

**HEARINGS ON A DEATH BENEFIT FOR FEDERAL LAW  
ENFORCEMENT OFFICERS AND FIREFIGHTERS**

**HEARINGS**  
BEFORE THE  
SUBCOMMITTEE ON LABOR STANDARDS  
OF THE  
COMMITTEE ON EDUCATION AND LABOR  
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

**H.R. 5834**

TO PROVIDE LUMP SUM DEATH BENEFITS FOR CERTAIN FED-  
ERAL LAW OFFICERS AND FIREFIGHTERS KILLED IN THE  
LINE OF DUTY

AND

**H.R. 5888**

TO AMEND TITLE 5 OF THE UNITED STATES CODE TO PROVIDE  
DEATH BENEFITS TO SURVIVORS OF FEDERAL LAW EN-  
FORCEMENT OFFICERS AND FIREFIGHTERS, AND FOR OTHER  
PURPOSES

HEARINGS HELD IN WASHINGTON, D.C., ON  
MARCH 12 AND 13, 1980

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## HEARINGS ON A DEATH BENEFIT FOR FEDERAL LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS

WEDNESDAY, MARCH 12, 1980

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON LABOR STANDARDS,  
COMMITTEE ON EDUCATION AND LABOR,  
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:50 a.m. in room 2261, Rayburn House Office Building, Hon. Pat Williams presiding.

Members present: Representatives Williams and Erlenborn.

Staff present: Earl Pasbach, majority counsel; Bruce Wood, minority counsel; and James Stephens, associate minority counsel.

Mr. WILLIAMS. I will call the subcommittee meeting on H.R. 5888 and H.R. 5834 to order. I apologize for the delay.

This morning we are going to consider two pieces of legislation before the subcommittee, namely H.R. 5888 introduced by Congressman Dale E. Kildee of Michigan, and H.R. 5834, introduced by Congressman Sam Gibbons of Florida. While these pieces of legislation contain differences they are similar in the respect that they amend title 5 of the United States Code to provide death benefits to the survivors of Federal law enforcement officers and firefighters who are killed in the line of duty.

In 1976, legislation was passed authorizing the Law Enforcement Assistance Administration to award \$50,000 in death benefits to survivors of law enforcement officers and firefighters of the States and the various cities and towns therein who lost their lives in the line of duty.

At that time, the Congress specifically decided not to include Federal law enforcement officials and firefighters as it was felt that the benefits under the Federal Employees Compensation Act would be available to those survivors of any Federal law enforcement officer and firefighter who was killed in the line of duty.

As I stated earlier, the bills that we are considering today would now broaden this coverage to include the Federal firefighters and law enforcement officers who were omitted in the 1976 enactment.

[The text of H.R. 5834 and H.R. 5888 follows:]

(1)



96TH CONGRESS  
1ST SESSION

# H. R. 5834

To provide lump sum death benefits for certain Federal law officers and firefighters killed in the line of duty.

## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 1979

Mr. GIBBONS introduced the following bill; which was referred to the Committee on Education and Labor

## A BILL

To provide lump sum death benefits for certain Federal law officers and firefighters killed in the line of duty.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### DEATH BENEFITS

4 SECTION 1. Section 8133 of title 5, United States Code,  
5 relating to compensation in case of death, is amended by add-  
6 ing at the end thereof the following new subsection:

7 “(g) If a law enforcement officer or firefighter (as de-  
8 fined in section 8331 of this title), a Federal protective officer  
9 employed by the General Services Administration, or a non-

1 uniformed special policeman referred to in section 5 of the  
2 Act of June 1, 1948 (40 U.S.C 318d) dies as a result of  
3 injuries sustained in the performance of duty, the United  
4 States shall pay, in addition to other benefits authorized by  
5 law, a lump sum payment of \$50,000 to the person or per-  
6 sons surviving on the date of death in the order of precedence  
7 established under subsections (a) and (b) of section 8705 of  
8 this title. No payment shall be made under this subsection if,  
9 by the end of the four-year period beginning on the date of  
10 the death of the employee, no claim for payment by a person  
11 entitled under this subsection is made. Payment under this  
12 subsection shall be made by the head of the Federal agency  
13 concerned out of appropriations available to such agency for  
14 such purposes.”.

### EFFECTIVE DATE

16 SEC. 2. The amendments made by section 1 of this Act  
17 shall be effective with respect to any law enforcement officer  
18 or firefighter (as defined in section 8331 of title 5, United  
19 States Code) or any Federal protective officer employed by  
20 the General Services Administration or any nonuniformed  
21 special policeman referred to in section 5 of the Act of June  
22 1, 1948 (40 U.S.C 318d) who dies on or after January 1,  
23 1976.



96TH CONGRESS  
1ST SESSION

# H. R. 5888

To amend title 5 of the United States Code to provide death benefits to survivors of Federal law enforcement officers and firefighters, and for other purposes.

## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 1979

Mr. KILDEE introduced the following bill; which was referred to the Committee on Education and Labor

## A BILL

To amend title 5 of the United States Code to provide death benefits to survivors of Federal law enforcement officers and firefighters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That (a)(1) subchapter I of chapter 81 of title 5, United  
4 States Code, is amended by inserting after section 8147 the  
5 following new section:

6 "§ 8148. Death benefits for law enforcement officers and  
7 firefighters

8 "(a) For the purpose of this section—

1 "(1) 'law enforcement officer' means an  
2 employee—

3 "(A) the duties of whose position are primar-  
4 ily to perform work directly connected with—

5 "(i) the control or reduction of crime or  
6 juvenile delinquency;

7 "(ii) the enforcement of the criminal  
8 laws; or

9 "(iii) the protection of Federal officials,  
10 public buildings or property, or foreign diplo-  
11 matic missions;

12 including work as a police or corrections officer;  
13 and

14 "(B) who, at the time the personal injury re-  
15 ferred to in subsection (b) of this section is sus-  
16 tained, is—

17 "(i) engaged in the detection of crime;

18 "(ii) engaged in the apprehension of an  
19 alleged criminal offender;

20 "(iii) engaged in the keeping in physical  
21 custody of an alleged or convicted criminal  
22 offender; or

23 "(iv) in the case of employees described  
24 in subparagraph (A)(iii) of this paragraph, as-

saulted or otherwise subjected to the conduct of a criminal activity;

"(2) 'firefighter' means an employee the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance or use of firefighting apparatus and equipment and who, at the time the personal injury referred to in subsection (b) of this section is sustained, is engaged in such work in the control or extinguishment of a fire;

"(3) 'child' means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased law enforcement officer or firefighter who, at the time of the law enforcement officer or firefighter's death, is—

"(A) 18 years of age or under;

"(B) over 18 years of age and a student; or

"(C) over 18 years of age and incapable of self-support because of physical or mental disability;

"(4) 'dependent' means an individual who was substantially reliant for support upon the income of the deceased law enforcement officer or firefighter; and

"(5) 'intoxication' means a disturbance of mental or physical faculties resulting from the introduction of alcohol, drugs, or other substances into the body.

"(b)(1) In any case in which the Secretary of Labor determines, under regulations prescribed pursuant to this section, that a law enforcement officer or firefighter has died as the direct and proximate result of a personal injury sustained in the line of duty, the Secretary shall pay a benefit of \$50,000 as follows:

"(A) if there is no surviving child of such law enforcement officer or firefighter, to the surviving spouse of such law enforcement officer or firefighter;

"(B) if there are one or more surviving children and a surviving spouse, one-half to the surviving children in equal shares and one-half to the surviving spouse;

"(C) if there is no surviving spouse, to the surviving children of such law enforcement officer or firefighter in equal shares; or

"(D) if none of the above, to the dependent parent or parents of such law enforcement officer or firefighter in equal shares.

"(2) In any case in which the Secretary determines, upon a showing of need and prior to taking final action, that the death of a law enforcement officer or firefighter is one with respect to which a benefit will probably be paid, the Secretary may make an interim benefit payment not exceed-

1 ing \$3,000 to the individual entitled to receive a benefit  
2 under paragraph (1) of this subsection.

3 "(3) The amount of an interim payment to any individ-  
4 ual under paragraph (2) of this subsection shall be deducted  
5 from the amount of any final benefit paid to such individual.

6 "(4) In any case in which there is no final benefit paid,  
7 the recipient of any interim payment under paragraph (2) of  
8 this subsection shall be liable for repayment of such amount.  
9 The Secretary may waive all or part of such repayment, con-  
10 sidering for this purpose the hardship which would result  
11 from such repayment.

12 "(5) The benefit payable under this section shall be in  
13 addition to any compensation or other benefit that may be  
14 due under this subchapter or from any other source, but shall  
15 be reduced by payments authorized by section 12(k) of the  
16 Act of September 1, 1916, as amended (D.C. Code, sec. 4-  
17 531(1)).

18 "(6) No benefit paid under this section shall be subject  
19 to execution or attachment.

20 "(7) No benefit shall be paid under this section—

21 "(A) if the law enforcement officer or firefighter's  
22 death was caused by the intentional misconduct of the  
23 law enforcement officer or firefighter or by such law  
24 enforcement officer or firefighter's intention to bring  
25 about such death;

1 "(B) if voluntary intoxication of the law enforce-  
2 ment officer or firefighter was the proximate cause of  
3 death; or

4 "(C) to any individual who would otherwise be  
5 entitled to a benefit under this section if such individ-  
6 ual's actions were a substantial contributing factor to  
7 the law enforcement officer or firefighter's death.

8 "(c) The Secretary may prescribe rules, regulations, and  
9 procedures to carry out the purpose of this section. Such  
10 rules, regulations, and procedures will be determinative of  
11 conflict of laws and issues arising under this section. Rules,  
12 regulations, and procedures prescribed under this section may  
13 include regulations governing the recognition of agents or  
14 other persons representing claimants under this section be-  
15 fore the Secretary. The Secretary may prescribe the maxi-  
16 mum fees which may be charged for services performed in  
17 connection with any claim under this section before the Sec-  
18 retary, and any agreement in violation of such rules and reg-  
19 ulations shall be void."

20 (2) The table of sections for chapter 81 of title 5, United  
21 States Code, is amended by inserting after the item relating  
22 to section 8147 the following new item:

"8148. Death benefits for law enforcement officers and firefighters."

23 (b)(1) Section 8101(9) of title 5, United States Code,  
24 relating to definition of "child", is amended by inserting after



1 "means" the following: " , except as provided in section  
2 8148(a)(3) of this title,".

3 (2) Section 8101(12) of such title, relating to definition  
4 of "compensation", is amended by striking out "Fund, but  
5 this does not in any way reduce the amount of the monthly  
6 compensation payable for disability or death." and inserting  
7 in lieu thereof the following: "Fund, except that—

8 "(A) this paragraph does not in any way reduce  
9 the amount of the monthly compensation payable for  
10 disability or death; and

11 "(B) such term does not include benefits paid  
12 under section 8148 of this title.".

13 SEC. 2. The amendments made by this Act shall take  
14 effect October 1, 1980, and shall apply with respect to inju-  
15 ries sustained on or after such date.

Mr. WILLIAMS. I want to thank the witnesses who will come forward today and tomorrow to give the subcommittee the benefit of arguments on both sides of this issue. So at this time I would like to introduce my good friend and colleague, the Honorable Sam Gibbons, Congressman from the State of Florida. Congressman Gibbons?

**STATEMENT OF HON. SAM GIBBONS, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF FLORIDA**

Mr. GIBBONS. Thank you, Mr. Chairman.

As John Erlenborn knows, I am no stranger to this room, although I am a stranger to this particular subcommittee. I served on the Education and Labor Committee for 6 years of my congressional career and I enjoyed it very much and it is a pleasure to be back.

I introduced my legislation shortly after a Federal protective officer, a gentleman by the name of Robert Timberlake, was murdered in the line of duty in the Federal office building where my district office is in Tampa. Mr. Timberlake was a very fine gentleman and in the performance of his duty was trying to remove from the building a person classified as a drifter, later classified as incompetent. This person murdered Mr. Timberlake in a shootout in the elevator in my building and it is not the first experience that I have had of this sort.

Those of us who have offices in Federal buildings perhaps see some of the violence and near-violence that takes place in those buildings. I say this because I think perhaps we have made a mistake by excluding the Federal protective officers and other people who perform law enforcement functions and keep law and order in this country from the death benefit proposals that were in the original act that you referred to.

I, frankly, am not fully informed on all of the ramifications of the Federal workman's compensation program and I realize that in our generosity we do not want to be, to those who are injured and those who lose their lives, extravagant. But we certainly owe a duty to these people who, on a daily basis, risk their lives to help us carry out the functions. These are dangerous jobs and jobs that I think deserve greater attention.

When the 1975 act was passed, I was not aware of the fact that Federal protective officers as a class, were excluded. Like most Members of Congress, I attended as much of the debate on the floor as I had time to, and when I voted for the act, I thought we were covering not only local employees, State employees, but covering Federal employees.

I hope that this subcommittee will take a very serious look and see that the benefits we give to our own people, that we do not slight them in any way; that we treat them as well as we treat anybody else; and that we certainly treat them adequately. I am not sure that Mrs. Timberlake has been treated adequately in all of this, but I think that is something you are in a better position to decide after having looked at the whole types of coverage that Federal employees are entitled to.

So I want to express my personal appreciation to you for taking up this matter, for seriously considering it, and I look forward to your recommendations in this subject matter.

That is all the statement I have, Mr. Chairman.

Mr. WILLIAMS. Congressman Erlenborn?

Mr. ERLNBORN. Thank you, Mr. Chairman.

I want to thank my colleague for his testimony and, as I mentioned before the hearing began, I am anxious for him to get over to his Ways and Means Committee markup because there is a very important bill there this morning so I will not take very long. Let me just make a comment.

First of all, when the legislation was passed to extend the \$50,000 death benefit to State and local law enforcement officers and firefighters, the argument was made that Federal officers were entitled to compensation or their survivors were under the FECA, Federal Employees Compensation Act, and as well they had group life insurance at rather low rates compared to what they would have to pay were they in the private sector.

And accidental deaths would lead to double indemnity and that it was necessary to provide equity for State and local officers to give them the \$50,000 death benefit.

Now I fear we are in a game of leapfrog, because those officers have the \$50,000 death benefit. It is suggested that we ought to give that to the Federal officers who then, because of FECA and group life insurance, will appear to have more than the State and local who will demand an increase in theirs, I presume. It looks like a game of leapfrog. Where does it end?

Mr. GIBBONS. We certainly should not play leapfrog with benefits, but we ought to determine, irrespective of what others get, what is a fair compensation for someone whose life is in danger. I have had an opportunity to be around other Federal protective officers, Secret Service, and people of that sort, the FBI agents.

Frankly, the job of a Federal protective service in the Federal building is, in my opinion, just as dangerous as any of those. There are a number of people free on the streets who, a number of years ago, would have been committed to institutions and would have been locked up.

I have had personal experiences in my own office, John, where people would come in and I would have to get police protection because of threats made against me. I do not advertise those because I am afraid that it would just increase the number of threats that you get, but there are a lot of people in our society—unfortunately more than any of us want to admit who do pose a serious threat to everyone's well-being.

The job of a Federal protective officer in a large Federal building like mine in a populous city is a terrible job. It is a tough job. You are putting your life on the line all the time.

You never know when you approach somebody whether that fellow—when you have the IRS office and they are making people mad, you have the Social Security Office there making people mad, they make some of them happy, too. You have the Immigration Service in there, and you can get some real ones there.

The FBI office. You just attract—and the congressional office—you just attract a lot of people, frankly, that have a chip on their shoulder and you do not know whether they are carrying a gun or not.

I can recall some personal experiences I have had where I called on my local law enforcement officers. I am not one who is very easily intimidated—at least in my own opinion, I am not. On a couple of occasions I have had people removed from the buildings. I have had people wandering up and down the streets muttering and telling other people they are going to kill me. You know, that is a part of the job.

But these people who guard us are entitled to fair and just compensation for the risks.

Unfortunately, you on the subcommittee must make that decision. I would not encourage leapfrogging. We have to watch our Federal expenditures.

But I am glad that you are taking this matter up. I know you will study it thoroughly and I hope that if there is some justice in the law—and it was my opinion, at the time I introduced this legislation, that there was injustice in the law—that you will make sure that that injustice is corrected. Not just to protect you and me, but to protect the person who puts his neck on the line.

Mr. ERLNBORN. How would you compare the risk of these Federal officers with those who serve in the armed services, some of whom, at times in the past, hopefully not in the future, but it could be, serve involuntarily? And as I recall when I was in the Navy in World War II, we had no death benefits. We were given the opportunity on the service life insurance to purchase \$10,000 low-cost life insurance and those are Federal employees risking their lives, as I say, some involuntarily.

Mr. GIBBONS. I had the same experience you did and I guess I was so young and so irresponsible in those days I really did not worry about it a lot. I did not have any dependents; I was single, and my mother and father were certainly never dependent on me, so I guess I just did not worry about that and I have not thought real seriously about it since that time, although I realized that a family had, or somebody who was in the military service gets killed, there is a tremendous loss of economic security to the family that we do not adequately compensate the family for, in my opinion.

I realize these things are very expensive. If we start insuring the lives of all the people in military service, for somewhere near their economic potential, the cost of war would be even more prohibitive than it is now.

Mr. ERLNBORN. Some might say that might be good.

Mr. GIBBONS. I guess we have all thought, particularly where the service was as broadly spread in society as it was in World War II and it was more the luck of the draw than anything else that decided whether we would live or die in World War II, there was a kind of spirit and comradeship that we were all in this mess together. If I must sacrifice my life, I am not going to be particularly happy about it, but that was the way it broke.

I think that the Federal protective officer is in a little bit different boat than the average GI of World War II vintage, or even the GI today.

Mr. ERLNBORN. If I just may comment on a couple of elements in your bill, we have two bills before us, one that you introduced and one that Congressman Kildee has introduced and they vary in their terms somewhat and without asking you to comment on these, unless you feel compelled to do so, let me just point out a few of the elements in your bill that I question. One is the retroactivity of the application of the death benefit.

Mr. GIBBONS. Let me comment on that first. I should have mentioned it in my opening statement.

As far as I have been able to determine, up until the time I introduced my bill, there have only been three Federal protective officers who have lost their lives in the line of duty since the time that we had

gone into the \$50,000 gratuity for other peacekeeping officers—and in an attempt to pick them up.

Obviously Mr. Timberlake who was in my area would be one of the three, so there would be two others whose identity I am not acquainted with, but those are the facts I was given.

The bill was made retroactive to pick up those three people and that was all. There are probably more by this time, but I am just not aware of them.

Mr. ERLBORN. We have an estimate here of 24 Federal law enforcement officers and 14 firefighters killed in the line of duty since January 1, 1976.

Mr. GIBBONS. It sure has picked up. When I first introduced this bill I had heard there were only three.

Let me say I have not been shopping for jurisdiction but it has been hard to find a committee in the Congress who really wanted to work on this matter.

I have had a number of hearings, Post Office and Civil Service messed around with that for awhile, but the Public Works Committee has messed around with it for awhile. I cannot tell you all the different places that seem to get involved in the subject matter that you are in.

Finally, I think I am in the right jurisdiction here, but the Parliamentarian never would send the bill to your committee. He referred my bill all over—the Judiciary Committee, the Post Office and Civil Service Committee, and even one time in the Public Works Committee. All of them gave me sympathetic hearings, but none of them had the power to act. We finally determined—finally I got the bill drafted so we could get over here where you all have the jurisdiction.

Mr. ERLBORN. One other difference. Your bill does not use the class of beneficiaries under FECA, Federal Employees Compensation Act, but rather incorporates the order of precedence under the Federal Employees Group Life Insurance Act which means that only FECA benefits can only be paid to defendant survivors, and they are listed under the insurance act. The life insurance could go even if there were no dependent survivors to the estate or the designated beneficiary.

How does this—if you want to comment on it—follow the rationale of helping the dependents? I can see if you followed FECA it would, by law, go to dependents, but following the group insurance act, it goes to the estate or designated beneficiary. It may not be dependents.

Mr. GIBBONS. In the original drafting, I was trying to follow the statute that came out of the Judiciary Committee thinking that was the proper way to go. Those are obviously good points that you have made there and I think with the expertise that you have on this committee and your committee staff, that you all should make the decision.

As I say, I do not seek a special privilege for our Federal employees but I do not want to see them discriminated against and I think it is appropriate at any time to sit down and make a decision, are we really treating these people fairly, commensurate with the type of hazard that they face.

I had passed Mr. Timberlake at his post 100 times at my Federal building and had gotten to know him as a very fine gentleman who was a very proficient officer. He had even come up to my office sometimes and talked about different things. I thought very highly of him.

I find that the others in there take their duties equally as responsibly. It was from this experience that I gained further insights into the hazards of their job.

Oftentimes we pass people in the hall or at their post and see them there patiently waiting, not realizing that their neck is really on the line. If trouble begins to back out, and it does in these Federal buildings—my city is not a wild city. It is a good, solid community, but unfortunately the kind of people who have problems in society drift into that Federal building because that is where they are seeking solutions and when they cannot find a solution, sometimes they become completely unreasonable and they have a persecution complex anyway because they have had so many rebuffs in society that they can become pretty dangerous characters.

Crime is not their business, but crime is something that they are driven to as a striking out at society. That is what these people are up against.

Mr. ERLBORN. One other difference between your proposed legislation and the public safety officers benefit act which is for the State and local is that benefits under that act are limited to death caused as a result of traumatic injury in the line of duty whereas in your bill, payment would be triggered by a death caused by any work-related injury.

Under a very liberal interpretation under FECA engaged in by the Labor Department, that would mean repeated traumatic experience resulting in, for instance, a strain resulting in a heart attack; exposure which might lead to pneumonia, which would lead to death.

You have been talking about the traumatic injury situation and yet the bill you have introduced would have a much wider application and some very imaginative cases could be filed claiming some exposure as a result of employment has caused illness—not necessarily physical injury, but a physical illness that led to death but yet would be covered under the definition in your bill.

Mr. GIBBONS. I realize the problem you are talking about and it was not one that I was seeking to address in this legislation.

Mr. ERLBORN. You would not mind if that were tightened up?

Mr. GIBBONS. I think you are probably going to have to. I have had some experience in the area you talk about. For instance, one time as a lawyer I had a case in which a person died suddenly taking very strenuous exercise in a group formation. This was a Reserve officer on temporary weekend active duty and the evidence in that case was that he never had any evidence of heart trouble prior to that time.

Doctors pronounced him dead on the basis of a heart attack and there was no autopsy or anything else and he was buried and it was all over.

Finally, the widow came to me and I assisted her in that case and I learned a lot about what the weekend soldier faces going out and performing his duty.

Let me say that case ended happily because the Federal Government decided that since no one could really determine why he died, and how he died, that in the fall that had taken place during his strenuous exercise that the fall could have killed him as much as, perhaps, some heart disease could have killed him. And we went into all the ramifications of what was heart disease and whether it was an injury or an illness and how long he had had it and everything else.

Frankly, as I say, the motivation for my introducing this legislation was to try to take care of the person whose life is in danger. All of us are in some kind of danger from disease and there again you have asked a very tough question. If the disease is directly related to his



exposure to danger—for instance say, a guard working in Atlanta in an area where they are doing work on contagious, lethal diseases and as a result of his injury died, I would think he would be entitled to some more compensation than some fellow just a little obese, and perhaps who did not take good care of himself, and was walking real fast one day and died of a heart attack.

You know, there are tough lines to draw and that is why I am glad you are seriously considering this.

I think where it is directly related and there is a causal connection that is not disease-related. You know, it is hard to trace heart trouble or diabetes or hypertension, what really causes them. We really do not know if they are environmentally related, heredity related. Our own self-abuse could cause those kinds of diseases.

I do not think that we ought to certainly give that person any greater benefit, but where a person puts his life on the line, risks himself because he is trying to do a good job and exerts himself, then I think that person is entitled to special consideration from his employer—in this case, the Government.

Mr. ERLBORN. Thank you very much. Thank you, Mr. Chairman.

Mr. GIBBONS. These are tough lines to draw. You have a decision there to make.

Mr. WILLIAMS. Sam, we appreciate the concern and obvious compassion that has occasioned your leadership in this vital and difficult area and we appreciate your testimony here today.

Mr. GIBBONS. Thank you very much.

Mr. WILLIAMS. Our next witness is our colleague on the Education and Labor Committee, Congressman Dale Kildee from Michigan, who is the sponsor of H.R. 5888. Welcome, Dale.

Mr. KILDEE. Thank you, Mr. Chairman and members of the committee. I am accompanied by Dean Wilkinson, my legislative assistant who has worked on this bill.

Mr. WILLIAMS. Please proceed.

#### STATEMENT OF HON. DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KILDEE. I would like to thank you for the opportunity to appear before the subcommittee this morning.

As the author of H.R. 5888, I would urge the subcommittee's favorable consideration of a bill which, I believe, addresses a basic quality issue at relatively little cost to the Federal Government.

H.R. 5888 would provide a \$50,000 death benefit to the survivors of Federal law enforcement officers and Federal firefighters who are killed in the line of duty. It is similar to a program which is already in place for State and local government public safety officers.

Under the Public Safety Officers' Benefits Act of 1976, the Law Enforcement Assistance Administration provides such a benefit to the survivors of State and local officers. Last year, LEAA awarded \$12.4 million to the survivors of 248 public safety officers killed in the line of duty. I find it ironic that in this instance the Federal Government does a better job of providing for employees of State and local governments than for its own employees.

This bill would extend to approximately 50,000 Federal public safety officers the same coverage which already exists for approximately 900,000 State and local government public safety officers. It is

a generally accepted principle that those who are in hazardous occupations deserve special consideration. No less important is the protection of the families of those who have died because of risks they incurred in protecting public safety.

If we ask someone to risk his or her life, fairness demands that extra measures are taken to insure the financial security of that person's dependents.

The existing death benefits program is the Federal Employees Compensation Act. That act takes no cognizance of hazardous occupations. Furthermore, my personal feeling is that the extent of its present coverage is inadequate. It provides only 50 percent of a deceased officer's salary to a surviving spouse if they have no children. If there should be dependent children, the spouse's percentage is reduced to 45 percent and 15 percent is added for each child. In no instance, however, can the maximum benefit exceed 75 percent of the income which would be received if the officer had not died.

In other words, every family would suffer an immediate income loss of at least 25 percent. I wonder how many families in the United States would not experience serious financial difficulty if their income was cut by anywhere from one-quarter to one-half.

I would point out that potential earnings power is not included in the existing program. Because it would be impossible to determine, it is assumed that no employee would receive a promotion after the date of death.

In the case of public safety officers, there is a further injustice. Actual compensation is in inverse proportion to the exposure to danger. FECA is based on the salary that an individual was receiving at the time of death. The law enforcement officers or firefighters whose lives are actually on the line are likely to be lower paid, lower ranking employees.

Their earnings are likely to be less than those whose major activity involves desk work. The average Federal firefighter who would be exposed to the dangers inherent in that occupation is either a GS-4 or GS-5. The base pay for a GS-5, step 4 is \$15,460 with premium. The base pay with premium for a GS-4, step 4 is \$13,818.

I do not believe that anyone can realistically state that a reduction in such an income would not create severe hardships for the family of a deceased officer. We may actually be reducing their families to penury. I think that we need to do better by those who have lost their lives protecting us.

In addition to the issue of equity, we are, however, constrained to consider the cost of any program which would expand benefits. Over the last 5 years, 94 Federal law enforcement officers and firefighters have died in the line of duty whose survivors qualified for death benefits under FECA, an average of about 20 per year. Of those 94 deaths, 29 were caused by heart attacks and would be outside the scope of the bill. If the last 5 years are typical, no more than about 13 deaths per year would be covered by this bill. At \$50,000 per case, the cost to the Federal Government for this program would be about \$650,000 per year.

The Congressional Budget Office estimate of average cost is more conservative. CBO estimates that \$500,000 would be paid out in the benefits each year. In 1979, the families of 11 public safety officers would have qualified for the benefit—an expenditure of \$550,000.

My personal feeling is that such an amount is small when it is weighed against the fact that we would be keeping faith with those from whom our Government has received the ultimate sacrifice.

I would like to raise one technical point on the legislation. There was an error made in the original drafting of the bill. It was my intention to bring Federal benefits into conformity with the coverage provided to State and local firefighters. It has been brought to my attention that lines 8, 9, and 10 on page 3 of the bill are unduly restrictive. As an example, they would not cover practice firefighting runs. To restore the original intent of the legislation, I would urge the subcommittee to adopt an amendment that would change the language after the word "sustained" to read "in the performance of duty." That would make the bill consistent with existing coverage for State and local firefighters.

In closing, I would like to state that we have a responsibility toward those of whom so much is demanded. If you demand that someone face dangers, there should be compensating factors. It is a major injustice to ask someone to risk his or her life and then not make adequate provisions for those who are dependent upon that person's income. This bill would extend to Federal public safety officers a benefit that the Federal Government already provides to State and local public safety officers.

Finally, while granting a decree of equity, it would not entail a major Federal expenditure. I would reiterate my feeling that the legislation is necessary recognition of the services performed by our own law enforcement officers and firefighters.

Mr. WILLIAMS. Thank you, Congressman. Let me ask you a couple of things. Would a social worker dealing with juvenile delinquents be included since that work directly connected with the control of reduction of crime and delinquency?

Mr. KILDEE. In my understanding, not unless he is a peace officer.

Mr. WILLIAMS. Would the understanding hold for a Customs official?

Mr. KILDEE. If he is a police officer, it would hold for that person.

Mr. WILLIAMS. Do you have a particular objection to the Gibbons approach of making the legislation retroactive?

Mr. KILDEE. I have no feelings at all. I can certainly understand the desire of helping those who were not covered at the time of their death and with my political philosophy I am probably a little more prone to do that. I also recognize the fact that there is a fiscal note that has to be examined very, very carefully when one does that.

Mr. WILLIAMS. Congressman Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

I want to thank you, my colleague, for your testimony. Let me ask a few questions on this issue of equity.

We were told a few years ago to get some equity and balance between Federal firefighters and police officers and State and local, that the \$50,000 death benefit to the State and local was necessary. This was because we already had life insurance coverage sponsored by the employer at the Federal level. We had Federal employees compensation and these types of benefits generally were not available to State and local.

So the \$50,000 was to bring them up to parity with our Federal law enforcement and firefighters. Do you think that we were wrong then, or has something occurred in the interim to create a new imbalance?

Mr. KILDEE. I think we were wrong then. I was not here at the time, but I think we should have covered the Federal firefighters and police at that time, and as long as I am in the Congress—and I cannot guarantee my own tenure; that is up to the people in my district—I certainly would not engage in a game of leapfrogging. I know how this is done at times. In solving one inequity you create another and then—I know that game. I have experienced it. I will not play that type of game myself. That will not preclude me from discussing with you equity from time to time.

If I may add, I do think we made a mistake at that time, although I was not here. We have an example of firefighters putting out fires at Vandenberg Air Force Base and one is a local firefighter and one is a Federal firefighter and one is covered and one is not.

In protecting the President of the United States, we have the local police protected under this \$50,000 and the Federal not.

I do think we have some specific examples at a given conjunction of time and place where we have an inequity.

Mr. ERLENBORN. Talking about equity in the situation with the Federal and local working side by side, I understand under the current law, if you have a local officer assisting in the apprehension of someone for the commission of a Federal crime, let's say he is assisting a Federal law enforcement officer, FBI or whatever. Let's say both of them are killed. Both are entitled to Federal employees compensation. The local officer is entitled to the \$50,000 death benefit. However, the \$50,000 death benefit is offset against FECA, Federal Employee's Compensation Act payments. Under your bill if you had the same situation, the offset would apply for the local officer but not for the Federal officer. Again, a question of equity.

Should they be treated alike—and under your bill, they would not be.

Mr. KILDEE. If this committee would like to move toward greater equity, I would not object.

Mr. ERLENBORN. Offset for both?

Mr. KILDEE. I would move toward greater equity. My definition of equity might be slightly different.

Mr. ERLENBORN. I thought we ought to tie that down.

Mr. KILDEE. Yes.

Mr. ERLENBORN. What kinds of injuries do you intend for your bill to cover? Only traumatic injuries, or other types?

Mr. KILDEE. The same types of injury. I am not an attorney. That may be an advantage or a disadvantage for me.

Only the type of injuries that apply to the local officers at this time. I am sure that there is some case law on that.

Mr. ERLENBORN. There is. The problem, as I understand it, I think your bill, as long as Gibbons, amends FECA and has enforcement through the Department of Labor, and maybe the decisions under FECA, which are very broad, very liberal, would apply rather than the LEAA-administered program.

Mr. KILDEE. I could not guarantee that would not take place. The congressional intent, I would think, might give the Labor Department some guidance, however.

Mr. ERLBORN. What type of law enforcement officers do you mean to have your bill cover? For instance, someone may be involved in the enforcement of the law as a lab technician over at the FBI building.

Mr. KILDEE. You would really have to be a police officer, a peace officer.

Mr. ERLBORN. What about an FBI agent working as a lab technician or maybe temporarily taking the visitors around on a guided tour and firing on the firerange to impress all the little kids?

Mr. KILDEE. We do give definitions. I do not claim that the definitions were written on Mount Sinai.

Mr. ERLBORN. Was that a hospital?

Mr. KILDEE. I have an extra Gideon bible in my office. However, I know you know as much as I do in that book. We have definitions on page 2 here which I think are fairly tight.

Mr. ERLBORN. Well, this is what we were reading when we came up with the suggestion that one who is directly connected with the Comptroller reduction of crime could be a lab technician with the FBI.

Mr. KILDEE. I think basically, Congressman Erlenborn—

Mr. ERLBORN. Engaged in the detection of crime, like, again, a lab technician might arguably be included?

Mr. KILDEE. I presume the same questions were asked and maybe answered at the time that the original bill was passed for the local and State. I would suggest the committee go back and see what the answers may have been at that time on that.

Mr. ERLBORN. Did you take into account into determining equity the life insurance available incurred by the Federal employees and the double indemnity?

Mr. KILDEE. Yes. We considered life insurance coverage. Although the life insurance is, I believe, optional, I think most people do exercise the option. We did consider that. We did feel that considering those things, there still was a question of equity.

Mr. ERLBORN. Thank you very much, Mr. Chairman, and thank you, my colleague.

Mr. WILLIAMS. Dale, we thank you for your testimony and also for your leadership in this vital matter.

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. WILLIAMS. Mr. Ralph Hartman, Director, Office of Workers' Compensation Programs, U.S. Department of Labor.

Mr. Hartman, it is nice to see you here today, and you may proceed.

Mr. HARTMAN. Thank you, Mr. Chairman. Before I proceed, I would like to introduce my colleagues. On my immediate left is John McLellan, Associate Director for the Federal Employees Compensation Act. On his left is Connie Donoghue, Deputy Associate Solicitor for Employee Benefits and on my left is Richard Larson who heads the Division of Special Claims under whose jurisdiction the general bills and the cases they affect would fall.

Mr. WILLIAMS. Go ahead.

STATEMENT OF RALPH HARTMAN, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ACCOMPANIED BY JOHN McLELLAN, ASSOCIATE DIRECTOR, FEDERAL EMPLOYEES COMPENSATION ACT; CONNIE DONOGHUE, DEPUTY ASSOCIATE SOLICITOR FOR EMPLOYEE BENEFITS; AND RICHARD LARSON, DIVISION OF SPECIAL CLAIMS

Mr. HARTMAN. Mr. Chairman and members of the subcommittee, I am pleased to appear before your subcommittee today to present the Department of Labor's views on H.R. 2543, H.R. 5834, and H.R. 5888. At the outset, I want to make it clear that the Department of Labor shares the concern expressed in the two bills for the welfare of survivors of law enforcement officers and firefighters. In administering our responsibilities under the Federal Employees Compensation Act—FECA—we make every effort in adjudicating claims to assure that survivors of covered employees are treated fairly, equitably, and sympathetically. Nevertheless, we must oppose these bills as an inequitable and unfair benefit to a select group of Federal employees.

