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REPORT
112–548

PUBLIC SAFETY OFFICERS' BENEFITS IMPROVEMENTS ACT OF 2012

JUNE 25, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4018]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4018) to improve the Public Safety Officers' Benefits Program, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This title may be cited as the "Public Safety Officers' Benefits Improvements Act of 2012".

19–006

SEC. 2. BENEFITS FOR CERTAIN NONPROFIT EMERGENCY MEDICAL SERVICE PROVIDERS; MISCELLANEOUS AMENDMENTS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) in section 901(a) (42 U.S.C. 3791(a))—

(A) in paragraph (26), by striking "and" at the end;

(B) in paragraph (27), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(28) the term 'hearing examiner' includes any medical or claims examiner.";

(2) in section 1201 (42 U.S.C. 3796)—

(A) in subsection (a), by striking "follows:" and all that follows and inserting the following: "follows (if the payee indicated is living on the date on which the determination is made)—

"(1) if there is no child who survived the public safety officer, to the surviving spouse of the public safety officer;

"(2) if there is at least 1 child who survived the public safety officer and a surviving spouse of the public safety officer, 50 percent to the surviving child (or children, in equal shares) and 50 percent to the surviving spouse;

"(3) if there is no surviving spouse of the public safety officer, to the surviving child (or children, in equal shares);

"(4) if there is no surviving spouse of the public safety officer and no surviving child—

"(A) to the surviving individual (or individuals, in shares per the designation, or, otherwise, in equal shares) designated by the public safety officer to receive benefits under this subsection in the most recently executed designation of beneficiary of the public safety officer on file at the time of death with the public safety agency, organization, or unit; or

"(B) if there is no individual qualifying under subparagraph (A), to the surviving individual (or individuals, in equal shares) designated by the public safety officer to receive benefits under the most recently executed life insurance policy of the public safety officer on file at the time of death with the public safety agency, organization, or unit;

"(5) if there is no individual qualifying under paragraph (1), (2), (3), or (4), to the surviving parent (or parents, in equal shares) of the public safety officer; or

"(6) if there is no individual qualifying under paragraph (1), (2), (3), (4), or (5), to the surviving individual (or individuals, in equal shares) who would qualify under the definition of the term 'child' under section 1204 but for age.";

(B) in subsection (b)—

(i) by striking "direct result of a catastrophic" and inserting "direct and proximate result of a personal";

(ii) by striking "pay," and all that follows through "the same" and inserting "pay the same";

(iii) by striking "in any year" and inserting "to the public safety officer (if living on the date on which the determination is made)";

(iv) by striking "in such year, adjusted" and inserting "with respect to the date on which the catastrophic injury occurred, as adjusted";

(v) by striking ", to such officer";

(vi) by striking "the total" and all that follows through "For" and inserting "for"; and

(vii) by striking "That these" and all that follows through the period, and inserting "That the amount payable under this subsection shall be the amount payable as of the date of catastrophic injury of such public safety officer.";

(C) in subsection (f)—

(i) in paragraph (1), by striking ", as amended (D.C. Code, sec. 4–622); or" and inserting a semicolon;

(ii) in paragraph (2)—

(I) by striking ". Such beneficiaries shall only receive benefits under such section 8191 that" and inserting ", such that beneficiaries shall receive only such benefits under such section 8191 as"; and

(II) by striking the period at the end and inserting "; or"; and

(iii) by adding at the end the following:

"(3) payments under the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101 note; Public Law 107–42).";

(D) by amending subsection (k) to read as follows:

"(k) As determined by the Bureau, a heart attack, stroke, or vascular rupture suffered by a public safety officer shall be presumed to constitute a personal injury within the meaning of subsection (a), sustained in the line of duty by the officer and directly and proximately resulting in death, if—

"(1) the public safety officer, while on duty—

"(A) engages in a situation involving nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or

"(B) participates in a training exercise involving nonroutine stressful or strenuous physical activity;

"(2) the heart attack, stroke, or vascular rupture commences—

"(A) while the officer is engaged or participating as described in paragraph (1);

"(B) while the officer remains on that duty after being engaged or participating as described in paragraph (1); or

"(C) not later than 24 hours after the officer is engaged or participating as described in paragraph (1); and

"(3) the heart attack, stroke, or vascular rupture directly and proximately results in the death of the public safety officer,

unless competent medical evidence establishes that the heart attack, stroke, or vascular rupture was unrelated to the engagement or participation or was directly and proximately caused by something other than the mere presence of cardiovascular-disease risk factors."; and

(E) by adding at the end the following:

"(n) The public safety agency, organization, or unit responsible for maintaining on file an executed designation of beneficiary or executed life insurance policy for purposes of subsection (a)(4) shall maintain the confidentiality of the designation or policy in the same manner as the agency, organization, or unit maintains personnel or other similar records of the public safety officer.";

(3) in section 1202 (42 U.S.C. 3796a)—

(A) by striking "death", each place it appears except the second place it appears, and inserting "fatal"; and

(B) in paragraph (1), by striking "or catastrophic injury" the second place it appears and inserting ", disability, or injury";

(4) in section 1203 (42 U.S.C. 3796a–1)—

(A) in the section heading, by striking "WHO HAVE DIED IN THE LINE OF DUTY" and inserting "WHO HAVE SUSTAINED FATAL OR CATASTROPHIC INJURY IN THE LINE OF DUTY"; and

(B) by striking "who have died in the line of duty" and inserting "who have sustained fatal or catastrophic injury in the line of duty";

(5) in section 1204 (42 U.S.C. 3796b)—

(A) in paragraph (1), by striking "consequences of an injury that" and inserting "an injury, the direct and proximate consequences of which";

(B) in paragraph (3)—

(i) in the matter preceding clause (i)—

(I) by inserting "or permanently and totally disabled" after "deceased"; and

(II) by striking "death" and inserting "fatal or catastrophic injury"; and

(ii) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively;

(C) in paragraph (5)—

(i) by striking "post-mortem" each place it appears and inserting "post-injury"; and

(ii) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively;

(D) in paragraph (7), by striking "public employee member of a rescue squad or ambulance crew;" and inserting "employee or volunteer member of a rescue squad or ambulance crew (including a ground or air ambulance service) that—

"(A) is a public agency; or

"(B) is (or is a part of) a nonprofit entity serving the public that—

"(i) is officially authorized or licensed to engage in rescue activity or to provide emergency medical services; and

"(ii) engages in rescue activities or provides emergency medical services as part of an official emergency response system;"; and

(E) in paragraph (9)—

(i) in subparagraph (A), by striking "as a chaplain, or as a member of a rescue squad or ambulance crew;" and inserting "or as a chaplain;";

(ii) in subparagraph (B)(ii), by striking "or" after the semicolon;

(iii) in subparagraph (C)(ii), by striking the period and inserting "; or"; and

(iv) by adding at the end the following:

"(D) a member of a rescue squad or ambulance crew who, as authorized or licensed by law and by the applicable agency or entity, is engaging in rescue activity or in the provision of emergency medical services."

