

# FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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## Testimony of Donald J. Mihalek Executive Vice President Federal Law Enforcement Officers Association Foundation

On

### “The Need for More Timeliness and Transparency: Oversight of the Public Safety Officers’ Benefits Program”

Before the

### Committee on the Judiciary United States Senate

On

April 26, 2016

Chairman Grassley, Ranking Member Leahy, Members of the Committee, and my fellow law enforcement professionals, my name is Donald Mihalek and I am honored to be allowed to represent our nation's front line defenders in the Federal Law Enforcement Officers Association (FLEOA) as its Legislative Director and Executive Vice President of the FLEOA Foundation and appreciate the opportunity to be here.

On September 11th, 2001 - as the terrorists attacked - law enforcement officers around our nation, including thousands of federal law enforcement officers responded and answered the call. In what former New York City Mayor Rudy Giuliani described as the "largest rescue operation" in history, thousands of American lives were saved due to the responding law enforcement officers' selflessness and willingness to sacrifice themselves on behalf of others. Throughout our nation's history, federal law enforcement officers have often been thrust into dynamic, dangerous and devastating situations for which they've answered the call - often at peril to their very lives.

The Federal Law Enforcement Officers Association, our nation's largest non-partisan, professional law enforcement association with over 26,000 members from 65 federal law enforcement agencies, since 1978, has had the honor of representing these brave heroes and helping them in their time of need.

It is their time of need with which I want to discuss today. Specifically, how when federal law enforcement officers were most in need, a program designed to "answer the call" often left the "caller on hold." And that program is the Department of Justice's Public Safety Officers' Benefits Program (PSOB).

The PSOB was founded in 1976 as a backstop for law enforcement officers and their families when an officer made the ultimate sacrifice in the line of duty. The program has been expanded through the years to include scholarships for the children of the fallen. But throughout its history, the program has been victim to increased over-regulation that has essentially ground what should be an expeditious process under the worst of circumstances, to one that adds a burden versus relieving one.

The issues of processing delays, Olympic sized paperwork hurdles, redundant legal reviews and lack of acceptance of outside medical evidence have created a cauldron that just boils but never cooks. According to a letter sent to this Committee's Chair and meetings the law enforcement groups have had with PSOB over the delays, the program currently has over 1,000 cases--165 of them September 11th related--that are in different stages of adjudication, the oldest dating back to 2006.

What this translates into is thousands of heroes and their families who are in limbo either waiting for payment on a claim or the scholarship support for children of the fallen to attend school. It is reprehensible that brave Americans who swore an oath to protect and serve and then paid a price in doing so, would be told that they haven't given enough information or that decisions that should be made swiftly are being delayed for further legal review. In an age of the internet and instant information, you'd think one search of an officer's name could confirm if they were or were not killed in the line of duty.

Cases include those of a Secret Service Supervisor, who suffered a heart attack while on duty and took five years for PSOB to adjudicate the case. What's worse is, that Agent's widow tried for almost 3 years to handle it herself, and it was only after FLEOA attorneys interceded that the case received final adjudication.

A US Marshal Court Security Officer was shot and killed while protecting a courthouse in Nevada in 2010. It took one year to meet with the hearing officer then another four years for the case to be adjudicated – and only so after FLEOA attorney's got involved. This shouldn't be the case.

According to FLEOA's attorneys that have been involved with federal PSOB claims, they cite that on average it takes 5 years for a claim to be adjudicated. To quote FLEOA's General Counsel Larry Berger, "there really is no excuse for the delays."

We appreciated the Chair and this Committee's recent letter asking PSOB to audit their cases and explain the timeframes and delays. This was one of many investigations that have been launched to examine why there are the delays with the

PSOB program. Once again, the response from the PSOB was startling, audacious, and frustrating. How can a Bureau that is supposed to help - allow it's bureaucracy to get in the way of its mission?

In discussions with the PSOB staff, and we commend them for their engagement, they cited "internal process" and "procedural corrections" as two of the main reasons for the delays and denials. For a Bureau and Department that write the rules and procedures for the program, it's amazing they haven't fixed it.