The bills pending before this subcommittee are similar in that a \$50,000 lump-sum gratuity would be paid to the survivors of Federal law enforcement officers and firefighters killed in the performance of duty. This payment would be in addition to any benefits they may receive under the FECA. H.R. 2543 and H.R. 5834, unlike H.R. 5888, provide for retroactive payment of benefits to any law enforcement officer or firefighter who dies as a result of an injury sustained in the performance of duty after January 1, 1976.

We note that as H.R. 2543 is now drafted, eligibility for the special, lump-sum gratuity is established through amendment of a definition used to provide eligibility for a special civil service retirement benefit as well, and we defer to the Office of Personnel Management with respect to its views in that regard. H.R. 5834 and H.R. 5888 would extend eligibility for the additional survivors' benefits without affecting civil service retirement eligibility.

In addition to providing a lump-sum gratuity for survivors of law enforcement officers and firefighters, H.R. 2543 provides criminal penalties for the murder of Federal protective officers employed by the General Services Administration. We defer to the views of the Department of Justice in this matter.

Before commenting on the merits of the proposed \$50,000 lump-sum gratuity, let me review the existing benefits under the FECA available to Federal public safety officers killed in the performance of their duties. As in the case of other covered employees, the act provides, in the event of the death of a Federal public safety officer, that the officer's surviving spouse receives 50 percent of the deceased employee's regular pay. If the surviving spouse has an eligible child, he or she is eligible for compensation equal to 45 percent of the employee's regular pay, plus an additional 15 percent for each child. In no case, however, may the total monthly compensation exceed the officer's monthly pay or 75 percent of the highest rate of monthly pay provided for a grade GS-15 employee of the U.S. Government. Compensation



to the officer's spouse continues until death or remarriage. Compensation to the children continues until they reach 18 years of age, and may be extended if such child is a student or is incapable of self-support. After 1 year, beneficiaries still receiving death benefits become eligible for cost-of-living adjustments. While the Federal Employees Compensation Act benefit payment is not generally in a lump sum, the account payable is potentially much higher than \$50,000.

There are a number of misconceptions concerning the status under the FECA of State and local government law enforcement officers, and some groups of public safety officers employed by the Federal Government. There is concern that certain groups of public safety officers are now receiving federally funded benefits that are more advantageous than the survivor benefits available to Federal law enforcement officers who are eligible for regular FECA benefits.

Under the Public Safety Officers' Benefits Act of 1976, certain State and local government law enforcement officers are eligible for \$50,000 in federally funded lump sum survivor benefits. This payment is in addition to any State or local workers' compensation benefits they may receive. While these public safety officers are not eligible for regular FECA benefits, they may, in the event the injury responsible for death occurred in the course of preventing a Federal crime or under related circumstances, be eligible for special FECA benefits. Such special benefits are paid to survivors, however, only to the extent that regular FECA benefit levels exceed what the officers' survivors receive from the Public Safety Officers' Benefit Act lump-sum award, any State or local workers' compensation award, or other comparable benefits. Since FECA benefits are often sizable in such cases, such State and local officers are not, as a general rule, receiving more than Federal officers eligible for regular FECA benefits.

It is worth noting that during congressional deliberation on the Public Safety Officers' Benefits Act in 1976, coverage of Federal public safety officers was specifically considered and was rejected under that law on the basis that FECA survivors' benefits were adequate and in many instances would exceed the \$50,000 payment authorized by these bills.

Another misconception is that survivors of some groups of Federal public safety officers now receive a \$50,000 lump-sum death gratuity in addition to their regular FECA benefits. This is because employees of the Uniformed Division of the Secret Service—formerly the White House Police—are eligible for the special lump-sum benefits along with members of the U.S. Park Police and the District of Columbia Metropolitan Police. However, these groups, local in character, are covered by the FECA on the same basis as State and local law enforcement officers. That is, these officers are only eligible for FECA benefits where injury or death occurred in connection with a Federal crime, and then only for the difference between what FECA pays and what they receive from their State or local compensation programs—including any lump-sum survivor award. Thus, they do not receive what these bills would provide—a lump-sum award plus regular FECA benefits.

The Department of Labor opposes the concept of singling out certain categories of Federal employees for special survivor benefits. We believe that survivor benefits should be adequate in all instances to ease the financial burden which the death inflicts. While Federal

law enforcement officers and firefighters may be exposed to hazards not commonly encountered by other Federal employees, their deaths would be no more financially, or otherwise, traumatic to their survivors than the death of any other Federal employee to his or her survivors. Providing a greater benefit under the FECA to a select group of Federal employees based only on the nature and potential hazards of their employment is inequitable and unfair. It should be noted that many Federal employees outside of the areas of law enforcement and firefighting are by the nature of their employment exposed to uncommon hazards. Yet, they are not, and should not, be afforded greater benefits under the FECA than those provided any other Federal employee.

Thank you, Mr. Chairman, for the opportunity to appear before you today to discuss this matter. My colleagues and I will be happy to answer any questions that you and the members of the subcommittee may have.

Mr. WILLIAMS. Thank you, Mr. Hartman, for your testimony today.

You mentioned that the Department opposes the concept of singling out certain categories of Federal employees for certain survivor benefits. Is it not true that the murder of a public safety officer is in itself a unique act and may, therefore, justify a unique response?

Mr. HARTMAN. That is entirely possible. It is a question and I do not mean to be crass, but we are talking about dollar value. You cannot place a dollar value on a human life, let me make that clear, as far as I am concerned. But the question is where the death is caused by A and a death caused by B, is there a rationale for a different resulting benefit?

Mr. WILLIAMS. I note in your statement that the deaths of Federal employees who face unusually unique hazards, that death is no more financially traumatic to their survivors than the deaths of others. I do not disagree with that statement, but ought not Federal employees faced with unique danger that some law enforcement officers and some firefighters face be able to go to work each morning knowing if they do not return home because of the unique threat to their life that they live with every day that their survivors have the benefit of a unique response, if that employee should die while on duty? I guess that is really the heart of what this legislation is all about.

Mr. HARTMAN. That would seem to be the thrust of it; yes.

Mr. WILLIAMS. It will take a subjective judgment, of course, of the committee. Congressman Erlenborn?

Mr. ERLBORN. Thank you, Mr. Chairman. Mr. Hartman, I would say that the underlying philosophy of FECA is income replacement when through death or disability income is denied to the Federal employee or to his survivors.

The purpose of FECA is to replace that income on an equitable basis, is it not?

Mr. HARTMAN. That is correct.

Mr. ERLBORN. Do the lump-sum death benefits fit that philosophy of income replacement?

Mr. HARTMAN. Really, no.

Mr. ERLBORN. Rather, the monthly benefits protected against inflation with the cost of living?

Mr. HARTMAN. Yes. The lump sum concept is, in my opinion, Congressman, the same in any form of insurance, whether it is workers' compensation in the true, commercial sense, or what have you.

Mr. ERLNBORN. It was pointed out by Congressman Kildee that the maximum that could be received by a survivor with two children, a widow and two children, would be 75 percent of the employee's salary. He suggested that that was a reduction of 25 percent income.

Considering the income of the employee was subject to taxes, deductions for life insurance, civil service retirement, and so forth, and the benefits under FECA are not subject to taxes or deductions. It is quite clear that that is not a 25-percent reduction in income.

Mr. HARTMAN. I would have to agree with that; yes, sir.

Mr. ERLNBORN. In the average case, do you have any idea how it compares with predeath or preinjury income?

Mr. HARTMAN. Well, with the cost-of-living adjustments that are built into FECA, they have exceeded 5 percent twice in 1979 for a total increase of 11.1 percent. If the cost of living continues to increase at the current rate, the FECA benefit could in 5 years be increased by up to 50 percent. The total income is escalating so that in many cases the take-home benefits are greater, without taxation, than the preinjury take-home income subject to taxation and other deductions.

Mr. ERLNBORN. Is the language in H.R. 5888 explicit and restrictive enough to compensate only those deaths that result from traumatic injuries in the line of duty, or would it rather be subject to argument that under the precedents of the Compensation Appeals Board that an occupational disease, such as heart disease, which was contracted in the line of duty, would also be compensable?

Mr. HARTMAN. If I may, I would like to refer that to my counsel.

Mr. DONOGHUE. I think the present definition here of personal injury sustained would, under our interpretation, include occupational diseases, heart attacks and would not be limited simply to the traumatic injury situation.

Mr. ERLNBORN. That, quite obviously, would be a major distinction between the State and local officer compensation at the present time and the interpretation under this act, which would be much, much broader. As a matter of fact, could it not arguably be extended to suicide if caused by the pressure at work which caused the imbalance and led to suicide?

Mr. DONOGHUE. Yes.

Mr. ERLNBORN. There have been some cases like this under FECA, have there not?

Mr. DONOGHUE. Yes, sir.

Mr. ERLNBORN. They have been found to be compensable?

Mr. HARTMAN. Tension and stress.

Mr. ERLNBORN. We are talking here about an act that seems to go—the proposal before us—that goes a great deal further than just providing equity between the State and local officers' compensation and Federal officers' compensation. I make that as an observation. You do not have to comment on it. It occurs to me that it does.

Well, I do not think I have any other questions, Mr. Chairman. Thank you.

Mr. WILLIAMS. Mr. Hartman, we have some figures that indicate that the average number of law enforcement officers and firefighters killed in the 4-year period since 1976 is 10 per year. Does your data go back—obviously it does—before 1976 and, if so, what has been the average number of deaths among policemen and firemen in the past decade?

Mr. McLELLAN. We do not have that information specifically. We have not collected it specifically by that category. We could break down information by Federal agencies and that type thing.

Mr. WILLIAMS. Do you know if the on-duty work-death rate is increasing? Do we know that?

Mr. McLELLAN. The reported injuries overall are staying about the same. It is leveling out, about 200,000 a year for all Government employees. It is not increasing greatly at the present time.

Mr. WILLIAMS. Counsel has a question?

Mr. PASBACH. Mr. Hartman, under the present program, under LEAA, does a city and State policeman receive benefits under the Workman's Compensation Act along with the \$50,000 award?

Mr. HARTMAN. Where they receive such benefits—and most of them do—there is an offset.

Mr. PASBACH. There is an offset?

Mr. HARTMAN. Yes. Only against the Federal benefit, not the local benefit.

Mr. LARSON. It is our understanding that under the Law Enforcement Assistance Administration program—LEAA—the \$50,000 that would be paid is not an offset against State and local benefits. However, if the survivors of the deceased officer qualify for benefits under the section 8191 program administered by the Department of Labor, there is an offset against Federal entitlement.

Mr. PASBACH. As a rule, does the State and local firefighter or police officer obtain, say, the \$50,000 plus his State compensation, as a rule?

Mr. LARSON. Again, the LEAA program is not administered by the Department of Labor. It is my understanding that they do.

Mr. PASBACH. Right. The State and local award, how does that compare with FECA generally? What percentage of FECA would you say?

Mr. HARTMAN. We do not have definitive information on this issue. However, it is rare that any local jurisdiction pays benefits with one dependent as high as 75 percent of the injured or deceased person's wage, which is one of the reasons, if I might say, why the act was amended some years ago because the State benefits were so low in many areas. It brings up the State standards question again.

Mr. PASBACH. At the time that this bill was enacted in 1976 there was the problem of a fireman being shot trying to do his duty putting out fires. Was this dangerous atmosphere the main reason for the passage of the 1976 legislation, if you recall?

Mr. HARTMAN. I have no direct recollection of it. Perhaps Mr. Erlborn could answer that question better than I can.

Mr. ERLNBORN. I always shy away from answering a question about congressional intent because I am not sure it is ever clear.

Mr. HARTMAN. We will not hold you to it.

Mr. PASBACH. Would the definition of a law enforcement officer in H.R. 5888(i) on page 2 as engaged in the control or reduction of crime include a social worker or a probation officer, in your opinion?

Mr. HARTMAN. Again, I would like to defer to my counsel.

Mr. DONOGHUE. It could.

Mr. PASBACH. Thank you. I have no further questions.

Mr. ERLNBORN. Mr. Chairman, one last question. Is it still true that the Office of Workmen's Compensation has the highest level of comp claims of any office in the Federal Government?

Mr. HARTMAN. Not really. I suppose if you take the small number of people in total and with their intimate knowledge of what to do, how to file the report, how to file timely claims, how to secure medicals, perhaps it is disproportionately high.

Mr. ERLBORN. I used that figure in my statistics. I just wanted to confirm it. I have always observed that those who know it best like it best. Thank you, Mr. Chairman.

Mr. HARTMAN. I would not want to publicly comment on that, sir.

Mr. WILLIAMS. Mr. Hartman and your colleagues, we appreciate your being here and your testimony today. Thank you.

Mr. HARTMAN. Thank you, Mr. Chairman and members of the committee.

Mr. WILLIAMS. Now we will hear testimony from Harold Schaitberger, legislative director, International Association of Firefighters.

We welcome you here today, Mr. Schaitberger, and you may proceed.

Mr. SCHAITBERGER. Thank you, sir.

First, I would like to take a moment to introduce two individuals who are joining me here today. To my right is Wayne Johnson, our 16th district vice president of our international union who has jurisdiction over our Federal employee membership. And to my left, Fred Schillreff, a staff representative with our international and responsible for our Federal employee issue.

**STATEMENT OF HAROLD A. SCHAITBERGER, LEGISLATIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, ACCOMPANIED BY WAYNE JOHNSON, VICE PRESIDENT, 16TH DISTRICT, AND FRED SCHILLREFF, STAFF REPRESENTATIVE, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS**

Mr. SCHAITBERGER. Mr. Chairman and members of the committee, my name is Harold A. Schaitberger, and I am legislative director for the International Association of Firefighters, AFL-CIO-CLC, representing approximately 175,000 professional firefighters throughout the country. I am pleased to appear before the subcommittee today to express our views on legislation providing a \$50,000 death benefit to Federal firefighters and law enforcement officers who die in the line of duty. Let me state now that the IAFF is in strong support of such legislation.

Under current Federal law—the Public Safety Officers' Benefits Act—State and local public safety officers and firefighters, including volunteers, already receive a \$50,000 benefit for death in the line of duty. Congress passage of the act in 1976 demonstrated its support for the work of these public servants and recognized its debt to those who gave their lives, by guaranteeing that their widows and children would not be forced into poverty.

Federal firefighters, like their State and local counterparts, are engaged in the most hazardous of occupations, with one of the highest death and injury rates in this country. A vivid example of the level of danger in Federal firefighting comes to mind: In December 1977, four Federal firefighters died in the line of duty in a brush fire at Vandenberg Air Force Base, Calif. These men were engaged and working alongside municipal firefighters, who had been called in to provide

assistance. This tragic incident highlights one inequity in the treatment of Federal firefighters as compared to their State and local colleagues.

Most, if not all, Federal installations participate in firefighting mutual-aid agreements with their surrounding localities. If deaths occur during such cooperative firefighting efforts, the State and local firefighter's family receives a \$50,000 death benefit, while the Federal firefighter's family does not.

A further example of the inequity of the current situation is the Federal firefighter who take part in his community's volunteer fire service. If he dies while on volunteer status, he is eligible for the death benefit, since the Public Safety Officers' Benefits Act includes volunteers in its provisions. Even more ironic, the off-duty Federal firefighter on volunteer status may well be called through local mutual-aid agreements to assist in a fire on a Federal installation, perhaps the very same installation where he is employed.

If he dies as a volunteer, his family is eligible for the death benefit, but if he dies while on duty as a Federal firefighter, they are not.

In our view, provision of a \$50,000 death benefit to Federal firefighters is a simple matter of equity. After all, fire does not distinguish between Federal, State, or local firefighters; neither should the law.

While Federal firefighters are covered by the Federal Employee Compensation Act we feel that this coverage is generally inadequate. A major flaw in its provision is that, since it is based on employee salary, those who are most likely to die—the younger, less-experienced, and lower paid firefighter—receive the least amount of coverage.

Furthermore, financial burdens are aggravated by the fact that the young firefighter's family is likely to be in the greatest financial need, faced with high mortgage balances, minimal savings, and huge outlays for raising and educating young children.

Under current FECA provisions, a firefighter's widow who has no children is entitled to 50 percent of his monthly pay. If she does have children, she is entitled to 45 percent of monthly pay and an additional 15 percent for each child, up to a maximum total of 75 percent.

Today's average Federal firefighter falls between GS-4, step 4 and GS-5, step 4. Taking the midpoint, the average firefighter salary, for purposes of FECA computations, is approximately \$14,639 per year.

Thus, the minimum benefit, for a widow with no children, is approximately \$7,320 and the maximum benefit of 75 percent for a widow with two or more children works out to \$10,979. And let's remember that this computation is based on the pay for average firefighters. The younger firefighter is likely to fall below these levels.

In today's economy, these amounts literally force firefighter widows to either remarry or seek employment. This is particularly tragic when small children are involved. Such treatment of the surviving families of Federal firefighters, who lay down their lives in public service, who often suffer horrible deaths, is incomprehensible and insensitive to the pain and financial dislocation with which these families are faced.

A comparison of FECA benefits to what State and local firefighters receive from their own death and pension plans, shows Federal firefighters receiving benefits far below their State and local counterparts. The IAFF represents both Federal and State and local firefighters



and a survey of our State and local membership shows that approximately 50 percent of them receive comparable or better death coverage, as compared to FECA.

Furthermore, they are all entitled to workmen's compensation and the \$50,000 death benefit provided by the Public Safety Officers' Benefits Act. How can the Federal fire service, which demands longer hours and lower pay, on top of marginal death benefits, hope to keep a stable Federal firefighting force under these circumstances?

Perhaps, in consideration of the current severe economic situation—if the cost of this legislation were in the millions or billions—we could understand some hesitation. But our own calculations, and those of the Congressional Budget Office, place the cost of this legislation between \$500,000 and \$650,000 per year. These costs are negligible, particularly in light of what they would do for the surviving families of Federal firefighters.

Today, the subcommittee is considering two bills, H.R. 5888 and H.R. 5834. While both bills seek to achieve the same end, we do have a preference for H.R. 5888, introduced by Congressman Dale E. Kildee.

The provisions of this bill are worked out in greater detail and more specific language which will simplify the implementation of the measure. Also, H.R. 5888 designates the Department of Labor for administration of the death benefit payments, while H.R. 5834 calls for payment to be made by the Federal agency concerned. We feel that keeping the administration of the death benefit in one single department will further simplify the implementation of the measure.

We do have one recommendation for a change in the wording of the Kildee bill. As it is written, on page 3 the bill qualifies a Federal firefighter for the death benefit if he sustains a personal injury "in the control or extinguishment of fires." Our own experiences with the passage and implementation of the Public Safety Officers' Benefits Act showed that this kind of wording was too restrictive, and would result in firefighters who for instance were killed in a truck accident on the way to a fire being excluded from the death benefit.

Another example of that would be situations involved in rescue calls, flood control, many other activities that firefighters are typically engaged in that could create a hazard-causing death which, under the present language, could possibly exclude coverage. We therefore ask that the subcommittee change the wording with section B(2) of the bill, lines 8 and 9 on page 3 to read: "is sustained in the performance of duty."

I thank the subcommittee for this opportunity to express our views. I think we have made some compelling arguments for the provision of a \$50,000 death benefit for Federal firefighters. I hope the subcommittee will agree once again. I thank you for your time and consideration of my statement on behalf of the International Association of Fire Fighters and its members and will be glad to answer any questions you have.

Mr. WILLIAMS. Thank you. One of the points you make is that the average minimum benefit is not appropriately high. That seems to be an indication that employees in the Federal Protective Service are underpaid. I wonder if the problem should not be to upgrade the pay rather than provide a lump-sum benefit.

Mr. SCHAITBERGER. We are certainly active in those proceedings in other committees of the Congress.

Mr. WILLIAMS. You also express your concern when you compare State and local benefits to the Federal benefits. Let me take a moment to read a paragraph from the previous witness, then have you respond to it.

Under the Public Safety Officers' Benefits Act of 1976, certain State and local government law enforcement officers are eligible for \$50,000 in federally funded lump-sum survivor benefits. This payment is in addition to any State or local workman's compensation benefits that they may receive.

While these public safety officers are not eligible for regular FECA benefits, they may, in the event of the injuries responsible for death in the course of preventing a Federal crime or other related circumstance be eligible for a special FECA benefit. Such special benefits are paid to survivors, however, only to the extent that regular FECA benefit levels exceed what the officer survivors receive from the public safety officers benefit lump-sum award, any State or local workmen's compensation program or comparable benefits.

Mr. SCHAITBERGER. The fact is that the \$50,000 death benefit provided from LEAA under the present act is in addition to any other compensation that the State or local law enforcement officer or firefighter would be entitled to, including State workmen's comp, independent pension benefits, or certainly personal insurance income.

However, if the individual were to, in addition to that, be entitled to some Federal benefit from FECA for participating in a Federal activity, that FECA benefit would be offset against the \$50,000 but not State-local workmen's compensation, State and local pension death benefits or any other personal compensation that they would be entitled to.

Mr. WILLIAMS. Who are the Federal firefighters? Define them for us.

Mr. SCHAITBERGER. I will refer to one of my colleagues. I certainly could do it, but I think I will let Vice President Johnson, since he is a Federal firefighter, describe that.

Mr. JOHNSON. The Federal firefighters are any force in a Federal installation, VA hospital, GSA installation who performs in the performance of fire suppression or inspection of fire.

Mr. WILLIAMS. Does that include forest firefighters?

Mr. JOHNSON. They are Federal also.

Mr. WILLIAMS. Thank you. Mr. Erlenborn?

Mr. ERLBORN. Thank you, Mr. Chairman. Let me ask you first about a comment on page 3 "In today's economy, these amounts force firefighter widows to either remarry or seek employment." Does the widow continue to be eligible for FECA benefits if she remarries?

Mr. SCHAITBERGER. My understanding is, she is not.

Mr. ERLBORN. Remarriage would cut off at least hers. If there are dependent children, I presume the payments continue for them?

Mr. SCHAITBERGER. That is correct. Mr. Erlenborn, if I could, too, I think this is really important, and I mentioned this in the testimony.

In the deliberations of this bill and particularly in 1976 during the original act, examples of high GS levels of pay were used to describe the benefits that these people would be entitled to and they ran out projections—I think benefit trends that they show that they could be entitled to hundreds of thousands of dollars if they live to be 70-some years old.

The truth of the matter is that the typical law enforcement officer and firefighter who is most often faced with a traumatic injury which would cause death, is very typically, a low-grade Federal employee, particularly in the fire situation. We are talking about low levels of GS-4 and 5. And I would hope that is an area which the subcommittee would take a strong look at in its deliberations.

Mr. ERLNBORN. In response to that observation, let me say that we looked at the life insurance eligibility with double indemnity for the GS-4 and 5 and for the GS-4, double indemnity would be \$32,000; for GS-5, \$36,000. Those are benefits, albeit partially paid for by the employee, but they are benefits to be considered as well.

I presume that you supported the legislation that extended the lump-sum annuity to State and local firefighters and police officers. Was not one of the strong arguments made at that time to justify that, that they were not being treated equally with Federal?

Mr. SCHAITBERGER. Well, I think that there would be two responses to that. One is, I think that that is accurate. There were many examples that were given where local law enforcement and firefighter personnel did not have adequate coverage.

To be very frank, though, I think the mood of the Congress at that time and its perception of certain groups of personnel who would be covered by the act was not one that encouraged their coverage. And I think that it was a consideration of the mood and the situation that some agencies had been involved in which caused as much consideration of elimination as the fact that State and local personnel were more inadequately not covered.

Mr. ERLNBORN. Has there been any dramatic increase in compensation at the State and local levels since that time?

Mr. SCHAITBERGER. Dramatic increase? I do not know that I could say dramatic increase. I could tell you what typically you will find in State and local. You will typically find workmen's compensation coverage which would provide usually no less than two-thirds and in many cases up to 75 percent, or even higher, of salary at the time of death.

In addition to that, most State and local governments have entirely independent retirement systems and most in addition to that have special retirement provisions for police and fire which pay a benefit in addition to workmen's comp.

So I do not know if the increase has been dramatic. I think that the case can be made quite easily that Federal law enforcement, and particularly Federal firefighters, law enforcement at those levels, are paid lower levels and their total compensation packages are much lower than the typical State and local officer.

Mr. ERLNBORN. Talking about the State and local pension funds, I call to your attention—you are probably aware of it already—ERISA?

Mr. SCHAITBERGER. I just did a 10-page memorandum on your bill. It was very interesting.

Mr. ERLNBORN. I fear that the State and local—"very interesting." I wonder what that means?

Mr. SCHAITBERGER. We have not taken a position on it yet.

Mr. ERLNBORN. I fear that those benefits expected by State and local employees under their pension plans may prove illusory unless we get something like ERISA enacted. For my colleague's benefit,

that is jointly sponsored by Frank Thompson and myself, a bipartisan measure to provide for reporting disclosure and fiduciary standards for State and local plans.

Mr. SCHAITBERGER. I am sure that we will certainly be supportive in working with the Congress in anything that will work to help to insure the pension benefits for our membership.

Mr. ERLNBORN. The one thing we do not want to do with ERISA is have a Federal takeover of those plans, but I think some minimum standards might be very helpful to guarantee that those benefits would be available for your members when they come to rely on them. Thank you, Mr. Chairman.

Mr. WILLIAMS. That was an interesting line of questioning. We appreciate it.

Mr. ERLNBORN. Just a little salesmanship.

Mr. WILLIAMS. What percentage of the total deaths of law enforcement and firemen are just firemen?

Mr. SCHAITBERGER. It is running about, I guess, 2 to 1 typically to law enforcement per every firefighter death.

Mr. WILLIAMS. Thank you.

Mr. SCHAITBERGER. I think that is basically because, Mr. Chairman, of the greater numbers. I believe they are probably in excess of 40,000 Federal law enforcement officers covered by the act and about 12,000 firefighters federally employed.

Mr. WILLIAMS. Do you know the extent of the injuries?

Mr. SCHAITBERGER. If I did it per 100,000 it is greater.

Mr. WILLIAMS. What about the percentage of injuries?

Mr. SCHAITBERGER. Our annual survey, which our international has been doing for years now, has shown that we have the highest injury rate within any of the occupations, depending on the year. It has been as low as 34 percent; it has been as high as 50-some percent. That is loss time injuries sustained.

Mr. WILLIAMS. I am from western Montana where we have great difficulty with forest fires every couple of summers and I know that the numbers of injuries among forest firefighters and jumpers have always amazed me. It is a very dangerous occupation.

Mr. SCHAITBERGER. It certainly is.

Mr. SCHILLREFF. If I might add to your comment, the fire at Vandenberg Air Force Base, which is very fresh in our minds, even though it was in 1977, is a typical example of the kind of thing you are talking about in western Montana. That fire started early in the morning, covering about less than 100 acres of land and looked like it could have been controlled. The winds picked up. Within an hour we had 10,000 acres burning with a firestorm of 90 miles an hour of wind. Two of our people got caught in that, so we certainly sympathize with the forest firefighters, smoke jumpers from western Montana. Great people.

Mr. WILLIAMS. Thank you. Counsel.

Mr. PASBACH. Mr. Schaitberger, once again, H.R. 5888 defines a law enforcement officer as an employee who, among other things, engages in the control or reduction of crime and juvenile delinquency. Do you understand this definition to include possible social workers or even people who teach this subject?

Mr. SCHAITBERGER. I was surprised at the response of counsel from the Department of Labor and I would certainly not challenge his

interpretation, but it is not our intent, nor is it my understanding, that those types of personnel would be covered by this act.

Mr. PASBACH. I see that this bill would put enforcement authority under the Department of Labor. Why would you not want to see the Federal firefighters also under the LEAA as the State and local are?

Mr. SCHAITBERGER. We thought, because the Federal firefighters are employees of the Federal Government and the other compensations are handled in the Department of Labor under the FECA program, it would be more appropriate for consistency to allow that Department to handle any other compensation they might be entitled to.

Mr. PASBACH. Do they not determine that a physical outward impact must occur before death benefits are allowable?

Mr. SCHAITBERGER. I am pleased that you asked that question because, again, I was surprised at the interpretation of what injuries may or may not be covered under the act. I am certainly no expert on FECA and would not make any claim to that.

Again, though, the bill was drafted to parallel the coverage provided under the original act. The language is identical and it is certainly our intent and our understanding that the same injuries and occurrences covered by the original act would be covered under this piece of legislation.

Mr. PASBACH. If a man suffered a heart attack at home, would he be covered?

Mr. SCHAITBERGER. Our impression and our understanding would be no, again having to defer to those who are expert with FECA. Our impression of the way the bill is drafted and our intent is that no, that would not be the case.

Mr. PASBACH. Thank you.

Mr. WILLIAMS. What if a law enforcement guard had to work at his desk and had a sudden heart attack. Is it your understanding that that would be covered?

Mr. SCHAITBERGER. No; it is not. It would have to be in the performance directly associated with the performance of engaging in the fires, for example, of actually engaging in some form of activity, whether it be rescue, firefighting, extrication, or whatever it may be. I would assume the same for law enforcement.

Let me additionally say that it is not our intent to try to obtain benefits for those who would not truly be entitled for the individual at home, who has diabetes and through some method tries to associate it with the job. We are looking at trying to provide a benefit to those who give their lives in the performance of duty for their Government. And there certainly is a precedent-setting situation not to allow distinguishing certain employees from other classes of employees. We pay combat to people. We pay flight pay to people. We have special retirement provisions.

There is certainly a rationale for taking a special look at certain classes of people and it is these people that really give their life in the line of duty that we are seeking coverage for.

Mr. WILLIAMS. We thank you, gentlemen, for your testimony here today.

Mr. SCHAITBERGER. Thank you.

Mr. WILLIAMS. The next witness is Mr. Robert Gordon, secretary-treasurer of the International Union of Police Associations. Mr. Gordon, we welcome you here today.

Mr. GORDON. Thank you, Mr. Chairman.

Mr. Chairman, accompanying me is Mr. John Burgoyne who is also slated as a witness, but I brought him up at this time. He is the president of the Federal Protective Service, local out of region 3 in Baltimore and on my right is Mr. John Hammond, Federal protective officer out of region II in New York City.

I think at the conclusion, these two officers, because this legislation involves generally, will have some good answers, I am sure, for any of the questions that are put forth by this committee.

Mr. WILLIAMS. Thank you. You may proceed.

**STATEMENT OF ROBERT GORDON, SECRETARY-TREASURER, INTERNATIONAL UNION OF POLICE ASSOCIATIONS, ACCOMPANIED BY JOHN W. BURGOYNE, PRESIDENT, FEDERAL LAW ENFORCEMENT ASSOCIATION AND PRESIDENT, LOCAL 47, IUPA, AFL-CIO AND JOHN HAMMOND, FEDERAL PROTECTIVE OFFICER**

Mr. GORDON. Mr. Chairman and members of the committee, for the record, my name is Robert D. Gordon and I am the secretary-treasurer of the International Union of Police Associations, AFL-CIO, representing our Nation's police officers throughout the United States, including Puerto Rico and the Virgin Islands.

As partners with our brothers in the firefighting service, we helped steer the Public Safety Officers' Benefits Act, Public Law 94-430, through several years of hearings and debate to finally see it become law on September 29, 1976. Unfortunately, however, Federal law enforcement officers were excluded from the legislation.

I would like at this time to thank the members of the committee for affording us the opportunity to present testimony on H.R. 5888 on behalf of our members in the Federal Protective Service.

Mr. Chairman, I do not believe it was the intent of the sponsors of the Public Safety Officers' Benefits Act to exclude Federal law enforcement officers from the original legislation. In fact, we find it disturbing that court personnel, probation officers, parole officers, and judicial officers were included in this legislation, while Federal Protective Service officers were excluded.

The men and women of the Federal Protective Service are no less professional law enforcement officers than any other agency. They put their lives on the line daily, in the protection of Federal property and employees. We believe the Federal Government that employs them should also compensate them and their survivors with the same benefit afforded all other members of the police community.

While this legislation will do nothing to bring back the Federal police officer killed in the line of duty, it will assure him that in doing his best as a law enforcement officer, someone will take care of those he leaves behind.

With the ever increasing cost of living, the \$50,000 widow's benefit would not be enough to pay off the mortgage, let alone raise and educate their children.



We in the law enforcement community owe a great deal of thanks to those Members of Congress who worked so diligently to see the final passage of the Public Safety Officers' Benefits Act. By extending coverage of this act to Federal police officers they will be put on equal footing with their counterparts in the public service.

To deny them this coverage, Mr. Chairman, is an indication that the Federal Government believes non-Federal officers deserving of just compensation while Federal officers are not.

According to information supplied by the Department of Labor, under the Federal Employees Compensation Act, the survivor of a Federal law enforcement officer who died in the line of duty would receive 75 percent of his salary if he left two children, age 4 and 5. If at time of death he was at grade 5 level, a salary of \$11,243, the monthly compensation would be \$702.69 until the first child reached the age of 18, at which time the compensation rate would change to 60 percent—45 percent for the widow and 15 percent for the remaining child.

This would reduce the monthly compensation to \$562.15. When the second child reaches age 18, the widow would receive \$468.46 per month. I note, Mr. Chairman, that the Department of Labor makes a great point while computing these figures that if the widow reaches age 74 the total compensation amounts to \$290,217.84. A point, I might add, which is rather farfetched, to say the least.

First of all, I need not remind any member of the committee of the evergrowing inflationary times we are presently experiencing. And at the rate of compensation provided me by the Department of Labor for a widow with two children, the monthly compensation of \$702.69 would, in 2 years, be worth \$500 a month. In this computation they have failed to indicate what a widow would receive if she were at age 40. It would be far less than the \$290,271.84 that they indicated.

The amounts of \$300,000 and \$400,000 paid out over a 25-year period indeed sound impressive to say the least, but in reality we are talking about someone at a GS-12 level, which is a salary range of \$25,000 at time of death. I know of no patrolman with the Federal Protective Service who is making \$25,000. We are referring to officers who are at the GS-5, 6, and 7 levels.

I believe what is most important, however, is what it would cost the Federal Government to provide this benefit to the Federal Protective Service officers. If they were covered under this legislation, it would have cost the Federal Government \$700,000 last year, which would have included all Federal officers killed in the line of duty, numbering approximately 14.

Arguments have been presented by those who oppose this legislation that if the Federal protective officers receive this benefit they would be receiving compensation twice. Local and State governments in almost every State in this country provide a separate death benefit over and above the average city and State employee to its police and firefighters because of the dangerous nature of their jobs, which I might add, was recognized by the Federal Government and when the Public Safety Officer's Benefits Act was signed into law in 1976.

I am sure no one would expect a clerk, metermaid, or traffic control officer to receive hazardous pay or the same amount of pay as a police

officer who works for the Department. And I am sure no one would expect a soldier, sailor, or marine to receive combat pay during a time of conflict while sitting at a desk in Key West, Fla.

This should not be considered a giveaway, handout, or a ripoff in providing these officers with these benefits, but rather should be considered as compensation for giving their most precious possession, their lives, to protect the citizens of this country.

Again, thank you for allowing us this opportunity to present our views.

Mr. WILLIAMS. Thank you. Before we have questions of you, sir, we will hear from Mr. John Burgoyne for his scheduled testimony.

Mr. BURGOYNE. Mr. Chairman, because of the length of some of the testimony, if you are agreeable, may I just submit this for the record and then any questions you may have, I will answer them?

Mr. WILLIAMS. Without objection, it will be accepted into the record.