(6) in section 1205 (42 U.S.C. 3796c), by adding at the end the following:

"(d) Unless expressly provided otherwise, any reference in this part to any provision of law not in this part shall be understood to constitute a general reference under the doctrine of incorporation by reference, and thus to include any subsequent amendments to the provision.";

(7) in each of subsections (a) and (b) of section 1212 (42 U.S.C. 3796d–1), sections 1213 and 1214 (42 U.S.C. 3796d–2 and 3796d–3), and subsections (b) and (c) of section 1216 (42 U.S.C. 3796d–5), by striking "dependent" each place it appears and inserting "person";

(8) in section 1212 (42 U.S.C. 3796d–1)—

(A) in subsection (a)—

(i) in paragraph (1), in the matter preceding subparagraph (A), by striking "Subject" and all that follows through ", the" and inserting "The"; and

(ii) in paragraph (3), by striking "reduced by" and all that follows through "(B) the amount" and inserting "reduced by the amount";

(B) in subsection (c)—

(i) in the subsection heading, by striking "DEPENDENT"; and

(ii) by striking "dependent";

(9) in paragraphs (2) and (3) of section 1213(b) (42 U.S.C. 3796d–2(b)), by striking "dependent's" each place it appears and inserting "person's";

(10) in section 1216 (42 U.S.C. 3796d–5)—

(A) in subsection (a), by striking "each dependent" each place it appears and inserting "a spouse or child"; and

(B) by striking "dependents" each place it appears and inserting "a person"; and

(11) in section 1217(3)(A) (42 U.S.C. 3796d–6(3)(A)), by striking "described in" and all that follows and inserting "an institution of higher education, as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002); and".

(b) AMENDMENT RELATED TO EXPEDITED PAYMENT FOR PUBLIC SAFETY OFFICERS INVOLVED IN THE PREVENTION, INVESTIGATION, RESCUE, OR RECOVERY EFFORTS RELATED TO A TERRORIST ATTACK.—Section 611(a) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (42 U.S.C. 3796c–1(a)) is amended by inserting "or an entity described in section 1204(7)(B) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(7)(B))" after "employed by such agency".

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 402(l)(4)(C) of the Internal Revenue Code of 1986 is amended—

(1) by striking "section 1204(9)(A)" and inserting "section 1204(10)(A)"; and

(2) by striking "42 U.S.C. 3796b(9)(A)" and inserting "42 U.S.C. 3796b(10)(A)".

SEC. 3. AUTHORIZATION OF APPROPRIATIONS; DETERMINATIONS; APPEALS.

The matter under the heading "PUBLIC SAFETY OFFICERS BENEFITS" under the heading "OFFICE OF JUSTICE PROGRAMS" under title II of division B of the Consolidated Appropriations Act, 2008 (Public Law 110–161; 121 Stat. 1912; 42 U.S.C. 3796c–2) is amended—

(1) by striking "decisions" and inserting "determinations";

(2) by striking "(including those, and any related matters, pending)"; and

(3) by striking the period at the end and inserting the following: ": *Provided further,* That, on and after the date of enactment of the Public Safety Officers' Benefits Improvements Act of 2012, as to each such statute—

"(1) the provisions of section 1001(a)(4) of such title I (42 U.S.C. 3793(a)(4)) shall apply;

"(2) payment (other than payment made pursuant to section 611 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (42 U.S.C. 3796c–1)) shall be made only upon a determination by the Bureau that the facts legally warrant the payment;

"(3) any reference to section 1202 of such title I shall be deemed to be a reference to paragraphs (2) and (3) of such section 1202; and

"(4) a certification submitted under any such statute (other than a certification submitted pursuant to section 611 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (42 U.S.C. 3796c–1)) may be accepted by the Bureau as prima facie evidence of the facts asserted in the certification:

Provided further, That, on and after the date of enactment of the Public Safety Officers' Benefits Improvements Act of 2012, no appeal shall bring any final determination of the Bureau before any court for review unless notice of appeal is filed (within the time specified herein and in the manner prescribed for appeal to United States courts of appeals from United States district courts) not later than 90 days after the date on which the Bureau serves notice of the final determination: *Provided further,* That any regulations promulgated by the Bureau under such part (or any such statute) before, on, or after the date of enactment of the Public Safety Officers' Benefits Improvements Act of 2012 shall apply to any matter pending on, or filed or accruing after, the effective date specified in the regulations, except as the Bureau may, consistent with the interests of justice, indicate otherwise.".

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall—

(1) take effect on the date of enactment of this Act; and

(2) apply to any matter pending, before the Bureau of Justice Assistance or otherwise, on the date of enactment of this Act, or filed or accruing after that date.

(b) EXCEPTIONS.—

(1) RESCUE SQUADS AND AMBULANCE CREWS.—For a member of a rescue squad or ambulance crew (as defined in section 1204(7) of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by this Act), the amendments made by this Act shall apply to injuries sustained on or after June 1, 2009.

(2) HEART ATTACKS, STROKES, AND VASCULAR RUPTURES.—Section 1201(k) of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by this Act, shall apply to heart attacks, strokes, and vascular ruptures sustained on or after December 15, 2003.

Purpose and Summary

The legislation makes improvements to the Public Safety Officers' Benefit Act of 1976, which supports public safety officers and their families across the country.

This legislation, among other things, provides a very limited expansion of coverage, for some non-profit personnel, to the current statutory provisions relating to members of rescue squads or ambulance crews who suffer fatal or catastrophic injury as a result of their performance of certain public safety activity within their specific lines of duty. With these changes, a member of a rescue squad or ambulance crew—*i.e.,* an employee or volunteer member either of a public-agency rescue squad or ambulance crew, or of a rescue squad or ambulance crew that is (or is a part of) a nonprofit entity serving the public that is officially authorized or licensed to engage in rescue activity or to provide emergency medical services, and engages (as directed by an official emergency dispatch system) in rescue activities or provides emergency medical services—would be covered under the PSOB program, whenever the member is engaging in rescue activity or in the provision of emergency medical services, as authorized or licensed by law and by the applicable agency or entity (and as directed under the official emergency dispatch system).

Background and Need for the Legislation

Congress passed the Public Safety Officers' Benefits Act (PSOBA) in 1976. Since PSOBA was first enacted, there have been many subsequent modifications of, and amendments to, the PSOBA and related laws. Some of these statutory amendments have expanded coverage under the program; many of them have contracted coverage.

When it approves claims for the benefits payable under the PSOBA and related statutes, the Bureau of Justice Assistance of the Justice Department's Office of Justice Programs has a legal duty to do so judiciously. The Bureau has the concurrent duty to be both the impartial administrator of the PSOBA according to the law and the impartial guardian of the public treasury with respect to it. Failure to administer the PSOBA program in keeping with these two principles could jeopardize the program's continued existence. It is just as problematic for the program if the Department of Justice pays a PSOBA claim when payment is not unequivocally warranted by the PSOBA program statutes and implementing regulations, or is not supported by the evidence, as it is for the Department to deny payment when payment is clearly required.

Under 31 U.S.C. § 3528, every Department official who determines PSOBA claims and/or certifies payments is *personally* "responsible for . . . repaying a payment [that is] illegal, improper, or incorrect because of an inaccurate or misleading certificate; [that is] prohibited by law; or . . . that does not represent a legal obligation under the appropriation . . . involved" unless the determination "was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information." Under 31 U.S.C. § 3528, every Department official who determines PSOBA claims and/or certifies payments is *personally* "responsible for . . . repaying a payment [that is] illegal, improper, or incorrect because of an inaccurate or misleading certificate; [that is] prohibited by law; or . . . that does not represent a legal obligation under the appropriation . . . involved" unless the determination "was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information."

