



# NATIONAL FRATERNAL ORDER OF POLICE

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## Summary: the Consolidated Appropriations Act, FY2023

This summary has been prepared for members of the Fraternal Order of Police to provide them with information about the provisions contained in the Consolidated Appropriations Act for Fiscal Year 2023, also known as the omnibus spending bill. The measure, which was signed into law by President Biden on 30 December, contains many provisions that were developed or supported by the Fraternal Order of Police. The new law also contains several provisions which may impact our members and other public safety officers and other unrelated measures amending Federal law.

In the coming weeks, the massive new law will likely be subject to analysis by interested groups for weeks to come, and some interpretations may differ or even be challenged in courts. Any questions or requests for additional information from FOP members should be directed to staff in the Government and Media Affairs Center in Washington, D.C.

### **FOP Successfully Opposed “SAFE Banking” Bill**

The FOP worked closely with our allies in Congress, most prominently Senator Mitch McConnell (R-KY), the Senate Minority Leader, to defeat a sustained effort to incorporate H.R. 1996/S. 910, the “Secure and Fair Enforcement (SAFE) Banking Act,” into the omnibus spending measure. The bill would have given the marijuana industry access to the U.S. financial system by prohibiting Federal regulators from penalizing financial institutions who do business with the industry. Marijuana, like any illegal drug, is a risk to public safety. It is intrinsically linked to the violence of drug trafficking and is not “harmless.” Efforts to allow access to the banking system for the illegal marijuana industry create a dangerous precedent that could allow access for other criminal activity. The vicious drug cartels who push marijuana through our borders will have the opportunity to launder money under the guise of marijuana normalization, effectively creating a privileged class of narcotics traffickers. Providing an industry that is distributing a controlled substance with access to our financial institutions is not “SAFE Banking”—it is abetting a Federal crime.

We expect this legislation will be re-introduced early in the new Congress.

### **Provisions Successfully Supported by the FOP**

During the debate on the omnibus spending bill on the Senate floor, the FOP engaged with key offices to convey our support for Senate Amendment #6607 which provides \$1 billion for the World Trade Center Health Program to address a forecasted shortfall in

the fund. The amendment was offered and debated on the floor and the FOP actively lobbied Senate offices in support of the amendment. The measure ultimately passed on a 90-6 vote.

Another major victory for the FOP and our retired law enforcement officer members was the inclusion of a provision that amends the Healthcare Enhancement for Local Public Safety (HELPS) Retirees Act. Now eligible retired public safety officers may use up to \$3,000 per year from their qualified government retirement plan, on a pre-tax basis, to pay for health insurance or long-term care insurance premiums directly. The law repeals a previous provision requiring their pension fund make a direct payment to the officer's health or long-term care insurance company. This amendment repeals the unworkable direct pay requirement that prevented too many eligible public safety officers who belong to pension systems that were unable to make such payments from taking advantage of this tax benefit.

The FOP prevailed in part on our effort to make permanent the authority of the Drug Enforcement Administration (DEA) to classify fentanyl-related substances as Schedule I under the Controlled Substances Act. The authority was not made permanent, but it was extended until 31 December 2024. This emergency scheduling order allows the DEA to consider fentanyl analogues, based on their chemical structure, as dangerous Schedule I drugs.

The FOP also succeeded in making sure that the "Putting First Responders First Act," was included in the bill. This provision codifies Internal Revenue Service (IRS) Ruling 85-105, which makes public safety service-connected disability compensation exempt from Federal income taxes. The bill, as introduced, would have codified this ruling immediately but the provision included in the omnibus will go into effect on 31 December 2026. This is not expected to negatively impact any public safety officer as the IRS regulation that the bill makes into statute is still in effect.

The "Protecting Public Safety Employees' Timely Retirement Act," was also included in the Consolidated Appropriations Act for FY2023. This provision, which was another long-time FOP objective, modifies the eligible age for the exemption from the retirement plan early withdrawal penalty for public safety officers. Under the previous law, when a retired public safety officer withdraws from a retirement plan before reaching age 50, this is deemed an "early" or "premature" distribution and it is subject to an additional 10 percent early withdrawal tax. The provision included in the omnibus allows an officer who has retired after 25 years of service, even if it is before age 50, to be exempt from the 10 percent withdrawal penalty. The provision also extends recognition to State and local corrections officers as "public safety officers" for the exemption from the early withdrawal penalty.

**Additional retirement provisions identified in omnibus appropriations law:**

- The new law also contains a provision which will allow 403(b) plans to participate in multiple employer plans (MEPs) and pooled employer plans (PEPs), including relief

from the “one bad apple rule,” so that the violations of one employer do not affect the tax treatment of employees of compliant employers.

- Finally, the legislation will permit an exception to the 10 percent tax penalty applicable to early distributions, up to \$1,000 per year, from tax-preferred retirement accounts if the distribution is used for unforeseeable or immediate financial needs relating to personal or family emergency expenses. This exemption would also apply to withdrawals made by terminally ill individuals.

### **Other Provisions included in the Appropriations Act**

- *Electoral Count Reform Act*

The law also includes provision which will modernize and secure the electoral count process for presidential elections. It clarifies that the role of the Vice President in counting votes is purely ceremonial and raises the thresholds in the House and Senate to object to a State's slate of electors.

- Tik Tok Ban for Government Devices

The short form video app TikTok is now prohibited from being used on any Federal government device.