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August 24, 2021

The Honorable Dick Durbin
Chairman

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jerrold Nadler
Chairman

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
House of Representatives

Public Safety Officers' Benefits Program: Bureau of Justice Assistance In Compliance With Offset and Reporting Requirements for 9/11-Related Claims

Public safety officers—law enforcement officers, firefighters, and emergency medical technicians, among others—who die or become totally and permanently disabled after a line-of-duty injury are eligible for benefits from the Department of Justice's (DOJ) Public Safety Officers' Benefits (PSOB) program.¹ The PSOB program provides a one-time, lump-sum payment to eligible public safety officers or their surviving family members.² The lump-sum payment amount for a disability or death occurring during fiscal year 2021 was \$370,376. Since fiscal year 2013, the Bureau of Justice Assistance (BJA), which administers the PSOB program, approved more than 2,300 death and disability claims and provided over \$570 million to eligible officers and their families.

¹The PSOB program was initially authorized by the Public Safety Officers' Benefits Act of 1976, Pub. L. No. 94-430, 90 Stat. 1346 (codified as amended at 34 U.S.C. §§ 10281-10288). It was most recently amended by the Public Safety Officers' Benefits Improvement Act of 2017, Pub. L. No. 115-36, 131 Stat. 849. The PSOB program implementing regulations may be found at 28 C.F.R. pt. 32.

²The Public Safety Officers' Educational Assistance program also provides educational assistance (up to \$1,265 per month in fiscal year 2021) to eligible spouses and children of officers killed or disabled in the line of duty who are attending a degree or certification program at an institution of higher education. This program, however, is outside the scope of this correspondence, which focuses on PSOB death and disability claims.

Public safety officers may also be eligible for compensation through the September 11th Victim Compensation Fund (VCF), which is also administered by DOJ.³ The VCF can award monetary compensation to public safety officers or their surviving family members who were physically injured or died as a result of the terrorist attacks on September 11, 2001 (9/11), in New York City, NY, Arlington, VA, and Shanksville, PA, or during rescue, recovery, or debris removal efforts in the immediate aftermath of the attacks. Between January 2011 and December 2020, the VCF program approved more than 34,000 claims and provided over \$7.7 billion to individuals and their families, according to officials who manage the VCF.⁴

Public safety officers eligible for benefits under both the PSOB and the VCF may have their benefits reduced to avoid duplication. The Dale Long Public Safety Officers' Benefits Improvement Act of 2012 amended the PSOB program statute to require BJA to offset—that is, reduce—PSOB benefits by the amount of any VCF compensation received.⁵ In addition, the VCF program statute requires the Special Master, who administers the VCF, to offset from VCF awards certain other 9/11-related benefits received or entitled to be received by VCF claimants, including PSOB payments.⁶ To facilitate the implementation of these offsets, the PSOB and

³The VCF program was initially authorized under title IV of the Air Transportation Safety and System Stabilization Act, Pub. L. No. 107-42, 115 Stat. 230 (2001) (see 49 U.S.C. § 40101 note). It was reauthorized in 2011 by the James Zadroga 9/11 Health and Compensation Act of 2010, and in 2015 by the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act. See Pub. L. No. 111-347, §§ 201-205, 124 Stat. 3623, 3659-3665 (2011) and Pub. L. No. 114-113, div. O, §§ 401-405, 129 Stat. 2242, 3000-3018 (2015). It was reauthorized again in 2019 by the Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the September 11th Victim Compensation Fund Act, Pub. L. No. 116-34, 133 Stat. 1040 (2019). Under this Act, the time period to file a VCF claim was extended until 2090. The current VCF implementing regulations may be found at 28 C.F.R. pt. 104.

⁴The September 11th Victim Compensation Fund is comprised of VCF1 and VCF2. VCF1, under the original statutory authorization, was operational from 2001 through 2004. VCF2 began accepting claims in 2011 following the 2011 reauthorization, and will accept claims until October 1, 2090, under the most recent reauthorization. Individuals who file a claim for compensation from the VCF generally waive their right to sue for civil damages sustained as a result of 9/11. VCF compensation is not limited to public service officers; it is available to any individuals (or their representatives) who satisfy eligibility criteria set forth by the VCF statute and implementing regulations.

