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Public Safety Officers' Benefits (PSOB) and Public Safety Officers' Educational Assistance (PSOEA) Programs

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SUMMARY

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Public Safety Officers' Benefits (PSOB) and Public Safety Officers' Educational Assistance (PSOEA) Programs

The Public Safety Officers' Benefits (PSOB) program provides cash benefits to federal, state, and local law enforcement officers; firefighters; employees of emergency management agencies; and members of emergency medical services agencies who are killed or permanently and totally disabled as the result of personal injuries sustained in the line of duty. The Public Safety Officers' Educational Assistance (PSOEA) program, a component of the PSOB program, provides higher-education assistance to the children and spouses of public safety officers killed or permanently disabled in the line of duty.

The PSOB and PSOEA programs are administered by the Department of Justice (DOJ), Bureau of Justice Assistance (BJA). However, claimants dissatisfied with denials of benefits may pursue administrative appeals within DOJ and may seek judicial review before the United States Court of Appeals for the Federal Circuit.

Each year, Congress appropriates funding for PSOB death benefits, which is considered mandatory spending, and for PSOB disability benefits and PSOEA benefits, which is subject to annual appropriations.

For FY2019, the one-time lump-sum PSOB death and disability benefit is $359,316 and the PSOEA monthly benefit for a student attending an educational institution full-time is $1,224.

In FY2017, the DOJ approved 399 claims for PSOB death benefits, 82 claims for PSOB disability benefits, and 601 claims for PSOEA benefits.

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Congress appropriates funds for these programs in the annual Departments of Commerce and Justice, Science, and Related Agencies Appropriations Act. For FY2019, the one-time lump-sum PSOB benefit is $359,316 and the monthly full-time attendance PSOEA assistance is $1,224. The PSOB and PSOEA benefit amounts are indexed to reflect changes in the cost of living.

Table 1 shows PSOB and PSOEA claims and approvals as reported by DOJ.

Table 1. PSOB and PSOEA Claims and Approvals
(FY2015-FY2017)

	FY2015	FY2016	FY2017
	PSOB Death Benefits		
Claims Filed	284	285	356
Claims Approved	266	330	399
	PSOB Disability Benefits		
Claims Filed	64	61	77
Claims Approved	17	31	82
	PSOEA Benefits		
Claims Filed	606	679	715
Claims Approved	453	549	601

Source: Department of Justice, Office of Justice Programs, *FY2019 Program Summaries*, February 2018, p. 108, https://www.justice.gov/jmd/page/file/1039211/download.

Note: Data is reported when a claim is filed and approved, thus claims filed in one year may be approved in another year.

Public Safety Officers' Benefits Program

Eligible Public Safety Officers

To be eligible for PSOB benefits for death or disability, a person must have served in one of the following categories of public safety officers:

- law enforcement officer, firefighter, or chaplain in a public agency;

[1] The Public Safety Officers' Benefits (PSOB) program is authorized in statute at Part L of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. §§10281-10288).

[2] The Public Safety Officers' Educational Assistance (PSOEA) program is authorized in statute at 34 U.S.C. §§10301-10308.

[3] The PSOB program website is at https://psob.bja.ojp.gov/.

- FEMA employee or a state, local, or tribal emergency management agency employee; or
- emergency medical services member.

There is no minimum amount of time a person must have served to be eligible for benefits.

Law Enforcement Officer, Firefighter, or Chaplain

To be eligible for PSOB benefits as a law enforcement officer, firefighter, or chaplain, a person must have served in a "public agency" in an official capacity, with or without compensation.[4] For the purposes of PSOB eligibility, a public agency is defined as

- the federal government and any department, agency, or instrumentality of the federal government; and
- any state government, the District of Columbia government, and any U.S. territory or possession; and any local government, department, agency, or instrumentality of a state, the District of Columbia, or any U.S. territory or possession.[5]

Law Enforcement Officer

For the purposes of PSOB eligibility, a law enforcement officer is defined as "an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), including, but not limited to, police, corrections, probation, parole, and judicial officers."[6]

Firefighter

For the purposes of PSOB eligibility, the definition of firefighter includes both professional firefighters and persons serving as an "officially recognized or designated member of a legally organized volunteer fire department."[7]

Chaplain

A chaplain is eligible for PSOB benefits (1) if he or she is either an "officially recognized or designated member of a legally organized volunteer fire department or legally organized police department" or public employee of a police or fire department[8] and (2) only if he or she was performing the duties of a chaplain in an official capacity while responding to a police, fire, or rescue emergency.[9]

[4] 34 U.S.C. §10284(9).

