

TO: Federal Law Enforcement Officers Employed by the U.S. Department of Defense
FROM: Lou Cannon, Chairman, Federal Officers' Committee
DATE: 15 October 2010
RE: LEOSA Improvements Act

The Federal Officers' Committee and the National Legislative Office have received several emails, phone calls, and reports with respect to the reaction of the U.S. Department of Defense (DoD) to the enactment of S. 1132 (now Public Law 111-272), the Law Enforcement Officers' Safety Act Improvements Act.

We have shared these reports, and the one official directive we have received to date, with the National Legislative Office. The National Legislative Office is confident that the DoD has misinterpreted the statute and that all Federal law enforcement officers employed by the Department now meet the definition of "qualified active or qualified retired law enforcement officer" in Federal law.

However, in an abundance of caution, we are urging our members not to challenge directives, orders, or other instructions with respect to how their employers have interpreted the law. We strongly advise that you not carry under LEOSA at this time—there is no need for anyone to be a defendant in a test case.

I know many of you may be frustrated, but please remember that the amendment to LEOSA has been law for *less than 72 hours*. It will take some time for the changes to be reviewed and understood by all parties—especially parties hostile to the underlying statute and the FOP's tremendous success in amending the law. Many of us have been waiting for the past six years—since the passage of the original LEOSA in 2004—we can wait a few more weeks for the Grand Lodge to get this issue settled.

To be clear, Congressional intent with the enactment of S. 1132 was to clarify that any Federal law enforcement officer classified as a GS-0083 (or any successor to that series) who is employed by the Executive Branch also be deemed to meet the definitions in 18 USC 926B and 18 USC 926C. On this point, the law reads:

...a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest.

This makes the question of whether or not a Federal law enforcement officer employed by the DoD has statutory arrest powers moot for the purposes of LEOSA, as such officers are now **by definition** qualified active or retired law enforcement officers. This is the section that the DoD is misinterpreting.

Congressional intent is made even more plain in Committee Report 111-233, which accompanied S. 1132 when that bill was favorably reported by the Senate Committee on the Judiciary. Section III of that report reads:

Section 2(a)(2) makes explicit that active law enforcement officers employed by the Amtrak Police Department, the Federal Reserve, or who serve as law enforcement officers 'of the executive branch of the Federal Government' are eligible for the law's benefits.

Finally, the President acknowledged this in his statement which accompanied the announcement that he had signed the bill into law:

[S. 1132] ...specifies that current and former law enforcement and police officers of the executive branch of the Federal Government and current and former law enforcement officers of the Amtrak Police Department and the Federal Reserve may generally be exempted from State laws prohibiting the carrying of concealed weapons

In our view, the Defense Department is wrong, and National President Canterbury and the National Legislative Office has assured me that they will be challenging their interpretation so that the men and women who the amendment was written to help will be acknowledged as “qualified active and retired law enforcement officers” and thus able to carry under LEOSA.

This also underscores the need to adopt H.R. 675, which would amend Federal law to grant law enforcement officers employed by the U.S. Department of Defense the statutory powers of arrest it claims we lack.