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March 18, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable William Barr
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Barr:

I write to express my concern with Department of Justice (DOJ) management of the Public Safety Officers Benefit Program (PSOB). According to several public safety officers, application of the program's very stringent requirements is leading to uncertainty and unfair results.

First, I am troubled to learn that DOJ has not produced a claims manual to assist adjudicators in making consistent determinations when reviewing disability benefit claims. Claims manuals are used by government agencies and private businesses alike. They help remove ambiguity, establish uniform best practices, and ensure predictable results. The absence of such guidance could lead to dramatically different final determinations for similarly situated claimants.

Additionally, the stringent regulations promulgated by DOJ make it extremely difficult for public safety officers disabled in the line of duty to qualify for PSOB benefits. PSOB provides public safety officers who are killed or permanently disabled in the line of duty with a lump-sum award of \$359,316.¹ According to statute, a public safety officer is eligible for benefits if they have "become permanently and totally disabled," as a result of a "catastrophic injury."² The statute further defines "catastrophic injury" as an injury which "permanently prevent[s] an individual from performing any gainful work."³ DOJ subsequently issued regulations further defining "gainful work" as "full-or-part-time activity that actually is compensated or commonly is compensated."⁴

¹ Cong. Research Service, 7-5700, *Public Safety Officers' Benefits (PSOB) and Public Safety Officers' Educational Assistance (PSOEA) Programs* 1 (2019), available at <https://www.crs.gov/reports/pdf/R45327>.

² 34 U.S.C. § 10281(b).

³ 34 U.S.C. § 10284(1).

⁴ 28 C.F.R. § 32.23.

The lack of clear and reasonable guidance here can, and apparently has, led to absurd results. Public safety officers may be denied benefits if they are capable of performing *any activity* which is commonly compensated. In theory, for example, the simple act of washing family dishes in the controlled, safe environment of one's own house could qualify as a commonly compensated role because a dishwasher is a commonly compensated position—in restaurants.

My office has been in contact with several disabled public safety officers who have had claims rejected based upon a reportedly overbroad interpretation of the term “gainful work.” For example, a police officer who suffered a severe traumatic brain injury after an on-duty vehicle collision, was denied disability benefits because he held several short-term part-time positions. In 2015, this injured officer worked at Home Depot, Inc., Garda Great Lakes, Inc., and the City of St. Paul and earned a *combined* total of \$9,551.11 *for the year*. My staff spoke with another injured officer who was denied benefits because, in an effort to fight through his disability, he would work around his home fixing old motorcycles and snowmobiles.

Further, DOJ's interpretation of these statutory requirements differs starkly from other agencies' approaches to determining disability claims. For example, to receive Social Security disability benefits, an individual “must be unable to engage in substantial gainful activity.”⁵ Social Security Administration then sets a dollar amount, adjusted for inflation, to determine what qualifies as “gainful activity.”⁶ For example, in 2019, if an individual earned less than \$1,220 a month, it was not considered a gainful activity and they would qualify for Social Security disability.⁷

DOJ should establish clear and objective standards to determine an individual's disability. The regulations, as written, do not permit adjudicators to consistently and fairly resolve a disabled claimants' applications. Additionally, DOJ should thoroughly review its definition and interpretation of the PSOB requirements. If Congress had intended for *any* activity that *could* be compensated under *some* conditions that are likely totally irrelevant to a disabled public safety officer to disqualify that person from receiving benefits, then it would not have added the word “gainful” in the statute.⁸

In order to better understand how DOJ is processing these claims, please answer the following questions by no later than April 1, 2019.

1. Why has DOJ not produced a claims manual? Does DOJ plan to produce a claims manual in the near future? If so, when? Please provide a copy of the completed manual to my staff as soon as it's complete.
2. In the absence of a claims manual, how does DOJ ensure uniform analysis and predictable, consistent results in the administration of PSOB?

⁵ See 65 C.F.R. § 82905; see also Social Security Admin., SUBSTANTIAL GAINFUL ACTIVITY, accessed Mar. 11, 2019, <https://www.ssa.gov/oact/cola/sga.html>.

⁶ *Id.*

⁷ *Id.*

⁸ 34 U.S.C. § 10281(b) (“Catastrophic injury” means an injury, the direct and proximate consequences of which permanently prevent an individual from performing any gainful work”

3. Has DOJ received complaints from adjudicators due to the absence of a claims manual? If so, please list the number of complaints received in the past ten years.
4. Has DOJ considered promulgating new regulations which define “gainful work” in a manner that is more consistent with other agencies? If not, why not?

Should you have any questions, please contact Dario Camacho of my Committee staff at 202-224-4515. Thank you for your attention to this important mater.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on Finance