury or Death. (a) Within 15 days after the employer has notice or knowledge of the occurrence of a death or any injury which constitutes a permanent impairment, or which renders the injured person unable to perform a regularly established job at his place of employment during the full period of his regular shift on any calendar day subsequent to the day of injury, a report thereof shall be made in writing by the employer to the Director, upon a form approved by the Director for that purpose, setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the nature of the injury and a description of the manner in which it occurred; (4) the year, month, day and hour when, and the particular locality where injury or death occurred; and (5) such other information as the Director may prescribe by regulation. In addition, within the same period, except where claim has been filed under subsection (e) of Section 26, if the case involves death or more than seven days' disability, the employer shall notify the Director in writing whether payment shall be made without an award or controverted. If the right to compensation is controverted, the grounds shall be stated, but the stating of such grounds shall not prevent the later

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7. The American Association of State Compensation Insurance Funds comments that it would be preferable if the Director were not vested with this quasi-penal authority. The determination of penalty should rest with the civil courts, with the Director authorized to initiate the action.

assertion of other defenses. For other injuries not resulting in disability but which require medical treatment by a physician beyond ordinary first-aid, monthly summary reports may be required on a form prescribed by the Director.

(b) The mailing to the Director of any such written report as requited in subsection (a) of this section within the time prescribed, shall be a compliance with this section.

(c) Whenever an employer willfully fails to file or refuses to file report of injury or death as required in subsection (a) of this section, the Director may assess a penalty not exceeding [$500], which penalty shall be paid into the Special Fund, established under Section 55.[7]

(d) Where the employer has knowledge of any injury or death and willfully fails or refuses to file the report of injury as required in subsection (a) of this section, the limitations prescribed in Section 26 shall not begin to run against the claim of any person entitled to compensation until such report shall have been furnished as required by this section.

(e) All reports submitted to the Director under this section shall be confidential and not admissible in evidence in any administrative or judicial proceedings. Such reports may be made available to other state or federal agencies for study and informational purposes under such limitations as may be prescribed by the Director, but they shall not be used as evidence of any admission against interest for purposes of adjudication, litigation or determination of claims, whether administrative or judicial.

Section 24. Method and Time of Payment of Compensation. (a) Compensation under this act shall be paid promptly, and directly to the person entitled thereto, without an award, except where the right to compensation is controverted by the employer.

(b) The first installment of income benefits shall become due on the fifteenth day after the employer has notice or knowledge of the employee's disability or death due to injury, on which date all income benefits then due shall be paid. Thereafter, income benefits shall be paid in bi-weekly installments, except where the Director determines that payment in installments should be made at some other period.

(c) Upon making the first payment of income benefits, and upon stopping or changing of such benefits for any cause other than final payment under subsection (c) of Section 27 the employer shall

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7. The American Association of State Compensation Insurance Funds comments that it would be preferable if the Director were not vested with this quasi-penal authority. The determination of penalty should rest with the civil courts, with the Director authorized to initiate the action.

immediately notify the Director, in accordance with a form prescribed by the Director, that the payment of income benefits has begun or has been stopped or changed.

(d) If payments have been made without an award, and the employer then elects to controvert, the notice of controversy shall be filed with the Director within 15 days of the due date of the first omitted payment under this election.

(e) If, after the payment of compensation without an award, the employer elects to controvert the right to compensation, the payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. The acceptance of compensation by the employee or his dependents shall not be considered a binding determination of their rights under this act.

(f) The Director (1) may, upon his own initiative at any time in a case in which payments are being made without an award, and (2) shall, upon receipt of information from any person claiming to be entitled to compensation, from the employer, or otherwise that the right to compensation is controverted, or that payment of compensation has been opposed, stopped or changed, whether or not claim has been filed, promptly make such inquiry as circumstances require, cause such medical examinations to be made, hold such hearings, make such determinations or awards, and take such further action as he considers will properly protect the rights of all parties.

Section 25. Notice of Injury or Death. (a) Notice of injury or death shall be given to the employer within 30 days after the date of such injury or death, or within 30 days after the employee or his dependents know the nature of the injury and its relationship to the employment.

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or, in case of death by any person claiming to be entitled to compensation for such death, or by a person on his behalf.

(c) Notice shall be given to the employer by delivering it to him or his representative or by sending it by mail addressed to him or such agent at the last known place of business of either. Such notice may be given to the employer, partner, superior, foreman, agent, or officer of the employer.

(d) Failure to give such notice shall not bar any claim under this act (1) if the employer (or his representative as identified in subsection (c) above) or the carrier had knowledge of the injury or death, or (2) if the Director excuses such failure on the ground that for some satisfactory reason such notice could not be given or that the employer or carrier has not been prejudiced by failure to receive such notice, or (3) unless objection to such failure is raised in the answer as filed with the Director in accordance with subsection (e) of Section 26.

Section 26. Time Limitation for Filing of Claims. (a) The right to compensation for disability shall be barred unless a claim therefor is filed within one year after the injury or last payment of compensation. The right to income benefits for death shall be barred unless a claim therefor is filed within one year after the death or within one year after the dependents know or by exercise of reasonable diligence should know the possible relationship of the death to the employment. However, in cases in which the nature of the injury or disease or its relationship to the employment is not known to the employee the time for filing claim shall not begin to run until (1) the employee knows or by exercise of reasonable diligence should know of the existence of the injury and its possible relationship to his employment and (2) sustains disability or incurs a scheduled physical loss under subsection (c) of Section 16, (except paragraph (24)).

(b) Notwithstanding the provisions of subsection (a), failure to file a claim within the period prescribed in such subsection shall not be a bar to such right unless objection to such failure is raised in the answer to the claim filed under subsection (e) of this section.

(c) If a person who is entitled to compensation under this act is incompetent or a minor, the time for filing claim under subsection (a) shall not begin to run so long as such person has no guardian or other authorized representative, but shall run from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes twenty-one years of age, from the date he becomes twenty-one years of age.

(d) Where recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this act, the limitation of time prescribed in subsection (a) of this section shall not begin to run earlier than from the date of final termination of such action.

(e) Upon the filing with him of a claim, demand, or application of any kind by a person seeking determination of his rights under this act, the Director shall transmit a copy thereof to the other party with notice to respond thereto by answer. The Director shall prepare an appropriate form or forms by which to enable the other party to answer. The other party shall respond by answer (in duplicate) within 20 days after receiving such notices or within such extension of that time as the Director may allow. If answer is not filed, the Director or his hearing officer shall proceed to determine the rights following the procedure in subsection (f) of Section 24.

Section 27. Payment of Compensation. (a) If the right to compensation has not been controverted and any amount of compensation payable to the beneficiary without an award is not paid within 14 days after it becomes due, as provided in subsection (b) of Section 24, there shall be added to such unpaid compensation an amount

equal to [10] per cent thereof, which shall be paid to the beneficiary at the same time as, but in addition to, such amount due, and without regard to any limitation otherwise applicable upon the amount of the compensation, unless such nonpayment is excused by the Director after a showing by the employer that owing to conditions over which he had no control such compensation could not be paid within the period prescribed for the payment.

(b) If any amount of compensation payable under the terms of an award is not paid within 30 days after it shall become payable under the terms of the award, there shall be added to such unpaid amount an amount equal to [20] per cent thereof, which shall be paid to the beneficiary at the same time as, but in addition to, such compensation unless review of the order making such award is had, as provided in Section 34, or unless such nonpayment is excused by the Director after a showing by the employer that owing to conditions over which he has not control such compensation could not be paid within the period prescribed for the payment. If review is had, interest at the rate of [5] per cent shall be added to the award from the date of the original award of the Director or hearing officer.[8]

(c) Within 16 days after the final payment of income benefits has been made, the employer shall send to the Director a notice, in accordance with a form prescribed by the Director, stating that such final payment has been made, the total amount of income benefits paid, the name of the employee, and of any other person to whom income benefits have been paid, the date of the injury or death, the dates on which income benefits have been paid, and the period covered by the payment. If the employer fails to notify the Director within such time, the Director may assess against such employer a civil penalty in an amount not to exceed [$500] which shall be paid into the Special Fund, established under Section 55.[9]

(d) Whenever the Director deems it advisable or necessary to protect a beneficiary, he may require an employer who has not secured the payment of compensation to his employees as required by this act to make a deposit of money with the [State Treasurer] to secure the prompt and convenient payment of compensation payable under an award or modified award. Payments therefrom upon

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8. On this subsection, the American Association of State Compensation Insurance Funds comments that unnecessary delay should be penalized by assessment of a civil penalty, but it should not redound to the pecuniary advantage of the employee. Such a procedure is psychologically wrong. It generates antagonisms, avarice, animosity and needless litigation.

