**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

*Washington, D.C. 20530*

January 23, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed a response to questions arising from the appearance of Director Domingo Herraiz before the Committee on October 4, 2007, at a hearing entitled "Justice Denied? Implementation of the Hometown Heroes Survivors Benefits Act".

We hope that this information is of assistance to the Committee. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: The Honorable Arlen Specter
Ranking Member

**"Justice Denied? Implementation of the Hometown Heroes Survivors Benefits Act"**

**October 4, 2007**

**Questions for the Hearing Record**
**for**
**Domingo Herraiz**
**Director**
**Bureau of Justice Assistance**
**Office of Justice Programs**
**United States Department of Justice**

**QUESTION FROM SENATOR LEAHY:**

**1. Director Herraiz, I appreciate that the Department is making efforts to turn around its handling of this program. On October 2, you signed two policy directives to clarify both the use of medical evidence in claims processing and what constitutes "non-routine" activity. These are encouraging developments.**

**a. Will the Department of Justice be applying these new policy directives to previously denied claims?**

**RESPONSE:**

The Department of Justice will apply the two policy directives signed on October 2, 2007, ["Nonroutine Stressful or Strenuous Physical Activity"; "Competent Medical Evidence to the Contrary"] to all Hometown Heroes claims, including those where survivors have requested an appeal of the initial PSOB Office decision. In addition, as I stated in my October 4, 2007 testimony before the Senate Judiciary Committee, to ensure that every Hometown Heroes claim is given the opportunity of review under the new directives, the Bureau of Justice Assistance (BJA) is reaching out to all the primary survivors who filed Hometown Heroes claims that were subsequently denied, to update them on the directives and share details regarding how they may appeal their claims, should they wish to do so.

**b. If so, what process will you undertake to review these cases? Will the Department revisit all of the claims that have been denied - regardless of whether the claimant has made a formal appeal?**

**RESPONSE:**

The appropriate staff within BJA will personally reach out to every primary survivor who has not yet appealed his or her claim regarding the process for appealing the initial decision. For any survivors who did not request an appeal of their claims within the regulatory filing period, but wish to now appeal their claim, I will, as BJA's Director, grant a waiver of the filing deadline.

**c. How will these new policy directives improve the Hometown Heroes claims process? Will they result in faster processing? More benefits being granted?**

RESPONSE:

The new policy directives have in fact already positively affected the Hometown Heroes claims process. Based on the directives, the Hometown Heroes claims we are processing have been reviewed again to identify whether any "affirmative suggestion" exists in the claim file that something other than the line of duty may have caused the fatal heart attack or stroke. In cases where no suggestion exists, these claims have been immediately moved forward in the review process. In addition, cases involving emergency calls have been reconsidered by the PSOB Office and moved forward as meeting the definition of "nonroutine" within the meaning of the Hometown Heroes Survivors Benefits Act (Hometown Heroes Act).

**2. I believe that it would be helpful for the Committee to understand what has been causing both the high rate of denials and the long delays in processing these claims. The Hometown Heroes Act expanded the Public Safety Officers' Benefits program to create a presumption that fatal heart attacks or strokes suffered in the line of duty are considered line of duty deaths. But in implementing the law, it appears the Justice Department has been holding the victims of fatal heart attacks and strokes to a different standard of proof than other line of duty deaths.**

**a. Please describe the policies that were being used to review and process Hometown Heroes claims prior to the policy directives issued on October 2, 2007.**

RESPONSE:

The Department values the contributions of those who serve their communities in potentially dangerous circumstances, and we are committed to ensuring the success of the Hometown Heroes Act and have worked in consultation with key stakeholders. The delay in implementing this important law was due in large part to the time it took to develop the final regulations.

The Hometown Heroes Act created a mechanism conceptually unlike anything else in the PSOB Program, by establishing a statutory presumption that public safety officers who die from a heart attack or stroke following training or engagement in a situation involving nonroutine stressful or strenuous physical public safety activity, died in the line of duty for benefit purposes. The Hometown Heroes Act also states that this presumption may be overcome by "competent medical evidence to the contrary."

In developing the regulations, the Office of Justice Programs (OJP), consulted extensively with the Armed Forces Institute of Pathology and other experts in the field of cardiovascular disease and work-life-related diseases and afflictions. OJP also considered comments from national organizations representing law enforcement and firefighters.

OJP published the proposed Hometown Heroes Act regulations in the July 26, 2005, Federal Register, with a 60-day comment period. During the comment period, OJP received comments from a number of interested parties, including national police and fire associations; municipal police, fire, and rescue departments; PSOB hearing officers; survivors of fallen public safety officers; and individual concerned citizens. OJP carefully reviewed and analyzed these comments, using them to make changes in the regulations. The new PSOB regulations, including the provisions that implement the Hometown Heroes Act, were published in the Federal Register on August 10, 2006. The final regulations went into effect on September 11, 2006.

