K. Berke 2561 GG14

DECISION THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-157179 DATE: SEP 7 1976

MATTER OF: Section 701 of Public Safety Officers' Benefits Act of 1976

DIGEST: Law Enforcement Assistance Administration (LEAA) pays $50,000 to survivors of non-Federal public safety officers killed enforcing Federal law. Payment must be reduced by amount of monthly payments under 5 U.S.C. § 8191 made by Department of Labor to same survivors. Because total Labor payment cannot be known in advance, LEAA may pay $50,000 immediately and Labor should pay over monthly amounts to LEAA until amount reaches $50,000. This procedure achieves congressional intent that survivors receive immediate assistance and avoids double payments or augmentation of Labor's appropriations.

This decision responds to a request by the Assistant Administrator, Law Enforcement Assistance Administration (LEAA), for our opinion on a proposed arrangement between LEAA and the Department of Labor (Labor) to establish an accounting system that will harmonize payments made by these agencies under separate death compensation programs for public safety officers. The programs involved are conducted pursuant to the Public Safety Officers' Benefits Act of 1976 (PSOB), 42 U.S.C. §§ 3796-3796c (1970), which is administered by LEAA, and a special disability and death benefits program for law enforcement officers, 5 U.S.C. §§ 8191-8193, as added by Pub. L. No. 90-921 (April 19, 1968), which is administered by Labor.

When a non-Federal public safety officer is killed in the line of duty while engaged in the enforcement of Federal law, the survivors of the non-Federal officer may be entitled to two types of Federal benefits. First, PSOB provides for a lump sum payment of $50,000 by LEAA to the survivors, to be paid as soon after death as the Administrator determines eligibility. Second, the survivors may be entitled to monthly payments by Labor under 5 U.S.C. § 8192 during their lifetimes. The longevity of the survivors is, of course, unknown at the time the payments begin and it is therefore impossible to determine the total monthly payments which Labor will be making. However, under PSOB, the LEAA lump sum payment must be reduced by the amount of the Labor payments authorized by 5 U.S.C. § 8191. (See section 701(e) of Pub. L. No. 94-430, 42 U.S.C. § 3796(e)). The problem is that since LEAA cannot determine the amount of payments Labor will make in the future, it cannot accurately reduce its payments to the survivors.

The proposed plan, agreed to by the staff of the Federal Employees' Compensation Claims Division, Department of Labor, is for LEAA to pay $50,000 to the survivors immediately while Labor maintains a dummy account of payments which it would have made to a beneficiary but for the PSOB benefit, withholding its monthly payments under 5 U.S.C. § 8192 until $50,000 has been recorded in the dummy account. Upon reaching $50,000, Labor would then begin direct payments to the survivors.

LEAA argues that a strict interpretation of the reduction requirement in the PSOB would force it to withhold all payments to the beneficiaries until after their deaths since only then could it determine the total amount of Labor's payment. It points out that such a result would contravene one important purpose of the PSOB, i.e., to "meet the immediate financial needs of the survivors." H.R. Rep. No. 94-1032, 94th Cong., 2d Sess. 3 (1976). The major reason for reducing the $50,000 was "to preclude double payments" by the Government. 122 Cong. Rec. S11827-28 (1976) (remarks of Senator McClellan). If any alternative can be found, we agree that there is no purpose to be served by a construction of the law which, in order to preclude double payments, prevents the intended beneficiaries of the PSOB from receiving a timely payment.

However, LEAA's proposal does not comply with the requirement of the PSOB that the benefits payable thereunder be reduced by "payments authorized by section 8191 of title 5, United States Code." Also, such an arrangement would augment Labor's appropriation at the expense of LEAA's appropriation by allowing Labor to retain monies that it should have paid out.

For these reasons, the proposed plan should be modified. We believe that, subject to the modification described below, the plan will: 1) fulfill the statutory requirements of the PSOB, 2) prevent the augmentation of Labor's appropriations; and 3) accomplish the principal purposes for enacting the PSOB.

B-157179

LEAA may make the full $50,000 payment to the survivors in accordance with the statutory provision in question. Labor, rather than establishing a dummy account, should pay to LEAA the monthly payments that it would otherwise have made to the survivors pursuant to 5 U.S.C. § 8192. Once the payments to LEAA reach $50,000, Labor should begin direct payments to the survivors, if otherwise proper. The payments by Labor to LEAA may, in effect, be considered recovery of overpayments from the payees and, hence, for crediting to the appropriation from which the $50,000 payment was made. In this connection, we note that LEAA's 1978 appropriation which is available for payments under the PSOB is a "no-year" appropriation. Pub. L. No. 95-86, 91 Stat. 419, 428.

We suggest, however, that LEAA consider proposing legislation to remove the impasse created by the reduction provision of the PSOB as presently written.

R.F.KELLER

Deputy Comptroller General
of the United States