



Office of the Inspector General
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before the

U.S. Senate
Committee on the Judiciary

concerning

"The Need for More Timeliness and Transparency: Oversight of the Public
Safety Officers' Benefits (PSOB) Program"

April 26, 2016

Mr. Chairman, Senator Leahy, and Members of the Committee:

Thank you for inviting me to testify today about the work of the Department of Justice Office of the Inspector General (OIG) to examine the process through which the Department of Justice (Department) awards benefits to survivors of fallen law enforcement officers, firefighters, and other first responders; and disability benefits to officers catastrophically injured in the line of duty. The OIG is committed to conducting effective oversight in this area in order to ensure that the Department does everything possible to provide swift and thorough consideration of benefit claims while protecting against improper payment of taxpayer funds.

Prior to joining the OIG in 2012, I was a prosecutor with the Department for more than two dozen years, working on a variety of cases focusing most heavily on public corruption, civil rights, and white collar crimes. As Deputy Inspector General, I am privileged to work with the Inspector General and our dedicated staff of auditors, analysts, investigators, and attorneys to fulfill the OIG's mission to detect and deter waste, fraud, abuse, and misconduct in Department programs and personnel, and to promote economy and efficiency in those programs. We work diligently to enhance the Department's ability to effectively and fairly manage the programs that affect so many Americans. The Public Safety Officers' Benefits (PSOB) Program is an example of one such program that directly impacts the lives of others in a critical fashion.

In my testimony today, I will discuss two reviews conducted by the OIG related to the Department's management of PSOB. In March 2008, the OIG issued a report entitled, *The Office of Justice Programs' Implementation of the Hometown Heroes Survivors Benefits Act of 2003*, which can be found on the OIG's website here: <https://oig.justice.gov/reports/OJP/e0805/final.pdf>. Then, in July 2015, the OIG issued a report entitled, *Audit of the Office of Justice Programs' Processing of Public Safety Officers' Benefits Programs Claims*, which can be found on the OIG's website here: <https://oig.justice.gov/reports/2015/a1521.pdf>. As detailed below, both our earlier review and our more recent audit found significant issues in the timeliness of PSOB's processing of benefits applications, and the OIG made recommendations to the Department's Office of Justice Programs (OJP) in both reports to facilitate and expedite its review process.

Our 2008 review was initiated in response to Congressional concerns about delays in processing PSOB claims under the Hometown Heroes Act, which provides for benefits to survivors of public safety officers who suffer heart attacks or strokes in the line of duty or within 24 hours of a triggering event while on duty. Claims under the Act are processed through OJP's PSOB Office. We found that there were significant delays in processing these claims, including that as of November 29, 2007, OJP had completed only half of the Hometown Heroes Act claims it received in the first 3 years after passage of the Act. We found that one of the reasons for the delay in processing claims was the fact that OJP took 33 months to issue final regulations implementing the Act, which resulted in a backlog of claims. However, we found that, even after OJP issued the necessary regulations in September 2006, it processed claims slowly, a problem that we found continued in our later 2015

audit. Also similar to our later findings discussed below, our 2008 review found that processing was slow because most claims had been submitted without required documentation. In our 2008 review, we also found that the OJP Office of General Counsel's (OJP OGC) legal reviews of claims at that time were time consuming, and that decisions on some claims were delayed because OJP could not obtain needed pathology reviews. In the fall of 2007, OJP implemented several initiatives designed to expedite its processing of claims and by the end of our review had reduced the backlog of 201 claims to 99, with a total of 179 claims pending determination.

We also found that OJP initially denied many claims based on restrictive interpretations of certain requirements under the Act, on issues such as whether the decedents' activities were sufficiently "stressful" or "strenuous," or qualified as "nonroutine" activities. In October 2007, the Bureau of Justice Assistance (BJA) issued policy memoranda directing the use of broader definitions that the Director of the PSOB Program Office stated had led to more claims being approved and faster claims processing. We also recommended that OJP improve the management of the Hometown Heroes Act claims review process, including that it require OGC staff attorneys to use the PSOB Office's case management system; and that it establish more definitive performance timelines related to OGC reviews of PSOB claims to facilitate their processing.