[The prepared statement of John W. Burgoyne follows:]

PREPARED STATEMENT OF JOHN W. BURGOWNE, PRESIDENT, FEDERAL LAW  
ENFORCEMENT ASSOCIATION, IUPA, AFL-CIO

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

FOR THE RECORD, MY NAME IS JOHN W. BURGOWNE, I AM THE PRESIDENT OF THE FEDERAL LAW ENFORCEMENT ASSOCIATION, INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO, REPRESENTING FEDERAL PROTECTIVE OFFICERS IN PENNSYLVANIA, DELAWARE, MARYLAND VIRGINIA AND WEST VIRGINIA.

THE LETTERS U F O ARE GENERALLY USED TO INDICATE UNIDENTIFIED FLYING OBJECTS. WE, AS FEDERAL PROTECTIVE OFFICERS HAVE HAD THIS ACRONYM APPLIED TO US, MEANING UNIDENTIFIED FEDERAL OFFICERS. IT IS A SAD COMENTARY THAT THE LEGISLATION WE ARE DISCUSSING TODAY REQUIRED A TRAGEDY TO PUNCTUATE AND UNDERScore THE IMPORTANCE AND NECESSITY OF A BILL FOR PROVIDING A SURVIVORS BENEFIT TO THE FAMILIES OF FEDERAL PROTECTIVE OFFICERS KILLED IN THE PERFORMANCE OF THEIR DUTIES. IT IS JUST THIS PUNCTUATION WHICH DEMANDS THAT I RECALL THE TRAGEDY OF OFFICER ROBERT TIMBERLAKE, JR, WHO WAS THE LAST FEDERAL PROTECTIVE OFFICER TO BE KILLED IN THE LINE OF DUTY. OUR PROFESSION AS POLICE OFFICERS REQUIRES THE REALIZATION THAT OUR DUTIES MAY RESULT IN THE PRESERVATION OF A LIFE WHILE REQUIRING OF US WHAT MAY RESULT IN THE SACRIFICE OF OUR LIVES. OFFICER TIMBERLAKE MADE JUST SUCH A SACRIFICE. THE VERY NATURE OF THE LAW ENFORCEMENT PROFESSION TENDS TO DICTATE THAT ALL THINGS SUPPORTIVE OF THIS VOCATION BE INDEPENDENT AND DISSIMILAR FROM ALL OTHER PROFESSIONS. THE PROPOSED COVERAGE UNDER THE LAW ONLY TENDS TO SUPPPORT THIS PREMISE. UNDERSTANDABLY, REPLACEMENT OF A FATHER, A HUSBAND, A PROVIDER FALLS OUTSIDE THE SCOPE OF ANY MONETARY PARAMETERS AND IT SHOULD NOT BE EXPECTED THAT ANY LEGISLATION WILL OR CAN REPLACE THE WAGE EARNERS ABILITY TO PROVIDE OVER A LIFE TIME. THIS LEGISLATIVE COVERAGE SHOULD BE VIEWED AS IMMEDIATE RELIEF FOR AN IMMEDIATE EMERGENCY. HOWEVER, ASSETS AS WELL AS BENEFITS ARE TO OFTEN INCUMBERED BY PAPER WORK AND RED TAPE AND ARE NOT IMMEDIATELY AVAILABLE TO SURVIVORS WHO SUFFER EMOTIONAL AND FINANCIAL TRAMA WHILE PAPERS ARE BEING SHUFFLED. THE LACK OF LEGISLATIVE COVERAGE DID NOT SURFACE UNTIL

THE DEATH OF OFFICER TIMBERLAKE. THE TITLE "FEDERAL PROTECTIVE OFFICER" TRANSMITTS A MISNOMER. IT SEEMS TO INDICATE THAT A FPO IS NOT A POLICE OFFICER AND THEREFORE DOES NOT REQUIRE THE PROTECTION NORMALLY AFFORDED A POLICE OFFICER. IF ONE WILL TAKE THE TIME TO RESEARCH THE HISTORY OF THE FEDERAL PROTECTIVE SERVICE, ONE WILL FIND, AMAZINGLY ENOUGH, THAT THE FIRST TITLE PROPOSED FOR FEDERAL PROTECTIVE OFFICERS WAS THAT OF "FEDERAL POLICE." OUR PRESENT TITLE COMPARES TO DESIGNATING OTHER POLICE DEPARTMENTS AS "CITY PROTECTIVE OFFICERS," "COUNTY" OR "STATE PROTECTIVE OFFICERS." WE ALL WEAR A BADGE AND THAT BADGE SAYS POLICE. IT IS INDEED DEMORALIZING TO OUR FEDERAL PROTECTIVE OFFICERS WHO, DAILY, EXPOSE THEMSELVES TO THE RISKS NECESSARILY INVOLVED IN ENFORCING THE LAW, TO DISCOVER THAT THEY ARE NOT REGARDED AS BONAFIED LAW ENFORCEMENT OFFICERS AND HAVE NO PROVISIONS FOR THE FINANCIAL PROTECTION OF THEIR SURVIVORS SHOULD THE ULTIMATE SACRIFICE BE DEMANDED OF THEM IN THE PERFORMANCE OF THEIR DUTIES. FEDERAL PROTECTIVE OFFICERS TEND TO BE VIEWED AS "SECOND CLASS CITIZENS" IN THE LAW ENFORCEMENT COMMUNITY. WE WEAR BADGES CLEARLY MARKED "POLICE," WE MUST UNDERGO EIGHT (8) WEEKS OF POLICE TRAINING AT THE FEDERAL LAW ENFORCEMENT TRAINING CENTER ALONG WITH OTHER FEDERAL LAW ENFORCEMENT OFFICERS, WE ARE CLASSIFIED BY THE OFFICE OF PERSONNEL MANAGEMENT IN THE 083 POLICE SERIES, WE PROTECT UNDER THE LAW AND FACE THE SAME DANGERS WHILE UPHOLDING THE LAW. HOW, THEN, CAN IT BE POSSIBLE THAT WE ARE REGARDED AS ANYTHING LESS THAN POLICE OFFICERS?

WE ARE ASKING NOTHING MORE THAN THAT PROTECTION AFFORDED ALL OTHER LAW ENFORCEMENT OFFICERS AND THE KNOWLEDGE THAT OUR FAMILIES WILL NOT SUFFER FINANCIAL HARDSHIP, SHOULD IT BECOME NECESSARY FOR US TO GIVE OUR LIVES WHILE UPHOLDING THE LAW.

Mr. WILLIAMS. Congressman Erlenborn?

Mr. ERLBORN. Thank you. Mr. Gordon, on page 3, you point out how the ravages of inflation would reduce the purchasing power of the FECA legislation. You were aware when you prepared that testimony and when you delivered it that FECA compensation has a cost of living escalator, were you not?

Mr. GORDON. At that time, I was not; no sir. In fact, I changed this testimony on three different occasions on some of the information we received from the Department of Labor. One has contradicted the other. I am sure the officer on my right will bear in mind we got information at the beginning that this payment was the one lump sum.

Mr. ERLBORN. FECA payment?

Mr. GORDON. Yes, sir. So I think the bureaucracy over at the Department of Labor needs some straightening out over there. That is the original information we had received. If the officer's family got \$11,000 that would be a one-shot deal, which we found out was not so.

Mr. ERLBORN. Do you have members in your association who are Federal law enforcement officers and firefighters?

Mr. GORDON. No. We only represent police officers. These are two police officers by my side.

Mr. ERLBORN. You do not have any in the Federal service?

Mr. GORDON. Yes, sir. U.S. Park Police are members. The U.S. Secret Service, Uniformed Division, are members of our union.

Mr. ERLBORN. They must have had some experience with FECA claims, have they not?

Mr. GORDON. That is very possible, Mr. Erlenborn. I am not aware of it, but I am sure they must have, somewhere along the line.

Mr. Erlenborn. Thank you, Mr. Chairman.

Mr. WILLIAMS. I will be easy on you gentlemen. I have no further questions. We appreciate having your testimony.

Mr. HAMMOND. Mr. Chairman, if I might, Mr. Erlenborn asked the question about the FECA benefits. We had an officer who was killed in region II, my region, New York City in 1977. When we applied for his benefits, we were conclusively informed that we were not eligible for the \$50,000 benefits, so we applied through FECA.

Through the bureaucracy, through the FECA, State benefits, the State says they will not cover us because we are Federal employees and he was performing his job. We have to go through the Federal order to get any compensation.

This man was killed in May 1977. His wife is still in court with FECA, the State and the Federal Government, trying to get any compensation.

The man was murdered while on the job. He was removing a man from the U.S. mission to the United Nations which is, right now as we know, a very sensitive area. The man in the midst of being removed demonstrated a proficiency in karate and killed the man with one blow to his chest. We were also informed that he could not be prosecuted through the Federal court as a murderer of a Federal employee because of our condition at this present time and the bureaucracy within the Government. We would not be considered.

This man had to be taken through Federal court, and his family and his dependents still have not received any compensation as FECA says that they will give us.

Mr. ERLBORN. I would think that would argue to some amendment to FECA to clarify the status.

Mr. HAMMOND. They are going through court to do that.

Mr. ERLBORN. It could be done through legislation. That, in most cases, would be far more valuable than the current bill before us. That does give income protection, where the current bill is just a lump-sum payment. Thank you, Mr. Chairman.

Mr. WILLIAMS. Thank you, gentlemen.

Mr. GORDON. Thank you.

Mr. WILLIAMS. Mr. James Peirce, president, National Federation of Federal Employees. Mr. Peirce, we welcome you here, sir.

Mr. PEIRCE. Thank you, Mr. Chairman.

[The prepared statement of James Peirce follows:]



PREPARED STATEMENT OF JAMES PEIRCE, PRESIDENT, NATIONAL FEDERATION OF  
FEDERAL EMPLOYEES

Mr. Chairman and Subcommittee Members: My name is James Peirce, and I am President of the National Federation of Federal Employees. NFFE represents approximately 150,000 Government workers, including many Federal firefighters and Federal Protective Officers. I appreciate the opportunity to appear here today in their behalf.

NFFE strongly supports H.R. 5888, the subject of this hearing, since it would allow Federal law enforcement officers and Federal firefighters who are killed in the line of duty the same \$50,000 lump-sum death benefit that Congress provided to state and local public safety officers in 1976. Regardless of Government affiliation, public servants in these dangerous professions face the same risk of death in protecting our society. Most officers have families to support. They are concerned about the financial as well as the emotional burden that would be placed on their survivors if they should lose their lives on the job.

In 1976, Congress held that providing a Federal lump-sum death benefit to state and local public safety officers, in addition to the benefits they would receive under workers' compensation, underscores the value our Government places on their performance. Also, it's considered to be in the national interest to upgrade and improve employment conditions for these employees.

However, when Congress acted four years ago to amend the Omnibus Crime Control and Safe Streets Act and provide a \$50,000 lump-sum benefit for state and local employees, Federal law enforcement officers and firefighters were denied coverage. The House Judiciary Committee tried to defend the exclusion by maintaining that "the benefits provided under the Federal Employees Compensation Act (FECA) are generally adequate and in many instances exceed the \$50,000 payment authorized." But a comparison of the death benefits provided to Federal public safety officers with the benefits of state and local officers should have been undertaken by the Committee before judging the relative adequacy of the FECA benefits.

Generally speaking, survivor benefits under FECA are comparable to those for most public safety officers covered by state workers' compensation programs. When the committee decided in 1976 that Federal officers were already receiving adequate benefits, a Federal employee's spouse was entitled to death benefits amounting to 45% of the deceased's monthly pay. At the same time, 39 of the state workers' compensation laws provided 66 2/3% of the worker's gross wages to the surviving spouse. In contrast to the provisions in FECA terminating benefits upon remarriage, more than half of the states provided two years worth of benefits payable in lump sum in the event of remarriage.

Perhaps, the Judiciary Committee made its recommendation based on the maximum payouts under FECA and state workers' compensation. The Federal Government provides death benefits to spouses under FECA at a maximum rate of 75% of the deceased employee's monthly pay, not to exceed a grade GS-15. But the average Federal law enforcement officer or Federal firefighter would never approach the GS-15 maximum benefit, and even if maximum payouts were considered by the Committee when deciding that Federal public safety officers were not in need of improved benefits, a comparison with state maximum benefits would have shown similar payouts. The dollar benefit for a surviving spouse of a Federal employee was \$352.25/week in 1976 and was comparable to the maximum spouse's benefit in the state of Alaska at \$357.9/week and in the District of Columbia at \$318.38/week.

It is also important to remember that since 1976, several hearings have been held to establish Federal standards for state workers' compensation programs. While minimum standards have not been passed by Congress, many of the states have followed the recommendations suggested during hearings and have improved their workers' compensation benefits, including the survivor death benefits. In contrast, the death benefits for spouses of Federal workers under FECA have been increased during the past four years by only 5% of the deceased's monthly pay.

Because of the many changes in compensation death benefits since 1976, an updated comparison is necessary for Congress to consider the merits of H.R. 5888. Federal law enforcement officers and firefighters are most likely to compare their pay and benefits with what they could be earning if they worked as public safety officers in their home states. Therefore, NFFE has compared the survivor death benefits available to Federal law enforcement officers and firefighters in 1980 with the death benefits under workers' compensation in the 10 states with the largest number of Federal employees (Table 1).

Each state was found to have a program equal to or better than that provided to Federal employees. Spouses of deceased state workers receive from 50% to 66 2/3% of the deceased's wages and often obtain additional benefits for children. Federal employees' spouses with no children acquire 50% of the deceased's pay. When there are children, the spouse gets only 45% of pay, plus 15% for each child - up to a maximum of 75% of salary. While there are differences in benefits depending on the specific family size, the state provisions are at least comparable to those provided to Federal employees.

Aside from restoring benefit equity, H.R. 5888 would also have an impact on recruiting. Public safety officers working for state and local government receive the \$50,000 lump-sum death benefit. To recruit and retain qualified Federal law

enforcement officers and firefighters, it is essential that there be comparable pay and benefits among the Federal, state and local officers performing similar jobs.

H.R. 5888 would have a far-reaching impact on every public safety officer currently working for the Federal Government or contemplating a Federal career yet would generate only a minimal increase in expenditures.

[The figures compiled from the Federal Bureau of Investigation's Uniform Crime Reports and from the National Fire Protection Association (Table 2) show the small percentage of Federal law enforcement officers and Federal firefighters that comprises the total number of public safety officers.] Only about 3% of all officers killed in the line of duty are not now covered under the law providing an additional death benefit to employees working in dangerous professions. If Federal public safety officers were provided the lump-sum death benefit as granted to state and local officers, an additional \$250,000 in 1977 and \$200,000 in 1978 would have been spent. The Law Enforcement Assistance Administration has already paid over \$34 million to state and local public safety officers.

Since Congress has provided additional death benefits for state and local public safety officers working in dangerous positions, it is only fair that Congress provide similar benefits to the much smaller group of Federal public safety officers who perform equally dangerous jobs. For this reason, as well as the common goal of an improved Federal workforce, NFFE strongly supports the enactment of H.R. 5888.

That concludes my statement. I will be happy to answer any questions.

TABLE 2

LAW ENFORCEMENT OFFICERS KILLED IN THE LINE OF DUTY			
	Total Officers Killed	Federal Officers Killed <sup>1</sup>	Percent of Total
1972	116	4	3.4%
1973	134	4	3.0%
1974	132	3	2.3%
1975	129	5	3.9%
1976	111	2	1.8%
1977	93	0	-
1978	93	1	1.1%
TOTAL	808	19	2.4%

<sup>1</sup>/Includes officers employed by the Interior Department, the Justice Department the Treasury Department, the Judicial Branch and the Postal Service.

Source: FBI Uniform Crime Reports

FIREFIGHTERS KILLED IN THE LINE OF DUTY			
	Total Killed	Federal Firefighters	Percent of Total
1976	108	5	4.6%
1977	134	5	3.7%
1978	162	3	1.9%
TOTAL	404	13	3.2%

Source: National Fire Protection Association

CLAIMS BY SURVIVORS OF PUBLIC SAFETY OFFICERS								
Fiscal Year	Total Claims	Claims Approved	Police	Firefighters	Correctional Officers	Courts	Other	\$
1977	349	106	76	25	5	-	-	\$ 5.3M
1978	379	239	148	80	6	1	4	\$11.95
1979	322	258	156	78	18	-	6	\$12.9M
1980	161	80	48	26	4	-	2	\$ 4.0M
as of 2-22-80								

Source: Law Enforcement Assistance Administration



**STATEMENT OF JAMES PEIRCE, PRESIDENT, NATIONAL  
FEDERATION OF FEDERAL EMPLOYEES**

Mr. PEIRCE. Mr. Chairman, since a lot of our testimony has already been related by previous witnesses, I would like to request that our statement be a matter of record and I will just briefly summarize a few points and shorten it down to where you can get at some questions.

Mr. WILLIAMS. Without objection we will accept your written testimony into the record and you may proceed to summarize.

Mr. PEIRCE. Thank you, Mr. Chairman. NFEE strongly supports H.R. 5888 and H.R. 5834, the subject of this hearing, since they would allow Federal law enforcement officers and Federal firefighters killed in the line of duty the same \$50,000 lump-sum death benefit that Congress provided to State and local public safety officers in 1976.

Regardless of Government affiliation, public servants in these dangerous professions face the same risk of death in protecting our society. Most officers have families to support. They are concerned about the financial as well as the emotional burden that would be placed on their survivors if they should lose their lives on the job.

In 1976, Congress held that providing a Federal lump-sum death benefit to State and local public safety officers, in addition to the benefits they would receive under workers' compensation, underscores the value our Government places on their performance. Also, it is considered to be in the national interest to upgrade and improve employment conditions for these employees.

However, when Congress acted 4 years ago to amend the Omnibus Crime Control and Safe Streets Act and provide a \$50,000 lump-sum benefit for State and local employees, Federal law enforcement officers and firefighters were denied coverage. The House Judiciary Committee tried to defend the exclusion by maintaining that "the benefits provided under the Federal Employees Compensation Act are generally adequate and in many instances exceed the \$50,000 payment authorized." But a comparison of the death benefits provided to Federal public safety officers with the benefits of State and local officers should have been undertaken by the committee before judging the relative adequacy of the FECA benefits.

Generally speaking, survivor benefits under FECA are comparable to those for most public safety officers covered by State workers' compensation programs. When the committee decided in 1976 that Federal officers were already receiving adequate benefits, a Federal employee's spouse was entitled to death benefits amounting to 45 percent of the deceased's monthly pay. At the same time, 39 of the State workers' compensation laws provided 66 percent of the worker's gross wages to the surviving spouse. In contrast to the provisions in FECA terminating benefits upon remarriage, more than half of the States provided 2 years' worth of benefits payable in lump sum in the event of remarriage.

Perhaps the Judiciary Committee made its recommendation based on the maximum payouts under FECA and State workers' compensation. The Federal Government provides death benefits to spouses under FECA at a maximum rate of 75 percent of the deceased employee's monthly pay, not to exceed a grade GS-15.

TABLE 1 - COMPARISON OF SURVIVOR DEATH BENEFITS

Federal Employees Compensation	50% of deceased's monthly pay (minimum GS-2, maximum, GS-15)	45% of pay for spouse plus 15% per child (not to exceed a total of 75%)	40% of pay for one child plus 15% per additional child (not to exceed a total of 75%)
California	66 2/3% of deceased's average weekly wage (minimum - \$73.50, maximum \$231) not to exceed \$50,000 total	66 2/3% of average weekly wage divided equally among spouse and children (not to exceed a \$55,000 total)	66 2/3% of average weekly wage divided among children (not to exceed \$50,000 total)
District of Columbia	50% of deceased's average wage (not less than national average weekly wage)	50% of average weekly wage to spouse plus 16 2/3% per child (not to exceed a total of 66 2/3%)	50% of wages for one child plus 16 2/3% for additional children (not to exceed a total of 66 2/3%)
New York	66 2/3% of deceased's average wages (not to exceed state average of \$215/week)	66 2/3% of wages divided 70-30 between spouse and children (not to exceed a total of \$215/week)	66 2/3% of wages divided among children (not to exceed a total of \$215/week)
Texas	66 2/3% of deceased's average weekly wages (not to exceed state average of \$119/week)	66 2/3% of wages divided 50-50 between spouse and children (not to exceed a total of \$119/week)	66 2/3% of wages divided among children (not to exceed a total of \$119/week)
Virginia	66 2/3% of deceased's average weekly wages (not to exceed state average of \$199/week)	66 2/3% of wages divided equally between spouse and children (not to exceed a total of \$199/week)	66 2/3% of wages divided among children (not to exceed a total of \$199/week)
Maryland	66 2/3% of deceased's average weekly wages (not to exceed state average of \$241/week)	66 2/3% of wages divided equally between spouse and children (not to exceed a total of \$241/week)	66 2/3% of wages divided among children (not to exceed a total of \$241/week)
Pennsylvania	51% of deceased's average weekly wages (not to exceed state average of \$242/week)	60% of wages for spouse with one child, 66 2/3% with 2 or more children (not to exceed a total of \$242/week)	32% of wages for one child, 42% for 2, 52% for 3, 62% for 4, 64% for 5, and 66 2/3% for 6 or more children (not to exceed a total of \$242/week)
Illinois	66 2/3% of deceased's wages one year prior to injury (minimum, \$132, maximum-state average of \$353)	66 2/3% of wages divided equally among spouse and children (not to exceed a total of \$353)	66 2/3% of wages divided among children (not to exceed a total of \$353/week)
Ohio	66 2/3% of deceased's average weekly wage one year prior to injury (not to exceed state average of \$258/week)	66 2/3% of wages divided equally among spouse and children (not to exceed a total of \$258/week)	66 2/3% of wages divided among children (not to exceed a total of \$258/week)
Florida	50% of deceased's average weekly wage (not to exceed state average of \$215/week)	50% of wages for spouse plus 16 2/3% for each child (not to exceed a total of \$215/week)	33 1/3% for each child (not to exceed a total of \$215/week)

But the average Federal law enforcement officer or Federal firefighter would never approach the GS-15 maximum benefit, and even if maximum payouts were considered by the committee when deciding that Federal public safety officers were not in need of improved benefits, a comparison with State maximum benefits would have shown similar payouts.

The dollar benefit for a surviving spouse of a Federal employee was \$352.25 per week in 1976 and was comparable to the maximum spouse's benefit in the state of Alaska at \$357.59 per week and in the District of Columbia at \$318.38 per week.

It is also important to remember that since 1976, several hearings have been held to establish Federal standards for State workers' compensation programs. While minimum standards have not been passed by Congress, many of the States have followed the recommendations suggested during hearings and have improved their workers' compensation benefits, including the survivor death benefits. In contrast, the death benefits for spouses of Federal workers under FECA have been increased during the past 4 years by only 5 percent of the deceased's monthly pay.

Because of the many changes in compensation death benefits since 1976, an updated comparison is necessary for Congress to consider the merits of H.R. 5888. Federal law enforcement officers and firefighters are most likely to compare their pay and benefits with what they could be earning if they worked as public safety officers in their home States. Therefore, MFFE has compared the survivor death benefits available to Federal law enforcement officers and firefighters in 1980 with the death benefits under workers' compensation in the 10 States with the largest number of Federal employees.

Each State was found to have a program equal to or better than that provided to Federal employees. Spouses of the deceased State workers receive from 50 percent to 66½ percent of the deceased's wages and often obtain additional benefits for children. Federal employees' spouses with no children acquire 50 percent of the deceased's pay. When there are children, the spouse gets only 45 percent of pay, plus 15 percent for each child—up to a maximum of 75 percent of salary.

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Aside from restoring benefit equity, H.R. 5888 would also have an impact on recruiting. Public safety officers working for State and local government receive the \$50,000 lump-sum death benefit. To recruit and retain qualified Federal law enforcement officers and firefighters, it is essential that there be comparable pay and benefits among the Federal, State and local officers performing similar jobs.

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Since Congress has provided additional death benefits for State and local public safety officers working in dangerous positions, it is only fair that Congress provide similar benefits to the much smaller group of Federal public safety officers who perform equally dangerous jobs. For this reason, as well as the common goal of an improved Federal work force, NFFE strongly supports the enactment of H.R. 5888.

That concludes my statement. I will be happy to answer any questions.

Mr. PASBACH. Just one question, going to the coverage of the employees involved, would you consider that this legislation should cover people other than those in the line of duty that say, fight a fire, or go right into the areas of danger? I am talking about possibly social workers, probation officers, or other people who might in some way effect the reduction of crime in some way other than through actual physical prevention?

Mr. PEIRCE. We have to support the contention that any Government employee who goes into such a dangerous situation as firefighting or comparable to that should be covered.

Mr. PASBACH. How about a social worker whose counseling may help to reduce crime?

Mr. PEIRCE. That is a rough one. Since we really do not represent any social workers, I am not familiar with the dangers and so forth that they might incur.

Mr. PASBACH. You would not have any objection to tightening up the act to include only police officers or firefighters?

Mr. PEIRCE. That would be fine.

Mr. WILLIAMS. Does counsel have any questions?

Mr. WOOD. On the chart at the back of your testimony, table 1, do you know if the States listed have a cost-of-living escalator in their benefits?

Mr. PEIRCE. We are not aware of any. Our research, as far as this chart went to the extent we could. I am sure that some of them probably do, but I could not substantiate that fact. The maximum figure is the State average minimum wage which would be some kind of cost-of-living escalation. The maximum figure for those States, like in California where the \$231 is a State average weekly wage for California, changes annually.

Mr. WOOD. The \$231 could change annually. Say you have an individual whose widow would only receive \$73.50 in California and that is based on his salary at the time of death. Would that \$73.50 stay at that rate in the coming years in the face of inflation or would there be, in California law, a cost-of-living escalator which would, as inflation rises—that \$73.50 would rise automatically?

Mr. PEIRCE. We do not know.

Mr. WOOD. That is all I have.

Mr. WILLIAMS. Which police officers and firefighters are members?

Mr. PEIRCE. We have Forest Service firefighters and law enforcement officers. That covers quite a magnitude of firefighters.

Mr. WILLIAMS. Federal employees are as sensitive, certainly, as any other workers in this country to the devastating effects of inflation. Some Federal employees, I suppose, support the efforts of the Federal Government to trim the Government where we can without doing injury to appropriate public services. Yet every day people come up on this Hill to ask for more. That is precisely how we got Federal spending as high as it is.

Frankly, you are asking for more when your members are being ravaged by inflation and rather than ask you a question about that, I would just like your response.

Mr. PEIRCE. Mr. Chairman, you open a Pandora's box for me because—and I think our position on the thing is fairly well known—we feel that the Federal employee in light of the problems in this country today, the economy, energy problems, and so forth, is being made the scapegoat. Everything I hear on the Hill to correct these problems is to take something away from the Federal employees.

I have indicated that 80 percent of our efforts are in opposing adverse legislation to Federal employees which, at one time, the Congress felt was good legislation. I do not see any action on the part of Congress, basically overall or the administration, to correct the problems we have in this country and you are simply not going to do it by chewing at the Federal employees to the extent that you decrease their wages or save a few dollars. These are peanuts, in essence, to what we need to do. Why do we not place some price controls on gasoline, oil, and so forth, the things that are really impacting us?

I think that what we are asking for Federal employees is nothing but comparability, to which we feel they have a right. Federal employees as a whole—and I speak basically for my constituency—are perfectly willing to sacrifice but, by the same token, they do not want to be the only ones sacrificing and it seems that is the way it goes.

Mr. WILLIAMS. I recall in the early sixties when being a Federal employee was a grand calling and I think all of us remember that people wanted to join up, wanted to be a part of that band of people who serve the public in this country.

You have been around for some time now. Do you see a serious threat to public service because that high feeling and pride among Federal employees is somewhat diminished?

Mr. PEIRCE. Yes, sir. Very definitely so. In fact, we have testified before other committees to this quite often over the past 3 years. There has been a steady eroding of the credibility of the Federal employee to the extent today that the morale is the lowest that I have ever seen it in Federal service, and I entered Federal service back in 1950.

It is even to the point today that a lot of Federal employees do not even want to admit that they are Federal employees because of the image that they have with the lay public which has been painted—excuse me if you please—by the politician. It is just unfair. They are being blamed for everything; the economy, the energy crisis, et cetera. The lay Federal employee is actually providing the services that Congress has mandated and I think they are doing a very good job of it.

But, by the same token, it is very difficult today for the Federal employee to maintain the level of productivity they have had in the past and if we do not stop the attacks I think we are going to have some of our better people—in fact, I see a lot of brain drain going on within the Federal service today because of what is happening. And I think eventually there is going to be an erosion as far as the capabilities of the Federal service is concerned.

Mr. WILLIAMS. You know, Congressmen are Federal employees too.

Mr. PEIRCE. I am aware of that, Mr. Chairman.

Mr. WILLIAMS. I wonder who paints us as the bad guys?

Mr. PEIRCE. Well, I have to admit that sometimes we may do this but I think, by the same token, when there is praise it should be given. We do not hesitate to give the praise.

Mr. WILLIAMS. We appreciate seeing you here today and your staunch defense of the Federal employees is well received. Thank you.

Mr. PEIRCE. Thank you.

Mr. WILLIAMS. Our final witness is Stanley Q. Lyman, executive vice president, National Association of Government Employees. Mr. Lyman, we welcome you here today.

#### STATEMENT OF STANLEY Q. LYMAN, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

Mr. LYMAN. For the record, I am Stanley Q. Lyman, executive vice president of the National Association of Government Employees. Accompanying me today is our legislative director, Anne E. Sullivan.

The National Association of Government Employees is pleased to appear today in support of H.R. 5834 and H.R. 5888, bills to provide death benefits for the survivors of Federal firefighters and protective officers who are killed in the line of duty.

Both of these bills would correct a longstanding inequity in the benefits of Federal protective officers. The risk of death in the line of duty that is inherent in the job of any law enforcement officer has been acknowledged for many years as a special occupational hazard.

The recognition of this high probability of job-related death has been dealt with, in part, by the provision of a \$50,000 lump-sum death benefit for surviving family members.

If I might digress at this point, I would mention that the National Association of Government Employees was the moving factor of bringing about the enactment of that \$50,000 lump-sum benefit bill.

We represent, in part of our organization, the International Brotherhood of Police Officers, the largest group of independent police officers organized throughout the country. It was on their behalf and with the efforts of various Members of the Congress that the benefit bill was provided for.

Members of the D.C. police force and many Federal law enforcement officers, such as the U.S. Park Police and the Uniformed Branch of the Secret Service, have been provided this benefit since 1973 under section 4-531 of the District of Columbia Code. Other public safety officers have received the same \$50,000 lump-sum death benefit since enactment of the Public Safety Officers' Benefits Act in 1976.

Consequently, Federal protective officers are almost the only group of law enforcement officers, Federal, State or municipal, not to receive lump-sum benefits. Clearly, this is unjust as both the responsibilities



and the risks involved in a Federal protective officer's job are similar to those of other law enforcement officers.

As was stated in the General Services Administration memo that created the new group of employees called Federal protective officers, these new positions "involve greater responsibility than the present positions of guard and the requirements for these new positions are similar to those of police officers."

Federal protective officers are uniformed officers responsible for providing security in Federal buildings and on Federal grounds. FPO's regularly patrol facilities, carry out identification and inspection procedures at entrances, aid in detecting and containing fires, and enforce Federal laws, rules, and regulations. The situations they respond to range from thefts and assaults to demonstrations. The people they protect range from Congressmen and judges to clerks and include any members of the general public entering Federal property.

Since the inception of the Federal Protective Service in 1972, three Federal protective officers have been killed in the performance of duty: The first death occurred in Washington, D.C., on May 1, 1972; the second in New York City on May 16, 1977; and the third in Tampa, Fla., on January 24, 1979. None of the survivors of these three officers received lump-sum death benefits.

The job of a Federal firefighter also involves high risk of death in the line of duty. Preventing and combating fires is extremely hazardous. These individuals must handle material as dangerous as exotic fuels and nuclear matter. They work at Federal properties ranging from forests to military installations and airstrips. The threat of loss of life hangs over them each and every day. Thus, the survivors of Federal firefighters should also be eligible for lump-sum survivor benefits.

The spouse, children and relatives of firefighters and Federal protective officers daily sacrifice their peace of mind thinking of the dangers involved in their loved ones' jobs. Should the ultimate tragedy, death in the performance of duty, occur, the welfare of the victims' survivors must be provided for. They have lost not only a breadwinner but a cherished family member, and it is in the interest of the safety of people and property on Federal buildings and grounds that this valued person's life has been lost. A survivor's death benefit cannot soften the pain of bereavement, but it can at least ease the financial problems the survivors are sure to face.

The bill before you today would provide such death benefits. As the only substantial difference between the bills is in their effective dates, this is our only basis for preference of one over the other.

H.R. 5834 because of its enactment would allow the survivors of two of the three protective officers already killed in the line of duty as well as the survivors of any one who may be killed between now and enactment to receive appropriate compensation.

As you are probably aware, other bills have been introduced which would also provide lump-sum death benefits for Federal protective officers and firefighters. These measures are before different committees due to the fact that they contain provisions which we understand are outside the jurisdiction of your committee.

The National Association of Government Employees supports these other bills. However, we obviously hope that the best possible approach to extending death benefits to survivors of Federal protective

officers and firefighters will be followed. Equity and decency demand that survivors be granted death benefits. Consequently, the NAGE fully endorses any measure which would achieve that end.

That concludes our statement, Mr. Chairman. Of course, if you have any questions, all of us would be happy to answer them for you.

Mr. WILLIAMS. Counsel?

Mr. PASBACH. How far do you wish to extend the people who are to receive benefits? For instance, as I said before, H.R. 5888 defines a law enforcement officer as an employee whose duties involve the control or reduction of crime or juvenile delinquency. Now, as the Department of Labor has indicated, this might include social workers, probation officers, and others. Is it your intention to include those people?

Mr. LYMAN. No, sir. It is our understanding of the bill, or at least our interpretation of that bill, that it would relate to peace officers and death incurred as a result of injuries sustained in the performance of their duties.

Mr. PASBACH. Would you consider that injury to be a heart attack?

Mr. LYMAN. Only if the heart attack occurred if the peace officer were pursuing someone and had dropped dead while he was in pursuit, but not if he was sitting at a desk.

Mr. PASBACH. Assume he was a firefighter and was back at the station when he suffered the heart attack.

Mr. LYMAN. It was not our intent to have the bill extended to them; no.

Mr. PASBACH. What about putting this bill back into the LEAA for administration? Would you have any objection to that?

Mr. LYMAN. I would prefer to have the Department of Labor administer the bill.

Mr. WILLIAMS. Why is that?

Mr. LYMAN. I think it would centralize the handling of the entire program. It would eliminate some bureaucratic problems that may develop in LEAA as far as administration of the bill goes. I just think that the Department of Labor with their experience in these areas would be the logical place for this particular program to be administered.

Mr. WILLIAMS. Does minority counsel have any questions?

Mr. WOOD. Thank you. Mr. Lyman, Congressman Kildee made the statement this morning that FECA, "takes no cognizance of hazardous occupations." It seems to me that if we pass the legislation we would be taking special cognizance of the hazards associated with law enforcement and firefighting. Your organization, of course, represents more than those employees, do you not?

Mr. LYMAN. Yes; we do. That is correct.

Mr. WOOD. Would you not feel uncomfortable arguing with your other constituencies when they come to you and maintain that they are engaged in very hazardous occupations which justifies special consideration, and these groups are different and FECA lump-sum benefits should be afforded only to that group?

Mr. LYMAN. No; I would not. Again, we do not feel the bill is being aimed at just a stressful occupation. A lot of people have stress. Congress has stress. You have stress in your position.