⁵Pub. L. No. 112-239, div. A, tit. X, § 1086, 126 Stat. 1632, 1964-1969 (2013). Specifically, the statute provides that benefits payable under the PSOB program “shall be in addition to any other benefit that may be due from any other source, except...payments under the September 11th Victim Compensation Fund.” 34 U.S.C. § 10281(f)(3). This provision generally took effect for PSOB claims pending as of January 2, 2013 or filed after that date. The PSOB program is also required to offset certain benefits under the Federal Employees' Compensation Act and the D.C. Retirement and Disability Act of 1916; however, those offsets are outside the scope of this report.

⁶See sections 405(b)(6) and 402(6) of the Air Transportation Safety and System Stabilization Act, codified as amended at 49 U.S.C. § 40101 note. Specifically, the statute requires the Special Master to reduce the amount of VCF compensation by the amount of “collateral source compensation” the claimant has received or is entitled to receive as a result of 9/11. Collateral sources include, among other things, “life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001.”

VCF offices established an information-sharing agreement to determine which public safety officers or their families may be eligible to receive compensation from both programs.

The Public Safety Officers' Benefits Improvement Act of 2017 (PSOB Improvement Act) established a requirement for BJA to issue public reports every 180 days on PSOB claims.⁷ These reports are to include, among other things, the number of PSOB claims relating to exposure due to the 9/11 terrorist attacks for which a final determination was made during the reporting period, and the average award amount for any such claims that were approved.⁸ These reports are also required to include the number of claims that are eligible for compensation under both the PSOB and VCF programs, the number of such claims for which BJA has made a final determination and the number that are still pending, and the amount of compensation paid for any such claims that have been paid by the VCF program.⁹

The PSOB Improvement Act also included a provision for GAO to conduct two studies on BJA's compliance with the requirement to offset PSOB benefits by the amount of VCF compensation paid, including a review of BJA's reporting on PSOB claims relating to 9/11.¹⁰ This report examines the extent to which BJA is 1) in compliance with requirements to offset benefits for claims that are eligible for both the PSOB program and the VCF program, and 2) accurately reporting information on PSOB claims related to 9/11 in its public reports during the period since our last report. This is the second of two reports; our first report was published in 2019.¹¹

⁷Pub. L. No. 115-36, § 2, 131 Stat. 849, 849-51 (codified at 34 U.S.C. § 10285(e)(2)). The PSOB Improvement Act states that not later than 180 days after enactment (June 2, 2017), BJA shall publish on its public website a report, and shall update the report on the website not less than every 180 days thereafter.

⁸34 U.S.C. § 10285(e)(2)(I).

⁹34 U.S.C. § 10285(e)(2)(O).

¹⁰Pub. L. No. 115-36, § 2, 131 Stat. 849, 851 (codified at 34 U.S.C. § 10285(e)(3)).

¹¹This 2021 report addresses the same objectives as our report published in 2019. See GAO, *Public Safety Officers' Benefits Program: Improvements Needed to Strengthen Reporting on 9/11-Related Claims*, GAO-19-521R. (Washington, D.C.: July 25, 2019). In our prior report, we recommended that BJA enhance quality checks to ensure the accuracy of information in its 180-day reports related to public safety officers affected by 9/11. BJA concurred with our recommendation and in 2020 reported implementing PSOB 2.0, a data reporting feature for its claims management system that includes quality checks to ensure the accuracy of information provided in the 180-day reports. Our recommendation to the BJA was closed as implemented.

To determine the extent to which DOJ offsets benefits for public safety officers who are eligible for both the PSOB and VCF programs, we matched claims data from the two programs.¹² We reviewed these matched claims to verify whether an offset was correctly applied. In addition, we conducted a limited file review of PSOB claimants to confirm whether an offset had taken place, if applicable, and award amounts paid. For our case file review we selected PSOB claimants who had received both PSOB and VCF payments, but were not identified in PSOB's data as being a 9/11-related claim. We also conducted follow up interviews with agency officials for any matched claims where it was unclear from reviewing PSOB and VCF data whether benefits had been offset accurately. We found the data to be sufficiently reliable for the purpose of analyzing offset data.