In response to the OIG's recommendations, OJP modified and updated its PSOB case management system and OJP OGC started using the system for its review of PSOB claims. Additionally, while OJP disagreed with our estimate and conclusions as to the time required for legal review, it implemented timelines for OGC reviews of PSOB claims to facilitate their processing in a timely fashion. This included requirements that the PSOB Office send a draft determination and complete claim file to OGC within 30 days of receiving all necessary information and identifying all potential beneficiaries, and that OGC would complete its review and send its recommendation back to the PSOB Office within 45 days of its receipt of this information. As a result of these steps, all of the recommendations from this report have been closed since January 2010.

In our July 2015 audit, we found that between fiscal years (FY) 2008 and 2013, the PSOB provided a total of \$464 million in death benefits and \$43 million in disability payments to eligible claimants. Over that same period, the one-time benefit amount for approved death or disability claims increased from \$303,064 to \$328,613. In FY 2014, the benefit amount was \$333,605 and, according to the PSOB website, the current amount is \$339,881. In addition, we found that PSOB reviewed nearly 700 death, disability, and education claims annually. The PSOB received 294 death claims and 90 disability claims in FY 2013.

During the time covered by our 2015 audit, the PSOB claims process began when an individual filed a claim received by the PSOB. An Outreach Specialist, contracted by the PSOB Office, then prepared a claim file for review, including reaching out to claimants and related public safety agencies to collect any required documents not previously submitted with the claim application. If needed, the

PSOB Office would also request an independent medical review. A Benefits Specialist then would make an initial determination, which would be reviewed by a Senior Benefits Specialist and then forwarded to the PSOB Office Director for review and decision. During the period of our review, the PSOB Office Director's decision to approve or deny a claim was submitted to the OJP OGC for legal review and concurrence. If the claim was approved by the PSOB Office Director and OJP OGC concurred, then the PSOB Office transmitted the determination to the claimant and the benefits were paid by the Treasury Department. If the claim was denied, the PSOB Office would notify the claimant of the denial, explaining the factual findings and legal conclusions supporting the denial, and include information about how to appeal the determination to a hearing officer. When legal counsel did not concur in a proposed determination, the PSOB Office either reversed its position and resubmitted a new determination to OJP OGC, or sought additional information or documentation to support its determination before resubmitting the claim for a second legal review. This audit did not assess the impact of OJP's decision in May 2013 to shift the responsibility for conducting legal reviews of claims from OJP OGC to a new PSOB Legal Counsel, as that change occurred after the claims that we reviewed were processed, in whole or in part.

Our July 2015 audit examined a total of 2,510 death and disability claims that were in the PSOB's database as of July 2013. Our goal was to see how the PSOB was balancing the need for both prompt payment and making sure there was adequate supporting documentation for a determination, with particular attention to claims that were pending beyond the BJA's stated performance metric of 1 year. Fifteen of the overall universe of claims were abandoned or withdrawn, and we found that of the remaining 2,495 claims, a determination had been made for 1,845 claims, or 74 percent. Of these, 1,200 claims, or 65 percent, were approved and 645 claims, or 35 percent, were denied. An additional 650 claims, representing 26 percent of all claims in the database, remained pending at the time of our audit.

At the time of our review, PSOB's performance goal for providing efficient, timely, and survivor-centered benefits to claimants was to decide claims in less than one year. Our audit found that OJP processed and determined 1,038, or 56 percent, of the 1,845 death and disability claims in less than 1 year. We found that it took between 1 and 2 years to decide 384, or 21 percent, of the 1,845 claims, and more than 2 years from filing to decide 79, or 6 percent, of claims. We could not calculate the timeliness of 305 claims, or 16.5 percent, because the data for these claims was incomplete. Of the 650 claims that were pending at the time of our audit, 49 percent had been pending for less than 1 year, 26 percent had been pending for 1 to 2 years, and 25 percent had been pending for 2 years or more.

We conducted a detailed review of 55 determined and pending claims that were unresolved for more than 1 year to identify factors that contributed to delays in claims processing and determinations. We found that the most significant contributing factors to delays in processing claims were, in summary: (1) claimants filing incomplete benefit claims applications, an issue we attributed at least in part to the inadequate application guidance being provided by the PSOB Office; (2) claimants and other agencies being unresponsive to PSOB Office requests for

additional documentation regarding a claim; and (3) the PSOB Office often not adequately documenting the basis for its determinations, which delayed subsequent legal reviews of claims determinations.