But the position of law enforcement and firefighter presents a unique and different occupation. The average Federal employee is neither expected to go out and extinguish a fire or face somebody with

a loaded gun in their hand or handling a demonstration, not knowing what is going to happen next. Stress alone is not what we are concerned with. It is because of the occupation and the inherent danger of that occupation that we would like to see this bill enacted, to provide for that, to take care of those problems.

Mr. WOOD. I guess what I am concerned about, suppose in the future you gather evidence to demonstrate that, say working around nuclear reactors is highly hazardous and a high percentage of those employees will contract an occupational disease that is usually fatal. Would we not be likely to see your organization testifying in support of a bill that we create a special lump-sum benefit to those employees because of the hazards associated with that.

Mr. LYMAN. No. I would hope that you would see us appear before OSHA or other people trying to improve the safety features of those particular jobs.

Mr. WOOD. If that fails?

Mr. LYMAN. I am not trying to be facetious. We represent electronic technicians in the FAA who work with high voltage all the time, tremendously high voltage areas. I would not be coming before this committee seeking a special \$50,000 payment for them if they got electrocuted as a result of working in that area; no.

Mr. WOOD. What about other occupations?

Mr. LYMAN. The same would apply in the nuclear area or any of these other areas. Again, there are safety aspects that could control that more so than a \$50,000 benefit.

Another area—and you have heard this this morning—most people, I think, you find in the higher grades who have other protections. These people are lower graded people and the coverage they are afforded now and for the foreseeable future, unless this bill is passed, is not adequate for them.

Mr. WOOD. I have no further questions. Thank you.

Mr. WILLIAMS. We thank you for your testimony this morning.

Mr. LYMAN. Thank you.

Mr. WILLIAMS. That concludes this hearing of the subcommittee this morning.

[Thereupon, at 12 noon, the subcommittee recessed, to reconvene at the call of the Chair.]

## HEARINGS ON A DEATH BENEFIT FOR FEDERAL LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS

THURSDAY, MARCH 13, 1980

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON LABOR STANDARDS,  
COMMITTEE ON EDUCATION AND LABOR,  
Washington, D.C.

The subcommittee met at 9:45 a.m. in room 2261, Rayburn House Office Building, Hon. Edward P. Beard (chairman of the subcommittee) presiding.

Members present: Representatives Beard, Williams, and Erlenborn.

Staff present: Earl Pashbach, counsel; Paul O'Rourke, associate staff director; Mary Lou Granahan, research assistant; Bruce Wood, minority counsel; Jim Stephens, associate minority counsel.

Mr. BEARD. The Committee on Labor Standards will now come to order.

The first witness is Mr. Thomas J. Madden, General Counsel, Office of Justice Assistance, Research and Statistics, Department of Justice, Washington, D.C. Mr. Madden, do you have a prepared statement?

[The prepared statement of Thomas J. Madden follows:]

(55)

PREPARED STATEMENT OF THOMAS J. MADDEN, GENERAL COUNSEL, OFFICE OF  
JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS, DEPARTMENT OF JUSTICE

It is a pleasure, Mr. Chairman, to appear today before the Subcommittee on Labor Standards in connection with hearings on legislation to provide a lump sum death benefit to the survivors of Federal law enforcement officers and firefighters killed in the line of duty. In my statement today, I would like to provide some background information which may assist in your consideration of the proposals pending before the Subcommittee, H.R. 5834 and H.R. 5888, and discuss the death benefit program administered by the Law Enforcement Assistance Administration.

The Public Safety Officers' Benefits Act of 1976 authorizes the Law Enforcement Assistance Administration to pay a benefit of \$50,000 to specified survivors of State and local public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty. "Public safety officer" is defined as a "person serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a fireman." Among those for whom coverage is intended are persons involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws, including police, corrections, probation, parole, and judicial officers. Paid and volunteer firefighters serving State and local units of government are also covered.

The program which LEAA administers applies solely to the survivors of State and local public safety officers, while the legislation being considered by this Subcommittee would provide a similar benefit to Federal officers. Since the pending bills would be administered through the Department of Labor, we must defer to that Department regarding the advisability of enactment of those specific proposals. However, legislation has been introduced in the Congress, including

H.R. 2342 in the 96th Congress, which would include Federal personnel under the Public Safety Officers' Benefits Act. The Department of Justice has consistently recommended against enactment of these measures on the grounds that they would duplicate benefits already available to Federal officers in a manner specifically considered and rejected in the past.

Coverage of Federal public safety officers was considered by Congress when the Public Safety Officers' Benefits Act was first approved. Such coverage was rejected. As indicated in the House Committee Reports on H.R. 365 and H.R. 366, 94th Congress, it was felt that benefits provided to Federal officers under the Federal Employees Compensation Act were generally adequate and in many instances would exceed the \$50,000 payment authorized by the legislation. (House Reports 94-1031 and 94-1032, both a page 5.)

It is true that Federal public safety officers killed or injured in the line of duty are covered by the Federal Employees Compensation Act. Thus, enactment of the proposals before the Subcommittee would result in payment of a duplicate Federal benefit in the event of the death of a Federal officer. House Report 94-1031 gave an example of the benefits already available to Federal personnel: "In the event of the death of a Federal officer, the officer's widow would receive 45 percent of the deceased officer's monthly pay if there were no children. If there was a child or children eligible for benefits, the widow would receive 40 percent of the monthly pay and each child would receive an additional 15 percent." In no case, however, may the total monthly compensation exceed 75 percent of the highest rate of monthly pay provided for a grade GS-15 employee of the United States.



Compensation to the officer's widow would continue until death or remarriage. Compensation to the children would continue until reaching 18 years of age unless extended because of student status or because a person was incapable of self-support. While the Federal Employees Compensation Act payment is not in a lump sum as are benefits under the Public Safety Officers' Benefits Act, the amount payable is potentially much higher. In addition the Federal Employees Compensation Act covers permanent and total disability, unlike the Public Safety Officers' Benefits Act, which covers only death, and then only if the result of a personal injury.

To assist you in your deliberations, Mr. Chairman, I would now like to offer some details regarding LEAA's implementation of the Public Safety Officers' Benefits Act. The Act applies to deaths occurring from injuries sustained on or after the date of its enactment, September 29, 1976. However, payments can be made only to the extent provided for in advance by appropriation Acts. No benefit is paid by LEAA if death is caused by the intentional misconduct or voluntary intoxication of the officer. Deaths resulting from occupational illness or chronic disease also do not qualify.

Once LEAA approves a claim, the \$50,000 benefit is paid as follows:

- (1) If there is no surviving child of the deceased officer, to the surviving spouse;
- (2) If there is a surviving child or children and a surviving spouse, one-half to the child or children in equal shares and one-half to the surviving spouse;
- (3) If there is no surviving spouse, to the child or children of the officer in equal shares;
- (4) If none of the above, to the dependent parent or parents of the officer.

No benefit is paid if no persons qualify under these categories. If the actions of a potential beneficiary were a substantial contributing factor in the officer's death, that individual is ineligible to receive a benefit.

The Internal Revenue Service has ruled that the \$50,000 benefit is not subject to Federal taxation. The Act also assures that the payment will not be subject to execution or attachment. In cases of need, an interim payment of \$3,000 can be made to an officer's survivors pending final disposition of a claim. Because of the swiftness with which final benefits are generally paid, however, there has been little need to make interim payments.

The gratuity provided by the Public Safety Officers' Benefits Act is intended to be in addition to other benefits received by the family of a deceased officer. The sum is reduced only by certain payments authorized by the District of Columbia Code and those provided by Section 8191 of Title 5 of the United States Code. The latter provision covers State and local law enforcement officers under the Federal Employees Compensation Act if they are killed or injured while apprehending a Federal offender or fugitive; attempting to prevent a crime against the United States, or guarding a Federal prisoner or material witness.

Benefits under 5 U.S.C. 8191 are paid by the Secretary of Labor. Since the payments to the survivors of an officer under the Federal Employees Compensation Act are made in increments which could exceed \$50,000 over several years, LEAA has entered into an agreement with the Labor Department to insure that individuals receive all the payments to which they are entitled. When a State or local employee covered by

5 U.S.C. 8191 is killed and that officer is also included under our Act, LEAA pays the survivors \$50,000 in a lump sum. The Labor Department keeps track of how much the survivors would have received under FECA, and begins making incremental payments once the total to qualifying survivors exceeds \$50,000.

On May 6, 1977, LEAA issued regulations implementing the Public Safety Officers' Benefits Act. Because the regulations dealt with several difficult issues, they were drafted with the assistance of a review committee comprised of representatives from the entire spectrum of criminal justice professions, as well as representatives of firefighting associations, and medical and workers' compensation specialists.

One problem faced was determining who, in fact, was covered as a public safety officer for the purposes of the Act. While the legislation includes definitions of "law enforcement officer" and "fireman," there are many individuals who perform these functions only at certain times. Under the regulations, we use a "primary function test" to determine coverage. If an officer's primary function is law enforcement or fire suppression, then he or she is covered by the Act if killed at any time while acting in the line of duty. If these responsibilities are secondary, an officer is covered if killed only while actually enforcing the law or suppressing a fire. This policy impacts directly on individuals such as rescue squad workers who may at times be authorized to fight fires. Similarly, some States authorize groups as diverse as dog wardens and highway toll collectors to enforce the criminal law.

Another area that has presented some difficulty has been the meaning of the phrase "direct and proximate result of a personal injury" used in the legislation to qualify when an officer's death is covered. Many public safety officers, particularly firefighters, are prone to heart attacks or chronic lung problems because of the nature of their work. We drew on several statements in the legislative history of the Act to exclude coverage for occupational diseases. Traumatic injury or an outside force must be a substantial factor in the officer's death.

Smoke inhalation is such an outside force, but it is frequently difficult to determine when it is a substantial factor in bringing about death. LEAA consulted with medical experts on this issue, and has indicated that smoke inhalation will be found to be a substantial factor in an officer's death from a heart attack when the decedent had a carbon monoxide blood saturation level of 15 percent or greater at the time of the fatal event, or, if the decedent was a nonsmoker, a saturation level of 10 percent or greater. LEAA believes that the selection of these standards reflects the most advanced thought on this issue and comports with the requirement in the regulations that any reasonable doubt arising from the circumstances of the officer's death be resolved in favor of paying the benefit.

Mr. Chairman, copies of our regulations, as well as a copy of the indexed legislative history of the Public Safety Officers' Benefits Act have been provided to the staff of the Subcommittee.

LEAA works hard to assure that the Public Safety Officers' Benefits Program is administered in a manner that best meets the needs of the families of officers who have been killed. We were very pleased last year when the Senate Judiciary Committee, in its report on legislation to reauthorize and restructure the LEAA program, took note of these efforts. In rejecting suggestions that the program be transferred from LEAA, the Committee made the following comments:

"The Public Safety Officers' Benefits program is an outstanding example of efficient government....LEAA has taken a very active role in meeting the needs of the families of these officers. It generally takes less than two months from the time a claim is filed until a final determination is made. This is impressive given the amount of investigation frequently needed and the limited staff available in the PSOB Office." (Senate Report 96-142 at page 58.)

The staff of the Public Safety Officers' Benefits Office receives notices of deaths via telephone calls from employers or surviving family members, newspaper clippings, or through correspondence with family representatives such as attorneys. Staff members call the appropriate persons immediately and advise them of the necessary forms to be completed and the specific certified documentation which must accompany the claim forms at the time of submission. Forms are then mailed directly to employers and family with a cover letter reiterating the instructions for submitting claims. Follow-up letters are sent periodically. When all claim forms and supporting certified papers are received, the claim is processed and a determination of eligibility is made. The maximum targeted time period between receipt of claim materials and issuance of a benefit check for an approved claim is 35 days, though that much time has not been needed in the typical case.

Pursuant to authority in the Act, LEAA utilizes the administrative and investigative assistance of State and local agencies. When a claim is denied and a hearing is requested, LEAA sends a hearing examiner to the area where the claimant resides, rather than burdening an officer's survivor with the cost of a trip to Washington. We are also authorized to assure that any attorney's fees charged a claimant are reasonable in light of the services provided. In one instance, for example, we set aside a fee one-half the award when the actual services rendered were only worth a few thousand dollars.

Since the Public Safety Officers' Benefits Act was approved, 1,158 claims have been submitted to LEAA. Of these, 683 had been approved as of March 2, 1980, 299 had been denied, and 176 were pending. The distribution of claims filed in Fiscal Year 1979 was as follows:

Police Officers:	179
Firefighters	: 109
Courts	: 1
Corrections	: 19
Other	: 14
TOTAL	: 322

Through the first five months of FY 1980, we have received 108 claims. Of the deaths reported, 69 have been police officers, 32 firefighters, 2 corrections, and 5 other officers.

Thank you, Mr. Chairman. I would now be pleased to respond to any questions you may have.



**STATEMENT OF THOMAS J. MADDEN, GENERAL COUNSEL, OFFICE OF JUSTICE ASSISTANCE, RESEARCH AND STATISTICS, DEPARTMENT OF JUSTICE, ACCOMPANIED BY DAVID TEVELIN, ATTORNEY-ADVISER, OFFICE OF GENERAL COUNSEL; WILLIAM F. POWERS, DIRECTOR, PUBLIC SAFETY OFFICERS' BENEFIT PROGRAM, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION**

Mr. MADDEN. Yes, I do. We have submitted copies to the committee staff and have additional copies available for distribution.

Mr. BEARD. The entire statement will be incorporated into the record.

Mr. MADDEN. Thank you, sir. I would like to just highlight it. I am accompanied by Mr. Bill Powers, Director of LEAA's Public Safety Officers' Benefits Office and Mr. Dave Tevelin, an attorney in my office who handles legal matters involving the Public Safety Officers' Benefit Act. Mr. Powers has long personal experience in law enforcement as former commissioner of public safety in Massachusetts and policy adviser to the Governor of Rhode Island on criminal justice.

I would just like to proceed and then I will be available to answer questions.

It is a pleasure, sir, to be here today to testify before this subcommittee regarding pending legislation. The purpose of my testimony is to provide background information that may assist you in the consideration of the legislation and to discuss the program administered by the Law Enforcement Assistance Administration.

The Public Safety Officers' Benefits Act, authorizes LEAA to pay a benefit of \$50,000 to specified survivors of State and local public safety officers found to have died as a direct and proximate result of a personal injury sustained in the line of duty. "Public safety officer" is defined as a "person serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a fireman." Among those for whom coverage is intended are persons involved in crime and delinquency control or reduction, enforcement of criminal laws, including police officers, corrections officials, probation, parole and judicial officers. Paid and volunteer firefighters are also covered.

Our program applies solely to the survivors of State and local public safety officers.

To assist in your deliberations, I would like to point out some of the details regarding our implementation of the Public Safety Officers' Benefits Act. This act applies to death occurring from injury sustained on or after the date of its enactment, September 29, 1976. Payments under our bill can be made only to the extent provided for in advance by appropriations acts; the program is not an entitlement program in that sense.

Benefits are paid to specified survivors of the public safety officer—to the wife, the children, and the dependent parents if they exist. If there are no survivors in these categories, then no benefits are paid. The Internal Revenue Service has ruled that the \$50,000 benefit is not subject to federal taxation. The act also assures that the payment will not be subject to execution or attachment.

The gratuity provided by the Public Safety Officers' Benefits Act is intended to be in addition to other benefits received by the family of a deceased officer.

On May 6, 1977, LEAA issued regulations implementing the Public Safety Officers' Benefits Act. Because the regulations dealt with several difficult issues, they were drafted with the assistance of a review committee comprised of representatives from the entire spectrum of criminal justice professions, as well as representatives of firefighting associations, and medical and workers' compensation specialists.

One problem we had was determining who, in fact, was covered as a public safety officer for the purposes of the act. While the legislation includes definitions of law enforcement officer and fireman, there are many individuals who perform these functions only at certain times. Under the regulations, we use a primary function test to determine coverage. If the officer's primary function is law enforcement or fire suppression, then he or she is covered by the act if killed at any time while acting in the line of duty. If these responsibilities are secondary, any officer is covered if killed while actually enforcing the law or suppressing a fire. This policy directly impacts on individuals such as rescue squad workers who at times may be authorized to fight fires. Similarly, some States authorize groups as diverse as dog wardens and highway toll collectors to enforce the criminal law. They would be covered during the time they were enforcing criminal law.

LEAA works hard to assure that the public safety officers' benefits program is administered in a manner that best meets the needs of the families of officers that have been killed. We were pleased last year when the Senate Judiciary Committee, in its report on legislation to reauthorize and restructure LEAA, took note of these activities and commended LEAA for its efforts to implement the Public Safety Officers' Benefits Act.

The staff of the Public Safety Officers' Benefits Office receives notices of deaths by means of telephone calls from employers or surviving family members, newspaper clippings, or through correspondence with family representatives and attorneys. Staff members call the involved persons immediately, advise them of the necessary forms to be completed and the specific documentation needed to accompany the claim form. Forms are mailed directly to employers and families with a cover letter, reiterating the instruction for submitting claims. Followup letters are sent periodically when we receive no response to the correspondence. When all claim forms are received, the claim is processed expeditiously and a determination of eligibility is made. The maximum targeted time between receipt of the claim materials and issuance of a benefit check for an approved claim is 35 days, though much of that time has not been needed in the typical case.

Pursuant to authority in the act, LEAA utilizes the administrative and investigative assistance of State and local agencies. When a claim is denied and a hearing is requested, LEAA sends a hearing examiner to the area where the claimant resides, rather than burdening an officer's survivor with the cost of a trip to Washington. We are also authorized to assure that any attorney's fees charged a claimant are reasonable in light of the services provided. In one instance, for example, we set aside a fee of one-half the award when the actual services rendered were only worth a few thousand dollars.

Since the Public Safety Officers' Benefits Act was approved, 1,158 claims have been submitted to LEAA. Of these, 683 had been approved as of March 2, 1980, 299 had been denied, and 176 were pending.

Since the pending bills would be administered through the Department of Labor, we must defer to that Department regarding advisability of enactment of the specific proposals. However, the legislation that you are considering today is similar to legislation upon which the Department of Justice has commented in the past and taken a position in opposition to, based on the fact that it would duplicate available payments.

That completes my statement. I am willing to respond to any questions.

Mr. BEARD. Would you be willing to give the Federal law enforcement officers and firefighters a percentage of the amount they are asking for, let us say, about \$25,000?

Mr. MADDEN. The administration's position is that in times of budget constraints, we have to look very carefully at new legislation. This duplicates benefits that are now available to Federal officials. Thus, the administration is opposed to it. The Department of Labor would be in a better position to talk in detail about that. They administer the current program and can explain what the benefits are, and what they are not.

Mr. BEARD. What, in your opinion, was the intent of the legislation sponsored in 1976, now administered by the LEAA?

Mr. MADDEN. The intent was to provide a benefit to the survivors if a law enforcement officer was killed in the line of duty, in recognition of the hazardous occupation performed by those individuals, and the fact that these individuals are called upon, on a daily basis, to risk their lives in protecting the citizens of State and local governments. There was the feeling on the part of the Congress, as reflected in the legislative history and the declarations of findings in our act, that the coverage should be provided so that there would be an incentive for individuals to continue to come forward and serve as law enforcement officers and firefighters.

There was also some concern at that time that law enforcement officers and firefighters were not eligible for the various kinds of insurance programs for which other Government officials were eligible. This was a way to provide a form of insurance for these officials.

Mr. BEARD. Thank you. Mr. Erlernborn?

Mr. ERLERNBORN. Thank you, Mr. Chairman.

Mr. Madden, you made reference to the legislative history, and we have looked at that; first of all, the fact that we have this benefit is a fact. But that does not necessarily mean it is a good decision that Congress made. Congress made the decision and that is the law, and that is one of the things we must take into consideration.

But the legislative history, as you have suggested, indicates that the purpose of the benefits for State and local policemen and firefighters was the recognition by the Congress that the benefits they were entitled to from their own jurisdiction, and the insurance they were able to buy or unable to buy, was an inadequate package. This was to bring these State and local firefighters and policemen up to or more close to the level of Federal firefighters and law enforcement officers. Was not that the rationale?

Mr. MADDEN. That was one of the rationales. There was some concern that Federal law enforcement officers and firefighters had workman's compensation and insurance programs that were available. These were not readily available to many State and local law enforcement officials.

That situation has changed over the years, though. In many States there are now State death benefit programs, in addition to the Federal death benefit program, which provide payments to law enforcement officers who are killed in the line of duty. They are not as large a benefit, as a general rule, as the Public Safety Officers' Benefits Act, but those were still enacted by State and local officials, knowing that the public safety officers' benefits were available.

Mr. ERLERNBORN. It also seems clear that the decision was made at that time not to include the Federal officers and firefighters. It was suggested and an amendment was offered, at least in committee, the Judiciary Committee, and it was rejected.

Mr. MADDEN. That is absolutely correct.

Mr. ERLERNBORN. So, the assertions made by some before this committee that it was an oversight, that the Congress had really intended to cover the Federal firefighters and law officers, really is not true. That was clearly considered and rejected.

Mr. MADDEN. It was clearly considered and rejected.

Mr. ERLERNBORN. There was also another interesting decision made at that time, and that is, local firefighters and law enforcement officers who might under the law qualify for FECA benefits—and that was recognized—it was clearly made a part of that act that there would be an offset of the death benefits against FECA benefits.

Mr. MADDEN. That is right.

Mr. ERLERNBORN. So that the congressional intent, again, was clear. We thought there ought not be both, FECA benefits and the \$50,000 death benefit, one would offset the other.

Mr. MADDEN. With respect to State and local officers, that decision was made.

Mr. ERLERNBORN. That is what I mean, State and local.

Mr. MADDEN. The FECA benefits are available for a State and local law enforcement official killed while pursuing individuals who have committed a Federal crime. This Public Safety Officers' Benefits Act provides for an offset. If that State and local official's survivor applies for the FECA benefits, the amount of FECA benefits would be offset by the \$50,000 received under the Public Safety Officers' Benefits Act. There would not be a dual payment.

Mr. ERLERNBORN. Well, I am not going to ask you to draw any conclusion, but these are the facts. The conclusion I draw is that there was clearly congressional intent not to have additional compensation over FECA and over the group insurance that is available to Federal firefighters and law enforcement officers; and if we were to extend this as is suggested by this legislation, without an offset as to FECA, we would then have the local firemen and policemen in an inferior position as compared to the Federal. It really was the intention of Congress not to offer both. It was a good decision at the time, and we ought to stick with it. Thank you, Mr. Chairman.

Mr. BEARD. No further questions. Thank you very much for your testimony.

Mr. MADDEN. Thank you, Mr. Chairman.  
 Mr. BEARD. The next witness is Mr. Kenneth Blaylock, president, American Federation of Government Employees, Washington, D.C.  
 Do you have a prepared statement?

Mr. BLAYLOCK. Yes, I do, Mr. Chairman, about six pages, double spaced.

Mr. BEARD. That statement will be incorporated totally into the record, and you may proceed. If you can summarize it, it will be appreciated by the committee.

[The prepared statements of Kenneth T. Blaylock follow:]

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

Affiliated with AFL-CIO

1325 Massachusetts Avenue, N.W., Washington, D. C. 20005

STATEMENT

OF

KENNETH T. BLAYLOCK  
 NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

BEFORE THE

SUBCOMMITTEE ON LABOR STANDARDS  
 OF THE

HOUSE COMMITTEE ON EDUCATION AND LABOR

ON

H.R. 2543, H.R. 5888, AND H.R. 5834  
 LEGISLATION TO PROVIDE LUMP SUM DEATH BENEFITS TO  
 SURVIVORS OF FEDERAL LAW ENFORCEMENT OFFICERS

MARCH 13, 1980

Mr. Chairman, I appreciate this opportunity to appear before your Subcommittee to comment on legislation providing lump sum death benefits to Federal law enforcement officers and firefighters killed in the line of duty.

AFGE represents over 700,000 Federal workers in exclusive recognition units. Collectively our Federal Protective Officer Locals represent some 2,000 of the 3,300 FPOs who work throughout our country to protect Federal property and persons under the jurisdiction of the General Services Administration.



I have asked James Hooks, President of Federal Protective Officer Local 1733, to appear with me today. His many years of duty with the Federal Protective Service have given him a clear understanding of the difficulties and inequities facing FPOs.

These matters were the subject of recent hearings before the House Subcommittee on Public Works and Transportation. At that time, AFGE testified in support of legislation to: define Federal Protective Officers as "law enforcement officers"; require that the grades, salaries, and fringe benefits of FPOs be comparable to those of other law enforcement officers; and cover FPOs under standard or existing statutory benefits for early retirement, protection against assaults, and \$50,000 survivor benefits for death in the line of duty.

In light of the relevance of that statement to these hearings, I request that it be included as an attachment to our testimony today.

#### THE NEED FOR FEDERAL DEATH BENEFITS LEGISLATION

H.R. 2543, H.R. 5834, and H.R. 5888 share a common purpose. Their intent is to provide \$50,000 in Federal death benefits to the survivor or survivors of Federal law enforcement officers killed in the line of duty.

The need for such legislation is clear. The F.B.I.'s Uniform Crime Statistics show that since 1972 at least 26 Federal law enforcement officers have been killed in the line of duty. Effective enforcement of our nation's laws can only be assured by professional law enforcement officers who are guaranteed that their families will be compensated in a manner commensurate with the dangers inherent in their work.

It is essential to our country's security that law enforcement careers, whether they be as Federal Protective Officers, uniformed police, non-uniformed special police or Federal firefighters, be made more acceptable to our qualified citizens. We simply cannot ask decent, patriotic, dedicated and hardworking men and women to face the ever-present perils of death in the line of duty and then disregard the need to protect their families from financial disaster.

The consequences of neglect have been seen before. All too often it is the young widow and her children who are shattered by the sudden loss of a husband and father. Indeed, the initial shock of the law officer's death viels the realization of what will be its lasting repercussions.

The widow soon discovers after the funeral that her ability to maintain the family's financial security and well-being have disintegrated beyond her ability to cope with the tragedy.

I would now like to offer comments on the legislation which will help to cushion this calamity.

#### WHAT THE LEGISLATION DOES

As we understand it, H.R. 2543: defines Federal Protective Officers and non-uniformed special police as "law enforcement officers" under title 5, United States Code, in recognition of their law enforcement work; the bill establishes the same criminal penalty for killing a Federal Protective Officer and non-uniformed special policeman as exists for other Federal law enforcement officers; a \$50,000 lump sum death benefit is provided to survivors of Federal law enforcement officers killed in the line of duty; and finally, "performance of duty" is the criterion for payment of the benefits.

We interpret "performance of duty" to have its customary usage. That is, the injury resulting in the officer's death occurred when the officer was performing duties authorized, required, or normally associated with the responsibilities of the officer acting in his official capacity as a law enforcement officer or firefighter.

The second bill, H.R. 5888 provides for the \$50,000 death benefit to survivors of certain unspecified law enforcement officers and firefighters. This legislation differs with H.R. 2543 in two principal respects.

First, H.R. 2543 establishes its own, more general, definition of "law enforcement officer". Secondly, this legislation does not utilize the "performance of duty" criterion for payment of the benefit. Rather the bill seeks to establish its own standard for determining payment of the benefit.

The final bill, H.R. 5834, provides the lump sum death benefit to Federal Law Enforcement Officers defined in section 8331 (20) of title 5, United States Code, to Federal Protective Officers, firefighters, and non-uniformed special policemen. "Performance of Duty" is the criterion for payment of the benefit.

#### RECOMMENDATION

We urge that "Federal Protective Officers", "uniformed police" and "non-uniformed special police" be defined as "law enforcement officers" in order to assure that Congress' purpose is clear and so these groups will later receive the coverage which Congress intended for them to receive.

We further recommend that "performance of duty" be the standard for establishing payment of the lump sum death benefit. This is the standard by which survivors of state and local law enforcement officers receive similar death benefits and this standard should be maintained for the sake of consistency and equity.

This concludes our statement. We wish to once again express our appreciation to you, Mr. Chairman, for scheduling these hearings. We also thank Congressmen Kildee and Gibbons. They have demonstrated both an understanding of the need to improve the employment conditions of Federal Protective Officers, other Federal law enforcement officers and firefighters and a compassion for the widows and children of these dedicated public workers who have given the ultimate sacrifice in the service of their country's security and the public good.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
 Affiliated with AFL-CIO  
 1325 Massachusetts Avenue, N.W., Washington, D. C. 20005

## STATEMENT OF

KENNETH T. BLAYLOCK  
 NATIONAL PRESIDENT

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

BEFORE THE

SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS,  
 HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

ON

H.R. 2308, "THE FEDERAL PROTECTIVE SERVICE ACT OF 1979"

OCTOBER 11, 1979

We thank you, Mr. Chairman, and other distinguished members of this Subcommittee for giving us this opportunity to appear before you and testify on this important issue.

As this Subcommittee knows, AFGE represents over 700,000 Federal employees in exclusive recognition units. Collectively, our Federal Protective Officer Locals represent some 2,000 of the 3,300 FPO's who work to protect Federal property and persons under the jurisdiction of the General Services Administration.

I have asked James Hooks, President of Federal Protective Officers Local 1733 to appear with me today. He has great expertise in this area and years of experience in dealing with the crucial life and death issues confronting Federal Protective Officers.

Our testimony today will deal with two main items:

1. The issue of whether or not Federal Protective Officers are "law enforcement" officers for the purpose of section 8331 (20) of title 5, United States Code.
2. What H.R. 2308 would do.

FEDERAL PROTECTIVE SERVICE  
 AS A LAW ENFORCEMENT ACTIVITY

For many years it has been the policy of the Federal Government that pay be determined for Federal employees on a basis of "equal pay for equal work". This same principle has usually guided the Congress with respect to benefit entitlements.

In practice, however, neither the Agencies nor the Office of Personnel Management have applied the principle of comparability with equity. This failure is in part attributable to their reluctance to recognize significant change.

Our statement seeks to direct your attention to such a situation with respect to Federal Protective Officers (FPO), whose function and primary mission have undergone a significant re-emphasis as a consequence of a changing world.

We believe persuasive arguments exist for categorizing Federal Protective Officers as law enforcement officers for all legal, regulatory, and administrative purposes.

Public Law 80-168 of 1947 extended to agents and similar employees of the Federal Bureau of Investigation preferential retirement provisions. Later, by Public Law 80-879, approved



July 7, 1948, Congress made these same provisions applicable to other similar law enforcement officers. As stated in House Report 80-2034 on H.R. 6454 (enacted as Public Law 80-879) the purpose of the amendment was "to provide for granting annuities to any officer or employee who performs duties which are primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the United States, and who is 50 years of age and has rendered 20 years of service in such positions". This statement of purpose is now set forth in section 8331 (20) of title 5, United States Code, and reads in pertinent part as follows:

"Law enforcement officers" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position."

The Office of Personnel Management has taken the position in the past that FPO's are not primarily engaged in the investigation, apprehension, or detention of individuals, but, are primarily engaged in protecting property. Accordingly, the OPM considers the FPO outside the purpose of the provisions relating to early retirement (5 USC 8336 (1)). This provision permits the retirement

and replacement by younger persons of those employees who because of the stringent physical and mental requirements of their positions and the hazardous activities involved, are no longer capable of carrying on at peak efficiency.

As a matter of fact, OPM refuses to consider Federal policemen whose duties involve the protection of life, property, and the civil rights of individual citizens, as having a primary duty, "the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States."

The important phrase in the mind of OPM is, the question of the "primary" responsibility of the FPO relative to the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States.

Traditionally, the function of the law enforcement officer has not been defined in those terms. The legislative history of section 8336 (1), title 5, USC, suggests that the intent in using that definition was to limit eligibility thereunder to the "investigation" category of law enforcement, i.e., as distinct from the general duty of maintaining community law and order.

The later inclusion of corrections officers, however, and still later firefighters (P.L. 80-879) in our judgement expanded and refocused the perspective and intent of the

standard from the investigative to the occupational work in general and the hazards involved, i.e., the physical capability of law enforcement officers to give chase, overpower and apprehend individuals far younger in age. A similar thesis may be developed for firefighters relative to the physical demands of their occupation.

In general, the primary responsibilities of the police officer are defined as law enforcement and community service, that is, maintaining public order and security, apprehending offenders and preventing crime. Inherent in this overall function is the application where necessary, of the techniques of investigation and apprehension. The frequency of these particular techniques is smaller, relatively speaking, when compared to the overall activities of the officer. Nevertheless, the police officer or Federal protective officer must have the vital skills, knowledge and physical capabilities prerequisite to deal successfully with the need for investigation, pursuit, apprehension, and detention of suspects.

In light of this ever present requirement for successful job performance the frequency with which this occurs must become a secondary consideration, much as in the case of the firefighter. Without the necessary skills and knowledge, the FPO cannot successfully fulfill the role the position demands.

We, therefore, maintain that:

First, the FPO is a law enforcement officer under the later

generally accepted meaning of the police function. Within that overall function, he is called upon on a regular and recurring basis similar to other uniformed police organizations to apply the functions of investigation and apprehension of individuals suspected or convicted of offenses against the criminal laws of the United States. Within his specific jurisdiction he maintains public order and security, and investigates, apprehends or detains suspects when necessary.

Second, protecting people and property inherently involves the investigation, apprehension, or detention of suspects. Criminal acts in growing numbers occurring in Federal facilities during recent years have required the diligent application of these techniques by the Federal Protective Service. The investigation and apprehension of persons suspected of violating the criminal code of the United States is no longer an occasional or incidental activity of the FPO. It has become the norm.

For example, in 1976, Federal Protective Officers made 532 arrests nationwide, "for offenses against the criminal laws of the United States." These arrests involved assaults, larcenies, civil disorders, hostage seizures, and other violations.

Prosecutions were processed by the Federal Protective Service itself, or in conjunction with State or other Federal agencies. This is, of course, in addition to the daily

routine responsibility for protecting Federal buildings and areas.

Realistically, therefore, one cannot honestly say today that property protection, for the FPO, takes precedence over the protection of the lives and the well-being of persons.

It is this changed emphasis which H.R. 2308 seeks to address.

WHAT H.R. 2308 WOULD DO

As we understand the legislation, it would make the following principle changes:

- It would define Federal Protective Officers as "law enforcement officers".
- It would require that the grades, salaries, and fringe benefits of FPO's be comparable to those in the Secret Service - Uniformed Division.
- It would cover FPO's under standard or existing statutory benefits for early retirement, protection against assaults, and survivors benefits for death in the line of duty. Presently the survivor of a GSA Federal Protective Officer who is killed in the line of duty receives no death benefits. Survivors of other law enforcement officers are eligible for a lump sum payment of \$50,000. This measure will have a minimal budgetary impact and serves to redress an obviously inequitable situation.

In conclusion, AFGE would like to express its strong support for H.R. 2308. We hope our recommendations receive your serious consideration, and that the Congress move expeditiously to provide Federal Protective Officers with pay and benefits comparable to those enjoyed by other Federal employees doing equivalent work.

**STATEMENT OF KENNETH T. BLAYLOCK, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY JAMES E. HOOKS, PRESIDENT, LOCAL NO. 1733; ANTHONY M. SANTINI, SECOND VICE PRESIDENT, LOCAL NO. 1733**

Mr. BLAYLOCK. Mr. Chairman, this morning I have with me Mr. Jim Hooks, who is president of our Federal protective officers local 1733, and its vice president, Mr. Anthony Santini.

Mr. Chairman, we appreciate this opportunity to appear before your subcommittee to comment on legislation providing lump-sum death benefits to Federal law enforcement officers and firefighters killed in the line of duty.

AFGE represents over 700,000 Federal workers in exclusive units. Collectively, our Federal protective officer locals represent some 2,000 of the 3,300 FPO's who work throughout our country to protect Federal property and persons under the jurisdiction of the General Services Administration.

I have asked Jim Hooks, president of Federal protective officer local 1733, to appear with me here today. His many years of duty with the Federal Protective Service have given him a clear understanding of the difficulties facing the Federal protective officers.