9. The American Association of State Compensation Insurance Funds comments that it would be preferable if the Director were not vested with this quasi-penal authority. The determination of penalty should rest with the civil courts, with the Director authorized to initiate the action.

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any such award shall be made upon order of the Director.

(e) Whenever the Director determines after a hearing that it is in the interest of the rehabilitation of the injured worker in accordance with regulations established by the Director, and it is recommended by the rehabilitation panel, the liability for income benefits under this act, or any part thereof, may be discharged by the payment of a lump sum equal to the present value of future income benefits commuted, computed at [3] per cent true discount compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to income benefits shall be determined in accordance with the United States Life Table,[10] and the probability of the re-marriage of a widow shall be determined in accordance with the American Re-Marriage Table.[10] The probability of the happening of any other contingency affecting the amount of duration of the income benefits shall be disregarded.

(f) Unless otherwise intended or agreed upon when the employer pays wages in whole or part during an injured employee's disability, he shall be entitled to a credit not to exceed the amount of income benefits due for the same period when such wages are paid except for scheduled benefits paid under subsection (c) of Section 16 to which this subsection shall not apply.

Section 28. Minors or Incompetents. (a) If a guardian or legal representative has been appointed for a person who is incompetent or a minor, payment of income benefits under this act shall be made to the guardian or legal representative.

(b) If no guardian or legal representative has been appointed, and notwithstanding any provision of law to the contrary, the income benefits payable to a minor or incompetent person may, upon approval of the Director, after hearing, be paid by the employer in whole or in such part as the Director may determine for and on behalf of such minor or incompetent directly to the person caring for, supporting, or having custody of such minor or incompetent without requiring the appointment of a guardian or other legal representative. The Director may petition a court of competent jurisdiction for appointment of a guardian or other representative to receive income benefits payable to, or to represent in compensation proceedings, any person who is incompetent or a minor under this act.[11]

(c) The Director may require of any guardian or other legal representative or of any person to whom income benefits may be paid under this provision, an accounting of the disposition of the funds

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10. Prior to the enactment of legislation, a check should be made to determine the availability of more recent data.

11. The American Association of State Compensation Insurance Funds suggests that this procedure might more appropriately be vested in the Director or the Appeals Board.

received by the person under this act for and on behalf of such minor or incompetent.

(d) Nothing in this act shall be deemed to preclude the payment of income benefits directly to a minor or incompetent with the approval of the Director.

(e) The payment of income benefits by the employer in accordance with the order of the Director shall discharge the employer from all further obligation as to such income benefits.

Section 29. Recording and Reporting of Payments. Every carrier shall keep a record of all payments of compensation made under the provisions of this act, and of the time and manner of making such payments.

Section 30. Invalid Agreements. (a) No agreement by an employee to pay any portion of premium paid by his employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation as required by this act shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this act shall be guilty of a [misdemeanor] and upon conviction thereof shall be punished by a fine of not more than [$1,000].

(b) No agreement by an employee to waive his right to compensation under this act shall be valid.

Section 31. Assignment and Exemption from Claims of Creditors. No assignment, release, or commutation of income benefits due or payable under this act, except as provided by this act, shall be valid, and such income benefits shall be exempt from all claims of creditors, or other debts and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

Section 32. Compensation a Lien Against Assets.[12] In case of insolvency or bankruptcy, every liability for compensation under this act shall constitute a first lien upon all the property of the employer liable therefor, paramount to all other claims or liens except for wages and taxes, and such liens shall be enforced by order of the court.

Section 33. Hearing Procedure. (a) Upon application of a party in interest, or when ordered by the Director of his hearing officer,

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12. As proposed, comments the American Association of State Compensation Insurance Funds, this seems to be a needless provision, and possibly a harmful one where the employer is insured. It should be limited to unlawfully uninsured employers.

and when issues in a case cannot be resolved by pre-hearing conferences or otherwise, a hearing shall be held for determining the questions at issue. All parties in interest shall be given at least 10 days notice of the hearing and of the issues to be heard, served personally or by mail. Following the presentation of the evidence, the Director or his hearing officer shall determine the questions at issue and file the decision thereon in the office of the [appropriate state agency] within 30 days unless the time for filing the decision is extended by the Director. At the time of such filing, a certified copy of the decision shall be sent by certified mail to all interested parties at the last known address of each. The decision of the Director or his hearing officer shall be made in the form of a compensation order, appropriately titled to show its purpose and containing a report of the case, findings of fact, and conclusions of law, and other explanation of the action taken. A compensation order shall be final unless a timely appeal to the Workmen's Compensation Appeals Board is filed by a party in interest under Section 34.

(b) The Director must adopt rules and regulations of practice and procedure consistent with this act for the hearing, disposition and adjudication of cases, the text of which shall be published and readily available. Such rules shall include provision for procedures in the nature of conferences in order to dispose of cases informally, or to expedite claim adjudication, narrow issues, and simplify the methods of proof at hearings.

(c) In making an inquiry or conducting a hearing the Director or his hearing officer shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedures, except as provided by this act, but may make such inquiry or conduct such hearing in such manner as best to ascertain the rights of the parties.

(d) All hearings before the Director or his hearing officer shall be open to the public. The Director shall by regulation provide for the preparation of a record of each hearing.

(e) All powers, authority, and duties of the Director in respect to adjudications and hearings shall apply to a hearing officer.

(f) The authority of the Director or hearing officer or their duly authorized representatives to determine controverted claims for compensation shall include the right to enter premises at any reasonable time where an injury or death has occurred, and to make such examination of any tool, appliance, process, machinery, or environmental or other condition as may be relevant to a determination of the cause and circumstances of such injury or death.

Section 34. Appeals to the Board. A party in interest may appeal a compensation order to the Workmen's Compensation Appeals Board within 20 days from the date of mailing of the compensation order. If the Board, after a request by any party, determines that a hearing is necessary, it shall schedule a hearing and give at least 10 days notice to all interested parties of the date of such hearing and

the issues to be heard. The Board shall have power to review the findings of fact, conclusions of law and exercise of discretion by the Director or his hearing officer in hearing, determining or otherwise handling of any compensation case and may affirm, reverse or modify any compensation case upon review or remand such a case to the Director for further proceedings and action.

The proceedings before the Board shall be on the record made before the Director or his hearing officer and no new or additional evidence shall be received in respect of the appeal. If the Board determines that the case has been improperly, incompletely, or otherwise insufficiently developed on hearing by the Director or his hearing officer, the case may be remanded for proceedings and appropriate action with or without the Board's relinquishing jurisdiction of the case.

The Board shall make a decision disposing of the issues presented by the appeal and file a decision in its office within [60] days of completion of submission of the case to the Board. Upon such filing, the Board shall send a certified copy of the decision by certified mail to all interested parties at the last known address of each. The decision of the Board shall be made in the form of an order, supported by a written opinion or statement setting forth the reasons for the action taken and including necessary findings of fact and conclusions of law.

The decision of the Board shall be final and conclusive as to all matters adjudicated by the Board upon the expiration of the thirtieth day after copy of the decision has been mailed to the parties, unless prior to that day (1) the Board on its own motion or that of a party in interest, and after notice to all parties in interest, shall signify that it will reconsider the decision, or (2) a party in interest shall seek judicial review of the decision authorized under Section 37.

The decision of the Board upon reconsideration of the case shall become final as to all matters considered, upon expiration of the thirtieth day after copy of decision has been mailed to the interested parties unless prior to that day a party in interest shall seek judicial review authorized under Section 37.

