



# FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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**Testimony of  
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**On**

**“Long-Term Care Needs of First Responders Injured in the Line of Duty”**

**Before the**

**Subcommittee on Crime and Terrorism  
Committee on the Judiciary  
United States Senate**

**January 17, 2018**

Mr. Chairman and Ranking Member Whitehouse, my name is Patrick O'Carroll and I serve as the Executive Director of the Federal Law Enforcement Officers Association (FLEOA). FLEOA represents more than 26,000 federal law enforcement officers from across all 65 federal law enforcement agencies. We appreciate your leadership in calling today's hearing and for the opportunity to appear before you.

Congress can and does have a role to play when it comes to addressing the long-term care needs faced by those first responders who are injured or permanently disabled in the line of duty. A shining example is the passage in 2010 of the James Zadroga 9/11 Health and Compensation Act, and its reauthorization in 2015. This legislation was a result of congressional recognition of the struggle faced by tens of thousands of the Heroes of September 11, 2001 whose health had deteriorated markedly as a result of their service at Ground Zero in the weeks following the heinous terrorist attacks in New York, Shanksville, PA, and at the Pentagon. It provided for compensation to those who were permanently disabled during the rescue and recovery operations through the reopened September 11 Victims Compensation Fund and the long-term health care needs of these brave men and women through the World Trade Center Health Program. This has been of tremendous benefit to law enforcement officers and firefighters across the nation, and we are grateful for Congress's support of this important program. Congress and this Committee in particular have also supported reforms to the Public Safety Officers Benefit (PSOB) Program to remove some of the hurdles law enforcement families have had to overcome to obtain their PSOB benefits. Recently, this Committee has also recognized the needs of those officers who suffer traumatic stress and PTSD issues through its support for the Law Enforcement Officers Health and Mental Wellness Act, which was just signed into law last week.

These and other measures have been of tremendous help to the federal law enforcement community, but there is still more to be done. While I, and no doubt each of the witnesses today, could spend days discussing what “should” be done, I wish to cover three topic areas where

FLEOA believes Congress can play a role to ease the plight faced by disabled federal law enforcement officers and their families: lower the unconscionably high bar for disability benefits under the Public Safety Officers Benefits (PSOB) Program, address the flaws in the current delivery of workers' compensation benefits under the Federal Employees Compensation Act, and ensure continuation of retirement coverage for injured officers who can no longer perform the duties of the job. I will be discussing each of these in greater detail below.

### **Revise the Standards by which Disabled Officers are Eligible for Benefits under the PSOB Program**

A key area where Congress and this Committee could help to better address the long-term needs of injured federal law enforcement officers and other first responders is through revising the standards by which disabled officers are eligible for benefits under the Public Safety Officers Benefits (PSOB) Program. As you know, for more than 40 years the PSOB Program at the U.S. Department of Justice has represented the federal government's commitment to recognize the service and sacrifice of those law enforcement officers and other first responders who are killed or disabled in the line of duty. The PSOB Program not only provides for the payment of death and disability benefits, but also helps with financial assistance for the educational costs of the children of fallen or disabled officers.

While the PSOB Program is universally supported by the public safety community and Members of Congress, it has also had its fair share of issues. Last year, FLEOA was proud to work with Chairman Grassley and Members of the Committee to pass legislation to reform the PSOB Program to address many of our concerns through the PSOB Improvement Act. This new law will bring a number of improvements to the processing of PSOB claims by reducing the paperwork burdens on claimant officers and their families, improving congressional oversight through enhanced transparency, and reducing the backlog in processing claims that were the subject of a Judiciary Committee hearing at which FLEOA testified in April 2016. Although these reforms were extremely helpful, they did not address one aspect of the PSOB Program that has been of greatest concern to the public safety community: the extraordinarily high bar that law enforcement officers, firefighters, and EMTs who have been critically injured and disabled in the line of duty must meet in order to qualify for PSOB disability benefits.

Under current law, a PSOB disability benefit is generally available to federal law enforcement and other public safety officers who become "permanently and totally disabled" in the line of duty. In practice, however, the application of the "permanently and totally disabled" standard on disability claims has been viewed by many as not in keeping with the spirit and intent of the PSOB Act. That is because in order to qualify for a disability benefit payment, the disability or injury must have been so severe that: (1) it would prevent the officer from ever performing any type of gainful work that is compensated; and (2) it is established to a degree of medical certainty that the officer's condition will progressively deteriorate, will remain constant over his lifetime, or has reached maximum medical improvement. Just because an injured officer takes disability retirement from their agency for a line of duty disability does not in and of itself establish eligibility. In other words, the fact that a disabled officer is no longer capable

of serving as a law enforcement officer is not enough to qualify the officer for PSOB disability benefits.