[5] 34 U.S.C. §10284(8).

[6] 34 U.S.C. §10284(6).

[7] 34 U.S.C. §10284(4).

[8] 34 U.S.C. §10284(2).

[9] 28 C.F.R. §32.3.

Emergency Management Agency Employee

Employees of the Federal Emergency Management Agency (FEMA) and state, local, or tribal emergency management agencies may be eligible for PSOB benefits under certain conditions provided in statute. A FEMA employee or an employee of a state, local, or tribal emergency management agency working with FEMA is eligible for PSOB benefits if he or she is performing official duties that are related to a major disaster or an emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)[10] and that are considered hazardous by the FEMA Administrator or the head of the state, local, or tribal agency.[11]

Emergency Medical Services Member

A member, including a volunteer member, of a rescue squad or "ambulance crew" who is authorized or licensed by law and the applicable agency and is engaging in rescue services or providing emergency medical services may be eligible for PSOB benefits.[12] The rescue squad or ambulance service may provide ground or air ambulance services and may be either a public agency or a nonprofit entity authorized to provide rescue or emergency medical services. By PSOB regulation, eligible emergency medical services workers include rescue workers, ambulance drivers, paramedics, health care responders, emergency medical technicians, or others who are trained in rescue activity or emergency medical services and have the legal authority and responsibility to provide such services.[13]

Injury and Line of Duty Requirements

The PSOB program pays benefits if a public safety officer becomes permanently and totally disabled or dies "as the direct and proximate result of a personal injury sustained in the line of duty."[14]

Injury Requirement

To qualify for coverage under the PSOB program, a public safety officer's disability or death must have been the result of a personal injury. The PSOB regulation defines an injury for the purposes of benefit eligibility as

> a traumatic physical wound (or a traumatized physical condition of the body) directly and proximately caused by external force (such as bullets, explosives, sharp instruments, blunt objects, or physical blows), chemicals, electricity, climatic conditions, infectious disease, radiation, virii, or bacteria ...[15]

The regulation also provides that the definition of an injury does not include an occupational disease or a condition of the body caused by stress or strain, including psychological conditions

[10] The Stafford Act is in statute at 42 U.S.C. §§5121 et seq. For additional information on emergency and disaster declarations under the Stafford Act, see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*. The definition of hazardous duty for the purposes of determining the eligibility of emergency management employees is not defined in statute or regulation. Rather, the determination of whether duty is hazardous is made by the FEMA Administrator or head of the relevant state, local, or tribal emergency management agency.

[11] 34 U.S.C. §§10284(9)(b) and (c).

[12] 34 U.S.C. §10284(9)

[13] 28 C.F.R. §32.3.

[14] 34 U.S.C. §§10281(a) and (b).

[15] 28 C.F.R. §32.3.

such as post-traumatic stress disorder. However, the PSOB statute specifically provides for deaths caused by certain cardiovascular conditions.

Presumption of Injury Status for Heart Attack, Stroke, or Vascular Rupture

The death of a public safety officer due to a heart attack, stroke, or vascular rupture shall be presumed to be a death from a personal injury for the purposes of PSOB eligibility if the officer engaged in nonroutine stressful or strenuous physical activity as part of an emergency response or training exercise; and if the condition began during the physical activity, while the officer remained on duty after the physical activity, or within 24 hours of the physical activity.[16]

Line of Duty Requirement

The PSOB program covers a public safety officer's death or disability if it occurred as the result of an injury incurred in the line of duty. The PSOB regulations provide that an injury occurs in the line of duty if it (1) is the result of the public safety officer's authorized activities while on duty, (2) occurs while responding to an emergency or request for assistance, or (3) occurs while commuting to or from duty in an authorized department or personal vehicle.[17] In addition, if there is convincing evidence that the injury was the result of the individual's status as a public safety officer, that injury is covered by the PSOB program.