Moreover, under 31 U.S.C. § 1301(a), a payment pursuant to a legally unwarranted PSOBA determination would appear to be a violation of 31 U.S.C. § 1341(a)(1)(A), the Anti-Deficiency Act, which is a felony statute in addition to carrying civil and administrative penalties, 31 U.S.C. §§ 1350, 1349(a).

The PSOBA is an important resource for the public safety officers and their families who would potentially face financial disaster because of the death or incapacitation of the public safety officer. The Supreme Court in *Rose* correctly acknowledged the benefits payable under PSOBA to be legal gratuities (see *Rose v. Arkansas State Police,* 479 U.S. 1, 4 (1986)). While the program is recognized as an important resource, there are many things that the program is not. The PSOBA program is not an insurance program, a worker's compensation program, or a remedial program, and never has been. It is also not a program that covers, or ever was intended to cover, Good Samaritans—even Good Samaritans who happen to be public safety officers, acting outside their specific line of duty. Nor

is it a program that covers, or ever has covered, or ever was intended to cover, off-the-job injuries, conditions, or circumstances; or non-physical injuries; or mental stress or strain, post-traumatic or otherwise; or occupational diseases; or injuries that result from an officer's misconduct, suicide, illegal, unauthorized, or improper behavior, or from other officer activity that is inconsistent with or contrary to law or to rules or conditions of duty; or injuries that occur when an officer is intoxicated through having consumed drugs or alcohol other than under duress or by mistake, or when an officer is grossly negligent in the performance of duty. Instead, it is a deliberately limited program that, except for one carefully circumscribed exception relating to certain heart attacks and strokes, provides for the payment of specific gratuity benefits arising from the death, or permanent and total disability, of some public safety officers, when the Department of Justice itself determines, on the basis of legally-sufficient objective evidence, and after "reasonable diligence and inquiry," that the death or disability is "the direct and proximate" result of a physical injury sustained in the line of their specific duty; *i.e.,* while they are acting within the scope of their official responsibility, legal authority, and particular employment as police officers, firefighters, correctional officers, probation and parole officers, chaplains, members of rescue squads or ambulance crews, or other positions defined by the statute. Each of these requirements is firmly-established in the law and therefore to be given full effect, rather than minimized, ignored, or interpreted away, administratively or judicially. Several disappointing rulings from the Court of Federal Claims that failed to recognize the gratuitous nature of PSOBA benefits contributed to the result of the jurisdiction over PSOBA appeals being removed from that Court and lodged exclusively in the Federal Circuit Court of Appeals.

Not every person for whom public safety officer status is claimed is a "public safety officer," for purposes of the PSOBA program, and not everything that public safety officers do, or every injury that may happen to them, happens or is sustained in their "line of duty." Not every disabling injury that may happen to an officer is a "catastrophic injury" within the meaning of the PSOBA. And, under the PSOBA and related statutes, not every injury that occurs in an officer's line of duty is "the direct and proximate" cause (*i.e.,* "the" principal, "substantial factor," as opposed to being a mere precipitator or a merely coincident cause) of death, or permanent and total disability, that may result or follow. By means of its PSOBA-implementing regulations and its consistent administrative jurisprudence derived from its determination of thousands of PSOBA claims over 35 years, the Office of Justice Programs has established a measured, comprehensive structure that falls well within the legislative intention for this limited program and overall has served to harmonize, interpret, and fill out the many disparate concepts that are critical to the various parts of the program, such as—injury; line of duty injury; line of duty activity or action; direct and proximate causation; substantial factor; risky behavior; legal authority and obligation to act as a public safety officer; gainful work; involvement in crime control; total disability; permanent disability; medical certainty; medical probability; fire suppression; fire protection; primary/non-primary function; department or agency;

intention; voluntary intoxication; gross negligence; intentional misconduct; functionally within or part of a public agency; instrumentality; certification; terrorist attack; qualified beneficiary; eligible payee; biological; heart attack; divorce; beneficiary of a life insurance policy; designated beneficiary under the PSOBA; intentional action or activity; occupational disease; participation in a training exercise; engagement in a situation; authorized commuting; emergency medical services; official training program; employment by a public agency; employee; and official capacity.

Since the PSOBA-implementing regulations were first issued in 1977, Congress has never overturned any of them by legislation. Courts are bound by the PSOBA's requirements and provisions of properly-implemented regulations, just as much as the Office of Justice Programs is, and further bound by the agency's administrative jurisprudence. Every PSOBA case is a legal claim against the Treasury, and these regulations and consistent administrative precedents have helped to ensure that the Federal Government, which is in the midst of its greatest debt crisis since the Founding, decides these claims strictly in accordance with the PSOBA and the underlying law governing legal gratuities, in a generally consistent and orderly manner over time, and based on real, objective, and legally sufficient evidence that objectively meets the standards of proof set forth in the law, rather than speculation, fancied legislative intent, uncorroborated assertions, biased evidence, a slanted record, incomplete information, or sympathy, however understandable or deeply felt.

Regulations can go only so far. Last year, the Bureau of Justice Assistance received a record number of death and disability claims, totaling in excess of 700. The Bureau has struggled to keep abreast, and must be provided with adequate means to enable it to administer the program and determine claims, under the law, more efficiently than it does at present. This legislation makes certain changes of a technical or administrative nature to the PSOBA and related laws that should help to expedite the administrative processing of these legal claims against the Federal Government and clarify Congressional intent with regard to certain matters.

Additionally, experience has highlighted that certain provisions of the PSOBA have the effect of excluding from the program some classes or subclasses of safety officers and of trainees who might better be included under certain circumstances. For instance, under the PSOBA as currently in effect, police academy trainees are considered "law enforcement officers" only after they acquire the legal authority and responsibility to go out and enforce the law by making arrests and detaining real or suspected criminals, because, under the PSOBA and related statutes, one cannot be a "law enforcement officer" unless one actually has the legal duty to enforce the criminal law; and the same goes for fire-fighter trainees, who are not considered "firefighters" until they actually acquire the legal authority and responsibility to go out and protect the public by fighting fires, because one is not a "firefighter" under the PSOBA and related statutes if one is not under the duty to fight fires. Mere authority to engage in training activities has never been enough to make someone a public safety officer, and when the dangers inherent in some academy or other training exercises lead to fatal or catastrophic injury, only those trainees who coinciden-

tally happen already to have that outside legal authority and responsibility are covered under current law. Efforts have been made to address this situation by considering certain limited expansions of coverage to some public safety officer candidates who suffer fatal or catastrophic injury as a result of their discharge of certain training activities. The scope or the appropriateness of such an expansion remains unsettled and is not addressed in this bill. The only expansion of status coverage in this legislation relates to certain nonprofit emergency response personnel who suffer fatal or catastrophic injury as a result of their discharge of certain specific public safety activities.

Hearings

The Committee on the Judiciary held no hearings on H.R. 4018.

Committee Consideration

On June 6, 2012, the Committee met in open session and ordered the bill (H.R. 4018) to be reported favorably, with an amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that no rollcall votes occurred during the Committee's consideration of H.R. 4018.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4018, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 2012.

