



Office of the Inspector General
U.S. Department of Justice



Audit of the Office of Justice Programs' Processing of Public Safety Officers' Benefit Programs Claims

AUDIT OF THE OFFICE OF JUSTICE PROGRAMS' PROCESSING OF PUBLIC SAFETY OFFICERS' BENEFITS PROGRAMS CLAIMS

EXECUTIVE SUMMARY

The Office of the Inspector General (OIG) conducted an audit of the Public Safety Officers' Benefits Programs (PSOB) administered by the Office of Justice Programs (OJP) Bureau of Justice Assistance (BJA).¹ The PSOB provides death benefits to survivors of fallen law enforcement officers, firefighters, and other first responders, and disability benefits to officers catastrophically injured in the line of duty.² The PSOB Office in BJA reviews nearly 700 death, disability, and education claims annually and received 294 death claims and 90 disability claims in fiscal year (FY) 2013. Between FYs 2008 and 2013, OJP provided \$464 million in death benefits and \$43 million in disability benefits to eligible claimants. From FYs 2008 to 2013, the one-time benefit amount for approved death or disability claims increased from \$303,064 to \$328,613. In FY 2014, the benefit payment amount was \$333,605.

The purpose of our review was to evaluate the timeliness of PSOB claims processing. Claims are processed by a PSOB Office Benefits Specialist, who prepares an initial determination approving or denying the claim. This initial determination is reviewed by a Senior Benefits Specialist and then forwarded to the PSOB Office Director for review and approval. During the period relevant to this report, after the PSOB Office Director's review and approval, the PSOB Director's determination was sent to the OJP Office of General Counsel (OGC) for legal review and concurrence. When the OJP OGC concurred with the PSOB Office Director's determination, either in approving or denying a claim, the PSOB Office would transmit the determination to the claimant. For approved claims, the benefit would be paid by the Treasury Department and the claim would be considered closed. Denied claims may be appealed *de novo*, first to a hearing officer appointed by OJP, and then to the BJA Director. After exhausting these administrative appeals, an unsuccessful claimant may appeal to the U.S. Court of Appeals for the Federal Circuit. When the OJP OGC did not provide a concurrence for a determination, the PSOB Office either reversed its position based on OJP OGC's review of the claim and resubmitted its determination to OJP OGC for concurrence, or sought additional information or documentation to support its determination before resubmitting the claim to the OJP OGC. In either instance, claims remained pending within the review process until the OJP OGC provided a concurrence for the determination.

We reviewed 2,510 claims in the PSOB Office's electronic spreadsheet database (database) as of July 2013, of which 1,845 cases had been determined

¹ All references to the "PSOB Office" in this report are meant to indicate the unit headed by the PSOB Director within the BJA. References to "PSOB" are meant to indicate the PSOB Office as well as other OJP units involved in claims processing, such as OJP's Office of General Counsel.

² In addition to death and disability claims, OJP is also responsible for processing educational assistance claims submitted by dependents of death and disability claimants.

and an additional 650 cases remained pending.³ Most of the claims in this database were filed between FYs 2008 and 2013. We found that OJP processed and determined 1,038 (56 percent) of the 1,845 death and disability claims in less than 1 year, which is the BJA's performance goal for providing efficient, timely, and survivor-centered benefits to PSOB claimants according to its Strategic Plan 2013-2016. Focusing on those claims with longer determination periods, our audit found that it took between 1 and 2 years to decide 384 (21 percent) of the 1,845 claims and more than 2 years from filing to decide 79 (6 percent) of the 1,845 claims. The data for the remaining 305 (16.53 percent) claims was incomplete and, therefore, we could not calculate the timeliness of those determinations. Of the 650 claims that were pending at the time of our audit, 69 claims had been pending for more than 3 years.

In this report, we identify the factors responsible for significant delays in death and disability claim processing by the PSOB. To understand the factors contributing to claim processing delays in excess of 1 year, we reviewed 92 claims with significant processing delays. We found the primary factors contributing to the most significant delays in processing claims were: (1) claimants filing incomplete benefit claims applications, an issue we attributed to the inadequate application guidance provided by the PSOB Office; (2) claimants and agencies being unresponsive to PSOB Office requests for additional information;⁴ and (3) the PSOB Office often not adequately documenting the basis for its initial determination which required the OJP Office of General Counsel (OGC) to conduct a complete review of the claim in order to complete its legal review and decide whether to concur with the PSOB Office Director's initial determination. In this report, we discuss each of the factors that contributed to the delays in claim processing and we make recommendations to help prevent such delays in the future.

We also determined that the PSOB Office has not reported annual and appropriate data on its performance measures. Maintaining complete, valid, and reliable descriptive data regarding claims processed is essential for the PSOB Office to measure performance and manage the program as a whole. We found that information in the PSOB Office's database was inconsistent and did not include data fields for important claims processing milestones, such as the date claimants submit applications and the PSOB Office submits claims for legal review and concurrence. We believe the PSOB Office needs to improve the collection and management of claims data to allow for improved performance measurement and program management.

Secondary to our review of delays in the PSOB Office's claim determinations, we noted an important change in the management of the PSOB claims processing that occurred after we initiated this audit. In May 2013 and in subsequent orders through January 2014, OJP re-delegated and transferred the authority to provide legal advice and concurrence regarding PSOB claims from the OJP OGC to a newly

³ The 2,510 claims included 3 abandoned and 12 withdrawn claims.

⁴ In this report, "agencies" refers to employers of public safety officers.

created PSOB Legal Counsel (PSOB Counsel) position within the BJA.⁵ Prior to changing this process, OJP sought an opinion from the Justice Management Division (JMD) on what was necessary to re-delegate and transfer this authority to the PSOB Counsel position. That opinion included a discussion of the internal orders that would be necessary for change, including that DOJ Order 2110.39A would require modification. In March 2015, DOJ Order 2110.39A was cancelled and replaced by DOJ Order 1401.⁶ As the claims we reviewed were all processed, entirely or substantially, prior to the reassignment of the legal review function to PSOB Counsel, this audit did not assess whether the change affected delays in claim processing.

This report makes four recommendations to OJP to help the PSOB improve the timeliness of its claims processing and the usefulness of its performance reporting.

⁵ OJP Order 1002.1A created the PSOB Legal Counsel position, with the responsibility for advising the AAG for OJP and BJA on all legal matters arising from the processing and adjudication of each PSOB claim.

⁶ The purpose of DOJ Order 2110.39A was to advise accountable officers to seek the advice of their component general counsel (which in this case would be the OJP General Counsel) when they are in doubt about the legality of authorizing the obligation or payment of government funds. The order further advised accountable officers that an opinion of the Comptroller General cannot itself absolve such officers from liability for the loss or improper payment of funds for which they are accountable.

**AUDIT OF THE OFFICE OF JUSTICE PROGRAMS' PROCESSING
OF PUBLIC SAFETY OFFICERS' BENEFITS PROGRAMS CLAIMS**

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INTRODUCTION

Background

The Public Safety Officers' Benefits Programs (PSOB) is administered by the Bureau of Justice Assistance (BJA) within the Office of Justice Programs (OJP).⁷ The PSOB provides death benefits to survivors of fallen law enforcement officers, firefighters, and other first responders, and disability benefits to officers catastrophically injured in the line of duty.⁸ Since the passage of the *Hometown Heroes Survivors Benefits Act of 2003* (Hometown Heroes Act), officers who die of heart attacks or strokes in the line of duty or within 24 hours of a triggering event while on duty also qualify for death benefits under the program.⁹ The PSOB Office reviews nearly 700 death, disability, and education claims annually and received 294 death claims and 90 disability claims in fiscal year (FY) 2013.¹⁰ Between FYs 2008 and 2013, OJP paid nearly \$464 million in death benefits and \$43 million in disability benefits. From FYs 2008 to 2013, the one-time benefit amount for approved death or disability claims increased from \$303,064 to \$328,613. In FY 2014, the benefit amount was \$333,605. To be eligible to receive the one-time death or disability benefit a public safety officer must have died as the direct and proximate result, or become totally and permanently disabled as the direct result, of a personal injury sustained in the line of duty.

In this section, we discuss the PSOB claims process, timeliness of claims processing, the compliance framework related to the PSOB Act and PSOB recordkeeping, and the OIG audit approach.

Claims Process¹¹

PSOB claims are processed by the PSOB Office and begin with the PSOB Office's receipt of a claim application. An Outreach Specialist, contracted by the

⁷ All references to the "PSOB Office" in this report are meant to indicate the unit headed by the PSOB Director within the BJA. References to "PSOB" are meant to indicate the PSOB Office as well as other OJP units involved in claims processing, such as OJP's Office of General Counsel.

⁸ In addition to death and disability claims, OJP is also responsible for processing educational assistance claims submitted by dependents of death and disability claimants.