Since then, all claims submitted under the Hometown Heroes Act have undergone an initial review by the PSOB Office, and, as I described in my October 4 testimony before the Senate Judiciary Committee, BJA continues to conduct outreach to agencies and survivors for Hometown Heroes claims that require additional information based on the documents provided with the original claim.

Prior to the directives, claims submitted for consideration under the Hometown Heroes Act underwent the following review process: the Public Safety Officers' Benefits (PSOB) Office conducted outreach and information collection regarding any 1) nonroutine; 2) stressful or strenuous; 3) physical activity at the time or in the 24 hours before the officer suffered the fatal heart attack or stroke, as well as 4) generally requesting additional medical records to assist the PSOB Office in making evaluations as to 'competent medical evidence' under the Act." Once PSOB drafted its determination, the Office of Justice Programs' Office of General Counsel reviewed each determination and provided the PSOB Office with input or edits regarding the above factors as well as any other information requested to consider eligibility of the claim. While the overall PSOB review process has not changed since October 2, the PSOB Office now looks to the BJA Director's policy memorandums regarding 1) what will be considered nonroutine for Hometown Heroes purposes; and 2) requesting limited medical records from survivors only in rare circumstances.

We have learned valuable lessons from our experience in reviewing these new claims, which we have applied to the implementation of the PSOB regulations. Ultimately after consultation with stakeholder groups, BJA made the decision to clarify the interpretation of significant terms in the Act, such as "nonroutine stressful or strenuous physical activity" and "competent medical evidence to the contrary." I am confident these policy directives will help us process claims more efficiently and effectively in the future.

**b. Has the Justice Department been following a different policy for reviewing Hometown Heroes claims than that used for other line of duty deaths?**

RESPONSE:

The Department has not been following a different policy for reviewing Hometown Heroes claims versus those used for other line of duty deaths. All line-of-duty deaths submitted to the Department of Justice's Public Safety Officers' Benefits (PSOB) Office are processed in the same general way and according to the PSOB Act and regulations.

**c. Are there particular identifiable aspects of the Department's review process that have caused the long delays and numerous denials? If so, please describe them.**

RESPONSE:

As previously mentioned, the delay in implementing this important law was due in large part to the time it took to develop the final regulations in consultation with significant stakeholders. Beginning in January 2004, OJP set out to amend the PSOB regulations to implement the provisions of the Hometown Heroes Act. After a few months, however, it became clear that a complete overhaul of the PSOB regulations was necessary for several reasons. One of the most important reasons was that the PSOB Act itself had been amended many times since its enactment in 1976, including amendments passed by Congress and signed into law by the President on January 5, 2006, following the closing of the comment period for the proposed rule.

OJP's goal in conducting a comprehensive revision of the PSOB regulations was to avoid inconsistency within the regulatory scheme and to prevent confusion for public safety agencies and survivors. This comprehensive revision was time-consuming, leading to delays, which, while necessary, caused understandable frustrations to survivors and the field.

In addition, one of the greatest challenges facing the PSOB Office in the review of all claims, including those that may implicate the provisions of the Hometown Heroes Act, is the significant outreach required to collect information from agencies and survivors in support of their claims. This detailed information, ranging from documents to accurately identify beneficiary eligibility among spouses, children, life insurance beneficiaries, and surviving parents, to detailed statements of circumstances from agencies regarding the fallen officers' activities at the time of the traumatic injury or heart attack or stroke, is time consuming and at times also frustrating for agencies and survivors.

One of the highest priorities of the PSOB Office is to conduct early and frequent outreach to survivors and agencies throughout the claim process. To further these efforts, at the end of September BJA implemented the first phase of a PSOB case management tool. This electronic workflow will allow claims to move through each stage of the review process more expeditiously and will provide monthly updates to survivors. Our hope is that this outreach will help assure survivors that the claims for their loved ones are neither lost nor forgotten. Another priority is to continue our critical partnership with stakeholders, including the National Fallen Firefighters Foundation and the Concerns of Police Survivors, from the moment of the officer's death through the resolution of a claim.

Finally, for PSOB claims not approved at the initial level, it is important to note that the PSOB regulations provide two levels of *de novo* administrative appeal; the first to an independent hearing officer, and the second to the Director of BJA. This means that in every case, and at each level, the appeal involves a comprehensive review of the entire claim, including new information, as if no decision had previously been made. At each level, a survivor is encouraged by the PSOB Office to provide additional evidence and arguments in support of the claim. Our independent hearing officers, and myself as the Director, have the authority to issue subpoenas when necessary to assist claimants in obtaining new information to support their claims. Ultimately, a survivor may appeal the final agency decision to the courts.