To determine the extent to which BJA accurately reports information on PSOB claims related to 9/11 in its public reports, we compared information on approved PSOB claims contained in the five 180-day reports covering the time period May 30, 2018 through November 16, 2020 with PSOB and VCF data.¹³ We verified whether relevant claims were included in the reports and examined the accuracy of the information reported.¹⁴ We interviewed DOJ agency officials responsible for the PSOB and VCF programs about internal documentation, procedures, and claims processing. We assessed the reliability of the data from PSOB's case management system by interviewing officials knowledgeable about PSOB data practices. We found the data to be sufficiently reliable for the purpose of determining the accuracy of claims information in the 180-day reports.

In summary, we found that BJA complied with the requirements to offset benefits for claims that were eligible for benefits under both the PSOB and VCF programs during the period of our

¹²The data set for our match included all of the 710 public safety officers who received PSOB benefits from fiscal year 2019 to March 2021 and the more than 42,000 claimants who received VCF compensation from 2001 to March 2021 (some of whom were public safety officers). For PSOB data, we used data beginning in fiscal year 2019 because our prior report reviewed PSOB claims paid through 2018. We used VCF data from 2001 through March 2021 because public safety officers who received benefits through the PSOB could have received VCF compensation throughout the VCF's period of operation and thus required an offset. We compared VCF1 and VCF2 data to PSOB claims data, as PSOB claims could be required to offset VCF compensation that had been paid from 2001 through March 2021.

¹³We reviewed data on all 159 approved PSOB 9/11-related claims for which BJA reported making final determinations in its five 180-day reports. We previously reviewed the first two 180-day reports covering the period, June 2, 2017 through May 29, 2018. See GAO-19-521R.

¹⁴We did not verify the accuracy of pending PSOB claims in the 180-day reports. Each report provides a snapshot of claim activity for the period, and PSOB data on pending claims is continuously updated as claims are resolved, according to PSOB officials.

review, and we found no discrepancies between PSOB and VCF when offsetting benefits.¹⁵ We also found that BJA generally reported accurate information in its 180-day reports on VCF claims and average award amounts related to 9/11 claims published between May 30, 2018 through November 16, 2020.¹⁶

We conducted this performance audit from March 2021 through August 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Agency Comments

We provided a draft of this report to DOJ for review and comment. DOJ provided technical comments, which we incorporated into the report as appropriate.

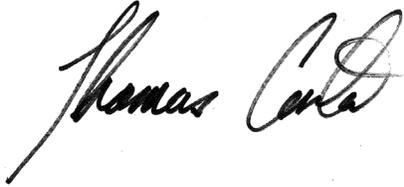
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¹⁵We identified 92 claims that were eligible for an offset. Of those claims, PSOB applied an offset to 68 claims, VCF applied an offset to 17 claims, and 7 claims had an offset applied by both PSOB and VCF. Our analysis of PSOB data also identified 57 additional claims that PSOB identified as being 9/11-related and potentially eligible for VCF compensation, but were not subject to an offset. VCF subsequently provided additional information for these claims. It was determined that the 57 claims were either pending a decision, were approved but the final payment has not yet been made, or the claim had been denied by VCF, among other reasons.

¹⁶We found four transcription discrepancies that occurred in the time period prior to PSOB implementing its online portal and case management system (PSOB 2.0). We also found only one discrepancy in how the PSOB calculated its average award after the implementation of PSOB 2.0. The discrepancy was for \$58.82. We communicated this discrepancy to the PSOB. PSOB officials told us that the discrepancy was a typographical human error, which was only present in one report. PSOB officials also told us that they continue to develop the capacities of the PSOB 2.0 case management system in an effort to prevent any future entry and calculation inconsistencies. We determined that the discrepancy had no impact on the proper application of offsets.

Key contributors to this report were Kimberley M. Granger (Assistant Director), Gustavo O. Fernandez (Analyst in Charge), and David Forgosh. Other contributors to this report include Monica Savoy, Grant Mallie, Walter Vance, Joy Solmonson, and Margaret Weber.

A handwritten signature in black ink that reads "Thomas Costa". The signature is written in a cursive style with a large, sweeping initial 'T'.

Thomas Costa

Director, Education, Workforce, and Income Security Issues

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