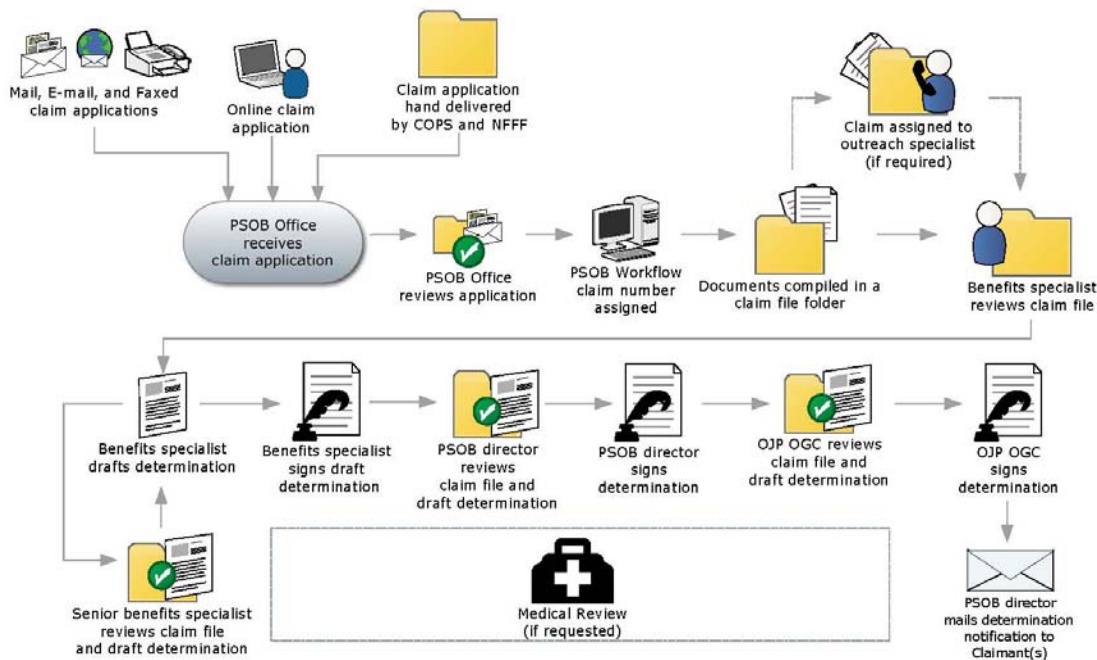
⁹ See Pub. L. 108-182 (2003). In addition, the *Public Safety Officers' Benefits Act* was amended further by the *Dale Long Public Safety Officers' Benefits Improvement Act of 2012*, to include vascular ruptures.

¹⁰ These figures were taken from the PSOB Office's Performance Measures report for FY 2013.

¹¹ The PSOB claims process described here is not documented as written policies or procedures. The presentation here provides an overview of the steps the PSOB Office generally follows upon receipt of a claim application.

PSOB Office, prepares a claim file for review by collecting from claimants and public safety agencies any necessary documents not previously submitted with the claim application. The PSOB Office maintains a website with information for claimants, including several checklists for Death, Disability, and Hometown Heroes claims (the latter of which have unique checklists for law enforcement agencies and fire departments). The PSOB Office may request that an independent medical examiner review the claim and provide an expert opinion on medical issues relevant to the determination of a claim. Volunteers from PSOB Office’s national partners, Concerns of Police Survivors (C.O.P.S.) and the National Fallen Firefighters Foundations (NFFF), may also assist claimants in providing documentation to the PSOB Office. The figure illustrates the steps in the claims process from claim application through claim determination and notification.

Figure 1
The PSOB Claims Process from Claim Application Through Determination and Notification¹²



Source: OIG

Once the Benefits Specialist completes a review of the claim application, he or she prepares an initial determination approving or denying the claim. According to the PSOB regulations, the PSOB Office shall serve notice to claimants of the claim outcome. In the case of a denial, the PSOB notification shall include factual

¹² From 1976 to 2013, the OJP OGC was responsible for providing legal advice and concurrence concerning the validity of initial claim determinations by the PSOB Office Director. Effective May 9, 2013, the new PSOB Legal Counsel, located within the BJA, assumed this responsibility as delegated in OJP Order 1002.1.

findings and legal conclusions that support the denial and provide information as to requesting a Hearing Officer determination. The Attorney General's Guide to the Hometown Heroes Survivor's Benefits Act of 2003 definition of a PSOB Office determination specifies that determinations include information on the fallen officer, a case summary with details regarding the fallen officer's death and disability, and the PSOB Office's reason for the approval or denial. Initial determinations prepared and signed by the Benefits Specialist are reviewed by a Senior Benefits Specialist and then forwarded to the PSOB Office Director for review and signature.¹³

During the audit period relevant to this report, after the PSOB Office Director's review and approval, the initial determination was sent to the OJP Office of General Counsel (OGC) for legal review and concurrence. If the general counsel concurred with the PSOB Director's initial determination to approve a claim, then the PSOB Office would transmit the determination to the claimant and the benefit was paid by the Treasury Department. If the claim was denied, which also required OJP OGC concurrence, then the PSOB Office would notify the claimant of the denial, explaining the factual findings and legal conclusions supporting the denial, and include information about how to appeal the determination to a hearing officer. Claims denied by the PSOB Office may be appealed *de novo*, first to a hearing officer contracted by the OJP, and then to the BJA Director.¹⁴ After exhausting these administrative appeals, an unsuccessful claimant may appeal to the U.S. Court of Appeals for the Federal Circuit.¹⁵ When the OJP OGC did not provide a concurrence for a determination, the PSOB Office either reversed its position based on OJP OGC's review of the claim and resubmitted its determination to OJP OGC for concurrence, or sought additional information or documentation to support its determination before resubmitting the claim to the OJP OGC. In either instance, claims remained pending within the review process until the OJP OGC provided a concurrence for the determination.

According to OJP's response to a 2009 U.S. Government Accountability Office audit of the PSOB Program, the first implementation phase of the PSOB Office's claim management system, named Workflow, was completed in the summer of 2009 "...with all active (and many closed) PSOB death and disability... [claims] entered into the system to capture and monitor critical details on death, disability, and education claims."¹⁶ Based on our review, we determined this system was used by the PSOB Office to log: (1) claims, (2) communication among staff and with claimants, (3) requests for documentation from claimants, and (4) communication between the PSOB Office and the OJP OGC. However, we determined that Workflow was not used to document how staff arrived at decisions

¹³ For purposes of this report, a "determined" claim is one that has been fully processed by the PSOB Office, as well as, appeals processed by a hearing officer or the BJA Director.

¹⁴ 28 C.F.R. Part 32. We did not assess the claims appeals process.

¹⁵ 28 C.F.R. 32.55.

¹⁶ U.S. Government Accountability Office, *Public Safety Officers' Benefits Program: Performance Measurement Would Strengthen Accountability and Enhance Awareness among Potential Claimants*, GAO-10-5 (October 2009).

regarding claims and does not include comprehensive or detailed descriptions of which documents within the claim file were relied on or discounted in the determination decision.

Timeliness of Claims Processing

In May 2004, the Attorney General directed the PSOB Office to make an initial determination on all filed PSOB claims within 90 days of receiving all necessary information and identifying all potential beneficiaries. OJP, in response to a 2008 review by the OIG, revised the 90-day requirement and indicated that the PSOB Office, within 30 days of receiving all necessary information and identifying all potential beneficiaries, would send a draft determination and complete claim file to the OJP OGC for review and that, within 45 days of receipt of such information, the OJP OGC would complete its legal review and send its recommendation to the PSOB Office for execution.¹⁷

In addition to the Attorney General's processing requirements, the BJA Strategic Plan for FYs 2013 to 2016 included the goal of providing efficient, timely, and survivor-centered benefit services to PSOB claimants. The BJA would measure progress toward this goal through metrics posted on the PSOB website that included the (1) average number of days required to process PSOB claims and (2) the percentage of PSOB claims determined within 1-year of submission.

Compliance Framework: PSOB Act and Recordkeeping Requirements

In administering the PSOB Programs, OJP must comply with PSOB-specific laws, regulations, and orders applicable to general OJP operations and claims processing. The PSOB Act, as amended, details specific requirements concerning the amount of benefit payment, the allocation of benefit payment among survivors, and circumstances when benefits may not be paid, such as when an officer's death is caused by intentional misconduct or voluntary intoxication. The PSOB Act, as amended, also includes provisions of the *Hometown Heroes Survivors Benefit Act of 2003*, which permits payment of PSOB death benefits when a public safety officer dies as the direct result of a heart attack or stroke, and authorizes funding to maintain and enhance national peer support and counseling programs to assist families of public safety officers who have died in the line of duty.¹⁸

Whereas collection and review of documentation is critical to claim determinations and payment of government funds, the PSOB must have adequate internal controls to ensure that determinations are documented adequately and claim files include sufficient documentation to facilitate a review of the

¹⁷ U.S. Department of Justice Office of the Inspector General, *The Office of Justice Programs' Implementation of the Hometown Heroes Survivors Benefits Act of 2003*, Evaluation and Inspections Report I-2008-005 (March 2008), 75.

¹⁸ See Pub. L. 108-182 (2003). In addition, the *Public Safety Officer's Benefits Act* was amended further by the *Dale Long Public Safety Officers' Benefits Improvement Act of 2012*, to include vascular ruptures.

determination. These controls must also ensure compliance with DOJ Orders 2710.11 and 2030.4G, as well as the *Improper Payments Elimination and Reduction Act*, as amended. DOJ Order 2710.11, requires OJP to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.”

DOJ Order 2030.4G requires OJP to have clear, organized procedures with a well-defined documentation process that contains an audit trail and verifiable results so that an independent reviewer can understand the assessment process. These procedures should provide for monitoring the effectiveness of the internal controls during the normal course of business and allow for deficiencies in internal controls to be efficiently reported, evaluated, and corrected. The claim record should also contain sufficient documentation for a reviewer to discern whether a payment was proper, in accordance with the *Improper Payments Elimination and Reduction Act*, as amended.¹⁹

OIG Audit Approach

The OIG conducted this audit to assess the process the PSOB used to make initial determinations for claims, paying particular attention to claims that remained undetermined beyond the BJA Director’s desired PSOB performance metric of 1 year.

The audit scope was based on the PSOB Office’s electronic spreadsheet database (database) of 2,510 death and disability claims as of July 29, 2013.²⁰ The database included 1,845 claims that had been determined (1,200 approved claims, 645 denied claims) and 650 pending claims. We sampled claims for review by calculating the time elapsed between the date PSOB assigned a claim number and its initial claim determination. We produced and analyzed general statistics for the 2,510 claims, reviewed 92 claims including claim files and Workflow notes, and completed a detailed review of 55 claims to identify factors that contributed to delays in claims processing and determinations.