To its credit, the PSOB Office and the Bureau of Justice Assistance (BJA) at the U.S. Department of Justice have taken steps to remedy the high bar set for PSOB disability benefit payments. In 2016, BJA issued proposed regulations to address the standards for determining when an injured public safety officer is permanently and totally disabled under the PSOB Act that address many of our concerns. Most significantly, BJA proposed to lower the “gainful work” requirement to allow disabled officers to perform some forms of compensated activities. BJA also proposed lowering the standard for determining when an officer is “permanently” and “totally” disabled by removing the term “medical certainty” and replacing it with a lower “medical probability” standard. Through these and other changes, the 2016 proposed rules would reduce the burden on claimants and improve BJA’s ability to make determinations with respect to the payment of disability benefits.

At present, the final rules for the PSOB program are pending review at the Office of Management and Budget. We have no indication as to when this review may be completed or when the final regulations might be promulgated, although the Justice Department did note in its Fall 2017 Semi-Annual Regulatory Agenda that it expects the rules to be issued next month. Depending on the contents of those final rules, there may still be a need for Congress to act to further improve the delivery of PSOB disability benefits to injured federal officers and their families.

### **Protect Injured Federal Law Enforcement Officers Through Meaningful Reforms to FECA**

Another area where Congress can aid injured federal law enforcement officers is through meaningful reforms to the Federal Employees Compensation Act (FECA), which provides workers’ compensation and medical benefits to officers suffering from line-of-duty injuries. One of the most consistent complaints FLEOA hears from our members concerns injured federal law enforcement officers who are forced by a line-of-duty injury to deal with any aspect of the FECA disability system. They often say about being subject to the current systems that it is like being injured over and over again.

Every year, hundreds of federal law enforcement officers sustain injuries in the performance of their duties at home and abroad. These injuries are the result of such things as violent physical encounters, vehicle accidents, training incidents, exposure to hazardous materials, and drug enforcement operations. In most every other aspect of federal employment—whether that is pay, retirement benefits, relocation and transfer, or physical standards—law enforcement officers are treated differently than their civilian counterparts because of the unique duties and missions they perform. Yet when it comes to line of duty injuries they are all treated the same under FECA.

A case in point is the plight of U.S. Secret Service Special Agent Garrett Fitzgerald. During the height of the 2016 Presidential Campaign, Special Agent Fitzgerald, along with Special Agents Kate Crowley, May Chow, and Michael Nunley, were in New Hampshire on an

assignment for then-candidate Hillary Clinton. They were dispatched to the northern border of the state for an assignment during a snow storm. During their trip, an unlicensed driver who was under the influence crossed the dividing line of the road at a high rate of speed and crashed into their government car. The end result was varying injuries to all four agents but Garret Fitzgerald, a newer agent, took the brunt of the impact. Garrett has been fighting paralysis ever since and is currently confined to a wheelchair. Garrett's spirit is unbreakable and the Agency is doing its best to support him. He is determined to walk again; but unfortunately, he grapples with a FECA system that isn't as strong as his desire to heal.

You see, federal law and regulations regarding injured federal law enforcement officers limit what an agency can and should do. And law enforcement officers like Garrett often fight their injuries under a cloud of uncertainty which makes recovery harder. The same sentiment holds true for Naval Criminal Investigative Service Special Agent Amanda Kopke, who contracted an unknown parasite while conducting anti-piracy operations off the coast of Somalia. To date, Amanda lives with this parasite and the bureaucratic hurdles she has had to overcome to obtain and maintain treatment are remarkable. FLEOA has heard the same types of stories from agents injured during combat operations in Iraq and Afghanistan whose injuries were denied by the federal workers' compensation system, to those who have been shot in the line of duty and had their disability benefits cut. The message from all is the same: the regulations are unhelpful, unclear, and undermine the goal of many of these agents to return to work as quickly as possible so that they can continue to serve and protect our nation. That should not be the case.

Over the course of the past several years, FLEOA has worked with the Department of Labor and the Office of Workers' Compensation Program (OWCP) to better address the needs of federal officers struggling with line of duty injuries. This includes working with OWCP to establish traumatic care nurses for law enforcement injuries and a law enforcement Ombudsman in each OWCP district. However, there are also a number of legislative reforms which Congress should consider to better address the unique nature of law enforcement work, the injuries that disable law enforcement officers, and the unique needs of disabled federal law enforcement officers. Specifically, FLEOA would make two principal recommendations here today:

1. *Establish a separate division under OWCP that will handle federal law enforcement officer claims exclusively.* OWCP can be one of the most dreaded agencies with which any federal law enforcement officer has to contend. As retired 9/11 responder and Secret Service Agent Mike Vaiani once said, "I'd rather run into the towers again then deal with OWCP." Under current law and regulations, federal law enforcement officers suffer severe financial hardship while their cases are being evaluated, often placing them in jeopardy of losing their homes and forcing them to turn to family and friends for their economic survival. The current system simply does not take into account the fact that most federal law enforcement officer's claims are more serious than those sustained by their civilian counterparts. In many cases, officers are so badly injured that they themselves are incapable of making the application and loved ones, many of whom have no experience with federal employee issues, fill out the paperwork. Aggregating all law enforcement claims in one division will allow OWCP to not only focus its resources but provide for greater accountability, transparency, and expertise in the handling of cases.