These matters were the subject of recent hearings before the House Subcommittee on Public Works and Transportation. At that time, AFGE testified in support of legislation to: Define Federal protective officers as law enforcement officers; require that the grades, salaries, and fringe benefits of the FPO's be comparable to those of other law enforcement officers; and cover the FPO's under standard or existing statutory benefits for early retirement, protection against assaults, and the \$50,000 survivor benefits for death in the line of duty.

In light of the relevance of that statement to these hearings, I request that it be included as an attachment to our testimony today.

I would like to make a few comments on the need for Federal death benefit legislation. H.R. 2543, H.R. 5834, and H.R. 5888 share a common purpose. Their intent is to provide \$50,000 in Federal death benefits to the survivor or survivors of Federal law enforcement officers killed in the line of duty.

The need for such legislation is clear. The FBI's Uniform Crime Statistics show that since 1972 at least 26 Federal law enforcement officers have been killed in the line of duty. Effective enforcement of our Nation's laws can only be assured by professional law enforcement officers who are guaranteed that their families will be compensated in a manner commensurate with the dangers inherent in their work.

It is essential to our country's security that law enforcement careers, whether they be as Federal protective officers, uniformed police, non-uniformed special police, or Federal firefighters, be made more acceptable to our qualified citizens. We simply cannot ask decent, patriotic, dedicated, and hard-working men and women to face the ever-present perils of death in the line of duty and then disregard the need to protect their families from financial disaster.

The consequences of neglect have been seen before. All too often it is the young widow and her children who are shattered by the sudden loss of a husband and father. Indeed, the initial shock of the law officer's death veils the realization of what will be its lasting repercussions. The widow soon discovers after the funeral that her



ability to maintain the family's financial security and well-being has disintegrated beyond her ability to cope with the tragedy.

I would now like to offer comments on the legislation which will help to cushion this calamity.

As we understand it, H.R. 2543 defines Federal protective officers and nonuniformed special police as law enforcement officers under title V, United States Code, in recognition of their law enforcement work; the bill establishes the same criminal penalty for killing a Federal protective officer and nonuniformed special policeman as exists for the Federal law enforcement officers; a \$50,000 lump-sum death benefit is provided to survivors of Federal law enforcement officers killed in the line of duty; and finally, performance of duty is the criterion for payment of the benefits.

We interpret performance of duty to have its customary usage. That is, the injury resulting in the officer's death occurred when the officer was performing duties authorized, required, and normally associated with the responsibilities of the officer acting in his official capacity as a law enforcement officer or firefighter.

The second bill, H.R. 5888, provides for the \$50,000 death benefit to survivors of certain unspecified law enforcement officers and firefighters. This legislation differs with H.R. 2543 in two principal respects: First, H.R. 5888 establishes its own more general definition of law enforcement officer; and second, this legislation does not utilize the "performance of duty" criterion for payment of the benefit. Rather, the bill seeks to establish its own standard for determining payment of the benefit.

The final bill, H.R. 5834, provides for the lump-sum death benefits to Federal law enforcement officers defined in section 8331 (20) of title V, United States Code, to Federal Protective officers, firefighters, and nonuniformed special policemen. Performance of duty is the criterion for payment of the benefit under this bill.

We urge that Federal protective officers the uniformed police, and nonuniformed special police be defined as law enforcement officers in order to assure that Congress purpose is clear and so these groups will later receive the coverage which Congress intended for them to receive.

We further recommend that performance of duty be the standard for establishing payment of the lump-sum death benefit. This is the standard by which survivors of State and local law enforcement officers receive similar death benefits, and this standard should be maintained for the sake of consistency and equity.

Mr. Chairman, this concludes our statement, and we wish once again to express our appreciation to you for scheduling these hearings, and for allowing us the opportunity to present our position to the committee. We will be glad to answer any questions which you may have.

Mr. BEARD. First of all, thank you for your statement. Do you feel that the two pieces of legislation before us today could possibly be construed to include social workers, educators, and others who do not normally come into contact with criminals and dangerous people?

Mr. BLAYLOCK. I do not interpret the bill before us as providing that coverage for those types of people.

Mr. BEARD. How do you feel that the legislation that was sponsored in 1976 is being carried out?

Mr. BLAYLOCK. Well, the legislation of 1976, as far as we know, is being carried out. As the previous witness testified, the situation has changed somewhat from that time. The whole theory of the legislation now before you, we think, is comparability and equity, and the Congress clearly intended that law enforcement officers at State and local levels have this kind of protection. It has been said that there is other insurance available for Federal law enforcement officers. Well, with the FPO for one, it is not clear that they are covered under the category of law enforcement officer. We have had an awful lot of trouble with the interpretation there. We do know that the existing benefits for Federal workers do not adequately cover the Federal law enforcement officers and the Federal protective officers. We see a need for the legislation that is before you, to insure that coverage.

Mr. BEARD. Because H.R. 5888 mentions "the control or reduction of crime or juvenile delinquency" as part of its definition of a law enforcement officer, do you believe that one might be able to include probation officers, counselors, and even judges under this bill.

Mr. BLAYLOCK. Well, I think the whole intent of the legislation and the bill as we read it, the prime concern is that those officers, those agents of the Federal Government who have a law enforcement function should be covered. If the Congress is clear in the language of the definition of what a law enforcement officer is—there may be other categories, if they have arrest authority, if they have the responsibility of protecting property, life, et cetera, those are the people we are concerned about, Mr. Chairman.

Mr. BEARD. It seems to me there is some variation of benefits among Federal law enforcement officers. What are the benefits for the uniformed branch of the Secret Service?

Mr. Hooks. The uniformed branch of the Secret Service, Mr. Chairman, receives the \$50,000 death benefits, along with the Park Police. That is one of the things that is inequitable, as far as we are concerned because we perform the same type and similar duties as the Park Police and the uniformed branch of the Secret Service. However, our category as a law enforcement officer has always been up in the air, it has never been clearly defined what we are. So, we really need H.R. 5834 because it clearly defines a Federal protective officer as a law enforcement officer. If this legislation passed it would not be left up to the interpretation of GSA, OMB, or Civil Service, it would give the interpretation of what this legislation would mean to us.

First of all, I would like to give you a background of a Federal protective officer; what his duties are. For instance, in San Francisco we have to enforce laws in the Federal housing projects. In other words, we have to go into domestic quarrels. In San Diego we have to go into the border patrol, arresting illegal aliens. In Arizona, Texas, New Mexico, the same thing, we end up as border patrol. In the District of Columbia we enforce different laws, crimes on Federal property.

In other words, the Federal protective officer performs these duties, but he never receives the recognition he deserves.

Mr. BLAYLOCK. Mr. Chairman, late last night, as we were going over this legislation, it appeared to me it would be helpful to the committee if we could give you a copy of the job description and the job standards for the Federal protective officer. We were not able to get them this morning, but I would like to get those back to you if it is agreeable to you, for you to look at the requirements they have.

Mr. BEARD. That would be helpful.

[The information referred to above follows:]

**POSITION DESCRIPTION  
FOR GENERAL SCHEDULE AND WAGE SYSTEM POSITIONS**

1. REASON FOR SUBMISSION (For complete)		2. GEOGRAPHICAL LOCATION		3. COMPETITIVE LEVEL		4. POSITION NO.	
A. NEW POSITION	B. REPLACES POSITION						
<input type="checkbox"/>	N-40	SERIES	GRADE	Region Wide		DC	N-5-67
5. CLASSIFICATION		POSITION TITLE		SCHEDULE	SERIES	GRADE	INITIALS
6. OFFICIAL ACTION BY PERSONNEL OFFICE		Federal Protective Officer		GS	083	05	TM 7-2-7
7. RECOMMENDED BY PERSONNEL OFFICE							
8. RECOMMENDED BY INITIATING OFFICE		Federal Protective Officer		GS	083		
9. ORGANIZATIONAL TITLE OF POSITION		10. CERTIFICATION. This is a complete and accurate description of the duties and responsibilities of this position:					
Federal Protective Officer							
11. SERVICE OR STAFF OFFICE		Public Buildings Service		12. SIGNATURE OF EMPLOYEE		DATE	
13. 1ST		Federal Protective Svc. Divn.		14. SIGNATURE OF IMMEDIATE SUPERVISOR		DATE	
15. 2D				TITLE, Director, Fed. Prot. Svc. Divn.		DATE	
16. 3D				17. SIGNATURE OF STAFF OFF. OR DESIGNEE		DATE	
18. 4TH				TITLE, National Commissioner, PBS		23/3	
19. 5TH				20. OFFICIAL CLASSIFICATION CERTIFICATION		DATE	
				SIGNATURE		7/15	
				TITLE, Chief, Compensation Branch			
10. REAUIT CERTIFICATION							
BY		INITIALS	DATE	INITIALS	DATE	INITIALS	DATE
SUPERVISOR							
PERSONNEL OFFICE							
11. DESCRIPTION OF POSITION (Refer to Guide for Writing Position Description, GSA FPMR 101-11.6)							

**NATURE AND CONTROLS**

Serves as a uniformed officer of the Federal Protective Service whose responsibility is to protect life and the civil rights of persons, to enforce law and order, to preserve the peace, and protect property owned and controlled by GSA.

The primary emphasis of training provided is directed to the principles, methods and techniques of law enforcement work. Stress is placed on (protection of human life and civil rights) preservation of law and order, court procedures, building rules and regulations, crowd control (civil disturbance), accident investigation, protection of property, and arrest procedures. This training is accomplished at the FPS Training Academies, and interregional training programs.

Performs duties in accordance with rules and procedures involved in operation of sophisticated protection systems and related equipment, pertinent Federal and local laws, modern police methods and procedures, and a large number of strict, precise security and life safety regulations. Required to interpret and extend guidelines, to determine when to initiate emergency procedures, and to exercise a very high degree of judgment and initiative without the benefit of on-site guidance as relates to natural and man made emergencies which are not predictable.

The officer's patrol area may be one sensitive post, a large building or several buildings. May be required to be highly mobile and move between buildings which are far apart or cover all floors in a large building.

**MAJOR DUTIES**

Performs all duties attendant to the normal interpretation of the Police Officer function. In addition, duties will include the security and protection of assets, and other related responsibilities on Federal property. This involves maintaining law and order, preservation of the peace, and the ability to detect abnormal behavior or characteristics of individuals or groups, with an ultimate aim at preventing disturbances detrimental to the orderly carrying out of Government business, and the ability to take prompt, decisive action to minimize and control imminent breaches of the peace.

In case of any type of emergency, participate fully in emergency action procedures and is in an integral part of the Facilities Self-Protection Plan. Conducts bomb searches, evacuates personnel, renders first aid, and assists other public safety agencies i.e., local, State and Federal law enforcement agencies, fire departments, bomb disposal units, etc. as required.

Conducts preliminary investigations of crimes such as robbery, aggravated assaults, breaches of the peace, accidents or other emergencies traditionally handled by police officers. As necessary, summons assistance, interviews complainants and suspects alike, preserves evidence, and prepares official police reports of all incidents within jurisdictional limits. Provides all necessary support to the criminal investigators of GSA and other Federal, State, or local law enforcement agencies required in the conduct of criminal investigations.

May be, when necessary, assigned to plainclothes work, full or part time, to conduct investigations of crimes, and maintain surveillance over locations with high incidence of crime. Investigations include searching the scene of the crime for clues, interviewing witnesses, following leads, locating suspects, and making arrests. May be required to join in "hot pursuit" of a fleeing felon, and/or leave his jurisdictional boundaries to effect the arrest of a fleeing felon.

Protection will be provided against criminal and non-criminal acts, both willful and inadvertent. Prevents, detects, and investigates accidents, crimes, and misconduct involving misdemeanors, felonies, and other violations.

Enforces a wide variety of Federal, state, county, and municipal statutes, law and ordinances, and agency regulations; is cognizant of the rights of suspects, the law of search and seizure, and the civil rights of citizens.

Exercises arrest authority as follows:

Arrests, under a warrant, any person accused of having committed any offense against the laws of the United States or against any rule or regulation

prescribed under pertinent law;

Arrests, without a warrant, any person committing any such offense in the presence of a Federal Protective Officer, member of the Federal Protective Service; or

Arrests, without a warrant, any person where there are reasonable grounds to believe that the person has committed a felony.

Testifies in court. Conducts presentation in a professional manner, giving testimony in a clear, concise and orderly fashion. Thoroughly reviews facts prior to testimony enabling complete answers to all questions.

Regulates pedestrian and vehicular traffic; prevents accidents, congestion, and parking problems and, when necessary, interprets rules and regulations and answers general inquiries.

Other requirements a Federal Protective Officer must have to perform and maintain the duties are: Security clearances as required by agencies in space protected; alertness, tact and integrity; ability to make sound judgments often in areas not clearly defined; ability to learn and apply regulations and guidelines relating to protection security systems; ability to exercise a high degree of discretion and independent judgments which vary from the normal and will often involve criminal statutes including espionage and sabotage; a valid drivers license from the state of residence and the ability to operate patrol vehicles, motor scooters and bicycles as required; skill in the use of firearms including the qualification requirements of the Federal Protective Service.

Failure to maintain these requirements will be cause for reassignment to non-critical duties for which the incumbent may qualify.

"I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds and that false or misleading statements may constitute violations of such statutes or their implementing regulations.

  
(Signature of immediate supervisor)

7/1/75  
(Date)

POSITION DESCRIPTION FOR GENERAL SCHEDULE AND WAGE SYSTEM POSITIONS		1. REASON FOR MISSION	4. IF NEW POSITION Mark here <input type="checkbox"/>	5. POSITION BEING REPLACED (if applicable)	6. COMPETITIVE LEVEL	7. POSITION NUMBER
		MISSION	Number	Grade		M-49
		M-39	083	4		
CLASSIFICATION						
8. ATTENTION	POSITION TITLE	SCHEDULE	SERIES	GRADE	INITIALS	DATE
	Federal Protective Officer	GS	083	4	CD	7/1/76
6. ORGANIZATIONAL TITLE OF POSITION (if applicable)						
7. NAME OF EMPLOYEE(S)						
9. LOCATION	a. SERVICE OR STAFF OFFICE		b. Federal Protective Service Division			
	Public Buildings Service					
10. SUPERVISORY CERTIFICATION	I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds and that false or misleading statements may constitute violations of such statutes or their implementing regulations.		c. IMMEDIATE SUPERVISOR (Signature and title)		DATE	
			John J. Gesta		7/2/76	
11. FLSA STATUS (For completion by servicing personnel office)	Mark "X" in appropriate box <input type="checkbox"/> EXEMPT <input type="checkbox"/> NONEXEMPT		d. HEAD OF SERVICE/STAFF OFFICE (OR DESIGNATE) (Signature and title)		DATE	
			Regional Commissioner, PBS		MAR 10 1976	
12. NUMBER OF INCUMBENTS PERMITTED	BY		13. OFFICIAL CLASSIFICATION CERTIFIED BY (Signature and title)			
	Initials Date Initials Date		Director, Compensation Division			
14. READIT CERTIFICATION	a. SUPERVISOR		b. PERSONNEL OFFICE			
	Initials Date Initials Date		Initials Date Initials Date			
15. DUTIES AND RESPONSIBILITIES						
<p><b>Duties</b></p> <ul style="list-style-type: none"> <li>- Maintains law and order and preserves the peace at the Federal installation(s) to which assigned. Observes individuals in or on Federal property in order to detect suspicious behavior or characteristics with the intent to prevent disturbances and take immediate decisive action to minimize and control breaches of the peace.</li> <li>- Responds to emergency calls within the boundaries of jurisdiction and, when appropriate, conducts preliminary investigations of crimes such as armed robbery, aggravated assaults, burglary, larceny, and breaches of the peace. As necessary, summons assistance, administers first aid, interviews complainants and suspects, preserves evidence, and prepares official police reports for criminal prosecution. Provides all necessary support to the criminal investigators of the Office of Federal Protective Service Management and for Federal, state, or local law enforcement agencies required in the conduct of criminal investigations.</li> <li>- Conducts regular patrol of Federal property consisting of one or more buildings and their adjacent property inspecting for unauthorized entry, theft, espionage, sabotage, vandalism, or other criminal activity and when discovered, institutes emergency procedures.</li> </ul>						
GENERAL SERVICES ADMINISTRATION U.S.GPO:1975-0-582-716/127 GSA FORM 1637 (REV. 4-75)						



secures the area to prevent further loss or destruction of property, protects people, and apprehends the person(s) who precipitated the emergency.

- As appropriate, conducts bomb searches. Should a bomb be found, secures the area, and evacuates personnel.
- Regulates pedestrian and vehicular traffic; prevents accidents, congestion, and parking problems, when required, interprets rules and regulations. Investigates vehicular accidents; interviews witnesses, and prepares written reports including diagrams of the accident scene. Enforces traffic regulations and issues traffic warnings or citations to violators.
- May be, when necessary, assigned to plain clothes work on a part-time basis to conduct investigations of crimes, and maintain surveillance over locations with high incidence of crime. Investigations include searching the scene of the crime for evidence, interviewing witnesses, following leads, locating suspects, and making arrests. May be required to join "hot pursuit" of a fleeing felon, and/or leave his jurisdictional boundaries to effect the arrest of a fleeing felon.
- Occasionally, performs duties as a Special Operations Response Team member to include response to emergency situations such as riots, demonstrations, terrorist/hostage incidents, natural disasters and court trials having highly controversial defendants or issues.
- Arrests, under a warrant, any person accused of committing any offense against the criminal laws of the United States or against any rule or regulation prescribed under pertinent law; arrests without a warrant, any person committing any such offense in the presence of a Federal Protective Officer; arrests without a warrant, any person where this is reasonable ground to believe that the person has committed a felony.
- Testifies in court, conducts presentation in a professional manner, giving testimony in a clear, concise and orderly fashion. Thoroughly reviews facts prior to giving testimony and consults with prosecution officials.
- Occasionally, assumes the responsibilities of communication center operator. Assignments will include receiving messages, transmitting instructions, monitoring complex electronic communications systems, and dispatching officers to crime scenes, accidents, or other emergency situations.
- May perform duties consisting of checking individuals to determine that ID badges are properly displayed, security barriers, security entrances to classified storage areas, security of safes and locked cabinets to ensure that classified material has not been compromised and determine compliance with security regulations.
- Checks and regulates electronic alarm devices used in the protection activity. Performs thorough physical inspection and secures all means of ingress before placing the system into effect and assures that all is in order within the areas of electrical protection. Energizes and deenergizes such protection circuitry according to the working schedules; identifies and establishes the right of entry of persons for whom such zones are to be opened.

#### Knowledge Required by the Position

- Depending on the nature of the facility to which assigned, special training and knowledge is required in: criminal law, community relations, crowd and riot control, detection of espionage and sabotage, control and disposal of bombs and incendiary materials, use of tear gas, and special weapons, and first aid.

- Ability to learn and apply regulations and guidelines relating to protection security systems.
- Ability to understand and enforce laws and regulations.

#### Supervisory Controls

- Receives general supervision on routine assignments. On the most complex duties, supervisor is available to provide assistance. Work is frequently spot checked.

#### Guidelines

- Works in accordance with rules and procedures involved in operation of extensive protection systems and equipment, pertinent Federal and local laws, police methods and procedures, rules of evidence, arrest procedures, and strict and precise security regulations. Required to interpret and extend guidelines, to determine when to initiate emergency procedures, and to exercise judgment and initiative in meeting new and unexpected problems.

#### Complexity

- Must have ability to exercise discretion and independent judgments and will, on occasion be involved in criminal actions such as physical assaults, robberies and other violations of Federal statutes, including espionage and sabotage.
- Makes sound judgments in areas not clearly defined during trying situations.
- Must have tact, integrity and alertness to resolve sensitive situations.

#### Scope and Effect

- Work furthers the physical well-being of facility occupants by providing security and safety precautions.
- Duties help to reduce disruptions and legal violations within the facility. Assists Federal employees and the public to smoothly ingress and egress from the facility.

#### Personal Contacts

- Has contact with the public, Federal employees, high level officials. May give them requested information, interviews them after an incident, or settle an issue among them. As the attitude may be uncooperative and hostile, is required to exercise tact and diplomacy.

#### Physical Demands

- Must have the physical agility to safely operate automobiles, motor scooters and bicycles as required. Must possess a valid driver's license from the state of residence.
- Must carry and have the ability to use firearms. Must meet the firearm qualifications required by the Federal Protective Service.

**CONTINUED**

**1 OF 2**

- Must be physically fit to perform the duties, such as strenuous walking, climbing, and running after suspected felons.
- Required to possess a high degree of emotional stability and health as certified by a physical examination.

#### Work Environment

- Generally works in areas which have adequate heat, air conditioning and light. Occasionally will be required to work under inclement conditions. Works in offices, warehouses, guard stations, storage areas, etc.
- Works in (1) a Government facility where enforcement of extraordinary security measures is required for the protection of highly classified material, data, documents and intelligence information; or (2) a facility which houses important Federal officials, Federal courts, and/or agencies having highly sensitive missions requiring an exceptional degree of personal and property protection; or (3) a facility within Federal jurisdiction having an extremely high rate of human and/or vehicular traffic.

#### Other

- Must possess a security clearance which is required by agencies in the space protected.

Mr. BLAYLOCK. They do have arrest responsibility, and it spells out everything that any law enforcement officer does. Yet, they are not included in the definition and that is where the real problem is.

Mr. BEARD. It seems to me there is a discrimination of benefits. There are many varieties of law enforcement under the Federal umbrella, and some receive the \$50,000 death benefit and some do not.

Mr. BLAYLOCK. There is no doubt about it. I think Jim hit it on the head, the definition has never been clear as to what the FPO really does. I do not know all the benefits the Secret Service people get, obviously, we do not represent them and have not been that involved with them. But I do know the Park Police are entitled to this benefit, and their duties are very similar, especially here in the Washington area.

Mr. BEARD. Thank you very much. Counsel?

Mr. STEPHENS. Thank you, Mr. Chairman. I am a little unclear on the different classification on Federal law enforcement officers. Is the U.S. Park Police Force and the White House Police Force and the U.S. Secret Service covered under FECA?

Mr. BLAYLOCK. Yes.

Mr. STEPHENS. They are covered under FECA?

Mr. BLAYLOCK. Yes.

Mr. STEPHENS. The reason I ask that question is, I notice that in the 1970 legislation which provided the \$50,000 lump-sum benefit under the D.C. retirement plan, they indicated that these individuals, the Park Police and White House Police Force and the Secret Service are covered under that legislation. It seems to me there seems to be double protection there. I was not sure if that is a correct understanding or not.

Mr. BLAYLOCK. Well, I am not sure there is double protection. I think the chairman said a moment ago that we have right now a real confused situation of who is covered, who is not covered, and which program covers whom. I think part of the issue before the committee now is how to untangle that and make sure the people who should be covered are properly covered.

Mr. STEPHENS. Now, is it your understanding that the bill, H.R. 5888, introduced by Mr. Kildee, would not cover Federal protective officers?

Mr. HOOKS. It may cover them, but it would leave the interpretation up to someone else.

Mr. BLAYLOCK. It would still leave the interpretation up in the air. We would like for language to be in that bill that clearly says Federal protective officers are law enforcement officers.

Mr. STEPHENS. I take it that part of the problem has been in the past in other legislation whether Federal protective officers are included within the phrase of "law enforcement officers."

Mr. BLAYLOCK. That is exactly right, and we would like to have that cleared up in the legislation. The reason I wanted to submit the actual job description to the committee, I think it would be helpful for you to see what is actually required of these people.

Mr. STEPHENS. Why were not Federal protective officers, for instance, covered under the 1970 legislation, the D.C. retirement and disability?



Mr. BLAYLOCK. We advocated that they be covered. I really cannot answer that, I really do not know why finally they were not covered.

Mr. STEPHENS. Was there a conscious decision made?

Mr. HOOKS. No. At that time the Administrator of GSA, Koonsley, tried to get the legislation passed to include us under that act. From Administrator Koonsley up to the present Administrator, they have been trying to get legislation to include us under law enforcement officers but for some reason or another it has always been opposed by OMB and the Civil Service Commission.

Mr. STEPHENS. What has been the fatality rate for Federal protective officers for the last couple of years?

Mr. BLAYLOCK. We have had five killed here in the D.C. area.

Mr. HOOKS. We had five killed. In the last 2 or 3 years we had two Federal officers killed. We had five Federal protective officers shot in Washington, D.C., alone. I do not know what the figure is nationwide, I only keep up with the figures here in Washington, D.C.

Mr. STEPHENS. Could you provide for the record the statistics on fatalities of officers killed in the line of duty for the last 3 or 4 years?

Mr. HOOKS. The ones in the line of duty?

Mr. BEARD. That would be very helpful.

[The information referred to above follows:]

#### FPO's KILLED IN THE LINE OF DUTY

MAJOR DAVID MOORE, MAY 9, 1972, WASHINGTON, D.C.

While working in his office at the Housing and Urban Development Building, Major Moore heard a disturbance and proceeded to investigate. He discovered an individual holding a woman as hostage in an effort to escape detention. Upon learning that the subject had escaped detention after being arrested for assault, Major Moore began efforts to speak with the suspect and to clear the area in anticipation of negotiation efforts. The subject became increasingly violent and Major Moore found it necessary to intervene and subdue the individual. During the ensuing struggle, Major Moore was shot and later died as a result of his wounds.

FPO JOHN L. SUCHOLDOLSKY, MAY 16, 1977, NEW YORK, N.Y.

During a large and violent demonstration at the United States Mission to the United Nations, FPO's John Sucholdolsky and Philip Spivak encountered a suspicious individual in the corridors of the building. The subject had no identification and appeared somewhat disoriented. The subject was turned over to the New York Police Department for processing and detention. Shortly thereafter, FPO's Sucholdolsky and Spivak noticed the subject running back to the building with New York Police Officers in close pursuit. When he attempted to reenter the building, they confronted the subject and attempted to place him in custody. An extremely violent struggle ensued during which FPO Sucholdolsky received a severe blow to the chest and collapsed. After the subject was subdued and handcuffed, FPO Spivak and New York Police Officer James Byrne began performing emergency medical treatment for FPO Sucholdolsky. He was transported to Bellevue Hospital and pronounced dead on arrival. The Medical Examiner listed cause of death as a result of "Homicidal Assault."

FPO ROBERT L. TIMBERLAKE, JR., JANUARY 24, 1979, TAMPA, FLA.

FPO Robert L. Timberlake was closely observing an individual who had caused disturbance at the Federal Office Building and the U.S. Post Office and Courthouse when the individual began to act in an erratic manner. As he entered an elevator, FPO Timberlake confronted the subject and attempted to speak

with him. As the elevator proceeded upward, it appears a struggle ensued with the subject attempting to take FPO Timberlake's weapon away. The weapon discharged, striking FPO Timberlake in the thigh and temporarily stunning him. The suspect was able to gain control of the weapon, whereupon FPO Timberlake was fatally shot in the chest and the head. During the struggle, other Federal and local law enforcement personnel responded and the subject was seriously wounded when he refused to surrender and attempted to shoot other officers on the scene.

Mr. STEPHENS. I have no further questions.

Mr. BEARD. Thank you very much.

Mr. BLAYLOCK. Thank you, Mr. Chairman.

Mr. BEARD. Counsel has some questions.

Mr. WOOD. Thank you, Mr. Chairman. Mr. Blaylock, do you honestly believe that if we do not approve the \$50,000 death benefit that our Nation's security is more in danger?

Mr. BLAYLOCK. Well, that is kind of a broad question, and somewhat of a loaded question. I think that the Federal protective officers and the Federal law enforcement officers are dedicated, and I think they will do their job, with or without it, as they have been doing it.

I think the question really is, does the Congress want to recognize the service that these people are doing. If you look at the incident rate, as has already been indicated, it is not a large amount of money. We know in the past the Civil Service Commission and OMB have opposed these kinds of programs because of the cost. I think it is a question of conscience of the Congress.

No, they will do their job. You are going to have a turnover rate; you are going to have low morale and you are going to have families who are left in financial straits because when these instances do occur, you get an officer killed, it causes all kinds of problems for the family, financial and otherwise. I think it is a question of conscience, not if the security is going to be in danger.

Mr. WOOD. So, we should expand the program to the Federal level on the basis of equity because we have this program already on the State and local level?

Mr. BLAYLOCK. Well, not only because it exists there, but because it is simply the proper thing to do.

Mr. WOOD. You can always expand the program on the basis of equity because any program is going to have criteria for eligibility. Some people are always going to be over the line, they are not going to qualify. So, they are always going to argue that on the basis of equity the program should be expanded to that group as well.

What about other Federal employees whose job requires them to perform tasks which are at least potentially more dangerous than others, should we also consider them because they put their lives potentially on the line?

Mr. BLAYLOCK. We represent mine inspectors, and you well know, we had serious problems there, with the mine inspectors going into the mines and trying to enforce safety standards.

The same thing applies in the Small Business Administration. We have compliance officers there who go out and close down, and seize small businesses who do not pay off on their loans. So, there is always

a group of people who face that. I think, again, the question is conscience. While equity is one of the arguments, if you are doing it for one group you should do it for the other, I do not think that is the real question.

I think if an employee is required to place his life on the line in the performance of duty for the American public, then I think Congress should dictate that there be compensation for that and recognition of that in the event he loses his life in the performance of that duty for the country.

Mr. Wood. Now, we have presently in the State and local program an offset, as you know, for the \$50,000 death benefit in the case where the State or local official is also eligible for FECA benefits. Now, in the Federal program, the Federal official would be getting FECA benefits in addition. Does not conscience demand that we also then remove the offset for FECA benefits at the State and local level?

Mr. BLAYLOCK. Well, if you go back to equity, we ought to treat everybody the same.

Mr. Wood. That is equity.

Mr. BLAYLOCK. Well, to a degree that is equity. I think you have to take into consideration also that there are also situations at the State and local level where they, by State law, in those jurisdictions and cities, have passed other types of local legislation that treat their people in some cases much better than this, by the way. So, I think it goes back to the conscience of the Congress how you are going to treat Federal workers that are required to put their lives on the line and, in the event they lose their lives, what are you going to do about it in the performance of their duty?

Mr. Wood. Thank you.

Mr. Hooks. I would like to get back to the Federal protective officer and how we can keep our young and highly motivated Federal protective officers. You have a great turnover rate because as fast as we train these people, they are going to other law enforcement agencies that offer these benefits.

Mr. Wood. Do you think that is major reason why they are leaving?

Mr. Hooks. That is the greatest reason they are leaving. In the last 3 years we have lost 38 Federal protective officers from the CIA. Can you afford to have that many people leaving an agency like the CIA because of insecurity, or so forth? We ought to maintain, keep and attract young and highly motivated Federal protective officers; you are going to need them sometime. We are going to have to offer them something in order for them to perform these duties.

Mr. Wood. Thank you.

Mr. BEARD. Thank you very much for your statements.

We will hear now from our panel.

Mr. McNerney, do you have a prepared statement?

Mr. McNERNEY. Yes, I do, Congressman.

Mr. BEARD. We would appreciate if you would keep it very brief. We are going to have to stop you right off the bat until we come back from voting.

Mr. McNERNEY. Fine.

[Whereupon, a short recess was taken.]

Mr. BEARD. The committee will come to order. Please, proceed.

PANEL CONSISTING OF JOHN McNERNEY, FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION, NEW HAVEN, CONN.; DONALD BALDWIN, ASSISTANT TO THE PRESIDENT, LAW ENFORCEMENT ASSISTANCE FOUNDATION; WILLIAM V. CLEVELAND, SOCIETY OF FORMER AGENTS OF THE FBI; VINCENT MCGOLDRICK, LEGISLATIVE CHAIRMAN, FRATERNAL ORDER OF POLICE, WASHINGTON, D.C.; ANTHONY J. MORRIS, NATIONAL TRUSTEE, FEDERAL LODGES, FRATERNAL ORDER OF POLICE

STATEMENT OF JOHN McNERNEY, FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION, NEW HAVEN, CONN.

Mr. McNERNEY. First, Mr. Chairman, we would like to thank you for the opportunity to come here and testify. We would like to tell you a little about our organization, the Federal Criminal Investigators.

Mr. BEARD. Would you identify yourselves?

Mr. McNERNEY. Yes, I am sorry. This is Mr. Vincent McGoldrick from the Fraternal Order of Police; Tony Morris, from the Fraternal Order of Police; Mr. William Cleveland from the Society of Ex-FBI Agents. Mr. Baldwin has just stepped out of the room for a minute, he is from the Law Enforcement Assistance Foundation.

Mr. BEARD. Thank you. Please proceed.

Mr. McNERNEY. The Federal Criminal Investigators is the only professional association that is composed of both active and retired criminal investigators. That would include Customs, Secret Service, Internal Revenue Service, Postal Inspectors, FBI Agents, Immigration and Naturalization Service, and United States Marshals, just to name a few.

Our members are vitually interested in this piece of legislation because they feel it is extremely important to them from a security standpoint and also from the standpoint of fairness.

The Federal law enforcement community was very, very much disappointed when the Public Safety Officers' Benefits Act of 1976 was signed by President Gerald Ford and they were not a part of it. Federal law enforcement officers were included in the original bill, but somewhere along the line from subcommittee hearings to final passage of the bill, the Federal law enforcement officer was excluded, based on some theoretical possibility that there may—and I emphasize may—be some circumstances where the survivors of Federal law enforcement officers would receive more monetary benefits under the current Federal Employees' Compensation Act than under the \$50,000 benefit bill.

Mr. Chairman, we think that it is reasonable to ask, what about those cases where benefits paid under the current Federal Employees' Compensation Act would be less? Is it reasonable to deny these survivors adequate benefits simply because there is a remote possibility that someone else may some day realize slightly higher monetary assistance? We think not.

What about the young wife with no children. Her compensation would be 50 percent of her late husband's monthly compenstion.

If there is a minor child, her monthly stipend is cut to 45 percent, and she receives 15 percent for the child. If she remarries, she loses her compensation.

And to the parents of the young agent who was not married, they receive 25 percent of the son's monthly pay only if one or both of them were dependent upon the deceased. If they were not dependent upon their agent son, they would not receive any compensation.

What about the agents in Boston, Chicago, New York, and Wisconsin who know that the policeman who was covered by Public Law 94-430 and receives \$50,000 from the U.S. Government also receives another \$50,000 from the city and/or State.

We do not argue with the provisions of Public Law 94-430, but we are merely pointing out that the dependents of Federal law enforcement officers are not as adequately compensated as the testimony on H.R. 365, H.R. 366, and H.R. 3544 would have led everyone to believe.

How can my Government tell me that if I, as a Federal law enforcement officer, get killed defending the laws established by the Congress of the United States, that my wife and children will have to get along on what is provided by the Federal Employees' Compensation Act, while a volunteer fireman in some small community who dies as the result of a fire, gets a \$50,000 check from the Federal Government, a check from the community and the possibility of a fund being set up by the local citizenry. Once again, I want it understood that we are not against what the volunteer fireman gets, but use this merely as an example of disparity between Public Law 94-430 and the Federal Employees' Compensation Act.

We feel that in the hearings on H.R. 365, H.R. 366, and H.R. 3544, and now on H.R. 5888, we have lost sight of the basic purpose of this legislation. We have talked about insurance, about pensions, about money, but at no time have we tried to develop a formula for the worth of a human being, a dedicated Government employee, of a loving husband, a devoted father, or a caring son. Can we place a dollar value on such an asset? We do not feel that it is possible to say what any human being is worth to his Government, his wife, his children, or his parents.

For those of us who have been fortunate enough to have been spared the trauma of losing a loved one, it is most difficult to understand what transpires during that period. The heartache, the grief, the despair, the loneliness visited upon the widow and the children cannot be fully understood until it happens to us.