In the meantime, 165 PSOB cases stemming from 9/11 sit and await movement. PSOB will say each case is delayed for a different reason and some having to do with unfulfilled documentation requests. Yet, the federal government has stood up the World Trade Center Health Screening Program on a national basis and to sign up for the program requires little more than a note stipulating where you were and what you did during the attacks and recovery. Once complete, you can have an appointment the following week to determine if a health condition is 9/11 related. Recently, after a recommendation by the law enforcement groups, did PSOB finally agree to that World Trade Center Health Screening Program results are acceptable as medical evidence.

I also think that after an injured officer or a family, who is reeling in the aftermath of a line of duty fatality; a third or fourth list of document requests propels them to lose hope in the process.

I know of Senate offices that sit on this Committee who have tried to advocate for families that have submitted PSOB Claims and have been turned away or put off by PSOB.

This situation is untenable, and despite PSOB's attempts to self-correct the long delays, repeated record requests, and expedite processing of claims, it still takes up to two months for, as PSOB told us, a "ground ball" claim to be fully processed. That would include claims like those of Air Force Office of Special Investigation (OSI) Special Agents Adrianna Vorderbruggen, Michael Cinco, Peter Taub, Chester McBride, Joseph Lemm and Louis Bonacasa; all killed on December 21, 2015, four days before Christmas, by a suicide bomber in Afghanistan while working alongside U.S. troops. I wonder if their PSOB claim would be considered a "ground ball" and take two months to process?

It is our view that despite fleeting attempts at self-correction, the PSOB program will require legislation to address its clear deficiencies and over-bureaucratization of their process.

We and other law enforcement groups have been discussing proposed legislation with the House and Senate to set some better ground rules with how a PSOB claim is handled.

First, we've recommended that the process itself be streamlined from the paperwork to the levels of scrutiny. This would include consolidating some of the review process of a claim from the current five or six levels to two, including the legal review.

The legal review should also be reserved for cases that on their face are rejected or are highly complicated. The legal review should be eliminated for "Ground ball" claims or those where the evidence is clear, like after a terrorist attack. To expedite all claims, we'd recommend PSOB use a task force approach where the legal reviewers, medical experts if needed and claims handler meet together to vet a claim and come to a resolution.

We'd also recommend setting a hard time frame, we've recommended a year, for the PSOB to review a claim and make an adjudication. Even if it's a "no", it will give families more direction than they have now and reduce the limbo status that more than 1,000 families currently sit in.

We've recommended the streamlining of the appeal process so claimants can clearly access the court system. During a revamp of the rules by PSOB, the Court of Federal Claims lost its jurisdiction over appeals and PSOB appeals shifted primarily to the U.S. Court of Appeals for the Federal Circuit. We'd recommend reinstituting the Court of Federal Claims as the court of first review for a claimant.

In more complex cases, we've also heard from Agencies the concern that if a case may become part of a lawsuit against a government body due to a claim of negligence, the Agencies are hesitant to provide information or support the claim. We'd recommend a liability type waiver process that would guarantee a governing body or department immunity for any information they provide in support of an Officers' claim, so that any information received could not be used outside of a PSOB Claim process.

Children of fallen officers who are applying for the scholarship assistance should also be viewed as a separate stand-alone application, based solely on whether their parent was lost or injured in the line of duty. They should not be forced to wait for the paperwork burden of proving "causalities" of death or "injury" to be able to access a scholarship that they would otherwise qualify for. The children of our fallen Air Force OSI Heroes should not have to wait for PSOB to determine if a suicide bomber was a "causality" of their parents' line of duty death.

FLEOA and many of the law enforcement groups feel that recommendations such as these would make the PSOB process faster, more efficient and more effective in supporting our fallen heroes.

I'm proud to be here, to have had the opportunity to represent our American heroes and stand with other professional law enforcement officers and organizations to fight for "the right" and ensure our heroes service and sacrifice doesn't die at the door of PSOB bureaucracy and those tasked to help them and as we do, should be motivated to use every method available to punch through any obstacle in furtherance of their sacred mission.

I appreciate the invitation from Chairman Grassley, the opportunity to speak with the Committee, look forward to your support and am available to answer any questions on this issue.