Section 35. Application for Modification. The Director may review any compensation case and make a determination upon his own initiative or upon application of any party in interest in accordance with the procedure in respect of hearings, which may terminate, continue, re-instate, increase, decrease, or otherwise properly affect the compensation benefits provided by this act, or in any other respect consistent with this act, modify any previous decision, award, or action, including the making of an award of compensation if the claim had been rejected in whole or in part.

A review may be had upon application of a party in interest filed with the Director at any time but not later than within two years after the date of the last payment or furnishing of compensation upon the following grounds:

(1) Mistake in determination of fact or failure to make material findings of fact; (2) mistake of law; (3) clerical error or mistake in mathematical calculations; or (4) newly discovered evidence.

A review may be had upon application of a party in interest filed with the Director at any time but not later than within five years after the date of the last payment or furnishing of compensation upon the following grounds:

(1) Change in the nature or extent of the employee's injury, wage-earning capacity, or status of the claimant; or (2) fraud. The Director may review a case at any time in order to correct a manifest injustice. In unusual cases in which the nature of the injury, disease, or its relationship to the employment is not known to the employee, the time for filing an application for review shall not begin to run until (1) the employee knows, or by exercise of reasonable diligence should know, of the existence of the injury and its possible relationship to his employment; and (2) the employee sustains disability or incurs a scheduled physical loss under subsection (c) of Section 16 (except paragraph (24)).

Section 36. Authority of the Director and Board for Conducting Hearings. (a) The hearings by the Director or his hearing officer and the hearings by the Board, unless otherwise provided by law, shall be held at such places as the Director and the Board may find most convenient for the parties and most appropriate for ascertaining the rights of the parties.

(b) The Director and any member of the Board shall have the power to preserve and enforce order during hearings; to issue subpoenas for, to administer oaths, and to compel the attendance and testimony of a witness, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable them effectively to discharge the duties of their office.

(c) If any person in proceedings before the Director or Board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath or affirmation as a witness, or after taking the oath or affirmation refuses to be examined according to law, the Director or Board shall certify the facts to the [court] where the offense is committed and the court shall, if the evidence so warrants, punish such person in the same manner and to the same extent as for contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

Section 37. Judicial Review of Decision by Board. (a) Any party

in interest may, within the time limit specified in Section 34, file application for judicial review of such decision with the [intermediate or final appellate court].

(b) The court shall have power and jurisdiction to review decisions filed by the Board under this act on matters of law only and to perform such other judicial functions and to hear such other matters as are provided for by this act. The court may affirm, suspend, remand, modify or set aside, in whole or in part, a decision of the Board or compel administrative action unlawfully withheld or denied. [Appeals from such court may be had as in other civil actions.]

(c) Proceedings to set aside a compensation order or decision shall not be instituted otherwise than as provided for by this act.

(d) Except as hereinafter provided in this subsection, the taking of an appeal shall operate as a supersedeas as to payment of compensation under the award. In proceedings brought to review administrative action in which an award by the hearing officer or Director has been affirmed by the Appeals Board the court may after at least three days' notice to all parties in interest hear an application by the employee for the payment of compensation required under a compensation order or decision pending the outcome of the appeal. If after summary hearing of the parties the court finds that failure to make payments may jeopardize the health or physical well being of the employee or his dependents, the court may in its discretion order payment in whole or in part. Such proceedings shall be given priority over all other cases and such orders shall not be reviewable.[13]

Section 38. Enforcement of Payment in Default and Penalties. (a) In the event of default in the payment of compensation due under a compensation order or decision the person to whom such compensation is payable may, on or after the thirtieth day from the date upon which the compensation became due, and before the lapse of two years from such due date, make application for a supplementary compensation order declaring the amount of compensation in default. Such application shall be filed with the Director who shall forthwith notify the employer and the carrier of the filing of such application with opportunity to be heard in respect thereto. In the absence of an allegation and proof of fraud in the procurement of the compensation order or decision and if the Director determines that payment of compensation is in default, the Director shall make and file a supplementary compensation order declaring the amount of the

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13. The American Association of State Compensation Insurance Funds regards this provision as incomplete in providing no means of restitution should the ultimate decision be adverse to the employee. It would prefer that payments be made from a Special Fund and to authorize the Director to obtain a restitution if the final decision is adverse to the injured worker.

compensation in default. In case the payment in default is an installment of an award of determinable amount, the Director may, in his discretion, declare the entire balance of the award as the amount in default. The applicant or Director may file a certified copy of the supplementary compensation order with the clerk of the [court] for the [county] [district] in which the employer maintains a place of business. If the employer maintains no place of business in this state, he shall be deemed to have appointed the [Secretary of State] as his agent for the purpose of acceptance of service of process in all matters under the act or related thereto. In such a case the compensation order may be filed in any [court] of this state, and the [Secretary of State] shall take reasonable steps to give actual notice to the employer.

(b) The applicant or Director may thereafter petition the court for entry of judgment upon the supplementary compensation order, serving notice of such petition on the employer and any other person in default. If the court finds the supplementary compensation order valid, the court shall enter judgment against the person or persons in default for the amount due under the order. No fees shall be required for the filing of the supplementary compensation order, or for the petition for judgment, or for the entry of judgment or for any enforcement procedure thereupon. No supersedeas shall be granted by any court with respect to a judgment entered under this section.

(c) Proceedings to enforce a compensation order or decision shall not be instituted otherwise than as provided by this act.

Section 39. Witnesses and Their Fees. No person shall be required to attend as a witness in any administrative proceedings under this act at a place more than one hundred miles from his place of residence, and no person shall be required to attend as a witness in such proceedings unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him. The testimony of any witness may be taken by deposition or interrogatories according to the rules of practice of the [court] and may be taken before any hearing officer under this act or before any person authorized to take testimony.

Section 40. Costs in Taking Appeal. No costs or docket fees shall be imposed upon a claimant under this act in any judicial review or other proceedings in any appeal therefrom. On the request of any party seeking judicial relief or on the request of any reviewing court, the Director shall furnish a transcript of testimony or other administrative record or the pleadings or orders filed in the court, and no such party shall be required to print the contents of these documents.

Section 41. Costs in Proceeding Brought Without Reasonable Ground. If the hearing authority having jurisdiction of any proceed-

ing under this act, administrative or judicial, determines that such proceeding has been instituted or continued without reasonable ground, the costs of such proceeding including a reasonable attorney's fee for necessary services rendered shall be assessed against the party who has so instituted or continued such proceeding.

Section 42. Payment by Employer of Fees for Claimant's Legal Services and Witnesses.[14] (a) If the employer or carrier declines to pay any compensation on or before the thirtieth day after receiving written notice of demand or claim for compensation, on the ground that there is no liability for compensation within the provisions of this act, and the person seeking benefits shall thereafter have utilized the services of an attorney at law in the successful prosecution of his right, claim, or demand before the Director or hearing officer, there shall be awarded, in addition to the award for compensation, a reasonable attorney's fee against the employer or carrier in an amount approved by the Director or hearing officer which shall be paid directly by the employer to the attorney for the claimant in a lump sum after final decision. If the employer or carrier pays or tenders payment of compensation, but controversy relates to the amount of compensation due, and if the award is

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14. This section was drafted only with considerable difficulty and difference of opinion among the drafting group and the Committee on Suggested State Legislation. It is offered with some misgiving because it appears to fly in the face of the tradition that each party to an action is responsible for paying his own legal fees. The section, however, seeks to ensure that a claimant will receive in its entirety an award to which he is entitled by statute--a statute which requires that he give up his common law right to sue his employer for all injuries covered by its provisions. It is recognized that certain safeguards must be included to prevent the section's becoming an invitation to litigation. Fees are subject to approval. If only the amount of the award is controverted, the size of the fee awarded must be related to the difference between the amount of compensation and the amount awarded. Further protection is offered an employer or carrier by his being able to submit the case to impartial medical opinion. Of course, payment of a claimant's legal fees by an employer or carrier presupposes the successful prosecution of his claim by the claimant.