After the funeral, when all of the friends and relatives have departed, what does the widow face? Bills, children's questions, loneliness, sadness. What does she tell her little boy or girl why daddy is no longer around? How does she some day explain to her children about their daddy because they were too young to remember him when he was killed? How does she explain that they cannot have a new sled, a new ball, or even a new pair of shoes because she cannot afford it?

My own mother, God rest her soul, was faced with the same predicament. My father was killed when I was 9 months old. Needless to say, I do not remember him. But I do recall the many nights I cried myself to sleep because I did not have a father like the other kids. My mother received a big settlement—the paycheck that my father would

have brought home the very next day. There was no lump-sum payment in those days, and there is still no lump-sum payment for Federal officers these days.

I urge each and every member of this subcommittee to express his compassion and recognition for the work of the Federal law enforcement officer and the Federal firefighter by voting in favor of this bill and sending it forward to the full committee with a recommendation of passage.

Mr. Chairman, on behalf of all Federal law enforcement officers, we thank you for this opportunity to testify. I shall be glad to answer any questions the committee may have.

Mr. BEARD. We thank you for your statement. There is no question that there is, in the whole Federal law enforcement system, discrimination as far as who gets what. Most Federal law enforcement officers don't receive the same benefits as State and local police and the uniformed branch of the Secret Service. For that matter, they don't receive what Congress gets. You know, if I died 5 minutes from now, they would pass a bill in Congress so fast it would make your head spin, that would give my wife the equivalent of a year's salary, \$60,000 a year.

So, they say that they cannot do it for you. That is a lot of baloney because they do it for themselves. Every time someone dies, you can count on another \$60,000 going back to whatever district he comes from. That is the reality of this place. So, if we compare our benefits with your benefits, you are shortchanged.

Mr. McNERNEY. I think even if you compare our benefits with those of local police departments in many areas, under current standards, there is a great disparity.

Mr. BEARD. If any Member of Congress feels you do not deserve this, ask him if he would turn down the \$60,000 his wife would get just by an act of Congress, if he should die.

Mr. McNERNEY. Right.

Mr. BEARD. A year's salary.

Mr. McNERNEY. In our close community of Massachusetts the policeman that gets killed gets \$50,000 from the State of Massachusetts; a lump sum. A Federal law enforcement officer does not get any lump sum.

Mr. BEARD. I know. I think there is a need to bring people in that situation under one system.

Thank you very much. I have no further questions.

Mr. STEPHENS. Just a couple of questions. What is the average salary that an officer makes, say a young officer who might be killed in the line of duty? The reason I ask it, yesterday a fireman indicated that it was a GS-4 or GS-5, the average salary that a young officer would make.

Mr. McNERNEY. I cannot tell you what the average is, but the younger officer of today—and most of them are young officers—I would say somewhere in the vicinity of \$11,000 or \$12,000 a year.

Mr. STEPHENS. What is that in a GS rating?

Mr. McNERNEY. Probably a GS-5 or GS-7.

Mr. STEPHENS. I notice your comparison here with State benefits, where you indicate that there may be some circumstances where survivors of Federal law enforcement officers receive less than State



officers. Have you endeavored to chart out on a State-by-State basis in which instances a State Officer would receive more than a Federal officer?

Mr. McNERNEY. No; I have not charted all the States, but I did check with what I thought were probably the three largest communities, Chicago, New York, and Boston. In all of them the local policeman get—or fireman, as the case might be—gets a \$50,000 lump-sum payment; and many of them get—for instance, in Boston—the surviving widow also receives up to 80 percent of the officers' salary for a year.

Mr. STEPHENS. Do you know if State law enforcement officers' salaries generally are on par with Federal law enforcement officers' or are they generally lower?

Mr. McNERNEY. Probably a little lower. But there again, you have another criteria that you have to take into consideration. The educational requirements for a Federal law enforcement officer position are much higher than those required for a local or State police officer.

Mr. STEPHENS. Now, one question I raised with the last witnesses is the coverage of Secret Service. I am unclear as to the White House Police Force and members of the Secret Service. Are they coming under FECA as well?

Mr. McNERNEY. The Secret Service is not covered under FICA, no Federal employee is covered under FICA as a law enforcement officer. They have their own Civil Service retirement, therefore they are not covered under FICA.

Mr. STEPHENS. What about their disability?

Mr. McNERNEY. Disability would come under the Federal Employees Compensation Act.

Mr. STEPHENS. They are covered under FECA?

Mr. McNERNEY. Not FICA, no, that is not FICA. FICA is the Federal Insurance Contribution Act, that is social security.

Mr. STEPHENS. No.

Mr. McNERNEY. Yes; it is, sir.

Mr. STEPHENS. No; that is FICA.

Mr. McNERNEY. Oh, you are talking about FECA? I am sorry. The inflection got me.

Mr. STEPHENS. My midwestern accent.

Mr. McNERNEY. No; my New England ear. [Laughter.]

Mr. STEPHENS. But Secret Service are covered under the Federal Employees Compensation Act.

Mr. McNERNEY. Yes; they are.

Mr. STEPHENS. And the White House Police are covered under the Federal Employees Compensation Act?

Mr. McNERNEY. I am not sure about the White House Police, I could not say because they are not members of our organization. I could not say, sir.

Mr. STEPHENS. The thing I am unclear on is, they seem to be covered under the District of Columbia Disability Plan.

Mr. McNERNEY. I cannot give you an answer to that.

Mr. STEPHENS. I have no further questions.

Mr. WOOD. I just want to clarify something for the record. You said on page 2 of your statement, you asked the question, "Is it reasonable to deny these survivors adequate benefits because there is a 'remote' possibility that someone else may some day realize slightly higher monetary assistance?"

The Judiciary Committee in 1976 did not consider the remote possibility. Mr. Oliver said that he believed that the majority of Federal employees were already adequately covered by the standards of the bills that we are considering under FECA; and the finding of the committee said, "They believe that the benefits provided under the Federal Employees Compensation Act are generally adequate."

Mr. McNERNEY. Let us take the word generally. You have to take into consideration how long the widow is going to stay a widow. Once she gets married, she loses—she is dead. I think what the committee was taking into consideration was, assuming that she does not become remarried, that she may do well. This, I pointed out, may under certain circumstances—if you remember, and I emphasized the word may—I think with the younger people we have today in Federal law enforcement, that the girls are going to stay widows for a relatively short period of time. They get married, and once they get married they lose those benefits.

Mr. WOOD. Do you think they should continue receiving benefits after they do get remarried?

Mr. McNERNEY. I think they should get the \$50,000 lump sum because they get nothing when the husband dies, except his paycheck. There is no provision for any lump-sum payment to the widow.

Mr. WOOD. They get Federal group insurance, do they not?

Mr. McNERNEY. Yes; but do you know how long it takes to get Federal group insurance?

Mr. WOOD. How long?

Mr. McNERNEY. I would hate to be hanging on the wall. Probably 6 to 8 months. We have an insurance policy as part of our membership which we give to our people because we knew, and we have experienced this, where some of the widows have waited 6 to 9 months. Do you know what happens when a man retires from Federal service? Sometimes it takes him a year before he gets a paycheck.

Mr. WOOD. What reasons were given for the delays of 6 to 9 months?

Mr. McNERNEY. You do not get any reasons, sir. Administrative "boondoggling" is what they call it, bureaucracy. What does the widow do in that 6 month period? She has a relatively easy time? Not in my book. Not unless she comes from a very wealthy family.

Mr. WOOD. How soon does she receive the FECA benefits?

Mr. McNERNEY. Well, it would be the same time.

Mr. WOOD. Would that take 6 to 9 months as well?

Mr. McNERNEY. That could take anywhere from 3 to 8 months, yes, sir.

Mr. WOOD. From 3 to 8?

Mr. McNERNEY. Yes.

Mr. WOOD. I have no further questions.

Mr. BEARD. Thank you very much.

Mr. McNERNEY. Thank you, Congressman.

# STATEMENT OF WILLIAM V. CLEVELAND, SOCIETY OF FORMER AGENTS OF THE FBI

Mr. CLEVELAND. Mr. Chairman, my name is Bill Cleveland, I am with the Society of Former Special Agents of the FBI. This morning I am testifying as an individual.

Counsel has asked me to clarify one point in connection with payments to FBI agents who are killed in the line of duty. There is no fund other than the Federal Employees' Compensation Act covering FBI agents.

What possibly becomes confusing is the fact that they have what is called a special agents' insurance fund. This was set up years ago by individual contributions from agents to build the fund up to a certain amount. It now pays \$30,000 in benefits at the death of an agent. The fund is re-insured by Lloyd's of London in the event of multiple catastrophe involving many agents; they would still be paid in the amount of \$30,000 each.

That is an insurance policy feature, strictly term insurance because it is good only as long as the person is a special agent, and only so long as he voluntarily contributes to the fund to keep it up to a certain amount. It is not an automatic thing at all, it is something that he may or may not belong to.

Something that is automatic is a sum of \$1,500, which is given to any agent killed in the line of duty from the so-called Charles S. Ross Fund, growing out of a kidnapping case.

If there are any questions about that, I will be glad to expand on it.

Mr. BEARD. Thank you very much.

[The prepared statement of Vince McGoldrick follows:]

# PREPARED STATEMENT OF VINCE MCGOLDRICK, CHAIRMAN, NATIONAL LEGISLATIVE COMMITTEE, FRATERNAL ORDER OF POLICE

GREETINGS HONORABLE MEMBERS OF CONGRESS, LADIES AND GENTLEMEN. I WOULD LIKE TO TAKE THIS TIME TO THANK YOU FOR THE OPPORTUNITY TO TESTIFY TODAY.

I AM VINCE MCGOLDRICK, CHAIRMAN OF THE NATIONAL LEGISLATIVE COMMITTEE OF THE FRATERNAL ORDER OF POLICE (F.O.P.). OUR ORGANIZATION REPRESENTS OVER 152,000 FEDERAL, STATE AND LOCAL LAW ENFORCEMENT OFFICERS ACROSS THE NATION.

WE ARE UNANIMOUSLY IN FAVOR OF THE PROPOSED AMENDMENT TO H.R. 5888 AND H.R. 5834 TO INCLUDE FEDERAL LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS IN THIS BILL. WE FEEL THAT PASSAGE OF THIS AMENDMENT IS GREATLY NEEDED TO PROVIDE SOME MEANS OF COMPENSATORY SUPPORT TO THE SURVIVORS OF LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS KILLED IN THE LINE OF DUTY. WE FURTHER FEEL THAT THE CONTINUOUS RISE IN THE COST OF HOUSING, FOOD, CLOTHING, AND EDUCATION DICTATES THE NEED FOR THE PASSAGE OF THIS LEGISLATION, ALTHOUGH THE AMOUNT WOULD ONLY PARTLY COMPENSATE THE SURVIVORS THAT WILL BE COVERED UNDER THIS LEGISLATION, TO CONTINUE TO CARRY ON THEIR RESPONSIBILITIES AND MAINTAIN THEIR OBLIGATIONS. IN CLOSING I WISH TO SAY THAT LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS ARE READY AND WILLING 24 HOURS PER DAY, THREE HUNDRED AND SIXTY FIVE DAYS PER YEAR TO GO OUT AND PLACE THEIR LIVES IN JEOPARDY TO PROTECT THE LIVES OF THE CITIZENRY AND TO INSURE THEIR SAFETY. WE FEEL THAT PASSAGE OF THIS BILL IS DEEMED NECESSARY IN AS MUCH AS IT COULD NEVER REPLACE ONE OF OUR LIVES.

THANK YOU ONCE AGAIN.

**STATEMENT OF VINCENT MCGOLDRICK, LEGISLATIVE CHAIRMAN,  
FRATERNAL ORDER OF POLICE, WASHINGTON, D.C.**

Mr. MCGOLDRICK. Mr. Chairman, I am Vince McGoldrick; I am chairman of the National Legislative Committee for the Fraternal Order of Police. Pretty much of my brief statement—which you have—coincides with what my colleague mentioned there.

I just want to say that our organization represents over 152,000 Federal, State, and local law enforcement officers across the Nation. We are unanimously in favor of the proposed amendment to the bill that is being considered.

Mr. BEARD. Anyone else? Please identify yourself.

Mr. BALDWIN. Mr. Chairman, I am Donald Baldwin, the assistant to the president of the Law Enforcement Assistance Foundation. I have just a brief statement, it will take a minute to present it for the record.

Mr. BEARD. Please proceed.

**STATEMENT OF DONALD BALDWIN, ASSISTANT TO THE PRESIDENT,  
LAW ENFORCEMENT ASSISTANCE FOUNDATION**

Mr. BALDWIN. I am grateful to you for this opportunity to appear before the committee on behalf of H.R. 5888, sponsored by Representative Kildee. It amends title V of the United States Code to provide death benefits to survivors of Federal law enforcement officers and firefighters, and for other purposes.

I am appearing today on behalf of the Law Enforcement Assistance Foundation, a private foundation organized 3 years ago to improve the quality and effectiveness of law enforcement throughout the United States. LEAF focuses on educating citizens in methods of deterring and preventing crime and on fostering communication and cooperation among law enforcement agencies and organizations.

Our concern with the Public Safety Officers' Benefits Act passed in 1976—Public Law 94-430—is that it did not cover the Federal law enforcement officers. We supported the bill granting the \$50,000 death benefit to the widow of the law enforcement officer slain in the line of duty. What a disgrace for the wife and children of a brave law enforcement officer, killed in the line of duty, protecting the life of law-abiding citizens, to be left penniless. As I said, we supported this bill and believe that it went a long way toward correcting this injustice.

We come before you now to ask that you grant this same \$50,000 death benefit to the widow of the slain Federal law enforcement officer who has limited insurance for his widow under the Federal Employee Compensation Act. It is just not fair to give the \$50,000 death benefit to one law enforcement officer's widow and not give it to another, especially if the law enforcement officer gave his life to protect us against a possible loss of our own life.

The other members of this panel have already spoken to you of their personal experiences and observations to illustrate their strong feeling for the need for this expanded coverage for the Federal law enforcement officer. There is no question that it is right and the least we can do for the widow and children of the slain law enforcement officer killed protecting our lives and making a better and safer place for us to live.

Mr. Chairman, I wish to also state that support for this legislation was unanimous by the National Law Enforcement Council at its regular monthly meeting this past Monday here in Washington. The council, for which I act as staff coordinator, is made up of the following organizations:

The Fraternal Order of Police; International Association of Chiefs of Police; International Union of Police Associations; Association of Federal Investigators; Americans for Effective Law Enforcement; Federal Criminal Investigators Association; National District Attorneys Association; Society of Former Special Agents of the FBI; Virginia Sheriffs Association, and Law Enforcement Assistance Foundation.

We believe that these organizations collectively, through their membership, represent somewhere in the neighborhood of 90 and 95 percent of all law enforcement.

Again, I want to thank you for this invitation to testify on this important legislation.

Mr. BEARD. Thank you very much.

**STATEMENT OF ANTHONY J. MORRIS, NATIONAL TRUSTEE,  
FEDERAL LODGES, FRATERNAL ORDER OF POLICE**

Mr. MORRIS. Mr. Chairman, I am Tony Morris, national trustee, Fraternal Order of Police for the Federal lodges. We represent 3,500 members, a total figure of 152,000.

I have some figures here. It appears that in fiscal year 1979 some 322 claims or payments were made under this benefit, the Public Safety Officers' Benefit Act, which comes to approximately \$16,100,000. Somebody testified that there were 26 Federal law enforcement officers killed in the line of duty since 1972. I cannot give you, unfortunately—and I apologize—these figures; I do not have them with me. So, I do not know how to extrapolate that for fiscal year 1979. But even going back to 1972, we are talking about \$1,300,000, as opposed to \$16 million in 1 year.

What are we talking about moneywise? We are talking about, as you mentioned several times, inequity. A uniformed officer is a uniformed officer, is a uniformed officer. People do not care whether he is a local police department, a Federal police department, or what he is. He is doing the same job. He is out there trying to provide for the safety of people and the protection of property. It makes no difference whether he has a Federal badge or a local badge, or whatever.

One of the other members here asked about the White House Police. The White House Police, years ago, used to take officers from Metropolitan on a lateral transfer basis. They evolved into the Executive Protective Service, and then they went under the arm of the uniformed division of the U.S. Secret Service. They used to be under the D.C. pension bill, that is correct; they carried benefits with them from District of Columbia over to the White House Police. But that separated down the road. I hope that helps to answer the question that you asked.

I would strongly urge that the members consider the plight that you are putting officers in when you have a basic inequity such as this.



Thank you, sir.

Mr. BEARD. Thank you very much. That completes this panel. I appreciate all your testimony. As I indicated earlier, it will be incorporated into the record.

Mr. McNERNEY. Thank you very much, Mr. Chairman.

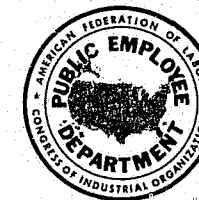
Mr. BEARD. We have one further witness, Mr. John A McCart, executive director, AFL-CIO.

Do you have a prepared statement?

Mr. McCART. Mr. Chairman, we have supplied the formal statement to the subcommittee.

Mr. BEARD. It will be accepted totally into the record, and you may proceed.

[The prepared statement of John A. McCart follows:]



# **Public Employee Department AFL-CIO**

815 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20006 • (202) 393-2820-21

WILLIAM H. McCLENNAN  
President

JOHN A. McCART  
Executive Director

KENNETH T. BLAYLOCK  
Treasurer

SUBCOMMITTEE ON LABOR STANDARDS COMMITTEE  
ON EDUCATION AND LABOR

UNITED STATES HOUSE OF REPRESENTATIVES

BY JOHN A. McCART, EXECUTIVE DIRECTOR  
AFL-CIO PUBLIC EMPLOYEE DEPARTMENT

MARCH 13, 1980

We appreciate the opportunity afforded by these hearings to present the position of our Department with respect to the proposed \$50,000 death benefits for federal fire fighters and federal law enforcement officers who died in the line of duty. Both fire fighters and police officers are members of unions affiliated, together with some 2 million other Public Employees, with our department. We are comprised of a total of 33 national unions.

Not long ago, 1976 in fact, Congress enacted PL 94-430 providing a \$50,000 benefit for survivors of those killed in the line of duty while working as state or local government public safety officers or fire fighters. This recognition and assistance to survivors was appropriate and indeed overdue.

We know of no valid distinction between federal and other fire fighters and police officers which would justify omitting the federal employees from these benefits.

Fire fighters and police officers working at any level of government have very high death and injury rates.

The Federal Employee Compensation Act (FECA) provides only inadequately coverage for the individuals for which we speak here. For example, in the fire fighters case, it is based on employees salary and accordingly provides less for a more junior workers, who may well be the ones who are most likely, to suffer injury or death. The minimum benefit paid widow with no children is approximately \$7,320; and the maximum, for a widow with two or more children, approximately \$11,000 per annum. This is obviously an impossibly low sum for survivors of someone who has laid down his life in fighting the horror of a fire.

Generally, federal fire fighters benefits are well below those of their state or local counterparts. As noted, the state and local fire fighters and police officers' survivors would receive the \$50,000 death benefit of the Public Safety Officers Benefits Act and be entitled to Workers Compensation. These survivors are for fire fighters who have worked shorter hours at higher pay. Such a situation cannot be conducive to a high caliber, stable, federal work force.

CBO has estimated the cost of this legislation as between 500 and 650 thousand dollars yearly. We submit that this is not too high a price to pay for the human suffering which would be mitigated by this bill. For a surviving family the \$50,000 would not go far in the face of our rampant inflation.

We must say that as between H.R. 5888 and 5834, on the same subject, we prefer the former, especially since the administration would be provided through the Department of Labor, rather than by a patch quilt of agencies.

In such legislation as this it is important to speak with the utmost clarity and to avoid language more readily susceptible of litigation. We accordingly concur with recommendations made by other witnesses that section B(2), line 8 and 9, on page 3, be made to read "...is sustained, in the performance of duty."

We commend you on your attention to this needed bill. It will be another important thread in the fabric of our country's labor standards legislation.

**STATEMENT OF JOHN A. McCART, EXECUTIVE DIRECTOR,  
PUBLIC EMPLOYEES DEPARTMENT, AFL-CIO**

Mr. McCART. I have no desire to be repetitious of testimony already received, so I will briefly summarize the small formal statement that we presented to you.

I am John A. McCart, and I am executive director of the Public Employees Department, AFL-CIO.

Thirty-three national unions representing the interests of Federal, Postal, State and local government employees constitute the department.

We appear today in complete support of H.R. 5888, because it is generally recognized that firefighter and police occupations are among the most hazardous in the Nation. The States and municipalities have enacted legislation recognizing the difference between these two types of positions and the regular positions occupied by public employees generally. Congress, in 1976, recognized the importance of this difference when it enacted the \$50,000 death benefit for State and local police officers and the firefighters who are killed in the line of duty.

The benefits now available to widows and survivors of these individual workers who are slain while performing their functions are certainly not sufficient in today's world to maintain wives—with or without children.

As a matter of equity between the two groups of people in the State and local governments on the one hand, and the Federal service on the other, it is very plain that this legislation is meritorious.

So, Mr. Chairman, we urge that the subcommittee act promptly to approve H.R. 5888. We appreciate very much your and your colleagues interest in the legislation and the sponsor, Mr. Kildee, for introducing this particular bill.

I will be happy to respond to any questions.

Mr. BEARD. Thank you very much, Mr. McCart, for your statement. I have no questions. Mr. Erlenborn?

Mr. ERLBORN. Just one. In the hearings yesterday it was testified by the administrators of the FECA program—Federal Employees Compensation Act—that under the liberal interpretations of FECA already existing, that it could be construed and preferably would be, that heart attacks, hypertension and other diseases that could be connected with the employment of the person, could be included as well as traumatic injury.

Would it be your intention and the intention of the AFL-CIO to include that broad category, or only those that died as a result of traumatic injury in the course of duty?

Mr. McCART. The language of the bill itself, together with the amendment that has been proposed by the firefighters with respect to their occupation, makes it very clear to us that the intent of the bill is to apply this to noncompensable type fatalities because it speaks specifically about, in the performance of duties fighting fires or maintaining custody of prisoners, or preventing crimes, and things of that kind. So, the purpose appears to be very plain from our point of view, as far as the bill is concerned. It would not apply to those fatalities that occur that are covered by the Compensation Act itself.

Mr. ERLBORN. All fatalities are covered by the Compensation Act.

Mr. McCART. Yes, but you mentioned the earlier testimony about hypertension and other diseases that are attributable to work performed by Federal employees generally.

The purpose of this bill, from our point of view, is to provide an additional benefit to those individuals when they are not under the normal coverage of the Compensation Act.

Mr. ERLNBORN. That is not my understanding of the other witnesses, they are talking about collecting both the \$50,000 and FECA benefits.

Mr. McCART. I am having a little problem.

Mr. ERLNBORN. I think if you would answer the question in the context in which it was asked, would it be your intention to compensate only those who were deceased as the result of an identifiable trauma—the roof fell in when they were fighting a fire; or they were shot by a fleeing felon. Or would you and your organization intend that if proof could be given that the firefighter, being under strain over the course of the years, developed hypertension, had a heart attack and then died—not necessarily fighting a fire, but as a result of his work experience he died from a heart attack. Would that be compensable as well?

Mr. McCART. The response to your first two examples is, no. The response to your second two examples is, yes.

Mr. ERLNBORN. I guess I will have to read the record to understand your answer.

Mr. McCART. What I am saying, the last two illustrations you gave where the work is directly related to fighting a fire or performing duties, police duties, such as detecting a felon or capturing a felon.

Mr. ERLNBORN. Traumatic injuries clearly identified as traumatic injuries, you intend those to be covered. But something that occurs over a long period of time you do not intend to cover.

Mr. McCART. That is correct, Mr. Erlenborn.

Mr. ERLNBORN. Thank you, Mr. Chairman.

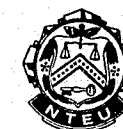
Mr. BEARD. Thank you very much for your testimony.

Mr. McCART. Thank you, Mr. Chairman.

Mr. BEARD. This concludes today's hearing, we now stand adjourned.

[Whereupon, at 11:10 a.m. the subcommittee adjourned, to reconvene subject to the call of the chair.]

[Material submitted for inclusion in the record follows:]



## NATIONAL TREASURY EMPLOYEES UNION

Suite 1101 — 1730 K Street, N. W.  
Washington, D.C. 20006 (202) 785-4411

April 10, 1980

The Honorable Edward P. Beard  
Chairman, Subcommittee on Labor  
Standards  
Committee on Education and Labor  
Annex 1, Room 617  
Washington, D.C. 20515

Attn: Paul O'Rourke

Dear Representative Beard:

Thank you for permitting us to supplement the record of hearings on H.R. 5834 and H.R. 5888, bills to provide lump-sum death benefits to the survivors of Federal law enforcement officers killed in the line of duty.

Our union represents 115,000 Federal employees, including all employees of the U.S. Customs Service worldwide. Of the nearly 14,000 workers in the Customs Service, approximately 5,000 of them are Customs Inspectors who are responsible for enforcing over 400 Federal laws and regulations, including criminal statutes.

The bills before you, H.R. 5834 and H.R. 5888, were drafted with the apparent intention of softening to some degree the harsh impact of untimely and unexpected death on the family of the deceased. Customs Inspectors are not specifically included in the two measures, although the definition of "law enforcement officer" in H.R. 5888, could be interpreted to cover them. We firmly believe, however, that Customs Inspectors should be considered "law enforcement officers" and their families should be among the beneficiaries of these bills.

There is considerable justification for granting Customs Inspectors the same status as other Federal law enforcement personnel. Recently, a task force completed a study of the role and duties of Customs Inspectors in an attempt to determine whether Inspectors should be brought under the early retirement provisions of current law. That report is attached and we would appreciate your including it in the record as well. In its study, the task force concluded that Customs Inspectors should be permitted the benefits of early retirement in order to maintain a young and vigorous work force that is equal to the strenuous job they perform.

The report points out that Customs Inspectors were not included in the law providing for early retirement at age 50 with 20 years of service because many Members of Congress felt that they did not meet the criteria set forth for a law enforcement office," the investigation, apprehension,

National Headquarters, Washington, D.C.

and detention" of suspected violators of Federal criminal laws. With the introduction of a computerized information system called Treasury Enforcement Communications System (TECS) into the Customs Service, however, the "extent of Customs Inspectors' involvement with fugitives, criminals and narcotic smugglers has taken on an entirely new dimension," the report points out. )

The TECS system is a network of about 1,200 terminals that give Customs Inspectors instant access to information on persons suspected of smuggling contraband and other violations of Federal and state law. If Inspectors become suspicious of someone entering the United States, they may retrieve data on that person from the TECS system. If the information indicates that the individual is indeed suspected of violating the law or is a fugitive from other law enforcement authorities, the Inspector must detain him/her until the police can arrive.

In a manner of speaking, the TECS system has already caused the unfortunate death of a Customs Inspector. Less than one year ago, on May 25, 1979, two individuals entered the United States from Canada at Lynden, Washington. Inspector Kenneth Ward was on duty there alone. Apparently, because he thought the travellers were driving a stolen car, Inspector Ward went into his office and activated the TECS system to see if his suspicion was correct.

Unknown to Inspector Ward, one of the suspects had been convicted of two counts of murder. When the fugitive heard the clicking of the TECS machine, he followed Inspector Ward into the office where he drew a gun and killed him.

By detailing Inspector Ward's untimely death, we are not suggesting that the TECS system should be removed. It is the job of Customs Inspectors to enforce the laws and to assist local police and the FBI detain fugitives and suspected criminals. Rather, we are asking that this Subcommittee recognize the risk and danger faced by Customs Inspectors and specifically include them among those entitled to the benefits of the legislation now under consideration.

In its report, the task force also points out that Customs Inspectors have participated in the following number of arrests over the past three fiscal years: 6,643 in FY 1977, 6,681 in FY 1978 and 7,413 in FY 1979. During this same time period, the Inspectional workforce has not grown, but has substantially decreased.

Furthermore, the number of cooperative arrests made in conjunction with other law enforcement officials has been growing from 1,718 in 1977 to 1,786 in 1978 and 2,197 in 1979. Customs Inspectors were also responsible for about 6.5 percent of all arrests made through the FBI's National Crime Information Center - more than any other single law enforcement entity.

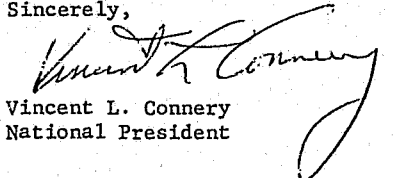
Throughout its study, the task force describes the kinds of stress to which Inspectors are subjected in the course of their careers. There is considerable physical danger in many of the jobs these men and women perform, including the boarding of ships. Last year, an Inspector in Wilmington, Delaware, took one unfortunate step in boarding a ship in mid-stream and fell to his death in rough waters.

In addition to the more obvious types of physical stress, Inspectors suffer considerable body tension from spending long hours on their feet. Constant shift rotation and generally unpredictable overtime assignments also take their toll on the physical and emotional makeup of an Inspector.

In recognition of the difficult job performed by Inspectors and their increasing responsibilities, the Customs Service has expanded the training it provides Inspectional employees. Effective July 1, 1979, the Service began placing more emphasis on physical standards such as visual and audial acuity for new hirees. It also outlined an extensive formal and on-the-job training program that Inspectors must complete to maintain their position. These hiring requirements and conditions of employment are detailed in the attached report.

In summary, it is our firm conviction that Customs Inspectors meet the criteria for the lump-sum death benefits provided under H.R. 5834 and H.R. 5888. The risks they undertake in their jobs are no different from those encountered by any other law enforcement officer, and too frequently have the same unfortunate result - untimely death and a young family left without a breadwinner. We believe that Customs Inspectors should be specifically included in the provisions of H.R. 5834 and H.R. 5888 so that they will be clearly entitled to the benefits of these bills.

Sincerely,

  
Vincent L. Connery  
National President

Attachment



United States of America  
**Office of  
 Personnel Management**

Washington, D.C. 20415

In Reply Refer To:

March 14, 1980

Your Reference:

Honorable Carl D. Perkins  
 Chairman, Committee on Education  
 and Labor  
 U.S. House of Representatives  
 Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the views of the Office of Personnel Management on H.R. 5834, a bill "To provide lump sum death benefits for certain Federal law officers and firefighters killed in the line of duty."

H.R. 5834 would, if enacted, add a new subsection (g) to section 8133 of title 5, United States Code, to authorize employing agencies to pay a \$50,000 lump sum death benefit payment to the survivors of a Federal law enforcement officer or firefighter who dies as a result of injuries sustained in the performance of duty. In addition to law enforcement officers and firefighters (as defined in section 8331 of title 5, United States Code), the bill would also cover Federal Protective Officers employed by the General Services Administration, and non-uniformed special policemen referred to in section 5 of the Act of June 1, 1948 (40 U.S.C. 318d). The \$50,000 lump sum death benefit would be in addition to other benefits authorized by law, and would be payable to the person or persons surviving on the date of death in the order of precedence established under subsections (a) and (b) of section 8705 of title 5, United States Code. No payment could be made unless the claim were made within four years from the date of the employee's death. The provisions would be effective with respect to any person referred to in the new subsection (g) dying on or after January 1, 1976.

The Public Safety Officers' Benefits Act of 1976 authorizes the Law Enforcement Assistance Administration to pay a \$50,000 gratuity to the survivors of certain State and local public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty. The effect of H.R. 5834 would be to authorize the payment of a similar benefit to the survivors of certain Federal law enforcement officers and firefighters.

Coverage of Federal public safety officers was specifically considered by Congress when the Public Safety Officer's Benefits Act of 1976 was enacted, and was rejected at that time. As indicated in the House

Committee Reports on H.R. 365 and H.R. 366, 94th Congress, it was felt that benefits provided to Federal officers under the Federal Employees Compensation Act were generally adequate and in many instances would exceed the \$50,000 payment authorized by the legislation which was enacted as Public Law 94-430 (90 Stat. 1346).

Federal public safety officers, including law enforcement officers and firefighters, who are killed or injured in the line of duty are covered by the Federal Employees Compensation Act (5 U.S.C. 8101 et seq.). Enactment of H.R. 5834 would result in the payment of additional benefits in the event of the death of a Federal officer. Under present law, in the event of the death of a Federal employee while engaged in the performance of duty, the widow or widower receives 50 percent of the deceased employee's monthly pay if there are no children. If there is a child or children eligible for benefits, the widow or widower receives 45 percent of the monthly pay and an additional 15 percent for each child. In no case, however, may the total monthly compensation exceed 75 percent of the employee's monthly pay or 75 percent of the highest rate of monthly pay provided for a GS-15 employee of the United States Government. Compensation to the widow or widower continues until remarriage before age 60, or death. Compensation to each child continues until he or she reaches 18 years of age, unless extended because such person is a student or is incapable of self-support. While the Federal Employees Compensation Act payment is not generally in a lump sum, the amount payable is potentially much higher than \$50,000.

H.R. 5834 would provide additional death benefits where such benefits are already adequate, and it would be costly to the Government, especially since the bill as written would be retroactive to January 1976. Accordingly, the Office of Personnel Management must oppose the enactment of H.R. 5834.

The Office of Management and Budget has advised that there is no objection to the submission of this report, and that enactment of H.R. 5834 would not be consistent with the Administration's objectives.

Sincerely yours,

*Alan K. Campbell*  
 Alan K. Campbell  
 Director

REPORT ON  
SPECIAL EARLY RETIREMENT  
FOR  
CUSTOMS INSPECTORS

U.S. CUSTOMS SERVICE  
BORDER OPERATIONS  
OFFICE OF INSPECTION  
OCTOBER 18, 1979

TITLE PAGE-STOCK NO. 100TP

Shred-MFG. CO. Hastings, Minnesota / Logan, Ohio / Los Angeles,  
California / McGregor, Texas / Chicago, Illinois

EXECUTIVE BRIEFING

Section 8336(c), title 5, U.S. Code, provides for the retirement or transfer of persons from covered positions at age 50 with 20 years experience (optional) or at age 55 (mandatory). Early retirement, designed to help agencies maintain a young and vigorous law enforcement workforce, is made economically feasible by providing an approximately 13 percent higher annuity to persons retiring under this system than under the regular civil service retirement system. Customs inspector positions have not previously been covered under 5 U.S.C. 8336(c) because inspectors were not considered to be investigators, apprehenders, or otherwise involved in the detention of violators of the criminal laws of the United States.

The occupation of the Customs inspector involves not only the investigation, apprehension and detention of persons suspected or convicted of offenses against the criminal laws of the United States, but also the physical and psychological requirements of the position are such that the efficiency of the employee is eventually affected, making his replacement by a younger person desirable to maintain an effective workforce.

This report deals with the various factors which support the extension of special early retirement provisions to Customs inspectors. Included among these factors are:

1. The strenuous and arduous duties of the inspector with the physical requirements related thereto. The need for a young and vigorous workforce.
2. The physical and psychological stresses of the job.
3. The law enforcement aspects of the job:
  - (a) arrest
  - (b) detention
  - (c) apprehension
  - (d) investigation
4. Assaults, Accidents, and Incidents
5. Law enforcement training
6. Terrorism
7. Alternative retirement formulae
8. The effects of shift work
9. Work sites

Prior arguments against the extension of special early retirement to inspectors, e.g., position is not a law enforcement position, hazards are adequately compensated for by higher grades, overtime pay sufficiently compensates the inspector, etc., are also discussed in the report.