In performing our review of the policies, procedures, and other requirements associated with the PSOB Programs during our audit, we were informed by the OJP OGC that 13 claims related to the terrorist attacks of September 11, 2001, and outside of the scope of our audit period, were paid in error and, by definition, were not in compliance with applicable laws and regulations as noted in our Statement on Compliance with Laws and Regulations (see p. 22). For two claims, the OJP

¹⁹ According to the Office of Management and Budget, an improper payment is any payment that should not have been made or that was made in an incorrect amount under legally applicable requirements. In addition, when an agency’s review is unable to discern whether a payment was proper as a result of insufficient documentation, the payment must be considered improper.

²⁰ Excluded from the total were 15 claims abandoned or withdrawn by claimants.

OGC informed us that the BJA Director issued waivers that effectively brought those claims into compliance. However, as of March 2015, the OJP OGC informed us that no action had been taken on the remaining 11 claims. Additionally, we were informed by the OJP OGC that in 2008, at the direction of a high-level Department official, one claim was paid that the OJP OGC believed should not have been paid. Our review focused on pending claims and those decided between 2010 and 2013. We did not include these claims in our review because we sampled claims that were processed for more than 2 years and determined since FY 2011 for approved claims and since FY 2010 for denied claims. The 14 claims referenced above were determined prior to FY 2010.

We interviewed the PSOB Office Director, Senior Benefits Specialists, Benefits Specialists, Paralegal Specialists, and Outreach Specialists to gain an understanding of the PSOB claim review process from claim application to determination. We also interviewed the General Counsel for OJP, the Deputy General Counsel for OJP, Senior Litigation Counsel, Attorney Advisors, and the new PSOB Legal Counsel, as well as the Directors of two significant PSOB stakeholders, the Concerns for Police Survivors and the National Fallen Firefighters Foundation.

FINDINGS AND RECOMMENDATIONS RELATED TO THE TIMELINESS OF CLAIMS PROCESSING

In our review of 2,510 death and disability claims, we found the PSOB finalized a determination within 1 year for 56 percent of the claims submitted, 21 percent of the claims took between 1 and 2 years, and 6 percent took more than 2 years. For the remaining 17 percent of claims, the timeliness of a determination could not be made due to incomplete data within the PSOB records. For the claims that were not determined within the PSOB goal of 1 year, we determined that the primary factors contributing to delayed determinations were: (1) PSOB claimants filed incomplete benefit claims applications, an issue that we attributed to the inadequate application guidance provided by the PSOB; (2) an unresponsiveness by claimants and public safety agencies to PSOB Office requests for documentation supporting claims; and (3) inadequate documentation demonstrating the basis for determinations for legal review. We also found that the PSOB Office had not reported annual and appropriate data on its performance measures, and information in the PSOB Office's claims tracking database was inconsistent and did not include data fields for important claim processing milestones.

The purpose of our audit was to evaluate the timeliness of death and disability claims processing by the PSOB. Having determined that there were significant delays in processing these claims, we now turn to the factors responsible for those delays. We reviewed data for 2,510 death and disability claims in the PSOB Office's electronic spreadsheet database (database) as of July 2013 and found that determinations were made for 1,845 claims (74 percent) and that the remaining 650 claims (26 percent) were still pending.²¹ Table 1 shows how long it took the PSOB to determine the 1,845 claims and the age of the 650 pending claims as of July 2013.

²¹ The figures do not equal 100 percent because we did not include 3 abandoned and 12 withdrawn claims.

Table 1
Processing Time for 1,845 PSOB Claim Determinations and Age of 650 Claims Pending Determination as of July 2013²²

Duration	Determined (Total %)	Pending (Total %)
0-3 months	7	16
4-6 months	18	12
7-9 months	18	11
10-12 months	13	10
1 Year or Less - <i>PSOB's Performance Measure from the BJA Strategic Plan (2013-2016)</i>	56	49
13-15 months	9	8
16-18 months	6	7
19-21 months	4	6
22-24 months	2	5
1 to 2 Years	21	26
2 Years or More	6	25
Claims with incomplete data ²³	17	0
Grand Total	100	100

Source: OIG analysis of PSOB Office data

Although we found that the PSOB processed more than half (56 percent) of the determined 1,845 determined claims within 1 year of filing, it often took much longer to resolve some claims. In particular, we determined that it took the PSOB between 1 and 2 years to resolve 21 percent of the claims and 2 or more years to resolve 6 percent of the claims. We also found that, of the 650 pending cases through July 2013, 26 percent had been outstanding between 1 and 2 years and 25 percent had been outstanding for 2 or more years.

For an initial sample, we considered all determined claims that required more than 2 years to process and all pending claims that required more than 3 years to process. The sample included 140 claims, 27 approved claims decided since October 2011 and 44 denied claims decided since October 2010. We selected 69 claims that had been pending for more than 3 years as of July 2013.

Of the 140 claims we selected for review, determinations had not yet been made for 15 claims that had not yet been referred for legal review. We did not consider these 15 claims in our sample in order to focus on those claims that were delayed after the PSOB Office completed its review and submitted the claims to the OJP Office of General Counsel (OGC). We also did not consider 33 of the 140 claims related to the terrorist attacks of September 11, 2001. Twenty-two of

²² Totals here and in subsequent tables may not equal 100 percent due to rounding.

²³ The PSOB Office database did not have values for "Date Claim Number Assigned" or "Date of PSOB Office Determination," which prevented us from calculating the claims process duration. The data for 305 (16.53 percent) of the 1,845 determined claims was incomplete and, therefore, we could not calculate the timeliness of those determinations.

these claims were not submitted by the PSOB Office to the OJP OGC as of July 2013. We did not consider the remaining 11 September 11, 2001 claims because the PSOB Office and OJP OGC continued to work towards creating a consistent approach for processing these nonroutine type claims involving medical conditions and privately contracted hospital rescue squads and ambulance crews. The exclusion of these 33 claims enabled us to focus on those claims that presented routine processing issues.

It is important to note that PSOB began processing these claim types before January 2011, when the *James Zadroga 9/11 Health and Compensation Act of 2010* re-opened the September 11th Victims Compensation Fund, and before October 2013, when that same fund began to provide compensation for eligible medical conditions, including cancer, resulting from the terrorist attacks and debris removal.²⁴ Additionally, the *Dale Long Public Safety Officers' Benefits Improvement Act of 2012* amended the PSOB Programs to cover non-profit rescue squads and ambulance crews that are officially authorized or licensed to engage in rescue activity or provide emergency medical services as part of an official emergency response system for injuries sustained on or after June 1, 2009.

Focusing on the factors contributing to delays in excess of 1 year, we selected an initial sample of 92 claims for a general review and, from that selection, a smaller sample of 55 claims for a more detailed review.²⁵ These 55 claims included (a) those that were pending as July 2013 and (b) determined claims (both approved and denied) that the PSOB Office submitted to the OJP OGC more than twice for legal review, and where the legal concurrence phase exceeded a 45-day deadline.²⁶

Based on our analysis, we found that the primary factors contributing to the most significant delays in processing PSOB claims were: (1) PSOB claimants filed incomplete benefit claims applications, an issue that we attributed to the inadequate application guidance provided by the PSOB Office; (2) claimants and agencies were unresponsive to PSOB Office requests for additional information;²⁷ and (3) the PSOB Office often did not adequately document the basis for its initial determination, resulting in requests from the OJP Office of General Counsel (OGC) for additional information to enable the OGC to complete its legal review and to decide whether to concur with the PSOB Office Director's initial determination.

²⁴ The September 11th Victims Compensation Fund is a separate program from the PSOB Programs.

²⁵ See Appendix 2, Objectives, Scope, and Methodology.

²⁶ The 45-day deadline was described in the OJP's response to the U.S. Department of Justice Office of the Inspector General, *The Office of Justice Programs' Implementation of the Hometown Heroes Survivors Benefits Act of 2003*, Evaluation and Inspections Report I-2008-005 (March 2008), 75.

²⁷ In this report, "agencies" refers to employers of public safety officers.

Below, we discuss each of these delay factors and make recommendations to help minimize such delays in the future.

The PSOB Office Provided Inadequate Claim Application Guidance

Based on our audit of the PSOB Office claim files, the first reason we identified as causing delays in the PSOB claims processing was that a significant percentage of submitted claim applications lacked adequate documentation to permit review. This, in turn, required the PSOB Office to request the needed information from claimants and public safety agencies, a step that added additional time to the claims process. We determined that the PSOB submitted all but four of the 1,034 claims received in FY 2011 to 2013 to an Outreach Specialist.²⁸

The reason for the insufficient claim application documentation, we concluded, was that the application instructions available to claimants were not sufficiently clear. We reviewed the claim application guidance the PSOB Office provided on its website that includes Death, Disability, and Hometown Heroes claim checklists. Although the disability claim checklist required specific documents to be submitted with disability claim applications, the death claim checklist stated only that the checklist was provided “to streamline the PSOB filing and review process.” The death claim checklist did not explicitly state that the documents were required for processing death benefit claims. The Hometown Heroes checklists for law enforcement agencies and fire departments states that the “... checklist is provided to help you collect the documents and information to file a ... claim—and help reduce the time it takes to do so.” None of the checklists required applicants submit the documents on the checklists with their initial claim applications. The decision not to require the submission of certain basic documents to initiate a death claim or Hometown Heroes claim application likely eases the burden of the initial application, but also makes it more likely that the PSOB Office will need to engage in outreach for additional information.