Benefit Amounts

The lump-sum PSOB death and disability benefit for FY2019 is $359,316. The benefit amount is adjusted annually to reflect changes in the cost of living using the annual percentage change in the Consumer Price Index for Urban Consumers (CPI-U) for the one-year period ending in the previous June.[18] If a public safety officer receives a disability benefit and later dies from the same injury, the officer's survivors may not receive a PSOB death benefit.

The payable benefit amount is based on the date of the public safety officer's death or the date of the injury that caused the disability, rather than on the date of application for benefits or disability determination. Thus, if a benefit increase occurs while an application is pending, the benefit is payable at the previous, lower, benefit level.

Death and disability benefits are not subject to the federal income tax.[19] In general, PSOB death and disability benefits are paid in addition to any other workers' compensation, life insurance, or other benefits paid for the death of a public safety officer. However, the PSOB death benefit is offset by the following benefits:[20]

- benefits under the Federal Employees' Compensation Act (FECA) payable to state and local law enforcement officers injured or killed while enforcing federal law;[21]

[16] 34 U.S.C. §10281(k).

[17] 28 C.F.R. §32.3.

[18] 34 U.S.C. §10281(h).

[19] Section 104(a)(6) of the Internal Revenue Code [26 U.S.C. §104(a)(6)].

[20] 34 U.S.C. §10281(f).

[21] 5 U.S.C. §8191. For additional information on FECA, see CRS Report R42107, *The Federal Employees' Compensation Act (FECA): Workers' Compensation for Federal Employees*. There is no offset for FECA benefits for federal employees.

- benefits under the D.C. Retirement and Disability Act of 1916 for certain police officers and firefighters in the District of Columbia;[22] and
- payments from the September 11th Victim Compensation Fund (VCF).[23]

Payments to Survivors

PSOB death benefits are payable to the eligible spouse and children of a public safety officer. A spouse is the person to whom the officer is legally married, even if physically separated, under the marriage laws of the jurisdiction where the marriage took place. Pursuant to regulations issued after the Supreme Court struck down the federal Defense of Marriage Act in *United States v. Windsor*,[24] the legally married spouse of a public safety office may be of the same sex as the officer.[25]

A child is defined as any "natural, illegitimate, adopted, or posthumous child or stepchild" of the public safety officer who, at the time of the public safety officer's fatal or catastrophic injury, is

- 18 years of age or under;
- between 18 and 23 years of age and a full-time student in high school or undergraduate higher education; or
- over 18 years of age and incapable of self-support because of physical or mental disability.[26]

PSOB death benefits are paid to eligible survivors in the following order:

1. if the officer is survived by only a spouse, 100% of the death benefits are payable to the spouse;
2. if the officer is survived by a spouse and children, 50% of the death benefits are payable to the spouse and the remaining 50% is distributed equally among the officer's children;
3. if the officer is survived by only children, the death benefits are equally distributed among the officer's children;
4. if the officer has no surviving spouse or children, the death benefits are paid to the individual or individuals designated by the officer in the most recently executed designation of beneficiary on file at the time of the officer's death; or if the officer does not have a designation of beneficiary on file, the benefits are paid to the individual or individuals designated by the officer in the most recently executed life insurance policy on file at the time of the officer's death;
5. if the officer has no surviving spouse or eligible children, and the officer does not have a life insurance policy, the death benefits are equally distributed between the officer's surviving parents; or
6. if the officer has no surviving spouse, eligible children, or parents, and the officer did not have a designation of beneficiary or a life insurance policy on file at the

[22] Section 12 of Act of Sept. 1, 1916, ch. 433, 39 Stat. 718.

[23] 49 U.S.C. §40101 note.

[24] 570 U.S. 744 (2013).

[25] Department of Justice, "Public Safety Officers' Benefit Program," 79 *Federal Register* 35492, June 23, 2014.

