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MEMORANDUM FROM THE DESK OF  
C. D. MICHEL

**Re: Frequently Asked Questions about the Law Enforcement Officers  
Safety Act (LEOSA/H.R. 218)**

**Date: May 5, 2011**

In July 2004, Congress passed the Law Enforcement Officers Safety Act (“LEOSA”) (also known as “HR 218”), codified at 18 U.S.C.S. §§ 926B and 926C. LEOSA amended the federal Gun Control Act (“GCA”) to exempt “qualified law enforcement officers” and “qualified retired law enforcement officers” from most state and local laws prohibiting the carrying of concealed firearms.<sup>1</sup> LEOSA generally allows qualified persons to carry a concealed firearm in all states, regardless of whether the respective state laws allow for such, as long as the qualified persons meets the statute’s requirements and possesses the proper photographic identification while carrying the concealed firearm. Carrying a concealed firearm under LEOSA does *not* exempt a qualified active or retired officer from state and federal prohibitions restricting areas where a concealed firearm may be carried.

The following are the most frequently asked questions about LEOSA:

<sup>1</sup> Machineguns, silencers, and destructive devices do not qualify as firearms under LEOSA. 18 U.S.C.S. §§ 926B(e), 926C(e). Beyond those limitations, however, “firearm” is not defined. Thus, though LEOSA seems to deal with handguns, the letter of the law does not so limit it. The only limitation expressly stated in 18 U.S.C.S. § 926B(a) is that the firearm must have “been shipped or transported in interstate or foreign commerce . . . .” This seems to mean that it must be a commercially made firearm, and not a homemade or unconventional firearm. For “qualified retired law enforcement officers” LEOSA also requires proof of qualification using the same “type” as the concealed firearm. 18 U.S.C.S. § 926B(d)(1), (d)(2)(B)(I-II). While no definition of “type” is contained within the statute, “type” should be read to conform to the dictionary definition, *i.e.*, something distinguishable as a variety. Accordingly, “type” of firearm should be read to mean either a handgun, rifle, or shotgun which would permit carrying any “type” of legal firearm based on the person’s respective qualification and not one particular make, model, or caliber.

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**Re: Frequently Asked Questions about the Law Enforcement Officers  
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**1. Who is Qualified under LEOSA?**

Certain current and retired law enforcement officers may become qualified under the Act. A qualified individual may then carry a concealed firearm in any state, subject to certain restrictions.

**2. How do I become a “Qualified Law Enforcement Officer” (“QLEO”) under LEOSA?**

To be considered a QLEO under LEOSA, one must be an employee of a governmental agency who at the time:

1. 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;<sup>2</sup>
2. is authorized by the agency to carry a firearm;
3. is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
4. meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
5. is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
6. is not prohibited by Federal law from receiving a firearm.

One must meet *all* of the above requirements to be considered a QLEO under LEOSA!

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<sup>2</sup> Who qualifies as having “statutory powers of arrest” varies by state, and is likely determined by the law of the state in which the person is employed as a law enforcement officer. Whether a person has “statutory powers of arrest” is usually ascertainable from the respective state’s Penal Code. Law enforcement officers of the executive branch of the Federal Government, including active duty and civilian military police, should consult with their installation’s Staff Judge Advocate (SJA) for specific guidance. While the statute’s language recognizes statutory powers of arrest for active (not separated or retired) individuals who may only have the power of apprehension, the Department of Defense (DOD) fails to share this interpretation. The DOD continues to only recognize employees/personnel of those agencies listed in DOD Instruction 5525.12 (which is outdated and has not been updated in accordance with the Amendments Act) as being able to qualify under LEOSA.

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**3. How do I become a “Qualified Retired Law Enforcement Officer” (“QRLEO”)?**

To be considered a QRLEO under LEOSA and the Improvements Act, a person must:

1. Be separated from service in good standing from service with a public agency as a law enforcement officer;<sup>3</sup>
2. Have been authorized by law before such separation to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest of any person for, any violation of law;<sup>4</sup>
3. Have served as a law enforcement officer for an aggregate of 10 years or more before separation with the agency,<sup>5</sup>

OR

4. Separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
5. Have met during the most recent 12-month period, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by: (1) the former agency of the individual; (2) the State in which the individual resides; OR, (3) if the State has not established such standards, either a law enforcement agency within the State in

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<sup>3</sup> The definition of the term “law enforcement officer” under LEOSA remains relatively unchanged, except for the fact that it now explicitly recognizes service as a law enforcement officer of the Amtrak Police Department, Federal Reserve, and the executive branch of the Federal Government. The specific inclusion of these departments is meant to highlight certain agencies that were historically opposed to recognizing their officer’s LEOSA authority. It opens the door to individuals like active duty and civilian military police because as law enforcement officers of the executive branch of the Federal Government they are considered to have statutory powers of arrest. This has created problems, however, as the DOD does not read the statute to provide statutory powers of arrest to these persons.