## TASK FORCE MEMBERS

## CO-CHAIRPERSONS

RENEE DEATLEY  
PROGRAM ANALYST  
HEADQUARTERS

ARNOLD SARASKY  
SR. PROGRAM ANALYST  
HEADQUARTERS

MEMBERS

TOMMY CROWE  
PORT DIRECTOR  
NACO, ARIZONA

PAUL CURRAN  
PORT DIRECTOR  
INTERNATIONAL FALLS,  
MINNESOTA

ANN GOGGANS  
SUPERVISORY  
CUSTOMS INSPECTOR  
EL PASO, TEXAS

ROLAND HEUSCHELE  
SUPERVISORY  
CUSTOMS INSPECTOR  
SAN YSIDRO, CALIFORNIA

WILLIAM LAW  
CUSTOMS INSPECTOR  
BLAINE, WASHINGTON

FREDERICK LAWRENCE  
PORT DIRECTOR  
SAULT STE. MARIE, MICHIGAN

INTRODUCTION

Section 8336(c) title 5, U.S. Code, provides for the retirement or transfer of persons from covered positions at age 50 with 20 years experience (optional) or at age 55 (mandatory). Early retirement, designed to help agencies maintain a young and vigorous law enforcement workforce, is made economically feasible by providing an approximately 13 percent higher annuity to persons retiring under this system than under the regular civil service retirement system.

Customs inspector positions have not previously been covered under 5 U.S.C. 8336(c), because inspectors were not considered to be investigators, apprehenders, or otherwise involved in the detention of violators of the criminal laws of the United States.

This report shows that the occupation of the Customs inspector involves not only the investigation, apprehension and detention of persons suspected or convicted of offenses against the criminal laws of the United States (See Part II), but also the physical and psychological requirements of the position (See Part I) are such that the efficiency of the employee is eventually affected, making his replacement by a younger person desirable to maintain an effective workforce.

The extent of Customs inspectors involvement with fugitives, criminals, and narcotic smugglers has taken on an entirely new dimension with the advent of our advanced Treasury Enforcement Communications System (TECS). This system is a computer network of approximately 1200 terminals placed strategically throughout the nation to provide inspectors with information on persons suspected of smuggling and other violations. The computer link-up of this network with the FBI's National Crime Information Center (NCIC) and other systems such as the National Law Enforcement Telecommunications System (NLETS), provides further access to approximately 2 million records of criminals, fugitives and related data never before available on this scale. This latter link provides access to FBI files which contain fugitive felons wanted by Federal, state, and local law enforcement agencies for murder, armed robbery, etc. These fugitives and other criminals are identified to inspectors on-the-spot after a query of the system. When such an individual's identity has been established, the inspector must attempt to arrest or apprehend and detain him so that the appropriate law enforcement action may be taken. In 1978, inspectors accounted for almost 6.5 percent of all NCIC arrests, i.e., arrests by all state, local and Federal law enforcement agencies. (This was more than any other single law enforcement entity in the country.) Customs inspectors, in 1978, also made or participated in 39 percent of all arrests in which this agency was involved (See Exhibit B). As these law enforcement intelligence capabilities increase through cooperation with other law enforcement agencies, there will be even greater involvement by Customs inspectors.

Customs inspectors are responsible for enforcing the gun and munitions control laws. During fiscal 1979, 485 weapons and 45,408 rounds of ammunition were seized by inspectors from persons and cargo.



Customs inspectors are responsible for detecting suspected or known terrorists attempting to enter the U.S., in addition to apprehending smugglers and fugitive felons. The Customs Service has developed terrorist contingency plans in every Customs region. The Customs inspector is to play a vital role in minimizing injury and death to both himself and the public. Yet the inspector is aware that he or she may be the first victim.

A terrorist attack could take place anywhere, at any time, without warning. This unknown potentially dangerous situation weighs heavily on the minds of our inspectors. These increasing demands are accompanied by a commensurate rise in armed and violent resistance to Customs inspectors performing their duties.

A Customs inspector can be compared to a policeman in this respect. When either encounters the public their identities are well known; however, the hardened criminal and dangerous individuals mixing in with the general public are not identified. Thus, the advantage lies heavily with those individuals.

The Customs inspector is a target for armed and dangerous criminals. At Lynden, Washington, an inspector was fatally shot during a secondary inspection by a person who was later determined to be a trained armed revolutionary and a prison escapee who had been serving time for two murders (See Exhibit A).

The Customs inspector, by his uniformed presence on the dock, reduces theft and pilferage from interstate and foreign commerce. He also detects the existence of theft or pilferage, may apprehend the felon still on the scene, or collect data and information which may be later used to track down the alleged felon.

As a result, inspectors and their families have been threatened with physical violence. The seriousness of such threats in several instances resulted in the transfer of inspectors in order to protect them.

An inspector at remote locations (See Exhibit D) is the sole law enforcement official in the area and is particularly vulnerable to criminal activity because of the fact of his isolation. This may occur at small one-man ports, e.g., some northern border ports, remote locations in Alaska or a one-man work station in a large port, e.g., the midnight to eight shift at JFK, a finger pier in Brooklyn, a small airport after hours, a small boat docked at a private house, etc.

There are also certain inherent psychological and physical stresses connected with the Customs inspector's occupation that, after prolonged duration, take their toll on the efficiency of the employee. Besides the constant threat of dealing with the criminal element of society, inspectors face resistance to personal searches from people who are drunk and disorderly and those who simply do not want to be searched. These individuals sometime become violent in their resistance and often are armed with dangerous weapons. It has been necessary to train inspectors in the use of firearms and to authorize them to carry weapons.

In addition to the resistance encountered by inspectors in the performance of their duties, there has been an increasing number of physical assaults on the inspector. Individuals have run inspectors off the road or attempted to run inspectors down with their automobiles. An angry importer hit an inspector with a briefcase resulting in the loss of the inspector's eye.

Customs inspectors are also regularly subjected to other kinds of physical dangers and arduous challenges in performance of their job. For example, launches taking inspectors to board incoming vessels approach those vessels at a high rate of speed. The transfer of the inspector between vessels is often accomplished in rough water using a swaying, sometimes ice-laden, rope ladder. Extreme caution must be used in climbing a rope ladder. One wrong move, one careless step or one slip of the foot could cause the death of the inspector, as happened last year when one inspector drowned in the Delaware Bay. Inspectors must climb over, under, and into trucks, containers and rail cars. They generally work around moving conveyances.

Customs inspectors work long hours, standing on their feet and bending over while checking vehicles and persons. They are under constant tension at busy ports to process the seemingly never-ending long lines of people entering the United States. The constant rotation of working hours, which is necessary at many ports, places a continual strain upon the inspector whose body may never get used to any regular routine (See Exhibit E). It is common for an inspector to work a shift, go home, attempt to get a couple of hours of sleep and have to go out to perform an inspection. The inspector may actually have to work his regular shift plus part or even all of an additional shift in 1 day.

As an initial effort to improve and maintain the vigor of the Customs inspector force, Customs initiated a new program, effective July 1, 1979, providing for hiring requirements and conditions of continued employment for inspectors GS-5/7 (Manual Supplement 413061, dated June 29, 1979 - copy attached). In addition to the experience and educational background, an inspector must meet certain physical standards, including visual and audio acuity within specific limits, to be hired. An inspector must satisfactorily complete formal and on-the-job training to maintain his employment (See Exhibit C). In this formal and on-the-job training, there are 430 tasks of the 494 tasks identified in the December 1975, Job Task Inventory for the Customs inspector Series 1890 (X PACE Research Instrument Number 1890-4). The core OJT guide which was being developed pursuant to the above Manual Supplement requires a trainee inspector to meet certain skills identified as critical in order to get satisfactory rating. The program meets the requirements of the Standards for a Merit System of Personnel Administration (44 FR 10238).

The question arises whether these findings support the need for a young and vigorous inspectional workforce. We believe they do. If the Customs Service seeks to give the best service it can provide to the taxpayer, special retirement coverage for the inspector should be pursued. This would pave the way for obtaining and maintaining a young and vigorous inspector workforce.

ORIGINATING OFFICE:	O:I:R	DISTRIBUTION:	P-41
POLICIES & PROCEDURES MANUAL	<b>MANUAL SUPPLEMENT</b>		
	NUMBER:	41306-01	
	ISSUE DATE:	June 29, 1979	
SUBJECT:	EXPIRES: Indefinite		
Hiring Requirements and Conditions of Continued Employment For Inspectors GS-5/7			

## 1. PURPOSE

This Manual Supplement outlines Customswide hiring requirements and conditions of continued employment for basic inspectors GS-5/7.

## 2. BACKGROUND

With the transfer of the inspector training function from Washington, D.C. to the Federal Law Enforcement Training Center (FLETC), Glynnco Facility, Brunswick, Georgia it is necessary to describe Servicewide uniform procedures for hiring and training basic Customs inspectors.

## 3. ACTION

Effective July 1, 1979, all on-board or newly hired untrained Customs inspectors will receive 9 weeks of formal classroom training and 6 months of on-the-job training in accordance with the attachment.

## 4. EXPIRATION

This Manual Supplement will expire upon incorporation into Policies and Procedures Manual 41306.

*James D. Davis*  
Assistant Commissioner (Operations)



CUSTOMS ISSUANCE SYSTEM  
DEPARTMENT OF THE TREASURY • UNITED STATES CUSTOMS SERVICE

Attachment to:  
MS 41306-01 dated  
June 29, 1979

HIRING REQUIREMENTS AND CONDITIONS OF  
CONTINUED EMPLOYMENT FOR INSPECTOR GS-5/7

### Hiring Requirements

- I. A. Three years of general experience (experience in administrative law enforcement, or work experience which demonstrates the ability to deal with others in person-to-person relationships, to learn and interpret facts, and to seek cooperation of others in following procedures and regulation) or successful completion of 4 years of study at a residence school above the high school level;
- B. Candidates from outside the federal service will be referred from the PACE register;
- II. Applicants must be physically able to perform the full range of duties of this position. Any physical condition which would cause the applicant to be a hazard to himself or others, or would prevent the efficient performance of the duties is disqualifying. If it is necessary to obtain a physician's opinion the employee will be advised of the provisions of the FPM regarding the selection of such physician.

Distant vision must test at least 20/40 (Snellen) in one eye and 20/100 (Snellen) in the other eye, with or without correction. Ability to read without strain printed material the size of type-characters, corrective lenses permitted, is required. Near vision should test Jaeger 4 in both eyes, correction permitted. Ability to distinguish shades of colors by color plate tests is essential. Hearing should be such that the applicant can hear the spoken voice at 20 feet and the whispered voice at 15 feet by each ear without the use of a hearing aid. When tested with an audiometer, hearing loss should not exceed 30 decibels (A.S.A. or equivalent I.S.O.) in either ear in the 500, 1,000, or 2,000 frequency range. Amputations or loss of function of an arm, hand, leg, or foot will disqualify an applicant for appointment. Applicants must possess emotional and mental stability. The presence of physical conditions which would be aggravated by the environmental conditions of these positions will ordinarily disqualify an applicant for appointment. Selectee will be required to undergo medical examination. Any individual not employed by the Federal Government at the time of selection for an inspector position must pay for his/her medical examination.

III. Applicants must be willing to work in excess of 40 hours per week, and be willing to work nights, Saturdays, Sundays, and holidays;

IV. Full field investigation is required;

For position at the GS-7 level 1-year of specialized experience is required in addition to the 3 years of general experience.

Specialized experience is any type of experience which demonstrates ability to deal with people to explain procedures and requirements in such a way as to elicit cooperative response; and (A) or (B) below:

(A) Ability to apply specialized knowledge of laws, regulations, decisions, or instructions pertaining to the importation or exportation of merchandise from the United States;

or

(B) Ability to collect, develop, and evaluate facts, evidence, and other pertinent data in investigating compliance with or violation of laws, rules, or regulations;

At least 6 months of the required specialized experience must have been at a level of difficulty and responsibility equivalent to that of the next lower grade, or one year of such experience at a level equivalent to the second lower grade in the federal service;

Completion of one full year of college work beyond the Bachelor's degree leading to a higher degree may be substituted for one year of specialized experience.

Newly selected inspectors may be brought onto official duty one calendar week prior to enrollment in the Basic Inspector Course at FLETC, Glynco, Georgia. (See Footnote.)

Footnote: Under normal circumstances candidates for Inspector should be hired primarily at the GS-5 level and in exceptional cases at the GS-7 level. It may be necessary to bring new hires on board one week prior to enrollment in the Basic Course to accomplish administrative processing at his/her permanent port of duty. Under no circumstances will the new hires be permitted to perform inspectional duties until completion of their formal basic training and they are functioning in their OJT phase at their home port.



Conditions For Continued Employment.

- I. Completion of the Basic Inspector Course; and
- II. Demonstrated satisfactory On-the-Job performance during the 1-year probationary period. In order to standardize the OJT, Headquarters will coordinate and develop, with field input, a core OJT guide for field use.
- III. Employees who do not satisfactorily meet the above requirements will revert to their status prior to selection for the inspector positions as follows:

- A. Employees in probationary status may be placed in another position in Customs (if available) when they have demonstrated that they could perform satisfactorily or if no position is available be dismissed from the Customs Service. Other procedures affecting probationary employees are as follows:

During the probationary period of the employee, the supervisor(s) will:

1. Closely observe the employee's conduct, general character traits and performance.
2. Provide guidance in regard to work related problems. When it appears that the employee's performance or conduct may be lacking, the supervisor(s) will [1] explain what is required of the employee in the position; [2] identify areas where the employee needs improvement; and [3] suggest ways or means for the employee to improve his/her performance or conduct.
3. Evaluate the employee's potentialities and attempt to determine whether the employee is suited for continued employment with the Employer.
4. Employees will be entitled to counseling by the supervisor(s) upon request.
5. The supervisor of each employee serving a probationary period will, no earlier than the beginning of the ninth month nor later than the end of the tenth month of this training period submit through supervisory channels a signed statement certifying either that the employees, performance, conduct and general traits of character have been found satisfactory or that they have been found unsatisfactory. This

certification will normally be on CF 198 or equivalent form. The employee may comment in writing within 2 days of receipt thereof. The certification will contain a definitive recommendation whether the employee should be retained beyond the probationary period.

6. The current supervisor may prepare the evaluation in conjunction with other supervisors who have participated in the training of the employee. The name of any other supervisor(s) who have participated in the rating will be noted on the rating form.

None of the above is to be interpreted as preventing or discouraging the initiation of removal action at any time during the probationary period.

8. Customs employees who have completed their probationary period at the time of selection for the Inspector position will be:

1. returned to their position if available and agreeable to the individual and former employer: or
2. placed in a like position at the former grade to that which he/she previously held.

- C. Other Federal employees who have completed their probationary period prior to the time of selection for the inspector position or have career status will be placed in an available appropriate position at the appropriate grade level within the Customs Service.
- D. If additional appropriate positions are not available and the employee can not perform satisfactorily, adverse action procedures would be initiated to discharge the employee.

On-the-Job Training

Upon completion of the Basic Inspector Course, trainees will enter the OJT phase immediately. OJT is designed to provide the trainee with practical experience and an opportunity to demonstrate the skills and knowledge obtained in the Basic Inspector Course.

In the future, there is a possibility of including one or two additional hiring requirements/conditions of continued employment. In that event, NTEU would be extended their bargaining rights in accordance with existing law, regulation or contract. For example: If qualification in use of firearms can be shown to be a specific condition of employment then it should be included as a hiring requirement and condition of continued employment for all inspectors. However, until this ruling is made, it will be necessary for some inspector applicants, after appointment, to qualify in the use of firearms and carry firearms (see page 5 of the Single Agency Qualification Standard for Customs Inspectors, dated February 1977).

## I. Location and Length of the Training:

Each trainee will receive 6 months of on-the-job training (OJT) at their home port immediately following the completion of their Basic Inspector Course at FLETC, Glynco, Georgia.

## II. Curriculum:

OJT in air, land, or sea inspectional operations will include:

Part 1 Courtesy

Process Passengers  
Assist Importing Public  
Work with Other Employees

Part 2 Carrier Control

Process vehicles, trucks, buses, trains, aircraft and vessels.

Part 3 Process Passengers

Primary Functions  
Declarations  
Secondary Techniques

Part 4 Cargo Examination

Formal Entry Documentation  
Informal Entry Documentation  
Processing Cargo  
Enforcement

Part 5 Merchandise Control

In-Bond Documentation & Processing  
In-Bond Procedures at Port of Origin  
In-Bond Procedures at Port of Destination  
Manifest Clearance & Control  
Quantity Control Functions  
Export Control Functions  
Bonded Warehouse Functions  
Cartage of Merchandise

Part 6 Enforcement Activities

TECS Functions  
Search Techniques  
Seizure & Arrest

## III. Evaluation of the Trainee:

Criteria for determining continued employment in an inspector position will consist of the new inspector's satisfactory OJT performance, coupled with their achievement at the Basic Inspector Course. Each new inspector will be evaluated at the completion of the OJT to determine if employment will continue in the inspector position by a panel of supervisory personnel.

ADDENDUMADMINISTRATIVE CONSIDERATIONS

If inspectors are brought under the coverage of the special early retirement provisions of section 8336(c), title 5, United States Code, we will have to deal with several preliminary matters before the law could be implemented. These include:

1. Obtain approval of a prototype position description to properly reflect the inspectors enforcement duties.
2. Developing job related mandatory physical and mental qualifications which will be accepted by the Office of Personnel Management and which will not be subject to waiver as is true with regard to such standards which currently exist.
3. How to handle incumbent inspectors who do not have the required number of years in a covered position.
4. Questions will also exist as to inspectors who might be eligible to retire but can't afford to retire or do not want to retire under 6(c) when they become eligible, as well as inspectors who desire to retire and meet the age requirement, but do not meet the length of service requirement.
5. We will also have to be careful to guard against the rapid dislocation of the inspector workforce. At the present time, approximately 11.5 percent of the inspector workforce is eligible to retire under the current retirement law. The extension of 6(c) to inspectors would result in an additional 10 percent increase to the current list of retirement eligibles.
6. Based on an average journeyman salary, equal to a GS-9/5, and average overtime earnings of \$7,500, Customs would have to budget approximately \$700,000 per year for all covered primary and secondary positions for the extra 1/2 percent employer contribution payment to the retirement fund required by 6(c) retirement.

This is not to be considered an all inclusive list but to only indicate that several administrative matters will have to be dealt with subsequent to the enactment of enabling legislation.

OPPOSING ARGUMENTS

There has been opposition in the past to special retirement legislation, section 8336(c), title 5, U.S.C., to cover Customs inspectors. A discussion of the points noted by such opposition follows:

1. The former Civil Service Commission, now the Office of Personnel Management, has stated that the inspector's job description lacks sufficient law enforcement responsibilities. We acknowledge that the current position description is deficient in describing the law enforcement duties the inspector is now performing. Accordingly, we have developed a prototype position description which will more accurately describe such functions. (See Exhibit F.)
2. The former Civil Service Commission has also stated that the hazardous aspects of the inspector's job were considered in the classification of the position and that he is being compensated for these aspects of the job. While the knowledge necessary to deal with hazards has been considered in classifying the position and is, therefore, supportive of the journeyman grade level, the inspector is not compensated for facing these hazards. In fact, if an inspector is killed on the job as a direct result of criminal activity, his family is not entitled to any kind of special compensation such as that paid to the family of members of the Executive Protective Service, Secret Service, etc. under P.L. 91509. (It should be noted that hazardous duty as a qualifying factor for special early retirement was removed from the law about six years ago.)
3. The job title "Inspector" has also been used in the argument against special early retirement 6(c). The Civil Service Commission's perception of Customs inspection is that it does not fall within the Congressional intent of investigation, apprehension or detention. The dictionary definition of inspection is, "a critical examination, close and careful scrutiny, a strict or prying examination or an investigation." There are inspectors on many police forces. The title "Customs Inspector" denotes a true law enforcement officer. Customs inspectors are considered law enforcement officers by other law enforcement officers. Both the National Fraternal Order of Police and the Federal Law Enforcement Officers Association, the two largest law enforcement



organizations, accept Customs inspectors for active membership. This is in accordance with their bylaws which specify that only full-time law enforcement officers can be active members.

4. The Commission has also indicated that Customs inspectors are adequately compensated for their work by the overtime pay they receive. It failed to note that special early retirement is neither compensation for work performed nor is it a reward for such work. It is intended to produce a young and vigorous workforce by making early retirement economically feasible.

Further, the Customs overtime provisions contained in section 267 and 1451, title 19, U.S. Code (commonly referred to as 1911 overtime), provide for extra compensation for the services of an inspector performed at night, Sunday or on a holiday. The law provides that the cost of these services is to be borne by the requestor of the services since the services are not a benefit accruing to the general public. This is the same philosophy behind the User Statute, section 483a, title 31, U.S. Code, which was enacted at a considerably later point in time. Civil Service, and other parties, have confused this extra compensation as somehow being payment for hazards being faced on the job. Since there is no payment for facing job hazards during regular hours, there is no reason to presume that facing these same hazards at night warrants some special payment. Indeed the extra compensation is for extra inspectional work. An inspector must give up his time with his family, his time off, whether at 3 a.m., a Sunday, or on a holiday. Although financially rewarding, inspectors often turn down overtime assignments, unless management requires them to work, because of the physical and psychological strain it produces. Overtime pay is clearly pay for extra services and not pay in lieu of eligibility for special early retirement.

5. Some parties have expressed a need to distinguish inspection and enforcement activity. They have failed to note that the inspector's duties consists of a conglomeration of inspection and enforcement activity. They have failed to note that the inspector is fulfilling the Customs mission to collect and protect the revenue and enforce Customs and related laws. An activity commenced as an inspectional activity may continue as a combined inspection/enforcement activity. For example, the inspection process normally requires a

NCIC (National Crime Information Center) license plate or name check. It may also require a check of various other law enforcement intelligence systems, e.g., NLETS (National Law Enforcement Telecommunication System), CLETS (California Law Enforcement Telecommunication System), etc. A baggage examination may lead to a more detailed examination and search of a person and his belongings, a detention, arrest and incarceration of the individual. An inspector is paid for this activity whether performed during regular or overtime hours. It is only the rate of compensation that changes if the inspection/enforcement work is performed after hours. If the enforcement activity is unassociated with the inspection activity, e.g., special surveillance operations, the inspector is compensated according to the Federal Employees Pay Act rather than the provision of the sections 267 and 1451, title 19, U.S. Code. In either case, the inspector is being compensated for working extra hours not because of the type of activity. He is being compensated the same as any other employee, whether operating in the public or private sector.

We believe that past opposition to extending special retirement coverage to inspectors has been the result of a failure to fully comprehend the nature of the duties performed by the Customs' inspector.

## PART I

A Young and Vigorous Inspectional Workforce

The inspector's job is strenuous and arduous involving great physical exertion and laborious activities, often performed in a dangerous environment. The inspector, therefore, should possess good reflexes, be fleet of foot, and have a keen eye, qualities most likely to be found in a young and vigorous person. These physical qualities are necessary in order to detain and apprehend armed and dangerous individuals, perform in-stream boardings, climb the Jacob's ladder, gauge oil tanks and tankers, climb onto trains, search aircraft, vessels and vehicles and examine cargo containers. He or she must possess physical stamina in order to stand for long periods without a break, to adjust to different work hours, and to be able to handle assignments at odd hours during the night. Inspectors must be capable of functioning with very little sleep and rest expecting that even his or her time off will be interrupted by a call for service. The inspectors must easily adjust to a changing work environment in day-to-day activities. The inspector may work at many locations during the day. For example, he may work at an airport, then a seaport, then a land border port and then an importer's premises. The inspector is expected to perform the physically demanding part of the job in good weather, icy, windy, rainy and snowy weather, as well as in extremely hot or cold climates.

In addition to the physical stresses, there are unquantifiable mental stresses that plague the inspector most of the time. With the advent of the computer age, the inspector possesses information about the type of individual he or she will encounter such as armed and dangerous persons. The National Crime Information Center's (NCIC) data base, which is interfaced with the Treasury Enforcement Communication System (TECS), contains approximately 150,000 wanted person, 970,000 stolen and felony vehicles. TECS alone, contains the names of 5,000 dangerous individuals. As a result, there are at least a potential 1,125,500 known dangerous situations inspectors could encounter at the land ports, airports and seaports. The unknown dangers are, of course, immeasurable but nonetheless faced by the inspectors.

The inspector is faced with the constant threat of terrorist attacks at our Nations ports of entry. As an integral part of the U.S. efforts to combat international terrorism, Customs is recognized as the first line of defense against a terrorist attack. The Customs inspector is the first Federal officer a terrorist entering the U.S. is likely to encounter. The inspector, therefore, is psychologically threatened by the possibility of a terrorist attack. He is also a possible threat to the terrorist. The Customs Service has prepared contingency plans at all field locations to deal with terrorist attacks.

The following are the physically strenuous activities involved in Customs inspections:

Physical Aspect of Conducting Search

1. Inspection of aircraft, vessels, automobiles, and railcars requires a lot of lifting, climbing, bending, stretching, kneeling, stooping and crawling. These activities conducted under adverse weather conditions, in extreme temperature, around moving vehicles and equipment, in poorly ventilated and lit facilities, in cramped, greasy, and dangerous areas, on decrepit and unsafe equipment, place additional physical strain on the inspector.
2. Inspection of persons become physically strenuous when individuals resist a search, apprehension or arrest. Inspectors have disarmed and/or subdued a suspect. Inspectors also have pursued on foot individuals who attempt to escape custody or avoid inspection by running the port.

In addition to the physical aspects of the position, the following are the various mental stresses involved in the Customs inspector's job:

Encounters with Armed and Dangerous, Psychotic and Intoxicated Persons

1. The criminal violator becomes desperate when it appears that the inspector may apprehend, detain, or arrest him or her. They usually carry a concealed weapon with the intent to use it if necessary to affect their escape. The psychotic person is unpredictable and the slightest provocation could set him off. They may carry a weapon and use it for no apparent reason. The heavily intoxicated person, when angered, could become so enraged as to inflict injury.
2. The Treasury Enforcement Communications Systems (TECS) which contains information on known armed and dangerous persons, provides some measure of protection. (TECS does not contain information on every individual who may be armed and dangerous.) When the system alerts on an armed and dangerous person, the inspector can call for assistance and take immediate protective measures to minimize the danger by searching the person, his baggage or vehicle for weapons.

The inspector, however, may not always have this information. Individuals who suspect Customs has information on them will use false identification. Individuals wishing to surreptitiously enter the U.S. at the land border may be driving a rented, borrowed or stolen vehicle or one displaying license plates assigned to another vehicle, since the primary TECS query at land border ports is a license query.

3. The dangers are increased when an inspector works alone at isolated, one man ports, on shifts by themselves (especially the midnight to 8 a.m. shift), or at private airstrips and boat docks or high-crime areas. Under these circumstances, the odds are often against the inspector, who may not always be armed, if a violent confrontation should occur.

The mental stress under these conditions is intensified. From the time a dangerous individual arrives at the port until such time as the inspector is able to render the person harmless, the inspector is under mental stress. Oftentimes it takes an even longer period of time to fully get over such incidents. The frequency of these types of incidents keeps the inspector under constant mental stress and strain.

#### Psychological Aspects of Possible Terrorist Activity

Terrorists are violent criminals who use fear to intimidate and force persons to accede to their demands. Their activities include assassination, execution, kidnapping, hijacking, bombings, expropriation, mass murder, torture and destruction of property. Terrorists are politically motivated and apparently convinced of the righteousness of their cause and will resort to acts of terror to advance that cause. Terrorists will kill or be killed to obtain their objective.

Known terrorists have gained, and may continue to attempt to gain, access to Customs facilities. Bombing at airports and Federal buildings, as well as apprehension of known terrorist at border crossings, place a psychological stress upon the inspector. The Customs (or Immigration) inspector will be the first U.S. Government employee a terrorist entering this country will encounter. The terrorist undoubtedly will consider the Customs inspector a threat to the successful accomplishment of any planned act of terrorism or violence.

Terrorist contingency plans have been developed at all Customs field offices in preparation for such an attack. In January 1975 we began developing terrorist information for entry into the Treasury Enforcement Communication System (TECS). Customs has signed an agreement with the Department of State on the exchange of terrorist information. We also share terrorist information with the FBI, CIA and INS. Training for inspectors in the detection of fraudulent passports relating to terrorist activities will be accomplished in FY 1980 by the CIA. Because inspectors will be the first law enforcement officers a terrorist will encounter, he may also be the first one to be killed or seriously injured. We have, therefore, trained the inspector in how to handle terrorist attacks and we continually update and disseminate relative training information.

In addition, when the U.S. is a host country for visitors to international events, Customs participates with other Federal and local law enforcement agencies in the planning and developing of security measures so we can be prepared to effectively deal with potentially explosive situations. The VIII Pan American Games held in Puerto Rico in June 1979 took place without any serious incident, in part, as the result of the security measures taken by all involved up to and during the games. Security plans for the 1980 Winter Olympics at Lake Placid and the 1984 Summer Olympics at Los Angeles are presently being developed.

As long as the potential exist for a terrorist attack, the inspector will live with the psychological pressure associated with this type of activity.

## PART II

### JUSTIFICATION FOR LAW ENFORCEMENT RETIREMENT

The history of retirement legislation dealing with law enforcement officers shows Congressional intent to liberalize retirement provisions so as to make it economically feasible for these employees to retire earlier than normal retirement age. This intent has been based on the nature of the work involved and the determination that law enforcement occupations should be composed of young men and women physically capable of meeting the vigorous demands of occupations which are far more taxing physically and psychologically than most in the Federal Service.

This objective of providing preferential retirement rights was to improve the quality, efficiency, and productivity of that activity by making law enforcement an occupation requiring a young and vigorous workforce. The preferential provisions serve to reduce the turnover among younger men and at the same time accelerate the retirement of old men.

Section 8336(c) covers employees whose duties are primarily investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States.

Today's Customs inspector is required to perform those duties which falls within the purview of the provision set forth under section 8336(c).

#### A. Apprehensions

- A. In FY-1978, Customs inspectors made or participated in 39 percent of all arrests in which this agency was involved. (8,467 of 21,707)
- B. In 1978, inspectors accounted for almost 6.5 percent of all NCIC arrests (911), which was approximately 66 percent of these arrests made by all Customs officers.
- C. Typical violators were wanted for crimes such as robbery, auto theft, and even murder. A number of these arrests involved individuals which were found to be armed with handguns and some resulted in violence, and even death, to inspectors.
- D. Customs inspectors have been given state arrest authority by the States of Washington, Idaho, Alaska, and Michigan. There is similar legislation pending in several other states.
- E. Title 26 of the U.S. Code provides that inspectors may carry firearms, execute and serve warrants; make arrests without a warrant for violation of any law relating to narcotics.

Pending legislation (S. 1214 and S.1722) will provide the same arrest authority for inspectors as is now provided for FBI agents and U.S. Marshals both of whom are covered under 8336(c) retirement.

## II. Detention

- A. When a violation of a law is detected, the Customs inspector has the responsibility for the search and detention of the violator. This search and detention process can and has been critical to the safety of the inspector. In some remote areas, the inspector may be miles from the nearest law enforcement agency which could render assistance; it may take hours for them to respond.

Confrontations with violent and sometimes armed violators has made it necessary to train inspectors in the use of firearms and to authorize the carrying of weapons on duty.

- B. Many Customs facilities are equipped with detention, as well as, search rooms.
- C. The inspector is responsible for disarming, subduing, and controlling the violators, and their legal and illegal weapons until such time as they are released into the custody of another law enforcement officer. (These officers are usually covered by some type of preferential early retirement.)

## III. Investigations

- A. Customs inspectors are actively involved in operations which require investigative techniques.
1. Specialized teams whose primary mission is the interdiction of controlled substances and other contraband in foreign cargo by the development and use of shipping document intelligence.
  2. The identification of internal conspiracies, sometimes involving organized crime figures, through the use of profiles.
  3. Customs inspectors actively use the facilities and capabilities of other law enforcement agencies to determine the criminal history of subjects entering the U.S., i.e., National Law Enforcement Telecommunications System (NLETS), California Law Enforcement Telecommunications System (CLETS), Law Enforcement Information Network (LEIN), etc.
  4. Inspectors are actively involved in interagency meetings with local, state, Federal, and foreign law enforcement agencies in order to exchange intelligence information to enhance our investigative capabilities.

5. Customs inspectors have developed specialized systems of identifying suspected smugglers of controlled substances through the use of information derived from travel documents and systematic interrogation of persons arriving in the U.S.
6. Customs inspectors have actively participated in the MOIR (Memorandum of Information Received) program to report and document information received, observed, or otherwise brought to the attention of the inspector during the performance of his duties. This information is derived from tips received by inspectors from informants; hiding places discovered during examination of persons, cargo and vehicles, and information obtained during debriefing of violators.

In conclusion, a substantial part of the Customs inspector's duties involve the utilization of investigative techniques in enforcing Customs and related laws and the apprehension and detention of persons and property associated with the violation of Federal, state and local laws. In testimony given in hearings before Congressional committees in 1975 by a representative of the Civil Service Commission, it was stated that, "if that is the case and that is the primary duty of the position, and it can be established as such under submission to us, we would cover it under 8336(c)".



## EXHIBIT A

## INCIDENTS INVOLVING CUSTOMS INSPECTORS

Down through the years since the establishment of the Customs Service, many Customs officers have sacrificed their lives in the performance of their duties.

Since 1900, 45 Customs officers have been killed in the line of duty by violators of U.S. laws or by accident while on duty. A total of 137 formally reported assault and battery (hereafter referred to as assaults) incidents against inspectors have occurred since January, 1974. Of these, 111 were simply assaults with no weapons, 15 were assaults using motor vehicles, five were assaults with firearms, and seven with other deadly weapons. Generally, assaults which are not prosecuted or which do not generate subsequent investigation are informally reported and are not included in this total. In some ports they are almost a daily occurrence and considered by the inspector to be part of the job. Further, the fact that an inspector is armed probably prevents many serious assaults.

As a result of the Customs Service's success in intercepting illicit narcotics, and apprehending fugitive felons through the use of NCIC, all enforcement personnel within Customs have been encountering a more dangerous and desperate type of violator. The violator of today does not hesitate to display violence to avoid apprehension. Inspectors have been shot, stabbed, run over, and dragged by automobiles, hit with every conceivable article, and assaulted time and again in the performance of their enforcement duties.

With the steady increase of arrests each year, the potential for assaults and violence against inspectors increases. In any confrontation, there exists a potential for danger for which the inspector must be prepared.

The following incidents within the past three years illustrate the types of dangers the Customs inspector encounters in the performance of his inspectional duties. These examples are presented to show that inspectors are actively involved in law enforcement work.

On July 18, 1977, a Customs inspector at Hidalgo, Texas was held hostage at gunpoint for 15 minutes by an individual he had escorted into a search room. The suspect escaped from the inspector by taking a young female hostage. When several Customs inspectors tried to intervene, the suspect turned and fired a shot at the first inspector. The suspect escaped with the hostage in a vehicle but was later apprehended by local authorities.

On May 14, 1979, at El Paso, Texas, an undocumented alien attempted to enter the U.S. through the vehicle lanes on foot. As a Customs inspector approached, the suspect raised a gun and fired at the inspector. The inspector took cover and a gun battle between the suspect and Customs inspectors ensued. The suspect was shot and killed in the exchange. No Customs personnel were injured.

On June 13, 1979, in Weehawken, New Jersey, a Customs inspector pursued a stowaway who had jumped ship. The inspector chased the suspect for several blocks before apprehending him. The suspect threatened the inspector with a knife, and a struggle ensued. The Customs inspector sustained minor injuries. The stowaway was later identified as a member of the Rastafarians, an active terrorist organization.

On May 25, 1979, in Lynden, Washington, two individuals entered the U.S. from Canada and reported to the Customs inspection station. The lone Customs inspector on duty escorted one subject into the office for further inspection. Unknown to the inspector, the subject was an escaped felon who had been convicted of two counts of murder. Believing that his identity would be discovered, the suspect pulled a handgun and shot and killed the inspector. The suspect then escaped in the vehicle with his companion. Both were taken into custody the next day by Federal and State authorities.