2. *Allow federal law enforcement officers to stay with their agency in a continuation of pay (COP) status for up to one year.* Currently, officers can remain in continuation of pay status for 45 days. For those officer's assaulted by a suspect, exposed to a toxic substance, or injured by a firearm or explosive, a one-year time frame would allow a proper period of evaluation necessary to determine if a return to work will be possible. In addition, one of the most common complaints from injured officers is that OWCP does a poor job processing pay. Anecdotally, we know that in many cases the pay is incorrectly calculated and frequently delivered late. Allowing law enforcement officers to remain on their agencies' payrolls will remove them from this morass and will also have two other key benefits.

First, it will get officers back to work quicker. Injured officers enrolled in OWCP are detached from their agency and often feel isolated. Law enforcement is not just a job, it is a way of life. This change will allow many officers to come back to work earlier in a light duty/restricted duty status and allow the agency to derive a benefit from their experience and training during their continued employment. Second, it allows officers to continue to accrue time toward retirement. Unlike most federal employees, federal law enforcement officers face mandatory retirement at age 57. A serious injury and placement on FECA effectively prevents them from accruing time toward retirement and from contributing to the Thrift Savings Plan. Most federal employees can make an adjustment from an injury by working longer. This is not an option for law enforcement officers and the time lost cannot be regained.

Mr. Chairman, we recognize that reforming FECA is no small task, and that there are no easy answers. It requires striking a careful balance between protecting taxpayer funds and caring for disabled federal employees. That is why there must be a focus solely on FECA by both the House and the Senate; one that looks not only at the benefit structure, but also considers FECA reform in the context of the disability retirement system.

### **Ensure Continuation of Retirement Status and Benefits for Injured Officers No Longer Capable of Performing the Duties of the Position**

Under current law, federal law enforcement officers, firefighters, and other public safety employees may retire after 20 years of service at age 50, or after 25 years of service at any age, and face mandatory separation from service at age 57. This coverage—known as “6(c)” retirement—is available to these brave men and women in recognition of the strenuous and physically demanding nature of the jobs they perform to protect and defend this nation. As a result, federal public safety officers pay a higher percentage of their pay toward an annuity under both the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). However, current law also mandates that a law enforcement officer is not eligible for 6(c) retirement unless they have met both the age and service requirements. An officer who suffers a disabling injury in the line of duty that prevents them from completing their service requirements in a covered law enforcement position does not have the option of retiring with 6(c) status. Instead, these officers must elect to either take a disability retirement or return to work in a non-covered position to retire under the standard FERS/CSRS benefit.

Suffice it to say, law enforcement officers and other federal public safety employees who suffer a disabling injury in the line of duty should not be penalized by the very retirement system that ought to be honoring their sacrifice and service. That is why FLEOA supports S. 29 / H.R. 3303, the “First Responder Fair Return for Employees on Their Initial Retirement Earned (Fair RETIRE) Act.” This legislation would allow a law enforcement officer who returns to federal employment after recovering from a line-of-duty injury or illness to retain their 6(c) retirement status in the same manner as if they had never been disabled. Their retirement status would be preserved, even in those cases where the nature or extent of the injury prevents an individual from returning to service in a covered law enforcement position.

The bill also supports law enforcement officers who seek to return to their agency following their transition to FECA but who are unable to continue their service as a law enforcement officer. Specifically, the “Fair RETIRE Act” includes a strong “Sense of Congress” provision that directs DOL and the Office of Personnel Management to ensure to the greatest possible extent that an individual reappointed to a non-covered position is with the same federal agency, in the same geographic location, and at a level of pay commensurate to the position the individual held immediately prior to suffering a disabling injury or illness.

We hope that the Members of this Committee will work with us to ensure passage of this critical legislation.

Mr. Chairman and Members of the Subcommittee, federal law enforcement officers wake up every day, put on a badge and gun, and do their absolute best to keep our borders secure, protect our leaders, and stop violent criminals and terrorists from hurting the American people. It is a job that they have volunteered to do and willingly place themselves in harm’s way. They do this with the belief that if something happens to them, their valor will be honored and their family protected. It is that trust which we hope the Congress keeps in mind as we work together to address these issues I have discussed today and ensure that our nation’s protectors can be secure in the knowledge that our government will be there for them if and when they need it the most.

On behalf of the Federal Law Enforcement Officers Association, thank you again Mr. Chairman for calling this important hearing and for affording us the opportunity to testify here today. FLEOA appreciates the work of this Committee on behalf of our nation’s federal law enforcement officers, and stands ready to support your efforts to better address the long-term care needs of injured officers. I would be pleased to answer any questions you may have.