<sup>4</sup> Note that with the exception of the word “retired” being substituted with “separated,” this definition is the same as the pre-S. 1132 definition.

<sup>5</sup> The Improvements Act decreased the previously required 15 years of law enforcement service to 10 years.

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which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;

6. Have not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described under LEOSA,

OR

7. Have not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described under LEOSA;
8. Not be under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
9. Not be prohibited by Federal law from receiving a firearm.

As is the case with QLEOs, *all* of the above requirements must be met in order for a person to be considered a QRLEO under LEOSA!

**4. What photographic identification is required under LEOSA?**

Once a person is deemed a QLEO or a QRLEO, that person may then carry a concealed firearm in any state as long as s/he also carries one of the following:

1. (QLEOs) A photographic identification issued by the agency from which the individual is currently employed

OR

2. (QRLEOs) A photographic identification issued by the agency from which the individual separated that indicates that the retired officer has been found by the agency to meet the standards established by the agency for training and qualification of active officers to carry a firearm of the same type within one year of carrying the firearm

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OR

3. (QRLEOs) A photographic identification issued by the agency from which the individual separated and a certification issued by the State in which the individual resides (or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State) that indicates that the individual has been tested or otherwise found by the State (or the certified firearms instructor) not less than 1 year before the date the individual is carrying the concealed firearm, to have met—
  - the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm;

OR

- if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

**5. I heard about something called the LEOSA Improvements Act. What is that?**

On October 12, 2010, the Law Enforcement Officers Safety Act Improvements Act of 2010 (“the Improvements Act”), codified at 111 P.L. 272, and also known as “S. 1132” was signed into law by President Obama. The purpose of the Improvements Act was to amend LEOSA and clarify its provisions by, among other things, substituting “separation” for “retirement,” reducing aggregate service time, and explicitly defining the status of Amtrak Police and law enforcement officers of the Executive branch of the federal government.

**6. Did the Improvements Act have any effect on who is considered a QLEO or QRLEO?**

The Act did not change those that are already considered a QLEO or QRLEO. However, it specifically included personnel of certain agencies and expanded the definition of retired QLEOs to those that separated after an aggregate of 10 years of service instead of 15. What the Act did change, however, is that officers from those agencies that have statutory powers of apprehension, and not arrest, are considered by the statute to have statutory powers of arrest. This interpretation, however, has not been tested, and is not shared by the DOD, where most

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personnel affected by this change are employed. The DOD has specified in DOD Instruction (DODI) 5525.12 certain agencies which it recognizes as having statutory powers of arrest, and has opined that individuals not a part of those agencies do not qualify for LEOSA despite the statute's language. It should be noted that DODI 5525.12 is outdated and has not been amended to conform with the Improvements Act.<sup>6</sup>

**7. How do I know if I'm prohibited by federal law from receiving a firearm?**

Under federal law, certain people are prohibited from owning, possessing, transferring and/or receiving firearms and ammunition, including any person who:

1. Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;
2. Is a fugitive from justice;
3. Is an unlawful user of or addicted to any controlled substance;
4. Has been adjudicated as a mental defective or has been committed to a mental institution;
5. Is an alien illegally or unlawfully in the United States or an alien admitted to the United States under a nonimmigrant visa;
6. Has been discharged from the Armed Forces under dishonorable conditions;
7. Having been a citizen of the United States, has renounced his or her citizenship;
8. Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or

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<sup>6</sup> The DOD also fails to recognize arrest authority that personnel may have acquired during the course of their service through the Military Extraterritorial Jurisdiction Act (MEJA), 18 U.S.C.S. § 3261. MEJA gives the Secretary of Defense the authority to designate persons in DOD law enforcement positions to make arrests outside the United States, on certain categories of civilian and military personnel. While the DOD does not recognize personnel that were granted this authority because it is limited and only comes through the Secretary of Defense, LEOSA does not mandate that the authority be permanent. Rather, the statute mandates only that the individual currently have arrest authority (for active QLEOs) or has had the power to make arrests (in the case of QRLEOs). Carrying a concealed firearm under this authority has never been tested and there is no certainty over how a court of law would interpret the applicability of MEJA arrest authority for purposes of LEOSA.