Hon. LAMAR SMITH, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4018, the "Public Safety Officers' Benefits Improvements Act of 2012."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 4018—Public Safety Officers' Benefits Improvements Act of 2012.

As ordered reported by the House Committee on the Judiciary on June 6, 2012.

CBO estimates that implementing H.R. 4018 would have no significant cost to the Federal Government. Enacting the bill could affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year. The legislation would not affect revenues.

Under current law, the families of public safety officers who have died as a result of injuries sustained in the line of duty are eligible for a one-time payment of about $320,000. Public safety officers who have been permanently disabled are eligible for the same payment, but this payment is subject to the availability of appropriated funds.

This legislation would make members of rescue squads or ambulance crews operated by nonprofit entities eligible for benefits paid when public safety officers are permanently disabled or die as a result of injuries sustained in the line of duty. H.R. 4018 also would narrow the eligibility of members of rescue squads or ambulance crews for benefits under the Public Safety Officers' Benefit (PSOB) program; as a result, some individuals would no longer receive benefits that they could receive under current law. The bill would prevent individuals from receiving certain benefits under the program if they receive payments from the September 11th Victim Compensation Fund of 2001. In addition, the proposed legislation would make many technical and administrative changes that aim to expedite the processing of claims for benefits.

Based on the number of fatalities of members of nonprofit rescue squads or ambulance crews in recent years, CBO expects that, on average, a few persons each year would be affected by the proposed legislation and that additional payments from the PSOB program

would be made. CBO estimates that those payments would total $13 million over the 2013–2022 period. However, based on information from the Department of Justice, we expect that those costs would be offset by savings from other provisions of the bill that would result in fewer persons receiving PSOB payments than will receive them under current law. As a result, CBO estimates that enacting the legislation would have no significant net effect on direct spending or discretionary spending from the PSOB program.

H.R. 4018 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4018 promotes public safety as a profession by providing benefits for public safety officers catastrophically injured or killed in the line of duty, thereby encouraging consideration of that profession by addressing financial security for the families impacted by the death or serious injury of a public safety officer.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4018 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1. Short Title

This section creates a short title, the Public Safety Officers' Benefits Improvement Act of 2011.

Section 2. Benefits for Certain Nonprofit Emergency Medical Service Providers and Certain Trainees; Miscellaneous Amendments

In general, this section of the legislation implements certain technical and administrative corrections, harmonizes inconsistent statutory language within the PSOBA, amends some provisions relating to beneficiaries and the definition of "member of a rescue squad or ambulance crew," and clarifies certain existing statutory language.

Subsection (a)(1): Because PSOBA claims are gratuity claims against the Treasury, all PSOBA claimants have the burden of proof as to every element of their claims, and any claim that lacks legally-sufficient objective evidence as to any material element, as a matter of law, must be denied. If such legally-sufficient objective evidence is present, however, then the PSOBA leaves it to the discretion of the Department, acting as finder of fact, to determine thereafter, upon "reasonable diligence and inquiry"(*see* 31 U.S.C. § 3528) if it is persuaded by that evidence, or not, under the particular standard of proof applicable to the element. For this reason,

among the most important authorities that the Department has in connection with determining PSOBA claims is the authority to make inquiries and gather evidence on its own initiative (as by law it is duty bound to do, *cf.* 31 U.S.C. § 3528, to avoid the issuance of "an inaccurate or misleading certificate" of determination, and to avoid any payment of a false claim or any payment in violation of the Anti-Deficiency Act), so that it may objectively test or verify each material factual assertion made and obtain relevant information beyond what claimants may provide, thus enabling it to discharge its legal duty of making its determinations as to each material element, in every claim, based on a proper, sound, thorough, and impartial objective record, rather than a faulty, skewed, incomplete, or slanted one.

Currently, hearing examiners, who are a principal means by which the Department independently obtains evidence in PSOBA claims, may receive evidence in any part of the United States. This provision of the legislation clarifies that medical or claims examiners may also receive evidence in any part of the United States, by making it clear that medical or claims examiners are hearing examiners under the program. In connection with medical examinations, the program's current piecemeal approach to finding and using the services of medical examiners from all over, who often have little or no experience with the program or training in its specific statutory and regulatory requirements, particularly for in-person examinations, has led to significant delays in claims processing and to needless administrative expense in securing and training each new examiner. Moreover, the current piecemeal approach has exposed the program to the risk of determining claims inconsistently with its prior administrative cases and/or contrarily to the PSOBA, such as through the application of legal or evidentiary standards from other programs or other areas of the law. This is a systemic problem, and a serious one, because, since the program's inception, impartial expert medical opinions obtained by the agency, most notably from the Armed Forces Institute of Pathology but also from other outstanding medical experts, have helped to ensure that the agency's determinations have a full and sufficient objective evidentiary basis, and apply the correct legal standards rather than the opinions of personal physicians, or other medical practitioners, who may be partial, have a direct or indirect financial interest at stake, or who are unfamiliar with or unused to the specific requirements of the PSOBA program. Under this legislation, the program will have clear statutory authority for the appointment of a disciplined cadre of impartial, dispassionate, objective, and informed independent medical examiners, much as the program currently has a cadre of appointed independent hearing examiners, who are well trained and versed in the PSOBA and regulations, and can conduct medical examinations nationwide and render expert opinions, in a manner consistent across the board and from case to case, based on their increasing experience, over time, with the program.

Subsection (a)(2)(A): The PSOBA and its implementing regulations, together, set out the rules under which the statutory death benefit may be received, in the first place, by a deceased officer's children and lawful spouse; and, if none, by certain designated beneficiaries; and, if none of the above, by the officer's biological fa-

ther and mother (although, instead, it may be an adoptive father or an adoptive mother, or a stepfather or a stepmother, depending on whom the deceased officer considered himself, as of the injury date, to have the closest relationship). Among other things, this provision of the legislation streamlines and restates the statutory list of beneficiaries of death benefits, using consistent language, and also specifies as a matter of statute that the living-beneficiaries-of-gratuities rule (see *Letitia Tyler Semple v. United States,* 24 Ct. Cl. 422 (1889)), which has always been applied since the PSOBA was enacted, continues to apply to the PSOBA death benefit. This specification should reduce the administrative costs of the program by preventing the agency from having to determine who may be survivors' legal heirs under the laws of inheritance of the several States. Under this provision of the bill, the beneficiaries, starting with spouse and children, currently specified in the PSOBA remain in place, and in the same order as at present, ending thereafter, in cases where an officer is survived by neither his father nor his mother, or by anyone higher on the statutory list of potential beneficiaries, with the officer's surviving adult children.

Subsection (a)(2)(B): Under the PSOBA and its implementing regulations, and consistent administrative jurisprudence, a disability benefit is payable only when the Department determines that a public safety officer has sustained a line of duty injury whose direct physical consequences permanently prevent the performance of any gainful work. This rule would remain firmly in place, undisturbed, under the provisions of the bill. As currently written, however, the PSOBA's disability provisions use different terms from those in other parts of the PSOBA to describe the same or similar things, which leads to ambiguity and imprecision, thus increasing the administrative costs of the program and occasioning delay in the processing of disability claims. This provision of the legislation addresses this problem by clarifying and harmonizing the statutory language relating to disability with other provisions of the PSOBA so as to create consistency in terms across the statute.