The PSOB Office posted new documentation requirements for death and disability claims to its website in June 2013. However, the revised checklists neither state which documents are required for the application nor indicate which party - the claimant or agency - is responsible for submitting each document. In approving these checklists, the BJA Director stated that the BJA’s goal was to improve the effectiveness, timeliness, and efficiency of the PSOB process by requiring claimants to file “only those documents minimally necessary to initiate the PSOB claims process.” In our judgment, the revised documentation requirements are unlikely to reduce the number of claims that require outreach efforts by the PSOB Office.

²⁸ Of the 2,510 claims within the scope of our audit, the PSOB Office assigned 1,272 claims to an Outreach Specialist. It is important to note, however, the PSOB Office contracted Outreach Specialists in December 2009.

We believe that the PSOB Office could reduce the number of claims that require outreach if claimants and agencies were explicitly instructed to submit with their application certain documents necessary for claim processing.

In our review, we found that, as of July 2013, the PSOB Office had completed outreach on 1,034 claims (81 percent) of the 1,272 claims sent for outreach. The remaining 238 claims were still in the outreach phase. Our audit revealed that the efforts to complete outreach on 486 (47 percent) of the 1,034 claims required 3 months or fewer. However, it took more than 9 months to complete 134 (13 percent) of the 1,034 claims. Further, for the additional 238 claims still in the outreach phase, 44 (19 percent) had been pending for more than 9 months.

Consequently, to improve the PSOB claims review process, the PSOB Office should improve its checklists to define claimant and agency documentation requirements and establish specific application documentation requirements standards to minimize the number of claims that require outreach. These changes would provide management with the resources to avoid claim delays by devoting additional resources during the outreach phase to claims that require assistance.

Unresponsive Claimants and Agencies

Based on our review, we determined that, as part of the processing delays associated with incomplete claim applications, claimants and public safety agencies also were often unresponsive to the outreach efforts conducted by the PSOB Office. We found that the PSOB Office made a significant number of requests for documentation required to complete their claim reviews. In particular, for the 55 claims we reviewed in detail, the PSOB Office made at least 601 requests to public safety agencies, claimants, national partners, and other entities. These 601 requests included 392 requests to public safety agencies, 132 to claimants, 11 requests to both claimants and agencies, 22 to national partners, and 44 requests to other and unknown entities. These requests ranged from 0 to 32 requests with an average of 11 requests for the 55 claims. Additionally, 24 of the 55 claims required 10 or more requests for documentation and 10 claims required 20 or more requests for documentation. Despite making a significant number of requests for the 55 claims we reviewed, the PSOB Office abandoned only 3 of the 2,510 claims as a result of not obtaining documentation to complete its review.

Moreover, based on our review of the PSOB Office's draft policy manual, the PSOB Office's draft policy manual includes an incomplete claim abandonment policy. This policy requires the PSOB Office to provide claimants with a written "Claim File Review" letter, which we determined specifies which documents are needed to complete the claim file review. If claimants do not respond to this letter, it is followed by a "Closeout" and subsequent "Abandonment" notification letter. This policy, however, is incomplete because it does not specify timeframes for issuing any of these three letters after a claimant does not respond.

For these reasons, we recommend the changes to the website checklists discussed above. We also recommend implementation of an abandonment policy

that gives claimants adequate opportunity to provide needed documentation to support their claims and ensures that the PSOB Office does not use its limited resources conducting outreach on claims, especially those which claimants do not intend to pursue.

The PSOB Office Often Failed to Adequately Document the Basis for its Initial Claim Determinations

Based on our review of 92 significantly delayed claims, we determined that the processing of 55 claims was delayed after submission by the PSOB Office to the OJP OGC for legal review and concurrence. To understand the causes of these delays, we inspected the claim files, initial determination notification letters, and Workflow notes related to these 55 claims.²⁹ We found that the reason for the most significant delays in PSOB claim processing was the failure of the PSOB Office to adequately document, on a consistent basis, the reasons for its initial claim determinations. As a result of these documentation deficiencies, the OJP OGC often made inquiries or requested additional information from the PSOB Office to identify and understand all of the information collected and considered in order to complete its legal review, further extending the time needed to bring these claims to resolution.

In accordance with DOJ Order 2030.4G, "...bureaus must have clear, organized procedures with a well-defined documentation process that contains an audit trail and verifiable results, so that someone not connected with the procedures can understand the assessment process." Additionally, the *Improper Payments Elimination and Recovery Act of 2010* defines payments as improper "...when an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation...."

Based on our review of the 55 claims, we were unable to understand the PSOB Office assessment process that led to the claim determination. We found during our audit that the claim files consisted of a compilation of documents the PSOB Office gathered from the claimant and the public safety officer's agency but did not contain the PSOB Office's analysis or any discussion of how it reached its determination. We found that documentation in claim files was organized in four general categories covering the specific aspects of a claim. Specifically, the contents were organized into four sections, labeled: (1) "Claim/Beneficiaries", (2) "Report of PSO Death", (3) "Investigations", and (4) "Medical". However, we found that as claims increased in complexity the documentary claim files may include hundreds of pages of documentation.

In addition, although PSOB Office staff used internal checklists to collect specific types of documents to include in claims files, we determined that the PSOB Office did not always collect the documents on the checklist and that the checklist

²⁹ In 5 of the 55 cases we reviewed, the delays were also caused by a pending investigation or litigation related to the public safety officer's death or disability.

itself was not included in the file provided to the OJP OGC or outside of the PSOB Office. We believe this lack of documentation made it difficult for the OJP OGC to understand which documents the PSOB Office relied on to make its initial determination, further slowing the claim determination process.

We also reviewed the initial determination letters to understand the PSOB Office's assessment process and to determine whether, as required, the letters documented the approval or denial of a claim, included information on the fallen officer and circumstances regarding the claim, and explained the PSOB Office's rationale for its approval or denial of the claim. While the PSOB determination is not meant to explain how all the documentation in the claim file was considered or disregarded by PSOB Office staff, both OJP OGC attorneys and the PSOB Legal Counsel told us that reviewing for concurrence was sometimes made very difficult without a documented explanation of how the PSOB Office arrived at its decision.

We also reviewed the PSOB Office's Workflow notes and determined that these notes did not shed light on the PSOB Office's assessment. The Workflow notes did not explain how evidence in the claim file supported the determinations or whether the processing was conducted in accordance with applicable laws, regulations, and policies. Instead, the Workflow notes contained limited information, such as the staff assigned to a claim, contacts made with claimants and agencies, and the physical location of files during the review process.

The documentation deficiencies we identified appear to have resulted in avoidable delays in the processing of claims. Among the claims we examined that were significantly delayed after the PSOB Office submitted initial determinations to the OJP OGC for legal review and concurrence, we found that the OJP OGC's feedback, provided in the Workflow notes, often indicated that it did not understand the rationale for the determinations. While it was a general course of action for the OJP OGC to review a case file in its entirety, because the basis for determinations was not established in claim files, the OJP OGC was required to review the entire claim record in an effort to determine whether the basis for the PSOB Office's determination was legally supported.

Based on our detailed review the 55 claims, we identified 42 claims for which the OJP OGC requested additional documentation or indicated that the claim file record did not clearly support the PSOB Office determination after at least one of its reviews.

In addition, we determined that the Hometown Heroes Act and motor vehicle-related claims provide significant detail into the reasons for claim processing delays caused by limited claim documentation.

Hometown Heroes Act Claims

The *Hometown Heroes Survivors Benefits Act of 2003* (Hometown Heroes Act) included a presumption that an officer's heart attack or stroke shall qualify as a line of duty personal injury that was the direct and proximate cause of death if the

officer was engaged in qualifying “nonroutine stressful or strenuous physical activity” or “training” within the 24-hour period preceding his death.” According to the Act, this presumption may be overcome by competent medical evidence to the contrary.³⁰

Soon after the PSOB Office finalized its regulations in September 2006 concerning the Hometown Heroes Act and began processing claims pursuant to those regulations, the BJA Director issued a PSOB Program Policy memorandum in October 2007 regarding how the PSOB Office should interpret the term “nonroutine” and determine whether there is competent medical evidence to the contrary related to a claim. According to the BJA Director’s guidance, when assessing whether physical activity is “nonroutine stressful or strenuous,” the PSOB Office should be informed less by the frequency with which it may be performed than by its stressful or strenuous character.

In October 2007, the BJA Director issued another PSOB Program Policy memorandum, which established that “competent medical evidence to the contrary” is present if documentation in the claim file suggests:

- (1) the heart attack or stroke was imminent (more likely than not), or
- (2) something in the file affirmatively suggests something other than the officer’s line-of-duty activity caused the heart attack or stroke and the officer (i) knew or should have known and (ii) actually appears to have worsened or aggravated the condition. If medical records are requested, then these records are reviewed in favor of the claimant.

We identified 12 Hometown Heroes claims that demonstrated inefficiencies in the concurrence phase. For 10 of these claims, the PSOB Office and the OJP OGC disagreed as to whether the record demonstrated that the officer was engaged in eligible activity within 24 hours of his death, including 6 claims for which the officers were engaged in some type of training or physical exercise. For the remaining 2 of the 12 Hometown Heroes claims, the PSOB Office and the OJP OGC disagreed as to whether the record indicated that something other than the public safety officer’s work caused the heart attack.