The American Association of State Compensation Insurance Funds adds that it tends to favor the traditional view that the litigants pay for services of legal counsel. Any other proposal makes for a fruitful source of additional litigation. It would be equally logical to provide that the employer-carrier be reimbursed for the successful defense of an unwarranted claim. Witness fees and mileage are no more warranted than attorney fees. By a process of similar reasoning, if these costs are allowed an employee when he prevails, an employer should be able to recover these costs when he prevails.

greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation; Provided, however, that this sentence shall not apply if the controversy relates to degree or length of disability, and if the employer or carrier offers to submit the case for evaluation by impartial medical opinion as provided in paragraph (7) of subsection (b) of Section 12 and offers to tender an amount of compensation based upon the degree or length of disability found by the independent medical report at such time as an evaluation of disability can be made. If the claimant is successful in review proceedings before the Board or court in any such case an award may be made in favor of the claimant and against the employer or carrier for a reasonable attorney's fee for claimant's counsel in accord with the above provisions. In all cases fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the Board or any court for review of any action, award, order or decision, the Board or court may approve an attorney's fee for the work done before it by the attorney for the claimant. An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation due under an award; and the Director, hearing officer, Board, or court shall fix in the award approving the fee, such lien and manner of payment. The amounts awarded against an employer or carrier as attorney's fee shall not in any respect affect or diminish the compensation payable under this act.

(b) In cases where an attorney's fee is awarded against an employer or carrier there may be further assessed against such employer or carrier as costs, fees and mileages for necessary witnesses attending the hearing at the instance of claimant. Both the necessity for the witness and the reasonableness of the fees must be approved by the Director or hearing officer.

(c) Any person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of claimant, unless such consideration or gratuity is approved by the Director, hearing officer, Board, or court, or who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a [misdemeanor], and upon conviction thereof, for each offense shall be punished by a fine of not more than [$1,000] or by imprisonment for not more than [one year], or by both such fine and imprisonment.

Section 43. Penalty for Misrepresentation. Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining or defeating any benefit, fee, or allowance under this act shall be guilty of a [misdemeanor] and on conviction thereof shall be punished by a fine of not to exceed [$1,000] or by imprisonment for not more than [one year], or by both such fine and imprisonment.

Section 44. Enforcement of Penalties, Deposits and Assessments. Proceedings to enforce civil penalties and to require deposits as authorized by this act may be instituted by the Director and brought in any court of competent jurisdiction having jurisdiction over the defendant.

Section 45. Aliens.[15] (a) The compensation payable to an alien as defined in subsection (q) of Section 2 shall be the same in amount as is provided for residents of the United States. Except as otherwise provided by United States treaty, death benefits in the case of a deceased employee leaving dependents who are aliens shall be limited to widow, child and parent of the deceased, if dependent in each case upon the deceased at the time of his death.

(b) Unless and until an alien entitled to benefits under this act shall otherwise notify the Director in writing, a duly accredited consular officer of the country in which the alien resides, or the duly authorized representative of such officer, may upon filing notice with the Director (who shall transmit a copy thereof to the employer) act in all respects under this act as the agent of the alien. Unless specifically limited in writing by the alien, such officer or his representative may execute such claims, forms, and other papers as may be required under this act, and may receive the compensation for the alien. Any fees received for such services shall be subject to approval by the Director. Payment to such officer or his representative of compensation under this act shall constitute a discharge of the obligation of the employer, carrier or other person to the alien in respect to such payment. As a condition precedent to receiving payment for an alien, the Director may require such officer or his representative to furnish bond in such amount as the Director shall determine payable to the alien or to any fund on the alien's behalf as the Director shall require, conditioned upon the faithful performance of the agency and proper disbursement of funds received for the alien as well as compliance with reporting and fee requirements under this section. Such officer or representative shall file with the Director semiannually, or at such other time or times as the Director may require, a report containing a statement, verified under oath, of all amounts received and disbursed for the account of the alien showing the disposition of the amounts stated to have been disbursed. Failure to make an accounting within 30 days after notice is sent by the Director for such accounting, or within such further time as the Director may allow, shall be deemed a

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15. To the American Association of State Compensation Insurance Funds this section appears inordinately long and complex. In the vast majority of claims, standard claims adjusting procedures will be adequate. Except for necessary safeguards for determining dependency, much of the language of this section appears redundant.

sufficient ground for regarding the agency as terminated, in which event the Director shall take such further action as may be necessary to protect the interests of the alien.

(c) Transcripts of birth, marriage, death or other similar certificates or records, when certified to be correct by a local official having custody or charge of such records in a foreign country, and authenticated by proper authority as to the power of such official to make such certification or by a diplomatic officer or consul of the United States within the area, and other documents, affidavits, interrogatories, or depositions, when similarly certified and authenticated, shall be admissible in evidence in proceedings under this act. Evidence of present existence, dependency, relationship, and of any other fact material to the payment of benefits, when certified to by a diplomatic officer or consul of the United States and when supported by his statement showing the basis upon which such certification was made, shall be admissible in evidence.

(d) (1) The Director shall establish a Fund to be known as the "Alien Compensation Fund." The moneys in such Fund shall be deposited in the State Treasury or in any depository authorized to accept state funds. Withdrawal from such Fund shall be made only upon the order of the Director or his representative specially authorized for that purpose. The Fund and any account therein as established by this act shall be subject to audit in the same manner as other public funds of the state. The Director and his authorized representative shall give bond in an amount determined by the [State Treasurer] for the proper discharge of obligations, duties and disbursements in relation to the Fund and any account thereof as imposed by this act.

(2) There shall be deposited in the Alien Compensation Fund all moneys accruing under this act to an alien, or accruing to a citizen or national of the United States residing outside the United States, but which cannot be paid to him either directly or through his agent, because (a) of inability of the payer effectively to transmit funds to the payee, (b) of any restriction upon the payee (other than that imposed by the United States) or any control exercised over the payment, either of which would deny to the payee the full benefit and enjoyment of the payment, (c) impossibility of confirming payment or (d) a finding that the best interests of the payee would be served by withholding transmission of the funds to him. The Director shall exercise his discretion in requiring such a deposit, and any award may be modified so as to effectuate this purpose. When determined by the Director to be in the interests of the payee to do so, the Director may in any case require payment of the award in a lump sum by payment into such Fund of the present value of all future payments of compensation computed at 3 per cent true discount compounded annually. The probability of the beneficiary's death before the expiration of the period during which he is entitled to compensation shall be determined according to the United States

Life Table[16] and, in appropriate cases, the probability of remarriage by the American Re-Marriage Table.[16] The probability of any other contingency affecting payment shall be disregarded. Payment into such Fund shall constitute an acquittance and satisfaction of the obligation of the employer, carrier, or other payer in respect to the object of the particular payment. The Director shall thereafter have authority to pay from the Fund and without interest the amount withheld from the payee, whenever the Director determines that because of changed conditions payment can properly be effected.

(e) Whenever by reason of any law of the United States there shall be a prohibition or restriction applicable to the making of remittances to aliens or to any other persons whether residing in the United States or in any foreign country, or any seizure of alien enemy property rights, and such prohibition, restriction, or seizure shall apply to the remittance of any money benefits or payments to a person who is a beneficiary under this act or who is entitled to payment for services rendered in connection with claims or cases under this act, all such right to benefits and payments shall be terminated, and the alien shall have no property right in such benefits or payments, during the continuance of such prohibition or restriction. The Director shall by appropriate order or modification of an existing order require the payments which would be thus prohibited or restricted to be paid into the Alien Compensation Fund. The Director may in his discretion also require payment into the account of the lump sum value of future compensation or benefits in the manner prescribed in paragraph (2) of subsection (d) of this section. It shall be the duty of the Director to keep fully informed with respect to Executive Orders of the President of the United States, federal regulations, licenses and all other documents pertaining to foreign funds and alien property control, and to act immediately to effectuate payments from the Alien Compensation Fund as they would have been made had the restrictions not been imposed, as restrictions may be wholly or partially removed. It shall also be his duty to seek removal or relaxing of such restrictions in proper cases by applications to the appropriate officer of the United States, under such licensing or other arrangements as the United States may provide. The Director shall make reasonable effort to locate payees and to remit to them the payments which he finds may lawfully be made. Remittances from the account shall be made upon the order of the Director or his representative specially designated for such purpose. No interest shall accrue on any amount to be paid from the account. From time to time the Director shall ascertain whether any moneys so deposited are likely to remain unclaimed, and the moneys so ascertained shall be withdrawn from the account and redeposited in the Special Fund established by this act under Section 55 to be used for the purposes of such Fund.