Subsection (a)(2)(C): This provision of the legislation corrects a longstanding drafting error and makes a conforming amendment to the PSOBA collateral source/dual-compensation provision, by expressly netting out any payments made under Pub. L. 107–42: The collateral source provisions of Pub. L. 107–42 already requires PSOBA payments, among other payments, to be netted out, so as to avoid dual payment, but nothing in the PSOBA itself, as currently in effect, reflects this. Currently, 42 U.S.C. 3796(f)(1) requires eligibility for PSOBA benefits to be determined only after eligibility, if any, for the payments referred to there has been determined. With this legislative change, similarly, eligibility for PSOBA benefits will be determined only after eligibility, if any, for payment under Pub. L. 107–42 has been finally determined. Overall, this provision of the legislation should reduce confusion among claimants and lower the resulting programmatic administrative costs.

Subsection (a)(2)(D): The Hometown Heroes Survivors Benefits Act of 2003 created a statutory presumption generally applicable, in principle, to certain heart attacks and strokes that occur within a certain time after a public safety officer, while otherwise on duty,

has actually done one of the following specific things—(1) "engaged in a situation" within his line of duty, which engagement involved "physical . . . emergency response activity" that was also "law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other [similar] activity," as well as "nonroutine" and either "stressful or strenuous"; or (2) "participated in a training exercise" of his public agency, which participation involved "physical activity" that was also both "nonroutine" and either "stressful or strenuous." Although the terms in the 2003 enactment are not defined in the statute, by and large over time, mostly through implementing regulations but also through its administrative jurisprudence, the Bureau has given the separate elements that are statutorily required for the presumption to arise practical and workable definitions. One particular term introduced into the PSOBA in 2003, "competent medical evidence to the contrary," has not proven workable as introduced. This problem is addressed in this provision of the legislation, along with some streamlining of the 2003 statutory language.

First, the 2003 enactment placed the term in the wrong position within the PSOBA. Instead of using the term to describe something that rebutted the statutory presumption, the 2003 enactment provided that the presumption itself could arise only if the same presumption was "not overcome by competent medical evidence to the contrary." In other words, under the 2003 enactment, claimants—who of course as gratuity claimants against the Treasury have the burden of proof as to every element of their claims—are entitled to the presumption only if they can prove a negative. This provision of the legislation removes the negative from the factual elements that claimants must prove for the presumption, in principle, to arise, and separates the "competent medical evidence" inquiry/analysis required by the statute from the presumption inquiry/analysis.

Second, nothing in the 2003 enactment indicated what the "competent medical evidence" was supposed to be "to the contrary" *of*. The Department of Justice proposed regulations in 2005 that would have made the mere existence of certain well-recognized cardiovascular disease risk factors "competent medical evidence to the contrary," but this result was avoided in its 2006 final regulations relating to "competent medical evidence to the contrary," which correctly turn, instead, on "risky behavior" and on things other than "any engagement or participation described in the Act." This provision of the legislation strikes the "to the contrary" language from the current statute and replaces it with a clear and precise articulation of the specific factual issues that the "competent medical evidence" in a given claim is to go to, so as to keep claimants from being in doubt as to what, precisely, they must establish, in connection with this term, as a material element of their claims. In so doing, among other things, the legislation expressly precludes any possibility of adoption of a "mere existence" rule, such as was proposed unsuccessfully in 2005.

This provision of the legislation streamlines and restates the 2003 amendment to the PSOBA in clearer, more logical, more precise, and much less confusing language, and which harmonizes with the terms and structure found in other parts of the PSOBA. The 2003 amendment, as currently in effect, has occasioned great

confusion among claimants and has imposed significant attendant administrative costs on the program. Under this provision of the legislation, which is intended to reduce that confusion, and those costs, a public safety officer who is determined by the Office of Justice Programs to have died as the direct and proximate result of a heart attack, a stroke, or a vascular rupture under the specific conditions delineated there (described above) shall be presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty unless competent medical evidence establishes that the engagement or participation necessary for the presumption to arise played no material part in it, or that it was directly and proximately caused by something other than the mere presence of cardiovascular disease risk factors.

Subsection (a)(2)(E): This provision of the legislation moves a provision currently contained in the PSOBA to a more logical place within the statute, without making any substantive change.

Subsection (a)(3): The PSOBA contains provisions that categorically forbid the agency to pay benefits in any case in which there is reasonable evidence that there may have been officer misconduct that may have led to the fatal or catastrophic injury, or in which there is reasonable evidence that the officer, at the time of the fatal or catastrophic injury, may have been voluntarily intoxicated or may have been grossly negligent in the performance of duties, *unless* the claimant establishes the contrary, as a material element of the claim. Unfortunately, those provisions, as currently written, use terms in a manner inconsistent with other provisions of the PSOBA, which leads to ambiguity and imprecision and results in the delay of processing of certain claims, thereby increasing the program's administrative costs. This provision of the legislation amends these statutory non-payment provisions, and addresses these problems, by harmonizing the current statutory language with other provisions of the PSOBA so as to create consistency in terms across the statute. The amendments made by the legislation do not change the substance of these PSOBA non-payment provisions, as currently in effect and implemented by the agency regulations.

Subsection (a)(4) & (5): Various provisions of the PSOBA, as currently written, use different terms to describe the same or similar things, which leads to ambiguity, imprecision, and confusion, occasions delays in the processing of claims, and increases in the administrative costs of the program. In keeping with the agency regulations, this provision of the legislation addresses these problems by harmonizing the current statutory language with other provisions of the PSOBA so as to create consistency in terms across the statute; the provision also corrects several technical errors in the current statute.

Finally, this provision of the legislation makes precise changes, including a limited expansion of coverage for some non-profit personnel, to the current statutory provisions relating to members of rescue squads or ambulance crews who suffer fatal or catastrophic injury as a result of their performance of certain public safety activity within their specific lines of duty. With these changes, a member of a rescue squad or ambulance crew—*i.e.,* an employee or volunteer member either of a public-agency rescue squad or ambulance crew, or of a rescue squad or ambulance crew that is (or is

a part of) a nonprofit entity serving the public that is officially authorized or licensed to engage in rescue activity or to provide emergency medical services, and engages in rescue activities or provides emergency medical services as part of an official emergency response system—would be covered under the PSOB program, whenever the member is engaging in rescue activity or in the provision of emergency medical services, as authorized or licensed by law and by the applicable agency or entity (and as part of an official emergency response system).

Subsection (a)(6) & (11): This provision of the legislation clarifies that the various incorporations by reference that currently exist in the PSOBA constitute general references under the law and thus include subsequent amendments.

Subsections (a)(7)-(10): These provisions of the legislation removes confusing language from the PSOBA. For example, the PSOBA currently uses the terms "dependent spouse" and "dependent child," but does so only in the context of the provisions relating to educational-assistance benefits. (With respect to the other parts of the PSOBA, the term "dependent" was removed more than 20 years ago, by Pub. L. 100–690.) These provisions of the legislation harmonize the statutory language applicable to educational benefits with other provisions of the PSOBA. Additionally, these provisions remove language that has created unnecessary paperwork burdens on claimants and the Bureau, caused administrative delays in claims processing and payment, and disproportionately and negatively affected low-income children of public safety officers.