On May 14, 1979, at Nogales, Arizona, Customs inspectors identified an individual as a NCIC fugitive. The suspect ran and was pursued by the inspectors. The suspect drew a gun and aimed it in the direction of the pursuing inspectors. The inspectors caught up to the suspect and wrestled him to the ground. During the scuffle, the suspect's gun discharged, the bullet striking and superficially wounding a bystander.

On September 20, 1979, in San Ysidro, California, a Customs inspector was escorting a NCIC stolen vehicle from primary to the secondary inspection area when the driver attempted to escape apprehension by accelerating and driving at a high rate of speed back toward Mexico. A Customs inspector had to jump clear of the oncoming vehicle to avoid being struck. Several inspectors encountered violent resistance from the suspect when they attempted to remove him from the vehicle. As a result, two inspectors sustained back injuries. The suspect was found to be under the influence of PCP, commonly known as "Angel Dust".

In New York, on February 2, 1978, an inspector working at a pier attempted to check a longshoreman leaving the area in his private vehicle. The longshoreman refused to allow inspection of

his vehicle. He rolled up the window on the inspector's arm and drove off, dragging the inspector alongside for a distance of 100 feet. Two armed Customs Patrol officers drew their weapons and brought the vehicle to a stop. The inspector was not seriously injured.

Another incident in New York, on September 22, 1978, involved a truck driver who refused to furnish documentation pertaining to the cargo he was carrying. The truck driver became violent, and it took four inspectors to bring him under control. Two inspectors were hospitalized from injuries inflicted by the truck driver in this incident. It was later learned that the truck driver had recently been released from a mental institution and was prone to violence.

In 1978, at Los Angeles, an inspector, while walking from the airport parking lot to the Satellite 5 building at 10 a.m. was attacked by a man with a gun who tried to shoot him and put him into the trunk of a car. During the scuffle, the man's gun fired. Fortunately, no one was injured. The Los Angeles police arrived and arrested the man.

In addition to assaults, as noted above, threats and intimidation against Customs inspectors are common.

In Los Angeles, an inspector working at the airport detained imported documents for possible seizure in violation of the Sedition Act. While the case was under investigation, members of the organization which imported the documents went to the inspector's home to intimidate and threaten him.

In 1978, at a Los Angeles Customs auction, an inspector was threatened by an individual who was angered when the inspector would not permit the individual, who arrived a few minutes before the closing time, to look at the articles for auction. He started pushing the inspector and threatened to follow the inspector home and harm him and his family. The inspector, believing the individual was serious, requested his supervisor to follow him home. The individual did not follow through on his threat.

Customs inspectors have actively participated in investigations of bribes offered by persons involved in a smuggling operation. Through the assistance of the inspectors, a number of criminal bribery cases have been successfully prosecuted. The potential dangers and risks the inspector faces when involved in such an investigation are evident. A number of inspectors have had to be transferred to new work locations after receiving threats against themselves and against their families.

An inspector working at a major airport was approached and offered a bribe to allow a shipment of narcotics in air freight to enter the U.S. uninspected. The inspector notified the proper authorities, and with his cooperation, the subsequent investigation resulted in obtaining sufficient evidence for an arrest. Unfortunately, the suspect could not be immediately located, and the inspector received several threatening phone calls. The threats resulted in the inspector being transferred to a new work location. The suspect was eventually apprehended and convicted of bribery charges.

Customs inspectors have been involved in a number of similar bribery cases, but because of the confidentiality of these cases, no further examples have been cited.

To minimize the potential for harassment and threats, Customs inspectors, like other law enforcement officers, have their home telephone numbers unlisted. As a matter of policy, the Customs Service only requires inspectors to give their badge numbers, and not their names, to individuals who the inspector feels might contemplate retaliation.

There are other inherent dangers which a Customs inspector encounters in the performance of his duties, including handling dangerous commodities, caustic chemicals and explosives, working around heavy equipment, and working outside in bad weather.

During the winter of 1978, in Wilmington, Delaware, an inspector was transferring from a large freighter to a small transportation boat when he fell from the "Jacob's ladder". Rough seas made the inspector's rescue impossible, and he drowned.

On June 11, 1979, at Buffalo, New York, an inspector discovered two pipe bombs inside an unclaimed bag aboard a bus he was inspecting. The time bombs were loaded and wired, but the batteries were not attached. Recognizing the contents, he notified a bomb disposal unit, and the explosive devices were secured.

On July 16, 1979, at San Ysidro, California, a .25 caliber automatic pistol and ammunition concealed in the waistband of an individual were discovered during a patdown. Marijuana was found during the search of the trunk of his vehicle. A discrepancy in the vehicle identification number was also discovered.

On July 28, 1979, at El Paso, Texas, an inspector received a positive response to his NCIC license plate query; the vehicle had been stolen. A detailed inspection of the vehicle revealed an undeclared .357 magnum pistol and 6 rounds of ammunition in the glove box.

On July 30, 1979, at Houston International Airport, a preliminary inspection uncovered marijuana in the handbag of the traveling companion of an individual arriving from Monte Carlo. Cocaine and currency were discovered in the socks and pants pockets of this individual during a patdown search. A pistol and 10 rounds of ammunition were also found in the checked baggage of the principal declarant during a detailed baggage inspection.

Over the years there have been many incidents involving various socio-economic groups which, because of real or imagined grievances against the Federal Inspection Services or others, have sought to close ports of entry, pillage inspection offices and maim the officers on duty. During such incidents it has been necessary to reinforce the complement of armed officers to protect lives and maintain the integrity of the legal system. A Customs inspector is normally without authority to arrest such persons who have assaulted a Federal officer.

## EXHIBIT 3

## ARREST STATISTICS

FY-77, FY-78, FY-79

	<u>FY-79</u>	<u>FY-78</u>	<u>FY-77</u>
National Totals			
Insp. Arrest	7413	6681	6643
Insp. Coop. Arrest	<u>2197</u>	<u>1786</u>	<u>1718</u>
Total	9610	8467	8361
*NCIC Arrest	1098	911	574
*TECS Arrest	292**	1137**	836**
Region I			
Insp. Arrest	327	489	616
Insp. Coop. Arrest	<u>185</u>	<u>228</u>	<u>179</u>
Total	512	717	795
*NCIC Arrest	107	116	67
*TECS Arrest	31	155	90
Region II			
Insp. Arrest	132	102	92
Insp. Coop. Arrest	<u>52</u>	<u>26</u>	<u>42</u>
Total	184	128	134
*NCIC Arrest	30	23	17
*TECS Arrest	11	33	31

	<u>FY-79</u>	<u>FY-78</u>	<u>FY-77</u>
Region III			
Insp. Arrest	22	12	6
Insp. Coop. Arrest	<u>21</u>	<u>6</u>	<u>6</u>
Total	43	18	12
*NCIC Arrest	4	4	2
*TECS Arrest	5	10	4
Region IV			
Insp. Arrest	214	163	150
Insp. Coop. Arrest	<u>60</u>	<u>93</u>	<u>110</u>
Total	274	256	260
*NCIC Arrest	58	67	82
*TECS Arrest	16	86	101
Region V			
Insp. Arrest	2	0	3
Insp. Coop. Arrest	<u>0</u>	<u>2</u>	<u>8</u>
Total	2	2	11
*NCIC Arrest	0	0	0
*TECS Arrest	1	0	2
Region VI			
Insp. Arrest	1404	2257	2548
Insp. Coop. Arrest	<u>462</u>	<u>268</u>	<u>175</u>
Total	1866	2525	2723
*NCIC Arrest	318	231	182
*TECS Arrest	85	291	257

	<u>FY-79</u>	<u>FY-78</u>	<u>FY-77</u>
Region VII			
Insp. Arrest	5221	3538	3037
Insp. Coop. Arrest	<u>633</u>	<u>443</u>	<u>301</u>
Total	5854	3981	3338
*NCIC Arrest	413	338	120
*TECS Arrest	98	398	224
Region VIII			
Insp. Arrest	89	97	183
Insp. Coop. Arrest	<u>270</u>	<u>174</u>	<u>146</u>
Total	359	271	329
*NCIC Arrest	116	66	44
*TECS Arrest	36	85	56
Region IX			
Insp. Arrest	2	23	8
Insp. Coop. Arrest	<u>514</u>	<u>546</u>	<u>751</u>
Total	516	569	759
*NCIC Arrest	52	66	60
*TECS Arrest	9	79	71

\*NCIC and TECS arrests included in total inspector arrests.

\*\*In FY 1977 and 1978 the total TECS arrests also include the NCIC arrests. In FY 1979 the NCIC arrests were no longer counted as TECS arrests. As a result, the FY 79 TECS arrest total is significantly less than previous fiscal years.

EXHIBIT C  
LAW ENFORCEMENT TRAINING

Formal training for Customs inspectors in the past has centered on passenger processing, cargo examination, application of the tariff schedules, and related inspector functions. Elements of law enforcement - firearms and self-defense training, search and seizure, etc. - were incorporated in the training program, but not as a separate and specific focus of the program.

With growing recognition of the Customs inspector's role in law enforcement it became necessary to substantially increase the inspector training in law enforcement. The Customs Service Academy located at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, provides a nine-week training program for new inspectors entering on duty. In addition, by moving our training to FLETC we have access to better equipment and facilities to provide this training. Four weeks of the course are devoted entirely to law enforcement training, in the following categories:

1. Constitutional Law 4 hours
  - Civil Liberties
  - Courtroom procedures
2. Detention and Arrest 4 hours
3. Search and Seizure 8 hours
4. Criminal Law and Criminal Evidence - Legal Aspect 9 hours
5. Handling of Physical Evidence, Chain of Custody 3 hours
6. Search of Vehicles 3 hours
7. Recognizing Drug Violators 4 hours
  - Field Testing of Suspect Substances
8. Communication Skills
  - Effective Writing 4 hours
  - Interviewing 4 hours



9. Courtroom Testimony	6 hours
10. Description and Identification; Persons, Places, Things	5 hours
11. Human Relations	2
Ethics and Conduct of Law Enforcement Officer	
Human Relations, General	24 hours
12. Practical Exercise	8 hours
13. Administration - Initial Orientation and Examination	10 hours
14. Physical Skills:	
Arrest Techniques	20 hours
CPR Training	10 hours
First Aid	6 hours
Basic Firearms	28 hours
15. Treasury Enforcement Communications System (Includes NCIC, NLETS, Intelligence Information, etc.)	11 hours
16. Preparation of Investigative Reports:	
Memorandum of Information Received Search, Arrest and Seizure Reports	3 hours

Total 176 hours

After completion of the FLETC course, the inspector enters a probationary period and on-the-job training program at his duty station, with scheduled evaluations and counseling sessions by firstline supervisors. The inspector must make satisfactory progress under seven specified enforcement activity categories. On-the-job training is designed to provide the trainee with an opportunity to build upon and refine through practical experience the skills and knowledge obtained in the Basic Inspector Course. The trainee receives instruction, direction, guidance and supervision, and is evaluated to determine whether he is suited for continued employment.

In addition, in those states which have extended state arrest authority to inspectors, Customs inspectors participate in training which enables them to enforce state laws. Under this authority, inspectors can arrest persons who are the subject of outstanding state warrants, most commonly discovered through a NCIC (National Crime Information Center) check, and can make warrantless arrests of persons committing assaults on Federal officers without relying on their citizen arrest authority as they are currently required to do.

Once on the job, the Customs inspector, journeyman, and supervisor is given continuing law enforcement training. In addition to attending training sessions at the Customs Academy which make him aware of new and different techniques for handling old and new requirements, videotapes and various instructional pamphlets are made available to permit him to do self-tutoring or to be tutored in a small group at his port of entry. Currently available videotapes deal with such diverse subjects as interpreting travel documents to develop intelligence regarding travel patterns for people and cargo, the movement of stolen vehicles and the modus operandi of potential smugglers. Currently available pamphlets deal with searching of land vehicles, aircraft, etc. All these methods help inspectors maintain and improve their skills and thereby continue a high level of law enforcement proficiency.

EXHIBIT DISOLATED WORK SITES

Customs inspectors are stationed throughout the United States and its territories wherever people and merchandise arrive from foreign countries, and in preclearance stations abroad. The work sites range from very large facilities which process thousands of foreign arrivals daily, to remote, isolated stations where inspectors must travel great distances under difficult environmental conditions to perform inspections and enforce the laws of the United States. In many cases, that Customs inspector is the only law enforcement officer on the scene. State and local authorities may be miles away, without even reliable telephone contact.

The remote locations where inspectors are stationed include airports, seaports, and land border ports:

AIRPORTS

Almost all airports may be considered isolated duty stations in that a single Customs inspector, as a rule, is assigned to work arrivals of private aircraft or small commercial aircraft. (Even at JFK International in New York, only one Customs inspector is assigned after midnight.) In virtually all locations along the borders, the airport is located several miles outside of town, and the airport offices are closed at night. The Customs inspector reports alone to a deserted, often poorly lighted airfield, generally with no advance knowledge of the kind of people he will be meeting. With air smuggling on the increase, the likelihood of encountering a violation, or evidence of the aircraft having been used to smuggle, is considerable. The inspector who makes such a discovery has no immediate support, and may be considerably outnumbered. Even if he can get to the telephone or radio to call for help, it may be an hour or more before another law enforcement officer can reach him. This is almost equivalent to no help at all, since it can be assumed that the violator(s) will not wait quietly for that period of time. The inspector must handle the situation himself, alone.

Example: Port Huron, Michigan - ten miles from port of entry. The port also sends an inspector to the railyards, ten miles away, and ferry stations as far as 30 miles downstream, leaving one inspector at the port. Local police are located four miles from the airport, but the inspector has no radio. The only lighting at night is from the headlamps of the inspector's vehicle.

SEAPORTS

As in the case of the airports, inspectors work alone even in the largest seaports, reporting to isolated piers to inspect small craft or cargo shipments. Again, when a violation is detected, the inspector is on his own. An illustration of the inspector's awareness of his personal danger is the fact that often an inspector will, upon arriving to inspect a boat in a remote area, try to give the impression that he does have a backup. He may use a "dummy" two-way radio to give his location and identifying data on the boat and the individuals he is inspecting. No one hears him, but he hopes that the subjects will not realize this.

Example: Marathon, a station under Key West, Florida. The inspector also works Isla Morada and Key Largo. Marathon is 50 miles from Key West, Isla Morada another 25 miles. One highway patrolman in a substation at Key Largo, a considerable distance away, is the only local law enforcement backup. There is no regular Customs backup.

LAND BORDER PORTS

Much of the Nation's land border is sparsely settled, with stretches of up to 150 miles between towns. The border communities are often very small and can provide only limited law enforcement support to the Federal officers stationed at the border. In some locations, U.S. Customs is the only law enforcement presence in the area. A number of stations have only one or two inspectors. In others, daytime staffing is an adequate deterrent to smugglers, but only one officer is assigned during the night hours.

Example: Antelope Wells, New Mexico, a station under the Columbus, New Mexico port of entry, manned by two Customs inspectors who live at the station, no Immigration personnel. The duty station described by Mike Edwards in "Along the Great Divide" (National Geographic, October, 1979, p. 488) as "the loneliest border station manned by U.S. Customs", is completely isolated, except for the Mexican Customs station across the border, and is reached by vehicle over 90 miles of mostly dirt road from Columbus. The county seat, Lordsburg, is 100 miles north.

There are a number of similarly remote ports and isolated duty stations, each with unique problems. Some have permanent inspectors who live at the port (because there is no town nearby), and others are manned only on an as-needed basis. In Alaska, the distances involved and the weather conditions often dictate bizarre methods of travel which are dangerous in themselves. An inspector may have to travel as much as 700 miles in sub-zero temperature, transferring from a plane to a boat or an off-the-road vehicle, to perform an inspection. Needless to say, he is very much

alone when he makes his inspection. (An inspector from the Port of Anchorage travels 1,584 miles round trip by air to the station of Dutch Harbor in the Aleutian Islands. Dutch Harbor is the second-busiest U.S. fishing area in volume of exports.)

The vulnerability of the isolated port is underscored by the fact that smugglers and fugitives from the law often seek out these ports under the assumption that they have a better chance to enter the U.S. without detection. Unknown to them, the Customs inspector there has the same enforcement information as do inspectors at the large ports.

Almost every port has individual assignments where inspectors work alone, often in an atmosphere indifferent or hostile to law enforcement, almost always outnumbered. Distance - remoteness - in the examples above and in many others like them, is a significant factor; but when an inspector is alone, even if others are half a mile away, the situation is the same. It is his job to uncover violations of the law and to apprehend the violators, to take immediate action with or without assistance. Unlike the police officer who is in continual contact with a dispatcher, the Customs inspector often reports to an assignment or a series of assignments at railyards, stockyards, warehouses, etc., completes his task, and goes home. No one monitors his movements. If something happens to him and he is unable to get to a telephone, no one will be aware that anything is wrong until his family reports him missing or he does not show up for work the next day.

# EXHIBIT E

## HEALTH CONSEQUENCES OF SHIFT WORK

A study of the health effects of shift work was done by Donald L. Tosto, Ph.D., Stanford Research Institute and others for the U.S. Department of Health, Education and Welfare. The results of this study were published in DHEW (NIOSH) Publication No. 78154 in March 1978.

The results of the study support the view that there is a tendency for shift work to have a deleterious effect on the physical and psychological well-being of shift-work employees, particularly on their sleep patterns, digestion, mood, and personal, social, and domestic activities. These effects seem to become more severe with greater departures from the conventional daytime work schedule: They found that workers who rotate their shifts and night shift workers reported significantly more dissatisfaction and discomfort than did afternoon or day shift workers. Not surprisingly, day shift workers reported the least ill effects.

Rotators seem to consistently fare the worst, followed closely by night shift workers. They tend to have more serious physical complaints, more accidents, more clinic visits, more digestive problems, worse sleeping problems, more fatigue, more menstrual problems, to use alcohol more, to encounter more interference with their sex lives, and to find less satisfaction in their personal and domestic pursuits than do other shift workers. The findings tend to identify rotation as being a scheduling system that imposes excessive physical and psychological costs on shift workers.

Customs inspectors rotate shifts every two weeks at land border ports and most airports. Shifts at 24 hour ports are 8 a.m. to 4 p.m., 4 p.m. to midnight and midnight to 8 a.m. It is not uncommon for the inspector to be called out at anytime after or before working their assigned shift.

EXHIBIT FINSPECTOR POSITION DESCRIPTION

During the Task Force's field survey, a number of inspector position descriptions from different ports were obtained and reviewed. All of the position descriptions were different and the inclusion of any law enforcement responsibilities varied from none to very little. We also learned that there is no standard position description for the GS-9 inspector.

In testimony at Congressional hearings looking into law enforcement retirement coverage for the inspectors, the former Civil Service Commission argued against such coverage for the inspector because the job description did not include the statutory criteria for law enforcement retirement coverage. The criteria is apprehension, detention or investigation of violations against the criminal laws of the United States. The task force findings cannot refute this argument. In fact if the Office of Personnel Management used this same argument today they need only get a copy of the position description of Inspector Kenneth Ward. There is no reference made in that position description to any law enforcement responsibilities. Yet he was killed in the line of duty while wearing a weapon and carrying out law enforcement responsibilities.

The Position Classification Standard for Customs Inspection Series GS-1890 refers a number of times to the law enforcement responsibilities of the inspector's job. The Introduction part of the standard states that "Customs inspectors are charged by law with the vital role in the administration and enforcement of laws and perform an integral part of the total enforcement functions of the Bureau of Customs." Statements such as "Enforcement responsibilities pervade most of the duties performed by inspectors....." and "Inspectors have major responsibility for enforcement of customs laws and those of other agencies" are typical of the kinds of law enforcement statements made in the job standard. It is obvious that the Civil Service Commission was aware of and acknowledged this responsibility in preparing the job standard.

In order to ensure that the inspectors are made aware of and are responsible for their law enforcement responsibilities, it is recommended that a proto-type position description be developed and disseminated to all inspectors. Attached is a proposed draft of proto-type paragraphs for inclusion in all inspector's position description.

Proto-type Position Description  
Customs Inspector  
GS-1890 Series

The following enforcement responsibility statement must be included in position description under Principal Duties and Responsibilities:

Enforcement - Responsible for enforcing Customs and related laws (criminal and civil). In carrying out the enforcement responsibilities, apprehends, searches, detains and arrest violators of the criminal and civil laws of the U.S. (Federal, state and local). Responsible for detecting, searching and seizing controlled substances, contraband, undeclared or undervalued merchandise. Qualifies with and maintains proficiency in the use of firearms.

Responsible for making on-the-spot decisions in planning work, following leads and developing evidence of fraud, smuggling, pilferage and violation of other laws through interrogation of travelers, importers, or carrier staff, examination and interpretation of documents and intensive inspection and examination of merchandise, persons containers, and carriers. Responsible for identifying and analyzing, trade, smuggling and pilferage patterns. Must be knowledgeable about and become proficient in the use of and applying enforcement tools which include, but are not limited to, the Treasury Enforcement Communication System, Memorandum of Information Received (MOIR) smuggling profiles, informat tips, intelligence information received from local, state, Federal and foreign law enforcement agencies.



## ALTERNATIVES

The special retirement laws provide economic incentives for law enforcement and firefighter personnel to retire at an earlier age with fewer years of service than regular civil service employees. Covered employees receive greater benefits than non-covered employees with similar pre-retirement earnings and years of service. The purpose of special retirement laws was not to reward employees for working in these occupations but to make an earlier retirement economically feasible in order for the agencies to maintain a younger and more vigorous workforce.

There are several retirement laws covering civilian employees in the Federal Government:

- A. Regular retirement - Age 55 with 30 years of service (approximately 56 percent of "high three" salary computed as follows: 1-1/2% of the base pay for the first five years of service, 1-3/4% of the base pay the next five years of service and 2% of the base pay for all remaining years of service).
- B. Air Traffic Controllers (5 USC 8336(e) and 8339(c)) - Age 50 with 20 years service or 25 years service at any age (an air traffic controller or supervisor) at 50 percent of average pay or under regular retirement (whichever is higher). Mandatory retirement age is 56 unless waived for exceptional skills or ability until the age of 61.
- C. Law Enforcement or Firefighter (P.L. 93-350) - Age 50 with 20 years service in a covered position. Retirement based on 2-1/2 percent for first 20 years and 2% for each year of government service over 20. Mandatory retirement at age 55 or 20 years of service, whichever comes later. Retirement pay at age 55 with 30 years of service is approximately 70% of base "high three" salary, including premium pay (administratively uncontrolled overtime).
- D. P.L. 95-509 - Metropolitan Police Department, Executive Protective Service, Fire Department of the District of Columbia, U.S. Park Police Force, and certain contingents of the U.S. Secret Service - Immediate annuity after 20 years of service regardless of age. Annuity based on 2-1/2% of the base pay multiplied by the first 20 years and 3% for all years over 20. The act also provides for \$50,000 lump sum payment to survivor of a covered individual killed in the line of duty. P.L. 92-297 repealed age limits in connection with appointments to the U.S. Park Police.

The latter two retirement laws (P.L. 93-350 and 91-509) have been described by GAO as extremely favorable to the employee. The main

criticisms that have been leveled at P.L. 93-350 by GAO are: coverage is being extended indiscriminately to persons not involved in performing duties of law enforcement, and the benefits are greater than for regular employees who work a full 30 years.

GAO recommends a benefit structure based on the regular civil service benefit formula, with an established minimum level of benefits. This is a structure similar to Air Traffic Controller retirement. They feel this is a better method of compensating law enforcement officers, firefighters, or other personnel who may be unable to serve a full career because of the special demands of their jobs.

Another criticism of these alternative plans was brought out by the Subcommittee on Compensation and Employee Benefits of the House Post Office and Civil Service Committee. The criticism centered on the uncertainty, inadequacy, and discriminatory nature of a policy which relies on chronological age as the sole criteria for mandating retirement, especially in light of enactment of Public Law 95-256, which eliminated mandatory retirement based on age for all other Federal personnel. However, the Subcommittee did recognize the necessity of certain occupations having a "young and vigorous" workforce, and, where individual fitness can be determined, retiring those members of the workforce who cannot safely and efficiently perform that job.

Secondly, the Subcommittee strongly urged the Executive Branch to look into the feasibility of abolishing P.L. 93-350 (Law Enforcement and Firefighters) and extend P.L. 92-297 (Air Traffic Controllers) to all categories of job descriptions it determines necessary to have a young and vigorous workforce occupy.

United States of America  
**Office of  
 Personnel Management** Washington, D.C. 20415

March 14, 1980

In Reply Refer To:

Your Reference:

Honorable Carl D. Perkins  
 Chairman, Committee on Education  
 and Labor  
 U.S. House of Representatives  
 Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the views of the Office of Personnel Management on H.R. 5834, a bill "To provide lump sum death benefits for certain Federal law officers and firefighters killed in the line of duty."

H.R. 5834 would, if enacted, add a new subsection (g) to section 8133 of title 5, United States Code, to authorize employing agencies to pay a \$50,000 lump sum death benefit payment to the survivors of a Federal law enforcement officer or firefighter who dies as a result of injuries sustained in the performance of duty. In addition to law enforcement officers and firefighters (as defined in section 8331 of title 5, United States Code), the bill would also cover Federal Protective Officers employed by the General Services Administration, and non-uniformed special policemen referred to in section 5 of the Act of June 1, 1948 (40 U.S.C. 318d). The \$50,000 lump sum death benefit would be in addition to other benefits authorized by law, and would be payable to the person or persons surviving on the date of death in the order of precedence established under subsections (a) and (b) of section 8705 of title 5, United States Code. No payment could be made unless the claim were made within four years from the date of the employee's death. The provisions would be effective with respect to any person referred to in the new subsection (g) dying on or after January 1, 1976.

The Public Safety Officers' Benefits Act of 1976 authorizes the Law Enforcement Assistance Administration to pay a \$50,000 gratuity to the survivors of certain State and local public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty. The effect of H.R. 5834 would be to authorize the payment of a similar benefit to the survivors of certain Federal law enforcement officers and firefighters.

Coverage of Federal public safety officers was specifically considered by Congress when the Public Safety Officer's Benefits Act of 1976 was enacted, and was rejected at that time. As indicated in the House

Committee Reports on H.R. 365 and H.R. 366, 94th Congress, it was felt that benefits provided to Federal officers under the Federal Employees Compensation Act were generally adequate and in many instances would exceed the \$50,000 payment authorized by the legislation which was enacted as Public Law 94-430 (90 Stat. 1346).

Federal public safety officers, including law enforcement officers and firefighters, who are killed or injured in the line of duty are covered by the Federal Employees Compensation Act (5 U.S.C. 8101 et seq.). Enactment of H.R. 5834 would result in the payment of additional benefits in the event of the death of a Federal officer. Under present law, in the event of the death of a Federal employee while engaged in the performance of duty, the widow or widower receives 50 percent of the deceased employee's monthly pay if there are no children. If there is a child or children eligible for benefits, the widow or widower receives 45 percent of the monthly pay and an additional 15 percent for each child. In no case, however, may the total monthly compensation exceed 75 percent of the employee's monthly pay or 75 percent of the highest rate of monthly pay provided for a GS-15 employee of the United States Government. Compensation to the widow or widower continues until remarriage before age 60, or death. Compensation to each child continues until he or she reaches 18 years of age, unless extended because such person is a student or is incapable of self-support. While the Federal Employees Compensation Act payment is not generally in a lump sum, the amount payable is potentially much higher than \$50,000.

H.R. 5834 would provide additional death benefits where such benefits are already adequate, and it would be costly to the Government, especially since the bill as written would be retroactive to January 1976. Accordingly, the Office of Personnel Management must oppose the enactment of H.R. 5834.

The Office of Management and Budget has advised that there is no objection to the submission of this report, and that enactment of H.R. 5834 would not be consistent with the Administration's objectives.

Sincerely yours,

*Alan K. Campbell*  
 Alan K. Campbell  
 Director

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

MAY 8 1980

Honorable Carl Perkins  
Chairman, Committee on  
Education and Labor  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to Subcommittee Chairman Edward P. Beard's request for the views of this Office on H.R. 5888, "To amend title 5 of the United States Code to provide death benefits to survivors of Federal law enforcement officers and firefighters, and for other purposes", as amended by the Committee.

H.R. 5888 provides \$50,000 death gratuity to selected Federal employees in the event of service-connected death. Under the amended bill, this lump-sum payment would be made to survivors of law enforcement and firefighter employees; civilian Army and Air Force technicians in the National Guard program in the Defense Department, who occasionally assist in firefighting; and employees whose duties involve "protection of Federal officials, public buildings and property, or foreign diplomatic missions."

Unlike the Public Safety Officers' Benefit Act of 1976, on which H.R. 5888 apparently is patterned, the proposed death gratuity under the bill would be paid in addition to regular benefits provided Federal employees under the existing Federal Employees Compensation Act (FECA) program. As explained below, the 1976 Act does not permit payment of both the Federal gratuity and regular FECA benefits to State and local public safety employees.

In their reports to your Committee on H.R. 5834, a bill similar to H.R. 5888, the Department of Labor and the Office of Personnel Management stated their reasons for strongly opposing enactment of a death gratuity program for selected Federal employees. Both agencies pointed out that the existing FECA program provides substantial benefits and that there is no need to increase survivor benefits for any particular group of Federal employees. In its testimony on H.R. 5888, moreover, the Department of Labor noted that the bill apparently was premised upon a misunderstanding as to the size of the public safety officers' benefit, calling attention to the fact that survivors of State/local employees who are entitled to both the \$50,000 Federal gratuity and State/local workers compensation benefits are not receiving higher benefits than Federal employees covered by FECA, except on rare occasions.

(COPY FOR CHAIRMAN EDWARD P. BEARD)

Labor noted that survivors of State/local employees would be entitled to "special" FECA benefits only to the extent that regular FECA benefits exceed their combined State/local workers compensation plus the Federal gratuity and other benefits. Thus, State/local survivors do not generally receive higher benefits than those of Federal employees.

Labor further stated that Federal employees who participate in the District of Columbia policemen's retirement system--Uniformed Division of the United States Secret Service, other selected Secret Service employees, and the U.S. Park Police--are treated, with respect to FECA benefits, exactly like State and local employees, and thus do not receive both the Federal gratuity and regular FECA, as would be provided under H.R. 5888.

Labor also pointed out that coverage of Federal employees under the 1976 Public Safety Officers Benefits Act was specifically considered and rejected by Congress during consideration of the legislation, because of the size of regular FECA benefits and the fact that they would exceed \$50,000 in many instances.

Even if the "double dip" feature in respect to combined gratuity and FECA benefits were modified, H.R. 5888 would be objectionable in principle because Federal employees as a group, in all occupations, currently have service-connected death benefits that are more generous than provided in State workers compensation programs. Further, H.R. 5888 is inherently preferential in singling out certain groups of employees for special treatment, and could therefore create an undesirable precedent for extension to other Federal employees in hazardous occupations. While the number of service-connected deaths qualifying under the bill is anticipated to be relatively small, that number and consequent cost would increase significantly if the program were extended to other Federal employees with equal claim to hazardous exposure.

Apart from our fundamental disagreement with the approach of H.R. 5888, it should be noted that the bill contains definitions that are at variance with those in the FECA program, and that while it presumably is intended to apply to certain employees of the General Services Administration and the Secret Service, the precise coverage in such instances is unclear. Further, the bill would cover employees engaged primarily in "the control of ... juvenile delinquency", a category that is also unclear. Moreover, the bill apparently would cover technicians with the National Guard but not those in the Reserve program, etc. The bill, thus, could well involve a prolonged period of litigation to clarify its coverage and the classes of beneficiaries intended.

Accordingly, for the reasons stated above, and in the reports of the Labor Department and the Office of Personnel Management, we strongly recommend against enactment of H.R. 5888. Enactment of H.R. 5888 would not be in accord with the program of the President.

Sincerely,

(Signed) James M. Frey

James M. Frey  
Assistant Director for  
Legislative Reference

cc: Honorable Edward P. Beard  
Chairman, Subcommittee  
on Labor Standards  
House of Representatives  
Washington, D.C. 20515

## U.S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY  
WASHINGTON, D.C.  
20210

MAY - 8 1957

Honorable Edward Beard  
Chairman  
Subcommittee on Labor Standards  
Committee on Education and Labor  
U.S. House of Representatives  
Washington, D.C. 20210

Dear Mr. Chairman:

This is to reiterate the opposition of the Department of Labor to enactment of H.R. 5888, a bill to amend the Federal Employees' Compensation Act to provide lump sum death benefits to the survivors of Federal law enforcement officers and firefighters above and beyond the death benefits now available to the survivors of these and all other Federal employees.

As pointed out in testimony before your Subcommittee on March 12 of this year by Ralph Hartman, the Director of the Office of Workers' Compensation Programs in the Department's Employment Standards Administration, this bill is not necessary to ensure adequate benefits to the survivors of such employees. It is true that the Federal government now provides the survivors of State and local law enforcement officers with a \$50,000 lump sum benefit in addition to their State workers' compensation benefits, but the total of those two awards rarely exceeds what any Federal employee's survivors receive under the regular FECA death benefits authority. In fact, some of the State and local officers may be eligible for special statutory authority to have the sum of the aforementioned benefits increased again solely to bring that sum up to the normal FECA level. The State and local law enforcement officers eligible for these supplementary benefits include employees of the Uniformed Division of the Secret Service, the U.S. Park Police, and the District of Columbia Metropolitan police, whose activities are local rather than Federal in character and whose employees are not eligible for regular FECA benefits.

It continues to be the position of the Department of Labor that the benefits provided to the survivors of Federal law enforcement officers and firefighters under the Federal Employees Compensation Act are adequate and that there is no justification for the enactment of the special benefit provisions contained in H.R. 5888.

Two additional comments concerning the amended bill are appropriate. First, because some of the definitions and eligibility criteria set forth in this bill are different from those set forth in the Federal Employees Compensation Act, the Department would, if H.R. 5388 is enacted, be required to make two distinct decisions on each claim filed by the survivors of a Federal Law enforcement officer or firefighter. And second, the provisions of 5 U.S.C. §8149 grant the Department of Labor broad authority to regulate the filing, processing and adjudication of claims. The proposed section 8148(b)(7)(C) merely duplicates the grant of existing authority and is, therefore, unnecessary.

This Department makes every effort in adjudicating claims to assure that the survivors of employees covered by the FECA are treated fairly, equitably, and sympathetically. We are not aware of any problem peculiar to such awards to the survivors of Federal law enforcement officers or firefighters, and know of no other justification for providing special benefits for the survivors of these employees. We are therefore strongly opposed to enactment of H.R. 5888.

The Office of Management and Budget advises that enactment of this bill would not be in accord with the program of the President.

Sincerely,

*Ray Marshall*  
Secretary of Labor



## ERRATA

The Subcommittee regrets that the following corrections were inadvertently omitted.

1. Pages 1 and 55, Mr. Wood should be identified as assistant minority counsel.
2. Page 20, the fourth statement by Mr. Erlenborn, the word "comptroller" should read "control or".
3. Pages 30 and 31, reference by Mr. Erlenborn to "ERISA" should read "PERISA" (Public Employee Retirement Income Security Act).
4. Pages 49, 50, 53, and 54, questions attributed to Mr. Wood should be attributed to Mr. Stephens, associate minority counsel.
5. Page 99, second paragraph should read: The Judiciary Committee in 1976 did not consider this a remote possibility. Mr. Eilberg said that he believed that the majority of Federal employees were already adequately covered under FECA; and the committee found that "...the benefits provided under the Federal Employees Compensation Act are generally adequate."

# END