16. Prior to enactment of legislation, a check should be made to determine the availability of more recent data.

PART V

INSURANCE

Section 46. Security for Payment of Compensation.[17] Every employer shall secure the payment of compensation under this act:

(a) By insuring and keeping insured the payment of such benefits with any organization authorized to insure workmen's compensation in this state, or

(b) By furnishing satisfactory proof to the Director of his financial and administrative ability to meet his obligations under this act and by receiving an authorization from the Director to pay such compensation directly.

(1) The Director shall, as a condition to such authorization, require such employer to file with the [appropriate state agency] a bond of a surety company authorized to do business in this state or to deposit in a depository designated by the Director, negotiable securities, at the option of the employer, of a kind and in an amount determined by the Director, to secure the performance by the employer of all obligations imposed upon him under this act, for injuries occurring to his employees during the period of self-insurance and subject to such conditions as the Director may by regulation prescribe, provided that in no case shall the amount of bond or security required be less than [$100,000] for any one employer.

(2) Authorization of self-insurance shall be evidenced by a "Certificate of Authorization." Such authorization shall be granted for a period of not more than one year. The Director may, for good cause shown and after notice and opportunity of hearing, terminate the authorization of any self-insurer. Failure by a self-insurer to comply with any provision of this act, or of the lawful regulations issued by the Director, or with any lawful order of the Director or a hearing officer, or the failure or insolvency of the surety on his indemnity bond or impairment of financial responsibility of such self-insurer shall be considered good cause for such termination. No termination shall affect the liability of any self-insurer already incurred.

(3) The surety on a bond filed by a self-insurer pursuant to paragraph (1) of this subsection may terminate its liability thereon by giving the Director written notice stating when, not less than thirty days thereafter, such termination shall be effective. In case of such termination, the surety shall remain liable, in accordance with the terms of the bond, with respect to injuries to employees of

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17. In states having State Funds, appropriate provisions should be inserted at this point.

the self-insurer prior to the termination of the surety's liability. If the bond is terminated for any reason other than the employer's terminating his status as a self-insurer,the employer shall, prior to the date of termination of the surety's liability comply with the requirements of paragraph (1) of this subsection.

The liability of a surety on a bond filed pursuant to this section shall be released and extinguished and the bond returned to the employer or surety provided (a) such liability is secured by another bond filed or negotiable securities deposited as required by paragraph (1) of this subsection or (b) the employer files with the Director the policy of insurance specified in paragraph (4) of this subsection.

Securities deposited by an employer pursuant to paragraph (1) of this subsection shall be returned to him upon his written request provided the employer (a) files the bond required by paragraph (1) of this subsection or (b) files with the Director the policy of insurance specified in paragraph (4) of this subsection.

(4) Any employer may at any time terminate his status as a self-insurer by giving the Director written notice stating when not less than thirty days thereafter such termination shall be effective provided such termination shall not be effective until the employer shall have complied with the requirements of subsection (a) of this section.

If an employer who ceases to be a self-insurer files with the Director a policy of insurance in a form approved by the [Insurance Commissioner] and issued by an organization authorized to insure workmen's compensation in this state, and covering the entire liability of such employer for injuries to his employees which occurred during the period of self-insurance, the bond, bonds or securities securing such liability and filed or deposited by the employer pursuant to paragraph (1) of subsection (b) of this section shall forthwith be returned to him. The policy of insurance shall be non-cancellable for any cause during the continuance of the liability secured and so covered.

(5) The Director may in cases of default by the self-insurer after sending him notice by certified mail of his intention to do so, bring suit upon such bond or collect the interest and principal of any of the securities as they may become due or sell the securities or any of them as may be required to pay compensation and discharge the obligation of the self-insurer under this act and apply the proceeds to the payment of compensation under this act.

Section 47. Posting of Notices. The Director may by regulation require that every employer subject to the provisions of this act shall post and keep posted in a conspicuous place or places in and about the place or places of business a typewritten or printed notice, in accordance with a form prescribed by the Director, stating that such employer has secured the payment of compensation in accordance with the provisions of this act. Such notice shall contain the

name and address of the insurance organization, if any, with whom the employer has secured payment of compensation.

Section 48. Certificate of Compliance.[18] The Director may by regulation require that every employer shall present satisfactory evidence to the Director that he has secured the payment of compensation, as provided by Section 46 of this act and regulations thereunder, and on presentation of such evidence shall be issued a certificate of compliance by the Director, stating that the employer has secured payment of compensation.

Section 49. Insurance Policies. (a) Every policy or contract for the insurance of compensation herein provided for shall be deemed to be made subject to the provisions of this act and provisions thereof inconsistent with the act shall be deemed to be reformed to conform with the provisions of this act.

(b) An insurer insuring the liability of an employer under this act shall be deemed to be the insurer for all employees of the employer within the protection of this act. However, if specifically authorized by the Director, a separate insurance policy may be issued for a specified plant or work location if the liability of such employer under this act to all his other employees is otherwise secured.

(c) If the insurer or employer intends to cancel a contract or policy of insurance issued by the insurer under this act within the policy period, he shall give notice to such effect in writing to the Director and to the other party fixing the date on which it is proposed that such cancellation be effective. Such notices shall be served personally on or sent by certified mail to the Director and the other party. No such cancellation shall be effective until [10] days after the mailing of such notice, unless the employer has secured insurance with another carrier which would cause double coverage. In such event the cancellation shall be made effective as of the effective date of such other insurance.

(d) For the purposes of this act, as between the employee and the insurer, notice or knowledge of the injury on the part of the employer, shall be notice or knowledge, as the case may be, of the insurer, jurisdiction of the employer shall be jurisdiction of the insurer, and the insurer shall be bound by and subject to the findings, judgments, awards, decrees, orders and decisions rendered against the employer in the same manner and to the same extent as the employer.

(e) Every policy or contract of insurance issued under authority of this act shall be deemed to contain a provision to carry out the provisions of subsection (d) of this section and a provision that in-

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18. This section may be omitted if the information is readily available from other sources.

solvency or bankruptcy of the employer or his estate or discharge therein or both or any default of the employer shall not relieve the carrier from payment of compensation for injury sustained by an employee during the policy period.

(f) The insurer shall be directly and primarily liable to any person entitled to the benefits of this act. The obligations of the insurer may be enforced by such person, or for his benefit by any agency authorized by law, whether against the insurer alone or jointly with the employer.

(g) As between any such injured employee or his dependents and the insurer no question as to breach of warranty or misrepresentation by the insured shall be raised by the insurer in any proceedings before the [appropriate state agency] or any appeal therefrom.

(h) No statement in an application for a policy of workmen's compensation insurance shall void such policy as between insurer and employer unless such statement shall be false and would materially have affected the acceptance of the risk if known by the insurer. In no case shall the holding of such policy void between the insurer and employer affect the insurer's obligation to such employer's employees or their dependents to pay compensation and to discharge other obligations under the act. In such case, the insurer shall have a right of action against the employer for any amounts for which the insurer is liable under the policy of insurance.

Section 50. Claims Services and Medical Supervision. Each carrier shall provide claims services through its own staffed adjusting offices located within the state, or by independent, [licensed,] resident adjusters, with power to act for the carrier within the state.

The carrier shall provide medical supervision of cases from their insured through medical consultants located within the state or near enough to provide prompt and continuous service.

Section 51. Assigned Risk.[19] The [Insurance Commissioner], after consultation with carriers authorized to issue workmen's compensation policies in this state, shall put into effect a reason-

19. To the American Association of State Compensation Insurance Funds the concept of an assigned risk plan in a compulsory social insurance system is repugnant. If the corporate insurers, in a state which has as yet no State Fund, cannot provide a sure market for all employers, who by law are required to insure their liabilities, then these carriers should retire from the compensation business or request the creation of a State Fund. With the variety of rating plans and safety engineering facilities which are available in today's market, the idea of labeling any employer with the stigma of "uninsurable" is inconceivable. It recommends strongly that this provision be omitted as inappropriate and unnecessary.