Motor Vehicle Accidents

We found that claims involving the operation of motor vehicles were often delayed due to disagreements between the PSOB Office and OJP OGC about whether the record supported a decision that the officer’s death was caused by intentional misconduct and/or gross negligence. During our review of claims that were not processed timely, we identified 14 motor vehicle accident claims. Of those 14 claims, we found that 6 claims involved debate as to whether intentional

³⁰ See Pub. L. 108-182 (2003). In addition, the *Public Safety Officer’s Benefits Act* was amended further by the *Dale Long Public Safety Officers’ Benefits Improvement Act of 2012*, to include vascular ruptures.

misconduct and/or gross negligence in the operation of the vehicle, including excessive speed and possible intoxication, caused the accident.³¹

For both Hometown Heroes Act and Motor Vehicle accident claims, we believe that improvements to the PSOB Office's documentation practices would likely have helped expedite the OJP OGC's review. We therefore recommend that OJP improve the PSOB Office's decision-making documentation to facilitate and expedite the legal review and, ultimately, reduce the overall time required to process the claims.

Performance Data and Reporting

During our audit, we identified several concerns and weaknesses with the PSOB Office's tracking and reporting of its performance data.

The BJA Director defined two performance measures in the BJA Strategic Plan for Fiscal Years 2013-2016. These two measures were (1) the average number of days required to process PSOB claims and (2) the percentage of claims determined within 1-year of submission. The PSOB Office has published two prior performance reports for claims filed in FY 2011 and FY 2013. In February 2015, the PSOB Office also published combined FY 2013 and FY 2014 performance reports for death and disability claims.

While we believe the performance measures reported publicly by the PSOB Office are useful, these measures, as reported, do not adequately reflect the PSOB Office's progress towards achieving its 1-year measure. The FY 2011 and FY 2013 reports do not adequately reflect performance because the PSOB Office posted only the current Performance Measures report to its website. The PSOB Office also used different timeframes for measuring performance (claim activity as of July 25, 2012, for the FY 2011 report, and through May 1, 2014, for the FY 2013 report). Additionally, the reports provide only the average number of claims determined in 1 year and do not include the number of delayed claims that required more than a year to process. We believe this makes it difficult to (1) assess the PSOB Office's performance over time and (2) verify the accuracy of the reported figures using the PSOB Office data.

The combined FY 2013 and FY 2014 reports for death and disability claims presented figures by fiscal year, including the "Percentage of claims determined within one year", and were posted to the website in addition to the FY 2013 performance measures. Although these reports limited performance to a specific year, these reports did not include claims processing-related figures for claims received within a specific timeframe and did not include figures for delayed claims that required more than a year to process.

³¹ We determined the remaining eight claims were likely delayed by issues such as determining whether the officer qualified as a public safety officer according to the PSOB Act and identifying the appropriate beneficiaries; these claims did not indicate significant disagreement between the PSOB Office and OJP OGC.

In addition, we determined that the PSOB Office's method for tracking its performance data may not be sufficient to ensure reliable results. The PSOB Office uses an electronic spreadsheet database (database) that contains descriptive claims data drawn from Workflow and individual claim files because the Workflow system data is not available in a database format that can be used to analyze more than one claim at a time. Based on our use and review of the PSOB Office's database, we determined that it did not contain important claims-processing milestones, such as the dates the PSOB Office received a claim application and submitted a claim for legal review and the dates when the OJP OGC concurred with the initial claim determination. We also found that while PSOB Office staff informally reviewed the database for accuracy by comparing the data to the claim determination after a claim was determined or closed, the PSOB Office did not have formal controls to ensure the reliability of the data in the database. Maintaining complete, valid, and reliable descriptive data regarding claims processed is essential for the PSOB Office to measure performance and manage the programs as a whole. Therefore, we do not believe the PSOB Office's database, as a management tool, is adequate to evaluate efficiencies in processing or to identify potential causes of timeliness problems.

We recommend that OJP improve the collection and management of PSOB claims data and establish more detailed measures that will provide Congress, program managers, claimants, and stakeholders with a better understanding of program performance.

PSOB Programs' Changes since May 2013

Since the PSOB Office's inception in 1976, the OJP OGC reviewed all PSOB claim determinations for legal sufficiency.³² In April 2013, the Acting Assistant Attorney General (AAG) for OJP requested advice from the Justice Management Division (JMD) on how to transfer that legal review function from the OJP OGC to a counsel position or function within the Bureau of Justice Assistance (BJA). In a written response, the JMD General Counsel advised that the requested changes would require OJP to: (1) revise the PSOB regulations to remove the OJP OGC from the PSOB regulations, (2) establish the BJA PSOB Legal Counsel (PSOB Counsel) by issuing a new OJP Order, and (3) revise OJP Order 1001.5A to remove the OJP OGC's responsibility to provide legal advice and concurrence regarding claims under the Public Safety Officers Benefits Programs.³³

According to her memorandum to the Deputy Attorney General, the Acting Assistant Attorney General sought legal function transfer for Public Safety Officers' Benefits effective May 1, 2013, to increase efficiency, reduce duplication, and streamline the processing of claims. The Acting AAG also noted that while the PSOB had generally carried out its mission effectively, significant numbers of PSOB

³² OJP Order I 1310.72A (June 5, 1985), OJP Order I 1310.72B (April 4, 2001), and OJP Order 1001.5A (March 11, 2010), as well as the PSOB Regulations (as of August 10, 2006).

³³ PSOB Regulations, 28 C.F.R. §32.3, 43(e), and 44(a).

claims were delayed, sometimes for years, prompting concerns over the timeliness of the claims process. In addition to the reasons above, the Acting AAG also noted that an internal review found that delays in PSOB's processing of claims "...were often due to PSOB's complicated regulatory and administrative framework, which undermined BJA's accountability and statutorily-prescribed authority under the Act."

Additionally, on May 7, 2013, the Assistant Attorney General for the Office of Legal Counsel (OLC) issued an action memorandum to the Deputy Attorney General regarding the OJP and DOJ Order changes. That memo states that, by their terms, the OJP Orders would take effect when 28 C.F.R. Part 32 was amended, would modify regulatory references to the role of the PSOB Counsel, and make other technical changes. The memo concluded that the amendments to the regulations would not require notice and comment. The OLC memo also stated that the amendment of DOJ Order 2110.39A was being contemplated to be consistent with the proposed OJP Order changes. The memo concludes that it recommended to OJP that no action be taken with regard to PSOB claims until all the contemplated documents have been issued.

On May 9, 2013, the Acting Assistant Attorney General for OJP transferred responsibility for the legal review and approval of all PSOB claims from OJP's OGC to a newly created PSOB Counsel who reports directly to the BJA Director, by issuing OJP Order 1002.1 and revising OJP Order 1001.5A. The PSOB Regulation revisions were final on May 20, 2013. Additionally, on January 14, 2014, OJP issued OJP Order 1002.1A, cancelling OJP Order 1002.1 from May 2013. The new order largely mirrored the language in the pre-existing OJP Order 1001.5A relating to the authority and responsibilities delegated to OJP's general counsel, but included language that, "[n]othing in this order shall be understood to prohibit or inhibit, or to authorize any person to prohibit or inhibit, the PSOB Legal Counsel from consulting, or seeking the assistance or the legal or other advice of the [OJP] GC at any time (or the GC from acting and providing assistance or advice accordingly)."

In its written response to OJP, the JMD General Counsel also advised that DOJ Order 2110.39A, which was being revised at the time, would also need to be modified. Based on our discussions with the JMD, DOJ Order 2110.39A advised accountable officers to seek advice from their component general counsel when they are in doubt about the legality of authorizing the obligation or payment of government funds. The order also shielded accountable officers from personal liability for disbursed funds made in error if the component counsel or JMD General Counsel advised that the payment could legally be made. The JMD General Counsel advised OJP that DOJ Order 2110.39A would need to be changed to include "other counsel designated by the component head" in addition to the component general counsel and JMD General Counsel. JMD also advised that this DOJ order does not act as an absolute bar on the reassignment of counsel functions to the BJA PSOB Counsel.

In November 2014, the OIG met with JMD to discuss the status of DOJ Order 2110.39A. JMD told us the order was undergoing revision. In March 2015, in

advance of the audit close-out meeting, the OIG provided to OJP a working draft report that recommended that JMD and OJP amend the OJP and DOJ Orders for the PSOB claims process, either by modifying DOJ Order 2110.39A or taking other actions as needed. On March 23, 2015, 2 days prior to this audit's close-out meeting, JMD informed the OIG that the Department had replaced DOJ Order 2110.39A with DOJ Order 1401, Settlement of Accounts and Relief of Accountable Officers. At that time, JMD's General Counsel also informed the OIG that it had:

worked with OJP and the AAG/A [referring to the Assistant Attorney General for Administration] to issue a policy memo, under the AAG/A's delegated authority to amend Order 2110.39A, which harmonized the OJP change with the language of that order. In this way, both the program and the accountable officials & counsel involved in benefit decisions were protected.

This OJP policy memorandum was dated August 2, 2013. This was the first instance in which the OIG became aware of the August 2013 OJP policy memorandum. Throughout the audit, including the OIG's November 2014 meeting with JMD, the Department did not discuss or provide the memorandum that significantly concerned the PSOB claims process and the work of our audit.

The August 2013 policy memorandum allowed the Assistant Attorney General for OJP to designate specific counsel within OJP to provide the PSOB Programs with opinions regarding the legality of obligations or claims for benefits that relate to the PSOB Programs' functions. The policy memorandum was in effect for 1 year from the date of issuance or until it was converted into a DOJ Order or DOJ Policy Statement. On March 11, 2015, the Attorney General signed DOJ Order 1401, which amended DOJ's policy for settlement of irregularities in the accounts of Accountable Officers and delegates authority for rendering advance opinions on payments and for granting relief from irregularities, and which cancelled DOJ Order 2110.39A. We note that no DOJ Order or Policy Memorandum governed PSOB claims processing between May and August 2013; however, the PSOB Office stated that no claims were processed during this period. The August 2013 policy memorandum and DOJ Order 1401 incorporated the necessary controls in PSOB claims processing that we identified in our review of the PSOB policies made available to us during the audit.

