COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable Harrison A. Williams, Jr.
Chairman, Committee on Human Resources
United States Senate

Dear Mr. Chairman:

This refers to your request for our views on S. 3060, 95th Congress, a bill which, if enacted, would be cited as the "National Workers' Compensation Standards Act of 1978."

S. 3060 creates a series of Federal minimum standards for the States' workers' compensation programs, which incorporates 17 of the 19 "essential" recommendations of the 1972 National Commission on State Workmen's Compensation Laws plus certain other standards which are consistent with the National Commission's report.

Under S. 3060, if a State law is not certified by the Secretary of Labor as meeting the Federal standards, claims must still be filed and adjudicated in the State. The claimant, however, can seek Federal enforcement of his or her claim after it becomes clear that he or she will not be awarded compensation within the State system, if such compensation would be payable under required Federal standards.

To clarify the bill, the Committee may wish to add the following two definitions, similar to those that were contained in S. 2008, 93d Congress, to section 3 of the bill--

(1) the term "injury" means (a) any harmful change in the human organism, if work related factors were a substantial causative factor, whether or not the result of an accident, and includes any disease, and (b) any damage to or loss of a prosthetic appliance; and

(2) the term "State" means the several States of the Union, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Wake Island, Guam, and the Trust Territory of the Pacific Islands, but does not include the District of Columbia.

The Committee should consider amending Section 4(c)(1) (page 11) to clarify that death benefits are to be paid only when an employee dies from causes related to employment. Also, the provision that a child's benefit would be payable to age 25 if he or she is a full-time student is inconsistent with other survivor programs such as civil service retirement and social security, where benefits to a student are payable only through age 21, or the Longshore and Federal Employees' Compensation Programs where such benefits are payable only through age 23.

Section 4(f) (page 12) requires that certain benefits be adjusted at least annually to reflect increases in the statewide average weekly wage. Benefits under other programs, including civil service retirement, social security, and the Federal employees' workers' compensation program, are adjusted based on increases in the Consumer Price Index. The Committee may wish to consider the Regional Consumer Price Indexes as the adjustment factor in this provision.

Section 4(m) (page 15) of the bill states that the maximum waiting period for monetary benefits shall be not longer than 3 days and the maximum qualifying period for retroactive benefits during such waiting period shall be not longer than 14 days; however, the bill does not specify when these periods begin. We suggest that this section of the bill be clarified. The Committee may wish to add the phrase "from the date of injury" or it may wish to add the phrase "after the employer has knowledge of the injury" following "than three days" (line 14) and "fourteen days" (line 16), thereby establishing a waiting period similar to that in section 6 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 906).

The intent of having a waiting period is to limit the administrative work involved in processing numerous minor and frivolous claims. To serve this intent, the Committee may want to consider making the waiting period "at least" 3 days instead of "not longer than."

Section 13(c) (page 39) would require the Secretary to make annual reports and evaluations to the Congress of workers' compensation information compiled pursuant to such section. Section 16 (page 42) requires an annual report to

the President for transmittal to the Congress upon the subject matter of the bill, the progress toward achievement of the purpose of the bill, and the needs and requirements in the field of workers' compensation. We suggest that the report requirement at section 13(c) be deleted and the report requirement at section 16 be changed to read substantially as follows:

"Sec. 16. The Secretary shall submit an evaluation report to the Senate and House Committees on Appropriations, the Senate Committee on Human Resources, and the House Committee on Education and Labor, and to the President annually, not later than March 31, or at the time reauthorization legislation is submitted. Such report shall--

"a. contain the Secretary's statement of specific and detailed objectives for the program or programs assisted under the provisions of this Act, and relate these objectives to those in this Act,

"b. include statements of his conclusions as to effectiveness of the program or programs in meeting the stated objectives, measured through the end of the preceding fiscal year,

"c. make recommendations with respect to any changes or additional legislative action deemed necessary or desirable in carrying out the program or programs,

"d. contain a listing identifying the principal analyses and studies supporting the major conclusions and recommendations, and

"e. contain his annual evaluation plan for the program or programs through the ensuing fiscal year for which the budget was transmitted to the Congress by the President, in accordance with section 201(a) of the Budget and Accounting Act, 1921, as amended, 31 U.S.C. 11."