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able system for the equitable apportionment among such carriers of applicants for such policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. Such system shall be so drawn as to guarantee that such an applicant, if not in default on workmen's compensation premiums, shall, following his application to the assigned risk system and tender of required premium, be covered by workmen's compensation insurance. When any such system has been approved, all such carriers shall subscribe thereto and participate therein. Assignment shall be in such manner that, as far as practicable, no carrier shall be assigned a larger proportion of compensation premiums under assigned policies during any calendar year than that which the total of compensation premiums written in the state by such carrier during the preceding year bears to the total compensation premiums written in the state by all such carriers during the preceding calendar year.

Section 52. Performance of Insurance Organization. If the Director shall find, after due notice and hearing at which the insurance organization shall be entitled to be heard in person or by counsel and present evidence, that such organization has repeatedly failed to comply with its obligations under this act, he may request the [Insurance Commissioner] to suspend or revoke the authorization of such organization to write workmen's compensation insurance under this act. Such suspension or revocation shall not affect the liability of any such organization under policies in force prior to the suspension or revocation.

Section 53. Payment Pending Determination of Policy Coverage. Whenever any claim is presented and the claimant's right to compensation is not in issue, but the issue of liability is raised as between an employer and a carrier or between two or more employers or carriers, the Director shall order payment of compensation to be made immediately by one or more of such employers or carriers. The Director may order any such employer or carrier to deposit the amount of the award or to give such security therefor as he may deem satisfactory. When the issue is finally resolved, an employer or carrier held not liable shall be reimbursed for any such payments by the employer or carrier held liable and any deposit or security so made shall be returned.

Section 54. Penalty for Failure to Secure Compensation. (a) Any employer required to secure the payment of compensation under this act who willfully fails to secure the payment of such compensation shall be guilty of a [misdemeanor] and upon conviction thereof shall be punished by a fine of not more than [$1,000], or by imprisonment for not more than [one year], or by both such fine and imprisonment; and in any case where the employer is a corporation any officer or employee of the corporation who had authority to secure payment of compensation on behalf of the corporation and will-

fully failed to do so shall be individually liable to a similar fine and imprisonment; and such officer or employee shall be personally liable jointly and severally with such corporation for any compensation which may accrue under this act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by Section 46 of this act. [The fines shall be paid directly by the court to the Director for deposit in the Uninsured Employers' Fund provided in Section 56.]

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property or records belonging to such employer, after one of his employees has been injured within the purview of this act, and with intent to avoid the payment of compensation under this act to such employee or his dependents, shall be guilty of a [misdemeanor] and, upon conviction thereof, shall be punished by a fine of not more than [$1,000] or by imprisonment for not more than [one year], or by both such fine and imprisonment; and in any case where such employer is a corporation, any officer or employee thereof, if knowingly participating or acquiescing in the act, shall be also individually liable to such penalty of imprisonment as well as joint and severally liable with such corporation for such fine.

(c) An employer who has failed to secure payment of compensation for more than twenty days shall pay into the Uninsured Employers' Fund provided in Section 57 as a civil penalty for such failure an amount equal to 1 per centum of his payroll of employees covered by this act for the time during which such failure continued but for not more than three consecutive years. The assessment shall be made by the Director for the year or years immediately preceding the date on which such assessment is made against the employer. The assessment may be collected as a civil penalty in an action brought by the Director against the employer for and on behalf of the Uninsured Employers' Fund. All such assessments shall be deposited in the Uninsured Employers' Fund.

(d) This section shall not affect any other liability of the employer under this act.

Section 55. Special Fund. (a) There is hereby established in the [State Treasury] a Special Fund for the sole purpose of making payments in accordance with the provisions of Section 20, Section 21 and this section. The Fund shall be administered by the Director. The [State Treasurer] shall be the custodian of the Fund and all moneys and securities in the Fund shall be held in trust by the [State Treasurer] and shall not be money or property of the state.

(b) The [State Treasurer] is authorized to disburse moneys from the Fund only upon written order of the Director. He shall be required to give bond in an amount to be fixed and with securities approved by the Director conditioned upon the faithful performance of his duty as custodian of the Fund. The premium of the bond shall

be paid out of the Fund.

(c) Each carrier shall under regulations prescribed by the Director make payments to the Fund in an amount equal to that proportion of [175] per cent of the total disbursement made from the Fund during the preceding calendar year less the amount of the net assets in the Fund as of December 31 of the preceding calendar year, which the total income benefits paid by such carrier bore to the total income benefits paid by all carriers during the fiscal year which ended within the preceding calendar year. An employer who has ceased to be a self-insurer shall continue to be liable for any assessments into the Fund on account of any income benefits paid by him during such fiscal year.

(d) Where there has been default in the payment of compensation due to the insolvency of an insured employer and his carrier or a self-insured employer, payment of any compensation remaining unpaid shall be made from the Special Fund. Such employer and carrier, or self-insured employer and his surety, if any, shall be liable for payment into the Fund of the amounts paid therefrom by the Director under the authority of this subsection, and for the purposes of enforcing this liability the Director, for the benefit of the Fund, shall be subrogated to all the rights of the person receiving such compensation.

(e) The Director shall be charged with the conservation of the assets of the Fund. In furtherance of this purpose, the Attorney General shall appoint a member of his staff to represent the Fund in all proceedings brought to enforce claims against the Fund.

[Alternative (e) The Special Fund Conservation Committee, composed of three members appointed by the Director is created within the [appropriate state agency]. One member shall represent the interests of the stock insurance companies, one member, the interests of the mutual insurance companies and the third, the interests of the self-insured employers. The terms of the members shall be six years, and shall be arranged so that the term of one member, and of only one, shall expire on the tenth day of July in each odd-numbered year. Each member shall hold office until his successor is appointed. Any vacancy on the committee shall be filled by appointment by the Director.

(1) The committee shall represent the Special Fund established in this section in all proceedings brought to enforce a claim against the Fund. The committee shall be given notice of all applications, hearings, and proceedings involving the rights of the Fund.

(2) Members of the committee shall receive no salary, but shall be reimbursed for reasonable and necessary traveling and other expenses incurred in the discharge of their official duties in amounts approved by the Director.

(3) The committee shall have the authority to hire such medical or other experts and to defray the expense thereof and of such witnesses as are necessary to a proper defense of the moneys in

the Special Fund. The committee may also employ such employees as may be required and may also employ legal counsel to represent it and to conduct on behalf of the Fund, all suits, actions and proceedings whatsoever involving the Fund.

(4) All expenses under this subsection shall be defrayed from the Special Fund.] [20]

Section 56. Uninsured Employers' Fund.[21] (a) There is hereby authorized in the [State Treasury] an Uninsured Employers' Fund for the purpose of making payments in accordance with the provisions of subsection (d) of this section. The Fund shall be administered by the Director. The [State Treasurer] shall be the custodian of the Fund and all moneys and securities in the Fund shall be held in trust by the [State Treasurer] and shall not be money or property of the state.

(b) The [State Treasurer] is authorized to disburse moneys from the Fund only upon written order of the Director. He shall be required to give bond in an amount to be fixed and with securities approved by the Director conditioned upon the faithful performance of his duty as custodian of the Fund. The premium of the bond shall be paid out of the Fund.

(c) All amounts collected as fines and penalties under this act except those collected under subsections (a) and (b) of Section 42 shall be paid into the Uninsured Employers' Fund. The Fund shall become operative when the amount in the Fund reaches [$].

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20. This alternative subsection has been included as a suggestion for enactment by larger states. Commenting, the American Association of State Compensation Insurance Funds urges that it be amended to provide for representation from the State Fund in those states where such Funds exist or may exist in the future. A number of states are now giving serious consideration to the creation of such Funds to offset the mounting cost of workmen's compensation insurance. The Association recommends that the language of this subsection be amended to read: "One member shall represent the corporate insurers; one member, the State Fund; and the third, the interest of the self-insured employers."

