

NON-FEDERAL LAW ENFORCEMENT OFFICERS

§ 10.735 When is a non-Federal law enforcement officer (LEO) covered under the FECA?

(a) A law enforcement officer (officer) includes an employee of a State or local Government, the Governments of U.S. possessions and territories, or an employee of the United States pensioned or pensionable under sections 521-535 of Title 4, D.C. Code, whose functions include the activities listed in 5 U.S.C. 8191.

(b) Benefits are available to officers who are not "employees" under 5 U.S.C. 8101, and who are determined in the discretion of OWCP to have been engaged in the activities listed in 5 U.S.C. 8191 with respect to the enforcement of crimes against the United States. Individuals who only perform administrative functions in support of officers are not considered officers.

(c) Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this part, the provisions of the FECA and of subparts A, B, and D through I of this part apply to officers.

§ 10.736 What are the time limits for filing a LEO claim?

OWCP must receive a claim for benefits under 5 U.S.C. 8191 within five years after the injury or death. This five-year limitation is not subject to waiver. The tolling provisions of 5 U.S.C. 8122(d) do not apply to these claims.

§ 10.737 How is a LEO claim filed, and who can file a LEO claim?

A claim for injury or occupational disease should be filed on Form CA-721; a death claim should be filed on Form CA-722. All claims should be submitted to the officer's employer for completion and forwarding to OWCP. A claim may be filed by the officer, the officer's survivor, or any person or association authorized to act on behalf of an officer or an officer's survivors.

§ 10.738 Under what circumstances are benefits payable in LEO claims?

(a) Benefits are payable when an officer is injured while apprehending, or attempting to apprehend, an individual for the commission of a Federal crime. However, either an actual Federal crime must be in progress or have been committed, or objective evidence (of which the officer is aware at the time of injury) must exist that a potential Federal crime was in progress or had already been committed. The actual or potential Federal crime must be an integral part of the criminal activity toward which the officer's actions are directed. The fact that an injury to an officer is related in some way to the commission of a Federal crime does not necessarily bring the injury within the coverage of the FECA. The FECA is not intended to cover officers who are merely enforcing local laws.

(b) For benefits to be payable when an officer is injured preventing, or attempting to prevent, a Federal crime, there must be objective evidence that a Federal crime is about to be committed. An officer's belief, unsupported by objective evidence, that he or she is acting to prevent the commission of a Federal crime will not result in coverage. Moreover, the officer's subjective intent, as measured by all available evidence (including the officer's own statements and testimony, if available), must have been directed toward the prevention of a Federal crime. In this context, an officer's own statements and testimony are relevant to, but do not control, the determination of coverage.

§ 10.739 What kind of objective evidence of a potential Federal crime must exist for coverage to be extended?

Based on the facts available at the time of the event, the officer must have an awareness of sufficient information which would lead a reasonable officer, under the circumstances, to

conclude that a Federal crime was in progress, or was about to occur. This awareness need not extend to the precise particulars of the crime (the section of Title 18, United States Code, for example), but there must be sufficient evidence that the officer was in fact engaged in actual or attempted apprehension of a Federal criminal or prevention of a Federal crime.

§ 10.740 In what situations will OWCP automatically presume that a law enforcement officer is covered by the FECA?

(a) Where an officer is detailed by a competent State or local authority to assist a Federal law enforcement authority in the protection of the President of the United States, or any other person actually provided or entitled to U.S. Secret Service protection, coverage will be extended.

(b) Coverage for officers of the U.S. Park Police and those officers of the Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System is adjudicated under the principles set forth in paragraph (a) of this section, and does not extend to numerous tangential activities of law enforcement (for example, reporting to work, changing clothes). However, officers of the Non-Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System are covered under the FECA during the performance of all official duties.

§ 10.741 How are benefits calculated in LEO claims?

(a) Except for continuation of pay, eligible officers and survivors are entitled to the same benefits as if the officer had been an employee under 5 U.S.C. 8101. However, such benefits may be reduced or adjusted as OWCP in its discretion may deem appropriate to reflect comparable benefits which the officer or survivor received or would have been entitled to receive by virtue of the officer's employment.

(b) For the purpose of this section, a comparable benefit includes any benefit that the officer or survivor is entitled to receive because of the officer's employment, including pension

and disability funds, State workers' compensation payments, Public Safety Officers' Benefits Act payments, and State and local lump-sum payments. Health benefits coverage and proceeds of life insurance policies purchased by the employer are not considered to be comparable benefits.

(c) The FECA provides that, where an officer receives comparable benefits, compensation benefits are to be reduced proportionally in a manner that reflects the relative percentage contribution of the officer and the officer's employer to the fund which is the source of the comparable benefit. Where the source of the comparable benefit is a retirement or other system which is not fully funded, the calculation of the amount of the reduction will be based on a per capita comparison between the contribution by the employer and the contribution by all covered officers during the year prior to the officer's injury or death.

(d) The non-receipt of compensation during a period where a dual benefit (such as a lump-sum payment on the death of an officer) is being offset against compensation entitlement does not result in an adjustment of the respective benefit percentages of remaining beneficiaries because of a cessation of compensation under 5 U.S.C. 8133(c).