Subsection (b): This provision makes a conforming change to the 'fast track' provisions of law for first responder victims of terrorism, found at 42 U.SC. 3796c-1. This fast track process was enacted in the week after September 11, 2001, and requires payment of benefits under the PSOB program within 30 days to a qualified applicant injured or killed as a result of 9/11. One month later, as part of the *USA PATRIOT Act,* the mandate for payment was expanded to cover first responders killed while responding to any terrorist event. This provision clarifies that the non-profit employees granted eligibility for PSOBA benefits under this bill, also would qualify for the fast track provisions.

Subsection (c): This is a conforming amendment, relating to a cross-reference to the PSOBA in the tax code.

Section 3. Authorization of Appropriations; Determinations; Appeals

This section of the legislation largely is technical and administrative and intended to reduce the costs of administering the program. Principally, it amends 42 U.S.C. § 3796c-2 to remove unnecessary language and to harmonize the statutory language with other provisions of the PSOBA so as to create consistency in terms throughout. Furthermore, it provides explicitly that the PSOBA's general appropriations authorization, which applies to death, disability, and educational-assistance benefit claims, also applies to all claims under related statutes, *e.g.,* 42 U.S.C. § 3796c-1 and Pub. L. 107–37, thus confirming as a matter of statutory law the principle that informs what sections 32.3 and 32.2(e) & (f), for example, of the PSOBA implementing regulations already provide—that, generally speaking, claims under the related statutes all fall within the

ambit of the PSOBA program proper. Additionally, this section of the legislation makes certain other technical and administrative clarifications relating to some statutory limitations under current law, to the agency's determination authority, and to the agency's acceptance, as *prima facie* evidence, of certain certifications submitted by other government agencies—specifically, those certifications that government agencies are already authorized by the related statutes to submit to the Bureau of Justice Assistance. In so doing, among other things, the legislation confirms what section 32.5(f) of the PSOBA regulations already provides. None of the changes made by this legislation extends the 30-day period, currently specified in the related statutes, and that commences upon the Bureau's receipt of a proper certification from a government agency, within which the Bureau is required to make its determination, of approval or denial, as to the claim that the certification relates to. Finally, this section of the legislation establishes a jurisdictional time limit for appeals and a uniform rule for regulations that implement the provisions of the PSOBA and related statutes.

Section 4. Effective Date

This section of the legislation sets out the effective dates of the various amendments it makes.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

* * * * * * *

TITLE I—JUSTICE SYSTEM IMPROVEMENT

* * * * * * *

PART I—DEFINITIONS

DEFINITIONS

SEC. 901. (a) As used in this title—

(1) * * *

* * * * * * *

(26) the term "Indian Tribe" has the meaning given the term "Indian tribe" in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)); [and]

(27) the term "private person" means any individual (including an individual acting in his official capacity) and any

private partnership, corporation, association, organization, or entity (or any combination thereof)[.]*; and*

(28) the term "hearing examiner" includes any medical or claims examiner.

* * * * * * *

PART L—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

Subpart 1—Death Benefits

PAYMENTS

SEC. 1201. (a) In any case in which the Bureau of Justice Assistance (hereinafter in this part referred to as the "Bureau") determines, under regulations issued pursuant to this part, that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Bureau shall pay a benefit of $250,000, adjusted in accordance with subsection (h), as [follows:

[(1) if there is no surviving child of such officer, to the surviving spouse of such officer;

[(2) if there is a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares and one-half to the surviving spouse;

[(3) if there is no surviving spouse, to the child or children of such officer in equal shares;

[(4) if there is no surviving spouse or surviving child—

[(A) in the case of a claim made on or after the date that is 90 days after the date of the enactment of this subparagraph, to the individual designated by such officer as beneficiary under this section in such officer's most recently executed designation of beneficiary on file at the time of death with such officer's public safety agency, organization, or unit, provided that such individual survived such officer; or

[(B) if there is no individual qualifying under subparagraph (A), to the individual designated by such officer as beneficiary under such officer's most recently executed life insurance policy on file at the time of death with such officer's public safety agency, organization, or unit, provided that such individual survived such officer; or

[(5) if none of the above, to the parent or parents of such officer in equal shares.

[(6) The public safety agency, organization, or unit responsible for maintaining on file an executed designation of beneficiary or recently executed life insurance policy pursuant to paragraph (4) shall maintain the confidentiality of such designation or policy in the same manner as it maintains personnel or other similar records of the officer.] *follows (if the payee indicated is living on the date on which the determination is made)—*

(1) if there is no child who survived the public safety officer, to the surviving spouse of the public safety officer;

(2) if there is at least 1 child who survived the public safety officer and a surviving spouse of the public safety officer, 50 percent to the surviving child (or children, in equal shares) and 50 percent to the surviving spouse;

(3) if there is no surviving spouse of the public safety officer, to the surviving child (or children, in equal shares);

(4) if there is no surviving spouse of the public safety officer and no surviving child—

(A) to the surviving individual (or individuals, in shares per the designation, or, otherwise, in equal shares) designated by the public safety officer to receive benefits under this subsection in the most recently executed designation of beneficiary of the public safety officer on file at the time of death with the public safety agency, organization, or unit; or

(B) if there is no individual qualifying under subparagraph (A), to the surviving individual (or individuals, in equal shares) designated by the public safety officer to receive benefits under the most recently executed life insurance policy of the public safety officer on file at the time of death with the public safety agency, organization, or unit;

(5) if there is no individual qualifying under paragraph (1), (2), (3), or (4), to the surviving parent (or parents, in equal shares) of the public safety officer; or

(6) if there is no individual qualifying under paragraph (1), (2), (3), (4), or (5), to the surviving individual (or individuals, in equal shares) who would qualify under the definition of the term "child" under section 1204 but for age.

(b) In accordance with regulations issued pursuant to this part, in any case in which the Bureau determines that a public safety officer has become permanently and totally disabled as the [direct result of a catastrophic] *direct and proximate result of a personal* injury sustained in the line of duty, the Bureau shall [pay, to the extent that appropriations are provided, the same] *pay the same* benefit [in any year] *to the public safety officer (if living on the date on which the determination is made)* that is payable under subsection (a) [in such year, adjusted] *with respect to the date on which the catastrophic injury occurred, as adjusted* in accordance with subsection (h)[, to such officer]: *Provided,* That [the total annual benefits paid under this subsection may not exceed $5,000,000. For] *for* the purposes of making these benefit payments, there are authorized to be appropriated for each fiscal year such sums as may be necessary: *Provided further,* [That these benefit payments are subject to the availability of appropriations and that each beneficiary's payment shall be reduced by a proportionate share to the extent that sufficient funds are not appropriated.] *That the amount payable under this subsection shall be the amount payable as of the date of catastrophic injury of such public safety officer.*

* * * * * * *

(f) The benefit payable under this part shall be in addition to any other benefit that may be due from any other source, except—

(1) payments authorized by section 12(k) of the Act of September 1, 1916[, as amended (D.C. Code, sec. 4–622); or]*;*

(2) benefits authorized by section 8191 of title 5, United States Code[. Such beneficiaries shall only receive benefits under such section 8191 that]*, such that beneficiaries shall receive only such benefits under such section 8191 as* are in excess of the benefits received under this part[.]*; or*

(3) payments under the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101 note; Public Law 107–42).