Conclusion

We analyzed the timeliness of PSOB's processing of death and disability claims and found that 56 percent of claims produced a determination, with OJP OGC concurrence, within the PSOB Office's goal to decide to approve or deny a claim within 1 year. However, for some claims, the process took years to complete. Specifically, 6 percent of 1,845 determined claims and 25 percent of 650 pending claims we assessed required at least 2 years to determine or were still pending

after 2 years as of July 2013. These claims represent 283 claimants and their survivors.³⁴

Many of these delays began with applications that were incomplete, requiring PSOB Office staff members to collect documentation included in PSOB Office's guidance for claim submission and necessary to process claims. Similarly, we found another significant reason for delays was that claimants and agencies were sometimes unresponsive to PSOB Office requests for documentation during the claims review process. We believe these delays could be reduced, and PSOB Office's outreach staff more efficiently utilized, if claim application guidance provided to claimants and agencies were clarified and the PSOB Office implemented its draft abandonment policy to close claims in appropriate circumstances, such as when claimants no longer intend to pursue their claims.

We also found that claims were significantly delayed during the determination phase of processing. We found that the processing of claims and related decision making within the PSOB Office was not well documented, either in the claim files or the PSOB Office's case management system. As a result, attorneys that were required to review a claim decision frequently asked PSOB Office staff for clarifications or additional information, adding additional and potentially avoidable delays to the claims process.

Maintaining complete, valid, and reliable descriptive data regarding claims processed is essential for the PSOB to measure performance and manage the program as a whole. We found that information in the PSOB Office's database was inconsistent for all claims and did not include data fields for important claims processing milestones, such as the date the PSOB Office submitted a claim for legal review and concurrence. We do not believe the PSOB Office database, as a management tool, is adequate to evaluate efficiencies in processing or to identify potential causes of timeliness problems. We believe the PSOB Office needs to improve the collection and management of claims data to allow for improved performance measurement and program management.

Recommendations

We recommend that OJP:

1. Improve PSOB claim checklists to better communicate to claimants and agencies the documentation that will be required before a claim can be decided and establish specific PSOB claim application documentation requirements.

³⁴ A total of 305 claims, or about 17 percent, of the 1,845 claim determinations could not be considered due to missing claim information in the PSOB database.

2. Finalize and implement an abandonment policy and procedures to administratively close claims to better manage unresponsive claimants and agencies.
3. Improve PSOB claim decision-making documentation to facilitate legal review. This should include providing a clear and more organized record to support the PSOB Office's decision making, which would help expedite the legal review process and ultimately claim determination.
4. Improve the collection and management of PSOB claims data and establish and regularly report more detailed metrics to provide policymakers, program managers, and stakeholders with a better understanding of program performance.

STATEMENT ON INTERNAL CONTROLS

As required by generally accepted government auditing standards, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the Office of Justice Programs' (OJP) internal controls related to the Public Safety Officers Benefits (PSOB) Programs was *not* made for the purpose of providing assurance on its internal control structure as a whole. OJP's management is responsible for the establishment and maintenance of internal controls over the PSOB Programs.

We identified deficiencies in OJP's internal controls that are significant within the context of the audit objectives and that we believe, based upon the audit work performed, adversely affect OJP's ability to ensure that claims are processed and reviewed efficiently and in a timely manner. As a result, this audit makes recommendations related to claim processing policies and additional recommendations to improve performance data collection.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

This audit evaluated OJP's management of the Public Safety Officers Benefits (PSOB) Programs. As required by the *Government Auditing Standards*, we reviewed management processes and records to obtain reasonable assurance that OJP's management complied with federal laws and regulations for which noncompliance, in our judgment, could have a material effect on PSOB program operations and the results of the audit. Compliance with laws and regulations applicable to the PSOB Programs is the responsibility of OJP management.

We identified the following laws and regulations that concerned the operations of the PSOB Programs and that were significant within the context of the audit objectives:

- 42 U.S.C. § 3796 (2006)
- 28 C.F.R. 32 PART 32—Public Safety Officers' Death, Disability, and Educational Assistance Benefit Claims (2011)
- DOJ Orders 2030.4G, 2110.39A, and 2710.11 and OJP Orders 1001.5A, and 1310.72B
- OMB Circular A-123, Management's Responsibility for Internal Control, Appendix C, Requirements for Effective Measurement and Remediation of Improper Payments, Part III

Through our testing, we did not identify any areas where OJP was not in compliance with the laws and regulations referred to above; however, we identified and recommended to the Justice Management Division and OJP that they ensure that orders transferring responsibility for legal review of PSOB claims were issued in compliance with other DOJ orders.

Additionally, during our audit, the OJP OGC informed us of 13 claims related to the terrorist attacks of September 11, 2001, and outside of the scope of our audit period, which were paid in error and, by definition, were not in compliance with all applicable laws and regulations. For two claims, the BJA Director issued waivers that effectively brought those claims into compliance. However, as of March 4, 2015, no action has been taken on the remaining 11 claims and we consider these claims noncompliant. Additionally, we were informed by the OJP OGC that one claim was paid in 2008 that it believed should not have been paid, however, this payment was made outside of the scope of our audit and we did not review the individual claim.

PRIOR AUDITS AND REVIEWS

DOJ OIG

In 2008, the OIG Evaluations and Inspections Division issued a review of the implementation of the *Hometown Heroes Survivors Benefit Act of 2003* (Hometown Heroes Act), in response to Congressional concerns that OJP took too long to process these claims.³⁵ Deciding claims under the Hometown Heroes Act required OJP to revise PSOB regulations to define critical terms, such as “non-routine stressful or strenuous physical” activity, and “competent medical evidence.”

The OIG reviewed the initial 112 Hometown Heroes Act claims decided by OJP between September 2006 and November 2007 and found that 65 were denied. The OIG determined that OJP initially applied a narrow interpretation of “nonroutine stressful and strenuous” criteria in denying 19 of these claims. In October 2007, OJP issued a policy change that broadened the definition of “nonroutine” to include all emergency calls.

OJP agreed with two factors the OIG identified as contributing to delays in processing Hometown Heroes Act claims—claims that had been submitted without all the required information and difficulties arranging independent medical examinations. OJP disagreed with the OIG’s conclusion that lengthy legal reviews contributed to the slow processing of Hometown Heroes Act claims. OJP also disagreed with the OIG’s method for calculating the length of the OJP OGC’s review using the PSOB Office’s new case management system because it did not provide complete and accurate information regarding the dates claims are sent to and received from the OGC. OJP also disagreed with OIG’s conclusion that the OGC attorneys did not have access to the system to enter notes documenting their review. Finally, OJP disagreed with the OIG’s conclusion that certain OGC internal practices delayed the processing of claims, citing a lack of evidence beyond anecdotal assertions.

The OIG recommended that OJP improve the management of the Hometown Heroes Act claims review process, including that it require OGC staff attorneys to use the PSOB Office’s case management system, Workflow; and establish more definitive performance measures for timelines related to OGC reviews of PSOB claims to facilitate claims processing. OJP expressed disagreement with some of the OIG’s conclusions, but it took corrective action in response to all of the OIG’s recommendations. The recommendations were closed on January 20, 2010.

³⁵ U.S. Department of Justice Office of the Inspector General, *The Office of Justice Programs’ Implementation of the Hometown Heroes Survivors Benefits Act of 2003*, Evaluation and Inspections Report I-2008-005 (March 2008).

U.S. Government Accountability Office

A 2009 Government Accountability Office (GAO) audit of the PSOB Program found that only about a third of disability claims initiated in fiscal years 2006 through 2008 had determinations and that the majority of disability claims remained pending because they took significantly longer to process than other claims.³⁶ In comparison, education and death claims were generally processed in under a year. However, the GAO could not determine where delays in the claims process occurred since the PSOB Office did not consistently document the date when claims passed through each step of the process, specifically the time spent for legal review of the claims. In addition, local police and firefighting organizations frequently expressed concerns about perceived long wait times for receiving benefits, difficulties submitting all the necessary paperwork, and also reported difficulties obtaining information about claims status. With regard to these concerns, the GAO report stated:

Without reliable claims data, the PSOB Office will not be able to obtain a complete and accurate picture of how quickly claims are being processed and whether the process can be made more efficient. Without this information, the program office cannot communicate with claimants and other public stakeholders about how long the claims process is expected to take and whether program constraints, such as required procedures and limited resources, are affecting the process.

The GAO also found that the PSOB Programs did not follow federal government guidelines for performance monitoring applicable to other programs such as the Department of Labor Black Lung and Department of Energy Employees Occupational Illness Compensation programs, which provide benefits for work-related injury and illness. These programs had established performance measures related to claims processing times and report their results publicly. OJP agreed with the GAO's recommendations that the Assistant Attorney General of OJP should direct the BJA Director to establish appropriate performance measures and use reliable data to monitor and report on the program's performance.

OJP Internal Review of the Public Safety Officers' Benefits Program

In August 2012, the Acting Assistant Attorney General for OJP issued the results of its internal assessment of "concerns about the timeliness, effectiveness, and transparency of the PSOB claims process" and made recommendations for "both immediate and sustainable improvement."³⁷

³⁶ U.S. Government Accountability Office, *Public Safety Officers' Benefits Program: Performance Measurement Would Strengthen Accountability and Enhance Awareness among Potential Claimants*, GAO-10-5 (October 2009).

³⁷ OJP, *Public Safety Officers' Benefits Program, Report Providing Results of Comprehensive Review and Containing Recommendations for Action*, August 2012.