[26] 34 U.S.C. §10284(3).

time of his or her death, the death benefits are payable to surviving adult, nondependent, children of the officer.[27]

Definition of Disability

PSOB disability benefits are paid only in cases of permanent and total disability. There are no benefits payable for partial or short-term disabilities. A disability is considered permanent for the purposes of PSOB eligibility if, given the current state of medicine in the United States, there is a degree of medical certainty that the condition will remain constant or deteriorate over the person's lifetime or that the public safety officer has reached maximum medical improvement. A public safety officer is considered to be totally disabled for the purposes of PSOB eligibility if given the current state of medicine in the United States, there is a degree of medical certainty that the officer is unable to perform any gainful work. PSOB regulation defines gainful work as "full- or part-time activity that is compensated or commonly compensated."[28]

Application Process

Applications for PSOB death and disability benefits are filed with the PSOB office, which determines benefit eligibility and commences benefit payment. Unless extended for good cause, application deadlines must be met. Complete benefit applications must be filed no later than

- for death benefits:
  - three years after the death;
  - one year after the determination of the officer's employing agency to award or deny death benefits payable by that agency; or
  - one year after certification by the officer's employing agency that the agency is not authorized to pay any death benefits;[29] and
- for disability benefits:
  - three years after the date of the injury;
  - one year after the determination of the officer's employing agency to award or deny workers' compensation or disability benefits payable by that agency; or
  - one year after certification by the officer's employing agency that the agency is not authorized to pay any workers' compensation or disability benefits.[30]

A lump-sum interim payment of up to $3,000 may be made if a PSOB death benefit will "probably be paid."[31] The interim payment amount reduces the final PSOB payment amount. If the ultimate decision is to deny death benefits, the interim payment must be returned to the federal government, unless this repayment is waived because it would create a hardship for the beneficiary.

[27] 34 U.S.C. §10281(a).

[28] 28 C.F.R. §32.23.

[29] 28 C.F.R. §32.12.

[30] 28 C.F.R. §32.22.

[31] 34 U.S.C. §10281(c). The amount of the interim payment is not subject to a cost-of-living adjustment.

Expedited Benefits in Terrorism Cases

Section 611 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act; P.L. 107-56) provides for expedited payment of PSOB death and disability benefits if the officer's injury occurred "in connection with prevention, investigation, rescue, or recovery efforts related to a terrorist attack."[32] In such cases, PSOB benefits must be paid within 30 days of certification from the officer's employing agency that the officer's death or disability was related to terrorism.

Public Safety Officers' Educational Assistance Program

The Public Safety Officers' Education Assistance (PSOEA) program provides financial assistance with costs associated with higher education to the spouse or children of a public safety officer who is eligible for PSOB death or disability benefits.

Eligibility

The spouse or child of a public safety officer who is eligible for PSOB death or disability benefits may be eligible for PSOEA benefits. To be eligible for PSOEA benefits, a spouse must have been married to an eligible public safety officer at the time of the officer's death or injury. A child is eligible for PSOEA benefits until the age of 27. This age limit can be extended by the Attorney General in extraordinary circumstances, or, pursuant to Section 3 of the Public Safety Officers' Benefits Improvement Act of 2017 (P.L. 115-36), if there is a delay of more than one year in approving PSOB or PSOEA benefits.[33]

In addition, to be eligible for PSOEA benefits, the spouse or child must be enrolled at an eligible educational institution. For the purposes of PSOEA eligibility, an eligible education institution is one that meets the definition of an "institution of higher education" as provided by Section 102 of the Higher Education Act of 1965[34] and that is eligible for federal student aid.[35]

Amount of Benefits

PSOEA benefits are payable to the claimant and may be used only to defray costs associated with higher education attendance, including tuition, room, board, book and supplies, and education-related fees. The monthly PSOEA benefit amount is equal to the monthly benefit amount payable under the GI Bill Survivors' and Dependents' Educational Assistance (DEA) program, which is administered by the Department of Veterans Affairs (VA) for spouses and dependents of veterans with disabilities or who died as a result of service-connected conditions.[36] The PSOEA benefit amounts are adjusted annually to reflect changes in the cost of living in accordance with changes

[32] 34 U.S.C. §10486.