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9. Has been convicted of a misdemeanor crime of domestic violence.

Any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year cannot receive any firearm or ammunition, even if the person may still retain possession of a firearm, and is thus not qualified under LEOSA.

If you are prohibited from receiving or owning a firearm, please contact our office at (562) 216-4444 for details on possible restoration of your firearms rights.

**8. My agency will not issue me a photographic identification, is there any other way to obtain it or show that I qualify?**

From the text of LEOSA, there appears to be no way of qualifying without some sort of agency involvement. The photographic ID must be issued by the agency an individual separates from, and there is no expressly described remedy in LEOSA for a State agency's failure to issue such an ID. There may be a Federal remedy, however, which is based on a January 31, 2005 Attorney General memo, and, although prior to the passage of the Improvements Act, still appears to be valid.

**9. How often are retired officers required to demonstrate their firearms proficiency?**

Once every 12 months.

**10. I have a medical condition for which I have been prescribed medical marijuana and have registered with my state for a medical marijuana card. Am I prohibited from carrying a concealed firearm under LEOSA?**

YES. Although the use and possession of marijuana has been decriminalized in some states, it is still an illegal substance under federal law. Therefore, one will be considered an unlawful user of a controlled substance under 18 U.S.C.S. § 922(g) and thus be prohibited from shipping, transporting, receiving, or possessing firearms there under.

**11. Do my 10 years of law enforcement experience all have to be with the same law enforcement agency, or can I count previous law enforcement experience at a prior agency toward my 10 year total?**



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The Improvements Act not only dropped the required amount of service time needed to qualify as a QRLEO under LEOSA from 15 years to 10 years, but also changed the language from “before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more” to “before separation, served as a law enforcement officer for an aggregate of 10 years or more.” The use of the word “aggregate” and the nonuse of the phrase “at/with the former agency” (as clear requirements of connection with the former agency appear throughout the statute, like in the ID requirements) suggests that law enforcement experience at multiple law enforcement agencies would count towards the 10 year total, so long as the LEOSA ID is from the agency the person separated from, and the person meets all the other standards to be considered a QRLEO.

**12. Since I am a QLEO/QRLEO under LEOSA, this means I can carry a concealed weapon anywhere in the United States that I want to, right?**

Not quite. QLEOs and QRLEOs are still subject to local and state laws that restrict the possession of firearms on government property including schools, government buildings, parks, etc., as well as federal laws restricting firearm possession in airports, courts, federal buildings, etc. Also, restrictions on private property in accordance with the owner’s wishes must be respected. Thus, one should become familiar with the local laws of the regions he or she intends to travel to with a concealed firearm.

**13. LEOSA only refers to concealed firearms. Can I concealed carry a loaded firearm under LEOSA?**

LEOSA does not contain any language differentiating between a loaded or unloaded firearm. While the issue has not been challenged or tested in a court of law, it should be presumed from the statute’s language and intent that firearms carried under LEOSA are presumed to be loaded and operational since most states allow the open carry of loaded firearms.

**14. As a QRLEO, does my annual qualification have to be with the agency that I separated from? Is there a minimum course of fire required?**

No. Retired law enforcement officers can qualify by meeting the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm. If the State has not established such standards, then retired officers can qualify by meeting the standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.



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**15. Anything else?**

Remember, LEOSA is a program for civilians who used to be law enforcement officers, or law enforcement officers traveling outside of their jurisdiction. It DOES NOT exempt a person from carrying a concealed firearm in a prohibited area, and you should ensure that you adhere to all local and federal laws regarding prohibited carry areas. If you intend to carry a concealed firearm in accordance with LEOSA, you should do the following:

1. Confirm that you are a QLEO or QRLEO.
2. Carry the appropriate photo identification with you at all times.
3. QRLEOs should make sure to carry proof of having successfully qualified in firearms proficiency within the last 12 months.
4. Be sure that you are not prohibited under federal law from receiving a firearm.