I'll briefly discuss what we found with respect to each of these three chief causes for delay. The first cause for delays was incomplete applications that, in turn, required the PSOB Office to request additional information from claimants and associated public safety agencies. We determined that PSOB was receiving so many incomplete applications because the PSOB was not adequately informing claimants what they needed to submit in order to properly document a claim. As a result, the OIG recommended that the PSOB improve claim checklists available to claimants and establish specific PSOB claim application documentation requirements to provide guidance to claimants on the requirements of the claims process.

A second major cause for delays was a lack of responsiveness to follow-up requests when the PSOB sought documentation from claimants and agencies. In the 55 claims we reviewed in detail, we found that the PSOB Office made at least 601 follow-up requests to public safety agencies, claimants, and other agencies in order to obtain required documentation for a claim. Additionally, 24 of the 55 claims required 10 or more requests for documentation, and 10 claims required 20 or more such requests. Nevertheless, we also found that, because the PSOB did not have a defined claim abandonment policy in place to limit the need for continued outreach when documentation was not provided within a certain timeframe, the PSOB Office had closed only 3 of the 2,510 total claims as a result of not obtaining documentation to complete its review. Therefore, the OIG recommended that PSOB finalize and implement a policy that would both allow claimants a reasonable opportunity to provide necessary supporting documentation, while also allowing PSOB to administratively close claims for which they were not receiving responses within established timeframes and focus its resources on processing active claims in a more timely fashion.

A third cause for delays that we identified in our 2015 audit was that the PSOB Office often failed to adequately document the basis for its decisions to approve or deny claims. We found that claim files consisted of a compilation of documents the PSOB Office gathered from the claimant and the public safety officer's agency, but often did not contain the PSOB Office's analysis or any discussion of how it reached its determination. Further, while the PSOB staff used checklists to collect specific types of documents, not all of the documents on the checklists were necessarily collected, and the checklist was not provided to OJP OGC for a legal review of the claim. The lack of clear, consistent, and complete documentation often made it difficult for OJP OGC to understand the PSOB Office's reasoning for its determination. As a result, OJP OGC had to review the entire claim file to assess whether the PSOB Office's determination was legally supported. Therefore, we recommended that PSOB should provide a clear and more organized record to support the PSOB Office's decision making, which would help expedite the legal review process and, ultimately, reduce the overall time required to process claims.

While an efficient review process is crucial to timely payment of benefits, accurate and measurable performance data also would provide Congress, claimants, and other stakeholders with further insight into the PSOB process. The OIG identified the importance of reliable data and performance-based metrics in its latest report on the top management and performance challenges facing the Department, issued in November 2015 and available on the OIG's website here: <https://oig.justice.gov/challenges/2015.pdf>. In our 2015 audit of PSOB, we found that its database of claims did not include important claims-processing milestones, such as the dates the PSOB Office received a claim application or when a determination was submitted for legal review. We believe that maintaining complete, valid, and reliable data regarding claims processing is essential to measuring performance, managing and improving the timeliness of claims processing, and increasing transparency into a program that deeply affects people's lives. Accordingly, the OIG recommended that the PSOB improve the collection and management of claims data and establish and regularly report more detailed metrics, so that Congress, program managers, claimants, and other stakeholders can gain a better understanding of the program's performance. Particularly given the critical nature of the program, it is essential that there be the maximum possible transparency throughout the PSOB process.

The OIG made four recommendations to OJP in its report to improve the process for reviewing PSOB claims, and OJP agreed with all of them. OJP also indicated in its response to our audit that it had directed that a business process improvement (BPI) review be conducted by an outside source, and that it would consider the results of that study in ensuring compliance with the OIG's recommendations. We are currently reviewing information recently received from OJP describing its efforts taken in this regard to address our recommendations. After our review, we will inform OJP whether we determined they have taken sufficient actions to close the recommendations or whether additional information or actions are necessary.

In this significant program, the Department is called upon to ensure that death and disability payments are made in a timely fashion to survivors of law enforcement, firefighters, and other first responders and those catastrophically injured in the line of duty. In order to accomplish this important mission, the PSOB Program must have procedures and controls sufficient to ensure that its determinations are made promptly and in accordance with the requirements established by Congress, and also that claim files include sufficient documentation to facilitate legal review of benefits determinations and the resolution of claims in a timely and transparent fashion. This concludes my prepared statement, and I am pleased to answer any questions the Committee may have.