[33] 34 U.S.C. §10302(c).

[34] 20 U.S.C. §1002.

[35] 34 U.S.C. §10307(3). For additional information on institutional eligibility for federal student aid, see CRS Report R43159, *Institutional Eligibility for Participation in Title IV Student Financial Aid Programs*.

[36] For additional information on the GI Bill Survivors' and Dependents' Educational Assistance (DEA) program, see CRS Report R42785, *GI Bills Enacted Prior to 2008 and Related Veterans' Educational Assistance Programs: A Primer*.

to the GI Bill DEA benefit amounts. For FY2019, the PSOEA monthly benefit for a student attending an educational institution full-time is $1,224.[37] The PSOEA benefit rates are prorated for less than full-time attendance.

Duration of Benefits

The maximum duration of PSOEA benefits for any person is 45 months of full-time education or a proportionate duration of part-time education. A person is ineligible for PSOEA if he or she is in default on a federal student loan or is ineligible for federal benefits due to a drug trafficking or drug possession conviction. In addition, the Attorney General may discontinue PSOEA benefits for a student that fails to make satisfactory progress in his or her course of study as defined by Section 484(c) of the Higher Education Act of 1965.[38]

PSOB and PSOEA Appeals Process

A claimant who is dissatisfied with a PSOB disability benefit denial may request a reconsideration.[39] There is no reconsideration offered for denials of PSOB death or PSOEA benefits. A claimant who is dissatisfied with a PSOB or PSOEA benefit denial may request a de novo hearing before a hearing officer assigned by the director of the DOJ PSOB Office.[40] The determination of a hearing officer may be appealed to the PSOB Office director.[41] The director's determination is considered the final agency determination and is not subject to any further agency administrative review or appeal. However, provided all administrative appeals remedies have been exhausted, the PSOB Office director's determination may be appealed to the United States Court of Appeals for the Federal Circuit.[42]

The PSOB statute authorizes the BJA to prescribe the maximum fee that an attorney or other representative may charge a claimant for services rendered in connection with a claim, with attorney fees generally limited to between 3% and 6% of the total benefit paid, depending on the level in the administrative appeals process the claim is approved.[43] Program regulation prohibits stipulated-fee and contingency-fee arrangements for PSOB representation.[44]

Budget and Appropriations

Congress provides funding for PSOB and PSOE benefits and associated administrative expenses in the annual Departments of Commerce and Justice, Science, and Related Agencies Appropriations Act.[45] Funding for PSOB death benefits and associated administrative expenses is considered mandatory spending and Congress appropriates "such sums as may be necessary" for

[37] Current and historical GI Bill DEA benefit rates are available on the Department of Veterans Affairs (VA) website, at https://www.benefits.va.gov/GIBILL/resources/benefits_resources/rate_tables.asp.

[38] 34 U.S.C. §10305. Section 484(c) of the Higher Education Act of 1965 is codified at 20 U.S.C. §1091(c).

[39] 28 C.F.R. §32.28.

[40] 28 C.F.R. §§32.41-32.45.

[41] 28 C.F.R. §§32.51-32.54.

[42] 34 U.S.C. §10287, and 28 C.F.R. §§32.8 and 32.55.

[43] 34 U.S.C. §10285(a) and 28 C.F.R. §32.7.

[44] 28 C.F.R. §32.7(d)(1).

[45] For additional information on this appropriations legislation, see CRS Report R44877, *Overview of FY2018 Appropriations for Commerce, Justice, Science, and Related Agencies (CJS)*.

the payment of these benefits. Funding for PSOB disability and PSOEA benefits is considered discretionary and is subject to specific congressional appropriations. Annual appropriations language grants the Attorney General the authority to transfer from any available appropriations to the DOJ the funds necessary to respond to emergent circumstances that require additional funding for PSOB disability benefits and PSOEA benefits.[46]

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[46] See, for example, Title II of Division B of the Consolidated Appropriations Act, 2018 (P.L. 115-141).