21. Immediate initiation of the Fund may be made possible by legislative appropriation. The American Association of State Compensation Insurance Funds remarks that from experience in California and other states which have had some practice in the administration of Special Fund benefits, it is apparent that considerable specialized claims-adjusting skills are required. In those states which have, or may have in the future, a State Fund, there would be a considerable saving to the taxpayers if the claims adjusting, cost reserving and benefit disbursing functions were to be assumed by the State Fund. The cost could be on a service-fee basis and it would obviate setting up a separate bureau to administer this relatively small volume of claims.

(d) Once the Uninsured Employers' Fund has become operative, compensation thereafter shall be paid from it when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this act. Such employer shall be liable for payment into the Fund of the amounts authorized to be paid therefrom under the authority of this subsection and for the purposes of enforcing this liability the Director, for the benefit of the Fund, shall be subrogated to all the rights of the person receiving such compensation.

(e) The Director shall be charged with the conservation of the assets of the Fund. In furtherance of this purpose, the Attorney General shall appoint a member of his staff to represent the Fund in all proceedings brought to enforce claims against or on behalf of the Fund.

PART VI

ADMINISTRATION

Section 57. Agency to Administer the Act. (a) This act shall be administered by the Director of the [state administrative agency][22] who shall devote his entire time to the duties of his office. The Governor shall appoint the Director for a term of nine (9) years[23] [, by and with the advice and consent of the Senate,] [24] on the basis of administrative ability, education and training, and experience relevant to the duties of the Director under this act. Upon the expiration of his term the Director shall continue to serve until his successor shall have been appointed and qualified. [Before entering upon his duties the Director shall take and subscribe to an oath or affirmation to support the Constitution of the United States and of this state and to faithfully discharge the duties of his office.] Because cumulative experience and continuity in office are essential to the proper administration of a workmen's compensation and rehabilitation law, it is hereby declared to be in the public interest to continue the Director in office during good behavior and as long as efficiency is demonstrated. The Director may be removed by the Governor for cause, prior to the expiration of his term, but shall be furnished a written copy of the charges against him and shall be accorded a public hearing if he requests it. [He shall be paid a salary at the rate of [$] per year.] [25]

(b) The Director shall appoint such hearing officers and other employees, other than employees and assistants of the Workmen's Compensation Appeals Board, and may establish such branch offices, divisions, sections and advisory committees as he deems necessary to administer the workmen's compensation and rehabilitation law, and such other offices and committees as are provided for by this act. All employees engaged in the administration of the act shall devote their entire time to their duties. [They shall take and subscribe to an oath or affirmation to support the Constitution of the United States and of this state, and to discharge faithfully the duties of office or employment.] All hearing officers and other employees shall be employed under the [merit and classification system.] [26]

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22. Provision is made for identifying the administration agency in Section 2. Definitions.

23. In some states, constitutional provisions limit the length of terms of appointive officers.

24. If this provision is included, language should be added to enable the Governor to make interim appointment to fill vacancy when Senate is not in session.

25. In states having a general pay act, the Director's salary should be fixed therein.

26. Insert name of state merit and classification system.

(c) Hearing officers appointed after the effective date of this act must be lawyers licensed to practice in this state. They shall devote full time to their duties and shall not engage in the private practice of law.

Section 58. Appeals Board.[27] (a) There is hereby created a Workmen's Compensation Appeals Board composed of three[28] members appointed by the Governor [by and with the advice and consent of the Senate] for terms of nine (9) years each, except that the terms of members first appointed shall be for three, six, and nine[29] years respectively as designated by the Governor at the time of appointments. A member of the Board must be a lawyer licensed to practice in this state.[30] The Governor shall designate the chairman of the Board. Each member shall hold office until his successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper handling of appeals under a workmen's compensation and rehabilitation law, it is hereby declared to be in the public interest to continue Board members in office as long as efficiency is demonstrated. The members shall devote full time to their duties as members of the Board and shall not engage in the private practice of law. The Governor may at any time remove any member for cause after furnishing him with a written copy of the charges against him and giving him a public hearing if he requests it. Each member of the Board shall be paid a salary at the rate of not less than the minimum salary of [a judge of a state court of general jurisdiction].

(b) The Board shall have power to decide appeals from compensation orders of the Director or his hearing officers and it shall have authority to consider and decide all matters of fact and questions of law properly cognizable under this act.

(c) A decision concurred in by any two members shall constitute a decision of the Board.[31]

(d) A vacancy in the Board, if there remain two members of it, shall not impair the authority of two members to act.[31]

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27. This full-time Board is recommended for states where the volume of cases is sufficient to justify it. In states where the workload would not warrant a full-time Board, it may be possible for members of the Board to be utilized by the state in similar capacities.

28. In larger states the Board should have five or more members with rotating terms, and other relevant subsections should be adjusted accordingly, including the use of panels where desired.

29. In some states constitutional provisions limit the length of terms of appointive officers.

30. In states in which judges of courts of general jurisdiction are appointed, the same procedure for selection should be followed.

31. If a Board has more than three members, appropriate adjustment should be made.

(e) The chairman of the Board shall employ such employees as may be required to carry out the Board's duties under this act, shall assign the work of the Board to the members thereof and its employees and shall serve as administrative officer of the Board.

(f) The Board shall be within the [state administrative agency] for budgetary and administrative purposes only.

Section 59. Authority to Adopt Rules and Regulations. The Director and the Board each shall have authority to adopt reasonable rules and regulations within their respective areas of responsibility, after notice and public hearing, if requested, for effecting the purposes of this act. All rules and regulations, upon adoption, shall be published and be made available to the public, and, if not inconsistent with law, shall be binding in the administration of this act.[32]

Section 60. Location of Office. The principal office of the Director and of the Board shall be situated in the City of [ ].

Section 61. Seal. The Director and the Board shall each provide a seal for the authentication of orders, decisions and records and for such other purposes as required.

Section 62. Operating Expenses. The Director shall make such expenditures as may be necessary for the adequate administration of this act by the [state administrative agency]. The chairman of the Board shall make such expenditures as may be necessary to perform the Board's function under this act. Such expenditures may include salaries, other personal service, traveling expenses, and cost of subsistence while traveling on official business, office rent, the purchase and rental of books, periodicals, office equipment and supplies, printing and binding, vehicles, cost of membership in official organizations, attendance at meetings and conventions concerned with subject matters cognizable with this act, and all other purposes. All expenditures of the [state administrative agency] and of the Board in the administration of this act shall be paid out of the Workmen's Compensation Administration Fund.

Section 63. Administration Fund.[33] (a) There is hereby established in the [State Treasury] a Workmen's Compensation Administration Fund out of which all costs of administering the Workmen's Compensation and Rehabilitation Law are to be paid upon lawful appropriation.[34] There shall be one appropriation for the [state administrative agency], and a separate appropriation for the Board.

For the purpose of providing for the expense of administering the

32. This section should conform to any administrative procedure requirement the state may have.

33. States having an exclusive state Fund would want to make appropriate modifications in this section.

34. In those states where industrial safety or hygiene is a part of workmen's compensation administration, industrial safety or hygiene

For the purpose of providing for the expense of administering the Workmen's Compensation and Rehabilitation Law each insurance carrier authorized to insure liability under this act shall pay a tax at a rate of [2][35] per cent of gross direct premiums written during the preceding calendar year on account of workmen's compensation insurance on risks located in this state after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, savings and other similar returns paid or credited to policyholders. The provisions of Section [insert reference to general premium tax section or sections] insofar as they relate to time and manner of payment and penalties for late payment or non-payment of premium taxes shall be applicable to the tax imposed by this section which shall be in lieu of any other tax or taxes now or hereafter imposed upon such premiums. Any insurance carrier liable to pay a tax upon its premiums under this section shall not be liable to pay any other or further tax or taxes upon such premiums under any other law of this state. The tax collected under this section shall be deposited in the [State Treasury] to the credit of the Workmen's Compensation Administration Fund.

(b) Balances in the Fund at the end of any appropriation period shall not revert to the general fund or to any other fund, except as provided in this section, but shall continue as a Workmen's Compensation Administration Fund balance at the beginning of the next appropriation period. Whenever at the end of a fiscal year the balance in the Fund is in excess of two times the appropriation for the fiscal year just ending, the [State Treasurer] shall so certify to the [Insurance Commissioner] who shall then deposit in the [State Treasury] to the credit of the Special Fund created by Section 53 of the act, the amount collected from insurance carriers and employers under this section for the ensuing tax year.