* * * * * * *

[(k) For purposes of this section, if a public safety officer dies as the direct and proximate result of a heart attack or stroke, that officer shall be presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty, if—

[(1) that officer, while on duty—

[(A) engaged in a situation, and such engagement involved nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or

[(B) participated in a training exercise, and such participation involved nonroutine stressful or strenuous physical activity;

[(2) that officer died as a result of a heart attack or stroke suffered—

[(A) while engaging or participating as described under paragraph (1);

[(B) while still on that duty after so engaging or participating; or

[(C) not later than 24 hours after so engaging or participating; and

[(3) such presumption is not overcome by competent medical evidence to the contrary.]

(k) As determined by the Bureau, a heart attack, stroke, or vascular rupture suffered by a public safety officer shall be presumed to constitute a personal injury within the meaning of subsection (a), sustained in the line of duty by the officer and directly and proximately resulting in death, if—

(1) the public safety officer, while on duty—

(A) engages in a situation involving nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or

(B) participates in a training exercise involving nonroutine stressful or strenuous physical activity;

(2) the heart attack, stroke, or vascular rupture commences—

(A) while the officer is engaged or participating as described in paragraph (1);

(B) while the officer remains on that duty after being engaged or participating as described in paragraph (1); or

(C) not later than 24 hours after the officer is engaged or participating as described in paragraph (1); and

(3) the heart attack, stroke, or vascular rupture directly and proximately results in the death of the public safety officer,

unless competent medical evidence establishes that the heart attack, stroke, or vascular rupture was unrelated to the engagement or participation or was directly and proximately caused by something other than the mere presence of cardiovascular-disease risk factors.

* * * * * * *

(n) The public safety agency, organization, or unit responsible for maintaining on file an executed designation of beneficiary or executed life insurance policy for purposes of subsection (a)(4) shall maintain the confidentiality of the designation or policy in the same manner as the agency, organization, or unit maintains personnel or other similar records of the public safety officer.

LIMITATIONS

SEC. 1202. No benefit shall be paid under this part—

(1) if the [death] *fatal* or catastrophic injury was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about his death [or catastrophic injury]*, disability, or injury*;

(2) if the public safety officer was voluntarily intoxicated at the time of his [death] *fatal* or catastrophic injury;

(3) if the public safety officer was performing his duties in a grossly negligent manner at the time of his [death] *fatal* or catastrophic injury;

(4) to any individual who would otherwise be entitled to a benefit under this part if such individual's actions were a substantial contributing factor to the [death] *fatal* or catastrophic injury of the public safety officer; or

* * * * * * *

NATIONAL PROGRAMS FOR FAMILIES OF PUBLIC SAFETY OFFICERS [WHO HAVE DIED IN THE LINE OF DUTY] *WHO HAVE SUSTAINED FATAL OR CATASTROPHIC INJURY IN THE LINE OF DUTY*

SEC. 1203. The Director is authorized to use no less than $150,000 of the funds appropriated for this part to maintain and enhance national peer support and counseling programs to assist families of public safety officers [who have died in the line of duty] *who have sustained fatal or catastrophic injury in the line of duty*.

DEFINITIONS

SEC. 1204. As used in this part—

(1) "catastrophic injury" means [consequences of an injury that] *an injury, the direct and proximate consequences of which* permanently prevent an individual from performing any gainful work;

* * * * * * *

(3) "child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased *or permanently and totally disabled* public safety officer who, at the time of the public safety officer's [death] *fatal or catastrophic injury*, is—

[(i)] *(A)* 18 years of age or under;

[(ii)] *(B)* over 18 years of age and a student as defined in section 8101 of title 5, United States Code; or

[(iii)] *(C)* over 18 years of age and incapable of self-support because of physical or mental disability;

* * * * * * *

(5) "intoxication" means a disturbance of mental or physical faculties resulting from the introduction of alcohol into the body as evidence by—

[(i)] *(A)* a [post-mortem] *post-injury* blood alcohol level of .20 per centum or greater; or

[(ii)] *(B)* a [post-mortem] *post-injury* blood alcohol level of at least .10 per centum but less than .20 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to his death;

or resulting from drugs or other substances in the body;

* * * * * * *

(7) "member of a rescue squad or ambulance crew" means an officially recognized or designated [public employee member of a rescue squad or ambulance crew;] *employee or volunteer member of a rescue squad or ambulance crew (including a ground or air ambulance service) that—*

(A) is a public agency; or

(B) is (or is a part of) a nonprofit entity serving the public that—

(i) is officially authorized or licensed to engage in rescue activity or to provide emergency medical services; and

(ii) engages in rescue activities or provides emergency medical services as part of an official emergency response system;

* * * * * * *

(9) "public safety officer" means—

(A) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, [as a chaplain, or as a member of a rescue squad or ambulance crew;] *or as a chaplain;*

(B) an employee of the Federal Emergency Management Agency who is performing official duties of the Agency in an area, if those official duties—

(i) * * *

(ii) are determined by the Director of the Federal Emergency Management Agency to be hazardous duties; [or]

(C) an employee of a State, local, or tribal emergency management or civil defense agency who is performing official duties in cooperation with the Federal Emergency Management Agency in an area, if those official duties—

(i) * * *

(ii) are determined by the head of the agency to be hazardous duties[.]*; or*

(D) a member of a rescue squad or ambulance crew who, as authorized or licensed by law and by the applicable

agency or entity, is engaging in rescue activity or in the provision of emergency medical services.

ADMINISTRATIVE PROVISIONS

SEC. 1205. (a) * * *

* * * * * * *

(d) Unless expressly provided otherwise, any reference in this part to any provision of law not in this part shall be understood to constitute a general reference under the doctrine of incorporation by reference, and thus to include any subsequent amendments to the provision.

Subpart 2—Educational Assistance to Dependents of Public Safety Officers Killed or Disabled in the Line of Duty

* * * * * * *

SEC. 1212. BASIC ELIGIBILITY.

(a) BENEFITS.—(1) [Subject to the availability of appropriations, the] *The* Attorney General shall provide financial assistance to a [dependent] *person* who attends a program of education and is—

(A) * * *

* * * * * * *

(2) Except as provided in paragraph (3), financial assistance under this subpart shall consist of direct payments to an eligible [dependent] *person* and shall be computed on the basis set forth in section 3532 of title 38, United States Code.

(3) The financial assistance referred to in paragraph (2) shall be [reduced by the sum of—

[(A) the amount of educational assistance benefits from other Federal, State, or local governmental sources to which the eligible dependent would otherwise be entitled to receive; and

[(B) the amount] *reduced by the amount*, if any, determined under section 1214(b).

(b) DURATION OF BENEFITS.—No [dependent] *person* shall receive assistance under this subpart for a period in excess of forty-five months of full-time education or training or a proportional period of time for a part-time program.

(c) AGE LIMITATION FOR [DEPENDENT] CHILDREN.—No [dependent] child shall be eligible for assistance under this subpart after the child's 27th birthday absent a finding by the Attorney General of extraordinary circumstances precluding the child from pursuing a program of education.