OJP reported that an overwhelming majority of PSOB claims were decided without controversy and that timeliness related to deciding claims by the PSOB Office with OJP OGC concurrence had improved 37 percent between 2008 and 2011. However, it also noted that “a small but significant number of cases consume an inordinate amount of time and resources, create tension between PSOB and OGC staff, and draw significant outside criticism that threatens to publicly define the program.”

The review found that delays were caused by both claimants and agencies that were unable to provide requested documents in a timely manner and by internal OJP disagreements. However, OJP was unable to identify and measure delays caused by claimants and agencies compared to claims delayed by internal OJP inefficiency.

The report further found that when delays were caused by reasons other than claimants and partnership agencies not supplying documents, they were caused by disagreements between the PSOB and OJP OGC over the merits of claims. The report stated, “In nearly all of these controversial cases, PSOB staff believes the claim should be approved but [OJP] OGC staff disagrees, citing lack of ‘legal sufficiency.’ The report also found cases were held open for months and even years as staff members sought to supplement their positions with additional evidence. According to OJP, these cases “appear to claimants and stakeholders as arbitrary, harsh, and inconsistent with the remedial purpose of PSOB’s authorizing legislation...” or the PSOB Act.

Specifically, OJP found that:

- PSOB staff and stakeholders perceived the OJP OGC to have an “unnecessarily adversarial posture towards PSOB claimants that is contrary to the remedial purpose of the statute.”
- The OJP OGC’s participation was critical but its role should be confined to that of an advisor.
- Making changes to the PSOB regulations “...would likely make an immediate improvement in the timeliness, effectiveness and clarity of the PSOB claims process.”
- “It is also clear that failure [by the OJP] to distinguish deliberate misbehavior from minor mistakes or errors in judgment has resulted in harshly, seemingly arbitrary decisions that are inconsistent with the purposes of the [PSOB] Act.”
- The 37 percent approval rate for PSOB disability claims initiated in 2009 or later and the average number of days that disability claims were pending (900 days) were “unacceptable.” Revising the regulation by removing “convincing” from the standard relating to permanent and total disabilities may improve the determination and expedite claims processing.

- A lack of sufficient documentation had been noted in the past and accessing useful and reliable PSOB data had been a considerable challenge.

OJP concluded that “in order to make significant improvements that will be sustained over time, the purpose of the PSOB program must be clarified and reinforced, the roles and responsibilities of offices and staff must be clearly defined, and the claims process must be simplified, streamlined, and expedited.” In addition, the PSOB regulations must “be comprehensively reformed in order to achieve and maintain success over time.” The review recommended that OJP “conduct an assessment of all documents currently required by PSOB, balancing their evidentiary value against the time and expense of production, as well as opportunities for more efficient means of production, with the goal of identifying and eliminating standard requests for documents with limited, or no value without jeopardizing the quality of the claims process.”

OJP also concluded that “...the greatest internal challenges to the proper administration of PSOB claims...[was] confusion and disagreement...[among PSOB and BJA and OJP OGC] staff as to the basic purpose, nature, and scope of the program as contemplated by the [PSOB] Act.” Specifically, the review determined that “the current definition of the PSOB office [that includes the OJP OGC’s role in deciding each PSOB claim] is also inconsistent with the clear legislative intent of the PSOB Act, which authorizes BJA, and no other entity, to decide claims and promulgate regulations.”

OJP recommended clarifying the scope of the OJP OGC’s concurrence function to be strictly legal in nature. Specifically, the report states that the proper role of the OJP OGC is similar to that of a judge in a court of law, where the jury—in this case the BJA or PSOB Office staff—weighs the evidence as the finder of fact. The OJP OGC strongly disagreed with the review’s conclusions and recommendations. In May 2013, during our audit, the OJP Acting Assistant Attorney General announced the removal of the OJP OGC from all matters related to PSOB claims processing and established a PSOB Legal Counsel, within the BJA, to advise the AAG for OJP and BJA on all legal matters arising from the processing and adjudication of each PSOB claim.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our audit objective was to assess the process used by the PSOB to make determinations for claims, paying particular attention to claims and appeals that have remained undetermined beyond the BJA Director's desired PSOB performance metric of 1 year to decide to approve or deny a claim.

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

We conducted work at Office of Justice Programs offices in Washington, D.C. We interviewed the PSOB Director, Senior Benefits Specialists, Benefits Specialists, Paralegal Specialists, and Outreach Specialists to gain an understanding of the PSOB claim review process from claim application to determination. We also interviewed the General Counsel of OJP, Deputy General Counsel for the OJP OGC, Senior Litigation Counsel, Attorney Advisors, and the new PSOB Legal Counsel (PSOB Counsel). We also interviewed the Directors of the Concerns for Police Survivors and the National Fallen Firefighters Foundation, which support survivors of fallen public safety officers, to understand the role of these organizations in assisting PSOB claimants.

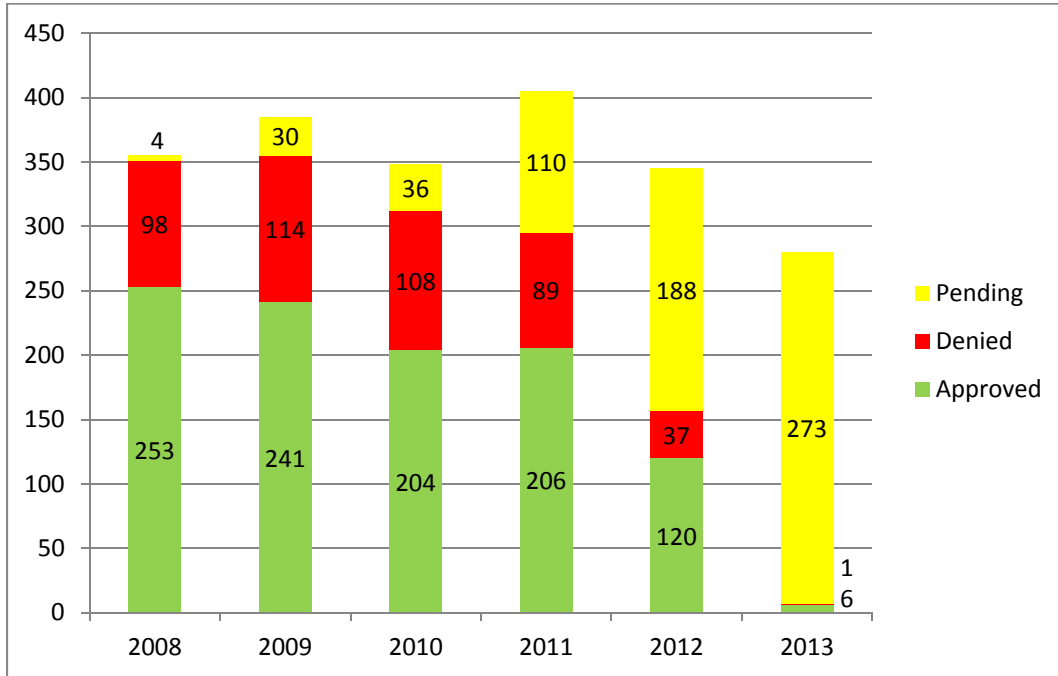
In general, the scope of this audit was defined by the death and disability claims tracked in PSOB's Office's electronic spreadsheet database as of July 29, 2013.³⁸ These claims included 1,845 claims that had been determined (1,200 approved claims, 645 denied claims) and 650 pending claims. We sampled claims for review by calculating the time elapsed between the date PSOB assigned a claim number and its initial claim determination.³⁹ We produced and analyzed general statistics for the 2,510 claims, reviewed 92 claims files and notes, and completed a detailed review of 55 claims to identify factors that contributed to delays in claims processing and determinations. In January 2014, we completed fieldwork to determine the status of claim determinations submitted to and concurred with by the new PSOB Counsel and those that were pending at the time of the re-delegation of concurrence authority in May 2013. Table 2 shows the number and status of the 2,129 claims received by the PSOB Office between FY 2008 and FY 2013, as of July 29, 2013.⁴⁰

³⁸ In addition to death and disability claims, OJP is also responsible for processing education claims submitted by dependents of death and disability claimants. We have not included education claims in our testing as we assessed risk to these types of claims as low.

³⁹ Excluded from the total were 15 claims abandoned or withdrawn by claimants.

⁴⁰ In addition to claims submitted since FY 2008, the PSOB Office's database included an additional 381 claims submitted in earlier years that we also considered in our analysis that included 102 claims submitted in FY 2007, 113 claims submitted in FY 2006, 90 claims submitted in FY 2005,

Table 2
Status of PSOB Claims Received
between FY 2008 and FY 2013, as of July 29, 2013⁴¹



Source: OIG analysis of PSOB Office data.

We determined that the majority of claims we reviewed in the PSOB Office database were death claims, which accounted for 2,069 claims or 83 percent of all claims. The remaining 441 claims, or 17 percent, were disability claims. In addition, we determined the largest single type of death claim in the database was those related to the Hometown Heroes Act. These 795 Hometown Heroes Act claims made up 32 percent of all death claims.

We analyzed the claims in the PSOB database to identify those claims that experienced the most significant delays in recent years. In total, we identified 140 pending, approved, and denied claims for testing that indicated timeliness problems.⁴² We determined that 33 of the 140 were September 11th-related death and disability claims. Of the 33 claims, we did not consider 22 claims in our review because these claims were not submitted by the PSOB Office to the OJP OGC as of

67 claims in FY 2004, 3 claims submitted in both FY 2003 and FY 2001, and 1 claim submitted in FYs 2002, 1999, and 1996. A total of two claims were abandoned in 2007 and one claim was withdrawn in both FYs 2004 and 2007.

⁴¹ This table does not include 1 abandoned and 10 withdrawn claims.