(c) When an employer is authorized to become a self-insurer the Director shall so notify the [Insurance Commissioner], giving the effective date of such authorization, whereupon the [Insurance Commissioner] shall assess and collect from the employers carrying their own risks [3][26] per cent of twice the total income benefits paid during the preceding calendar year. All money so collected shall be deposited in the [State Treasury] to the credit of the Workmen's Compensation Administration Fund.

(d) If any carrier shall fail or neglect to pay tax imposed herein or shall withdraw from business in this state before the tax shall fall due according to the provisions of this section, the [Insurance Commissioner] shall proceed at once to collect the same, and he is

activities may also be financed from the Workmen's Compensation Administration Fund.

35. These figures may be adjusted to conform to the general premium tax of the state, maintaining the relationship between the figures for insurance companies and self-insurers.

hereby empowered and authorized to employ such legal process as may be necessary for that purpose, and when so collected he shall pay the same into the [State Treasury] to the credit of the Workmen's Compensation Administration Fund. A suit may be brought by the [Insurance Commissioner] in any court of this state having jurisdiction.

Section 64. Reports. (a) Each year the Director shall make a report to the Governor and through him to the [state legislature] on the operation of this act, including suggestions and recommendations as to improvements in the law and administration thereof, a detailed statement of receipts and expenditures, and a statistical analysis of industrial injury experience and compensation costs.

(b) The Director may prepare and publish such other statistical and informational reports and analyses based upon the reports and records available which, in his opinion, will be useful in increasing public understanding of the purposes, effectiveness, costs, coverage, and administrative procedures of workmen's compensation and rehabilitation in the state; and in providing basic information regarding the occurrence and sources of work injuries for the use of public and private agencies engaged in industrial injury prevention activities.

Section 65. Cooperation with Other Agencies. The Director shall have the authority to enter into cooperative agreements with the [state labor department], [state division of vocational rehabilitation], [state division of employment security], and with other state, federal, or private agencies to facilitate the carrying out of the purposes of this act.

Section 66. Severability. If any provision of this act be declared to be unconstitutional or the applicability thereof to any person or circumstance be held invalid, the validity of the remainder of the act and the applicability of such provision to other persons and circumstances shall not be affected thereby.

Section 67. Laws Repealed. [Use this section to repeal all inconsistent statutory provisions. Where possible such provisions should be cited specifically.]

Section 68. Effective Date. [Insert effective date.]

U.S. DEPARTMENT OF LABOR

EMPLOYEES' COMPENSATION APPEALS BOARD

SUMMARY OF PROCEEDINGS

The Employees' Compensation Appeals Board is a quasi-judicial appellate body consisting of three members. It was established by Congress in 1946 with exclusive jurisdiction to consider and decide appeals of Federal employees from final decisions of the Bureau of Employees' Compensation in claims arising under the Federal Employees' Compensation Act. The Board is separate and distinct from the Bureau. The administration of the FECA is vested in the Bureau, except in the case of employees of the Canal Zone Government and the Panama Canal Company.[1] The FECA is the exclusive remedy for Federal employees for injury or disease sustained in the performance of duty.

The jurisdiction of the Board extends to questions of fact, as well as law, and to questions involving the exercise of discretion. Board review is limited to the case record upon which the Bureau rendered its decision; new evidence may not be submitted to the Board. A decision of the Board is final and not subject to court review.

Appeal is a matter of right, if the application for review is filed within 90 days from the date of the Bureau's decision (180 days for persons residing outside the continental United States or Canada). For good cause shown justifying delay, the Board may accept an application after the 90 (or 180) day period, provided it is filed within 1 year of the date of the Bureau's decision. The application for review may be made on a form which the Board has available for this purpose. However, the Board will accept an informal request for appeal provided it furnishes sufficient information to identify the appellant, Bureau case file number, date and place of injury, date of the decision to be reviewed, and succinctly states the ground of the appeal. It is not necessary for an appellant to be represented before the Board but, if he wishes, he may designate a representative.

Within the discretion of the Board, at any stage of the proceeding, a party in interest may inspect the case record in the office of the Board in Washington, D.C. Arrangements may also be made for inspection in other offices of the U.S. Department of Labor.

When an appeal is docketed, the Bureau is furnished with a copy and is permitted 30 days within which to file with the Board the original record of the case and its reply, which usually takes the form of a memorandum in justification of its decision. Since either the Bureau or appellant may demand oral argument of the issues on appeal, the Bureau's memorandum states whether oral argument is, or is not, requested. The appellant then is furnished with a copy of the Bureau's memorandum and is given an opportunity to file an answer. If the Bureau does not request oral argument, the appellant is advised of his right to request it. If he does not do so within a specified time, the case is submitted to the Board for decision without a hearing.

If either party requests oral argument, a hearing is scheduled. The Board sets the issues to be heard and sends notices to the parties at least 10 days in advance of the hearing. Hearings are held only in Washington, D.C. The hearing procedure is informal. An appellant may appear in person before the Board, or by representative.

The failure of an appellant to be present will not prejudice his case. Oral argument is first presented by appellant. The Bureau's representative then makes his presentation, following which appellant is given an opportunity for rebuttal. As new evidence may not be introduced, the parties must confine oral argument to the evidence already in the record or to the legal issues raised.

The only difference in procedure between cases submitted on the record and "hearing" cases is that in the latter the parties have the opportunity orally to stress and argue points which are considered significant. Each Board member personally reads the record, regardless of whether it is a hearing case or one submitted on the record. This permits the most careful evaluation of all of the evidence before a decision is reached.

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[1] In the case of employees of the Canal Zone Government and Panama Canal Company, the FECA is administered by the Governor of the Canal Zone. The right of appeal to the Board from final decisions of the Governor became effective Aug. 30, 1964. Hereinafter, any reference to the Bureau is similarly applicable to the Governor of the Canal Zone.

In each appeal reviewing the merits of a claim, the Board's decision is accompanied by a written opinion setting forth the salient facts, the conclusions, the law, and the reasoning upon which the Board based its action.

The Federal employee aggrieved by an adverse decision of the Bureau is entitled to the highest standards of appellate review. The Board endeavors to maintain such standards and to achieve through its procedures and practices a just decision in every appeal.

The processing of most of the cases follows the above pattern. However, many other actions may develop, such as motions to dismiss the appeal because of alleged lack of a final decision by the Bureau or contention of other basis for lack of Board jurisdiction; motions to remand for a particular purpose, etc., which may necessitate a variance from the procedure outlined, dependent on the nature of the motion or allegation. In any event, in each case the Board enters a formal order disposing of the matter on appeal. The order may affirm or reverse the decision of the Bureau or may remand the case to the Bureau for such further proceedings as the Board may direct. The Board also may enter an order dismissing the appeal for lack of jurisdiction or inherent insufficiency, or permitting withdrawal of the appeal. A copy of the Board's order is sent to all parties in interest.

All fees for legal services performed in connection with the appeal require the approval of the Board. Receipt of any fee or other consideration for such legal services without approval is a misdemeanor. Application for approval is submitted by an itemized statement of the extent and character of necessary work performed before the Board and a fee is approved in an amount which is considered fair and reasonable. The payment of any fee approved by the Board becomes the responsibility of the appellant. Disbursements do not require approval and are a matter of adjustment between attorney and client. Legal services performed before the Bureau require a separate application to be submitted to the Bureau for its approval.

The opinions of the Board are comprehensive and constitute a valuable fund of precedent which serves not only to guide the Bureau in the adjudication of claims but also as an important source of reference to injured employees, attorneys, and others concerned with problems of workmen's compensation. Each decision with opinion is first issued in multilith form. Later the decisions are assembled and printed in volumes. The volumes are available for reference to anyone who wishes access to the Board's decisions at many depository libraries, at the workmen's compensation commission of each State, and at the regional offices of the Bureau of Employee's Compensation. In addition, there has been a limited distribution to various university and law libraries throughout the United States.

Dated, Washington, D.C., July 1965.