SEC. 1213. APPLICATIONS; APPROVAL.

(a) * * *

(b) APPROVAL.—The Attorney General shall approve an application for assistance under this subpart unless the Attorney General finds that—

(1) the [dependent] *person* is not eligible for, is no longer eligible for, or is not entitled to the assistance for which application is made;

(2) the [dependent's] *person's* selected educational institution fails to meet a requirement under this subpart for eligibility;

* * * * * * *

(4) the [dependent] *person* already is qualified by previous education or training for the educational, professional, or vocational objective for which the educational program is offered.

(c) NOTIFICATION.—The Attorney General shall notify a [dependent] *person* applying for assistance under this subpart of approval or disapproval of the application in writing.

SEC. 1214. REGULATIONS.

(a) * * *

(b) SLIDING SCALE.—Notwithstanding section 1213(b), the Attorney General shall issue regulations regarding the use of a sliding scale based on financial need to ensure that an eligible [dependent] *person* who is in financial need receives priority in receiving funds under this subpart.

* * * * * * *

SEC. 1216. SPECIAL RULE.

(a) RETROACTIVE ELIGIBILITY.—Notwithstanding any other provision of law, [each dependent] *a spouse or child* of a Federal law enforcement officer killed in the line of duty on or after January 1, 1978, and [each dependent] *a spouse or child* of a public safety officer killed in the line of duty on or after January 1, 1978, shall be eligible for assistance under this subpart, subject to the other limitations of this subpart.

(b) RETROACTIVE ASSISTANCE.—The Attorney General may provide retroactive assistance to [dependents] *a person* eligible under this section for each month in which the [dependent] *person* pursued a program of education at an eligible educational institution. The Attorney General shall apply the limitations contained in this subpart to retroactive assistance.

(c) PROSPECTIVE ASSISTANCE.—The Attorney General may provide prospective assistance to [dependents] *a person* eligible under this section on the same basis as assistance to [dependents] *a person* otherwise eligible. In applying the limitations on assistance under this subpart, the Attorney General shall include assistance provided retroactively. A [dependent] *person* eligible under this section may waive retroactive assistance and apply only for prospective assistance on the same basis as [dependents] *a person* otherwise eligible.

SEC. 1217. DEFINITIONS.

For purposes of this subpart:

(1) * * *

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(3) The term "eligible educational institution" means an institution which—

(A) is [described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date

of the enactment of this section; and] *an institution of higher education, as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002); and*

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UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT ACT) ACT OF 2001

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TITLE VI—PROVIDING FOR VICTIMS OF TERRORISM, PUBLIC SAFETY OFFICERS, AND THEIR FAMILIES

Subtitle A—Aid to Families of Public Safety Officers

SEC. 611. EXPEDITED PAYMENT FOR PUBLIC SAFETY OFFICERS INVOLVED IN THE PREVENTION, INVESTIGATION, RESCUE, OR RECOVERY EFFORTS RELATED TO A TERRORIST ATTACK.

(a) IN GENERAL.—Notwithstanding the limitations of subsection (b) of section 1201 or the provisions of subsections (c), (d), and (e) of such section or section 1202 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796, 3796a), upon certification (containing identification of all eligible payees of benefits pursuant to section 1201 of such Act) by a public agency that a public safety officer employed by such agency *or an entity described in section 1204(7)(B) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(7)(B))* was killed or suffered a catastrophic injury producing permanent and total disability as a direct and proximate result of a personal injury sustained in the line of duty as described in section 1201 of such Act in connection with prevention, investigation, rescue, or recovery efforts related to a terrorist attack, the Director of the Bureau of Justice Assistance shall authorize payment to qualified beneficiaries, said payment to be made not later than 30 days after receipt of such certification, benefits described under subpart 1 of part L of such Act (42 U.S.C. 3796 et seq.).

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INTERNAL REVENUE CODE OF 1986

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter D—Deferred Compensation, Etc

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PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC

Subpart A—General Rule

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SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

(a) * * *

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(l) DISTRIBUTIONS FROM GOVERNMENTAL PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE.—

(1) * * *

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(4) DEFINITIONS.—For purposes of this subsection—

(A) * * *

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(C) PUBLIC SAFETY OFFICER.—The term "public safety officer" shall have the same meaning given such term by [section 1204(9)(A)] *section 1204(10)(A)* of the Omnibus Crime Control and Safe Streets Act of 1968 ([42 U.S.C. 3796b(9)(A)] *42 U.S.C. 3796b(10)(A)*).

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CONSOLIDATED APPROPRIATIONS ACT, 2008

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DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2008

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TITLE II

DEPARTMENT OF JUSTICE

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OFFICE OF JUSTICE PROGRAMS

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PUBLIC SAFETY OFFICERS BENEFITS

For payments and expenses authorized by part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796), such sums as are necessary, as authorized by section 6093 of Public Law 100–690 (102 Stat. 4339–4340) (including amounts for administrative costs, which amounts shall be paid to the "Justice Assistance" account), to remain available until expended; and $4,854,000 for payments authorized by section 1201(b) of such Act; and $3,980,000 for educational assistance, as authorized by section 1212 of such Act: *Provided,* That, hereafter, funds available to conduct appeals under section 1205(c) of the 1968 Act, which includes all claims processing, shall be available also for the same under subpart 2 of such part L and under any statute authorizing payment of benefits described under subpart 1 thereof, and for appeals from final **[**decisions**]** *determinations* of the Bureau (under such part or any such statute) to the Court of Appeals for the Federal Circuit, which shall have exclusive jurisdiction thereof **[**(including those, and any related matters, pending)**]**, and for expenses of representation of hearing examiners (who shall be presumed irrebuttably to enjoy quasi-judicial immunity in the discharge of their duties under such part or any such statute) in connection with litigation against them arising from such discharge**[**.**]***: Provided further, That, on and after the date of enactment of the Public Safety Officers' Benefits Improvements Act of 2012, as to each such statute—*

(1) the provisions of section 1001(a)(4) of such title I (42 U.S.C. 3793(a)(4)) shall apply;

(2) payment (other than payment made pursuant to section 611 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (42 U.S.C. 3796c–1)) shall be made only upon a determination by the Bureau that the facts legally warrant the payment;

(3) any reference to section 1202 of such title I shall be deemed to be a reference to paragraphs (2) and (3) of such section 1202; and

(4) a certification submitted under any such statute (other than a certification submitted pursuant to section 611 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (42 U.S.C. 3796c–1)) may be accepted by the Bureau as prima facie evidence of the facts asserted in the certification:

Provided further, That, on and after the date of enactment of the Public Safety Officers' Benefits Improvements Act of 2012, no appeal shall bring any final determination of the Bureau before any court for review unless notice of appeal is filed (within the time specified herein and in the manner prescribed for appeal to United States courts of appeals from United States district courts) not later than 90 days after the date on which the Bureau serves notice of the final determination: Provided further, That any regulations promulgated by the Bureau under such part (or any such statute) before, on, or after the date of enactment of the Public Safety Officers' Benefits Improvements Act of 2012 shall apply to any matter pending on, or

filed or accruing after, the effective date specified in the regulations, except as the Bureau may, consistent with the interests of justice, indicate otherwise.

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