⁴² Of the 140 claims we selected, 2 were submitted in FY 2011, 47 were submitted in FY 2010, 58 were submitted in FY 2009, 18 were submitted in FY 2008, 10 were submitted in FY07, 3 were submitted in FY 2006 and 1 claim was submitted for both FY 2002 and FY 2001.

July 2013. We did not consider the remaining 11 September 11th-related claims because the PSOB Office and OJP OGC continued to work towards creating a consistent approach for processing these nonroutine type claims involving medical conditions and privately contracted hospital rescue squads and ambulance crews. Therefore, we excluded these claims from our consideration of the most delayed PSOB claims to focus on claims that may represent routine processing issues. In addition, we identified 15 pending claim determinations that had not been submitted to the OJP OGC for concurrence because the PSOB Office had not yet completed its review of those claims.

In total, we reviewed 92 of the 140 claims determinations that were submitted to the OJP OGC for concurrence and completed a detailed analysis of 55 claims.

OFFICE OF JUSTICE PROGRAMS RESPONSE TO THE DRAFT AUDIT REPORT



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

JUN 16 2015

MEMORANDUM TO: Michael E. Horowitz
Inspector General
United States Department of Justice

THROUGH: Jason R. Malmstrom
Assistant Inspector General for Audit
Office of the Inspector General
United States Department of Justice

FROM: Karol V. Mason *KVM*
Assistant Attorney General

SUBJECT: Response to the Office of the Inspector General's Draft Audit Report, *Audit of the Office of Justice Programs' Processing of Public Safety Officers' Benefits Programs Claims*

This memorandum provides a response to the Office of the Inspector General's (OIG's) May 12, 2015, draft audit report, entitled *Audit of the Office of Justice Programs' Processing of Public Safety Officers' Benefits Programs Claims*. The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the draft report.

Enacted in 1976, the *Public Safety Officers' Benefits (PSOB) Act*, as amended, allows the Department of Justice to pay a death benefit to the survivors of public safety officers who have died, or to pay a disability benefit to officers who have become totally and permanently disabled, as the direct and proximate result of an injury sustained in the line of duty (See 42 U.S.C. §3796-3796c-2 and 28 C.F.R. Part 32). The statute requires that the claimant must establish and the Bureau of Justice Assistance (BJA) must determine that the individual was a "public safety officer," and that he or she sustained an "injury" in the "line of duty." The claimant also must establish and BJA must determine that the death or disability was the "direct and proximate result" of the injury sustained by the officer in the line of duty. While some claims are straightforward and clearly meet the statutory and regulatory criteria, many others present significant factual and evidentiary complexities that must be resolved before any determination can be made.

The recommendations made in the OIG draft audit report have the potential to improve efficiencies in the PSOB Program. As the OIG recognized, there are challenges associated with obtaining evidence from third-party public agencies, often complicated by an ongoing civil or criminal action associated with the officer's death or disability. In addition to the challenges identified by the OIG associated with obtaining basic required documents from the agency point of contact or claimants to move the case to the next stage of review, it is important to note that there are other significant contributors that lead to delays, which include:

- conflicting evidence, including investigative reports, medical records, and opinions.
- *Hometown Heroes/Dale Long Act* claims involving heart attacks, strokes, and vascular ruptures, which may be found legally eligible for payment only based upon evidence that the public safety officer was engaged in specific line-of-duty activities during the 24-hour period prior to suffering the vascular event.
- conflicting medical evidence regarding whether an injury is permanent and whether the claimant can perform "any work," as required by law.
- questions regarding whether any of the statutory prohibitions to payment apply to the claim, including whether the officer's injury or death involved intentional misconduct, gross negligence, or voluntary intoxication.

OJP continues to recognize the need to improve the timeliness of determinations on PSOB claims, and provide claimants with an outcome and closure on their cases. In 2013, OJP made changes that were intended to streamline the process and thus shorten the time period for making determinations. While those changes have improved some aspects of the process, they have not shortened the overall time period from the filing of claims to determination.

In January 2014, I directed OJP's Office of Audit, Assessment, and Management to conduct a limited review of the PSOB Program's processes. As a result of this review, in November 2014, I directed that a business process improvement (BPI) review of the PSOB Program be conducted by an outside source. The BPI review began with a kick-off meeting on May 18, 2015, with recommendations for process improvements anticipated to be made in early fall 2015.

OJP values the OIG's audit of the PSOB Program and recognizes the vital importance and responsibility of administering the program in accordance with the law and regulations, all while responsibly serving surviving families and injured officers in the aftermath of a line-of-duty tragedy. OJP will take decisive action to improve the delivery of benefits while preserving the integrity of the program.

The draft audit report contains four recommendations and no questioned costs. For ease of review, these recommendations are restated in bold and are followed by OJP's response.

- 1. Improve PSOB claim checklists to better communicate to claimants and agencies the documentation that will be required before a claim can be decided and establish specific PSOB claim application documentation requirements.**

The Office of Justice Programs agrees with the recommendation. The PSOB checklists are in the process of being updated to reflect that documentation is "required" to determine the claim. References on PSOB's website at www.psob.gov have been updated to clarify that requested claim documentation is "required." We will make further improvements regarding the PSOB claim checklists, based on recommendations from the BPI review which is anticipated to be completed by early fall 2015. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

- 2. Finalize and implement an abandonment policy and procedures to administratively close claims to better manage unresponsive claimants and agencies.**

The Office of Justice Programs agrees with the recommendation. OJP concurs that implementing an abandonment policy and adopting procedures to administratively close claims will increase the efficiency of the PSOB Program, and reduce the length of time that certain claims remain pending, due to a lack of required documentation. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

- 3. Improve PSOB claim decision-making documentation to facilitate legal review. This should include providing a clear and more organized record to support the PSOB Office's decision making, which would help expedite the legal review process and ultimately claim determination.**

The Office of Justice Programs agrees with the recommendation. The PSOB Office and PSOB Legal Counsel will develop policies and procedures that will enable all parties to determine claims as quickly as possible, while establishing an audit trail that permits an independent reviewer to understand the review process (i.e., how the claim was determined to be properly payable). Toward that goal, the PSOB Director and PSOB Legal Counsel will implement process changes, such as checklists identifying evidence in the record that was relied upon in making a determination, streamlining reviews, and expediting determinations. We will also make further improvements to how we document PSOB decisions based on recommendations from the BPI review. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

4. **Improve the collection and management of PSOB claims data and establish and regularly report more detailed metrics to provide policymakers, program managers, and stakeholders with a better understanding of program performance.**

The Office of Justice Programs agrees with the recommendation. OJP agrees that improved collection and management of PSOB data, gathered automatically through an automated claims processing system and independent of manual input, would provide a more reliable basis for assessing performance.

OJP will defer the development of new performance metrics until after completion of the BPI. The BPI will be an end-to-end review of the current "as-is" PSOB claims process, and provide recommendations for a future "to-be" process. Additionally, the BPI will provide best practices of other government benefit programs, and those in the private sector, to inform changes to the PSOB Program in the future. The Office of Justice Programs considers this recommendation resolved and requests written acceptance of this action from your office.

Thank you for your continued support and assistance. If you have any questions regarding this response, please contact Ralph E. Martin, Director, Office of Audit, Assessment, and Management, at (202) 305-1802.

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OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The OIG provided a draft of this audit report to OJP for review and comment. OJP's response is included as Appendix 3 of this final report. The following provides the OIG's analysis of the response and summary of actions necessary to close the report.

Recommendation Number:

- 1. Improve PSOB claim checklists to better communicate to claimants and agencies the documentation that will be required before a claim can be decided and establish specific PSOB claim application documentation requirements.**

Resolved: In response to the report, OJP concurred with our recommendation and stated that the process of updating documentation to establish what is required to determine a claim is ongoing. OJP also stated that further improvements regarding PSOB claim checklists will be made based on recommendations from a business process improvement review that was initiated in November 2014, with results to be implemented by early fall 2015.

This recommendation can be closed when we receive documentation demonstrating the changes made to better communicate to claimants and agencies the documentation that is required before a claim can be made and establish specific PSOB claim application documentation requirements.

- 2. Finalize and implement an abandonment policy and procedures to administratively close claims to better manage unresponsive claimants and agencies.**

Resolved: In response to the report, OJP concurred with our recommendation. This recommendation can be closed when we receive documentation demonstrating that PSOB implemented an abandonment policy and closeout procedures that will allow it to better manage unresponsive claimants and agencies.

- 3. Improve PSOB claim decision-making documentation to facilitate legal review. This should include providing a clear and more organized record to support the PSOB Office's decision making, which would help expedite the legal review process and ultimately claim determination.**

Resolved: In response to our report, OJP concurred with our recommendation and stated that process changes will be implemented, such

as checklists identifying evidence in the record that was relied upon in making a determination, streamlining reviews, and expediting determinations. Additionally, recommendations from the business process improvement review, currently underway, will be acted upon to further improve how the PSOB documents its decisions.

This recommendation can be closed when we receive documentation demonstrating steps have been taken to improve PSOB claim decision-making to facilitate legal review.

4. Improve the collection and management of PSOB claims data and establish and regularly report more detailed metrics to provide policymakers, program managers, and stakeholders with a better understanding of program performance.

Resolved: OJP concurred with our recommendation and stated that improved collection and management of PSOB data, gathered automatically through the claims processing system and independent of manual input, would provide a more reliable basis for assessing performance. Additionally, OJP noted that the business process improvement review, currently underway, will provide recommendations for a future PSOB claims process, and will provide best practices to inform changes to the PSOB Program in the future.

This recommendation can be closed when we receive documentation demonstrating that the PSOB has improved the collection and management of claims data and has established, and reported on a regular basis, more detailed metrics to provide a better understanding of program performance.

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