Section 14(c) (page 41) would authorize the Secretary of Labor to accept and use the services, facilities, and employees of any State or political subdivision thereof,

with or without reimbursement. To avoid the question as to when reimbursement should be made and to avoid placing a financial burden on the States, the Committee may wish to revise the language of this section to provide for an advance payment or reimbursement for services rendered by a State agency as is done under section 425 of the Federal Coal Mine Health and Safety Act, 30 U.S.C. 935, which reads in pertinent part as follows:

> "With the consent and cooperation of State agencies * * * the Secretary may * * * advance funds to or reimburse such State (or political subdivision) * * * and their employees for such (functions)."

Also, on page 41, line 16, "may" should be inserted before "accept."

Section 17(d) (page 44) would authorize the Chairman or Chairwoman, subject to such rules and regulations as may be adopted by the National Workers' Compensation Advisory Commission, to appoint and fix the compensation of an executive director and such additional staff personnel as deemed necessary, without regard to the provision of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. We are not aware of the need to exempt such personnel from these provisions. Generally, it should be possible to obtain qualified personnel within the structure of the General Schedule.

Section 7(c) (page 25) requires that the Secretary "annually review the workers' compensation law of each State, including the judicial and administrative interpretations of the law, to determine whether it meets the requirements of section 4 of this act." To fully carry out the duties and responsibilities of determining whether the Secretary effectively and efficiently carries out section 7, we believe the Comptroller General needs full and complete access to all records pertaining to the subject matter of an audit or investigation. To eliminate any future access to records problems, we believe that the bill should contain language similar to section 15(b) to give the Comptroller General access to States' workers' compensation records.

The basic purpose of having less than complete wage replacement for workers' compensation benefits has been to provide some financial incentive for the injured worker to return to work. This bill does not address the disincentive to return to work provided by the tax-free nature of workers' compensation. We believe that there are sound reasons why such benefits should be taxed and we urge the Committee to consider these reasons.

When benefits are nontaxable, replacing a constant fraction of a disabled worker's gross earnings generally means the higher the worker's earnings, the greater the replacement fraction. Suppose, for example, that benefit levels were established at 66-2/3 percent of gross wages, as section 4(b)(1) would require. Using the standard deduction, if an employee had been earning $7,200 per year, was married with two children, and filed a joint Federal income tax return with his spouse, and if they reported no other taxable income, his nontaxable benefits would amount to about 71 percent of his former after-tax earnings. If his earnings had been $20,000 per year, however, his benefits in the same circumstances would amount to 83 percent of his after-tax earnings. At still higher wage levels, his benefits might even exceed his former after-tax earnings, particularly if State income taxes, neglected here, are taken into account.

If the disabled employee or his spouse were receiving other taxable income--if his spouse, for example, were also employed--his earnings would have been taxed at even higher rates than assumed in this example. In that case the nontaxable benefits would amount to an even larger fraction of the employee's former after-tax earnings. Figures will vary according to circumstances; but the conclusion is inescapable that if benefit levels are set at a constant fraction of an employee's former gross earnings, and are nontaxable, many persons will have little financial incentive to return to their former jobs.

The 80 percent of spendable earnings rate, section 4(b)(2), would preserve financial incentives for employees at all wage levels to resume work, if neither the employee nor his spouse were receiving any other taxable income. However, if the employee or his spouse were receiving other taxable income and filed a joint return, the employee might be financially better off continuing to receive workers' compensation benefits than to resume working.

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The most nearly foolproof way of replacing a constant fraction of a disabled employee's after-tax earnings is to (1) set benefits equal to a constant fraction of former gross earnings and (2) make the benefit payments taxable. Exempting workers' compensation benefits for tax purposes also creates a sizable tax expenditure that primarily benefits higher income persons. The Congressional Budget Office predicts that under current law the exemption will cost the Federal Government forgone tax revenues of $1.7 billion in 1983. This bill's provisions would add to these costs, unless the benefit payments were taxed. In 1976 the staff of the Senate Budget Committee estimated that almost 40 percent of the tax expenditure benefits went to persons with incomes of more than $15,000 per year.

It is generally recognized that the tax-free nature of workers' compensation, coupled with the growth of multiple family income in recent years, has caused a reduction in the financial incentive to return to work. In order to reestablish the original intent of a financial incentive to return to work, the Committee might wish to consider the desirability of taxing workers' compensation benefits, while still requiring the payment of benefits equal to a certain percentage of a disabled employee's former gross earnings.

Sincerely yours,

R.F.KELLER

Deputy

Comptroller General
of the United States