

projects. Upon receipt and review of the local unit of government's proposed fund use, the State shall authorize the local unit of government to obligate local subgrant funds. The State shall electronically submit a copy of the local subgrant information to OJJDP, as provided in the award package, within 30 days of the date that the local unit of government is authorized to obligate program funds under its subgrant award.

## PART 32—PUBLIC SAFETY OFFICERS' DEATH, DISABILITY, AND EDUCATIONAL ASSISTANCE BENEFIT CLAIMS

Sec.

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AUTHORITY: 42 U.S.C. ch. 46, subch. XII; 42 U.S.C. 3782(a), 3787, 3788, 3791(a), 3793(a)(4) &(b), 3795a, 3796c–1, 3796c–2; sec. 1601, title XI, Public Law 90–351, 82 Stat. 239; secs. 4 through 6, Public Law 94–430, 90 Stat. 1348; secs. 1 and 2, Public Law 107–37, 115 Stat. 219.

SOURCE: 71 FR 46037, Aug. 10, 2006, unless otherwise noted.

### § 32.0 Scope of part.

This part implements the Act, which, as a general matter, authorizes the payment of three different legal gratuities:

- (a) Death benefits;
- (b) Disability benefits; and
- (c) Educational assistance benefits.

[73 FR 76528, Dec. 17, 2008]

### Subpart A—General Provisions

#### § 32.1 Scope of subpart.

This subpart contains provisions generally applicable to this part.

#### § 32.2 Computation of time; filing.

(a) In computing any period of time prescribed or allowed, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a federal legal holiday, or, when the act to be done is a filing with the PSOB Office, a day on which weather or other conditions have caused that Office to be closed or inaccessible, in

which event the period runs until the end of the next day that is not one of the aforescribed days.

(b) A filing is deemed filed with the PSOB Office, a Hearing Officer, the Director, or any other OJP office, -officer, -employee, or -agent, only on the day that it actually is received at the office of the same. When a filing is prescribed to be filed with more than one of the foregoing, it shall be deemed filed as of the day the last such one so receives it.

(c) Notice is served by the PSOB Office upon an individual on the day that it is—

(1) Mailed, by U.S. mail, addressed to the individual (or to his representative) at his (or his representative's) last address known to such Office;

(2) Delivered to a courier or other delivery service, addressed to the individual (or to his representative) at his (or his representative's) last address known to such Office; or

(3) Sent by electronic means such as telefacsimile or electronic mail, addressed to the individual (or to his representative) at his (or his representative's) last telefacsimile number or electronic-mail address, or other electronic address, known to such Office.

(d) In the event of withdrawal or abandonment of a filing, the time periods prescribed for the filing thereof shall not be tolled, unless, for good cause shown, the Director grants a waiver.

(e) No claim may be filed (or approved) under the Act, at 42 U.S.C. 3796(a) or (b), with respect to an injury, if a claim under the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37, has been approved, with respect to the same injury.

(f) No claim may be filed (or approved) under the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37, with respect to an injury, if a claim under the Act, at 42 U.S.C. 3796(a) or (b), has been approved, with respect to the same injury.

### § 32.3 Definitions.

*Act* means the Public Safety Officers' Benefits Act of 1976 (generally codified at 42 U.S.C. 3796, *et seq.*; part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968) (including (un-

codified) sections 4 through 6 thereof (payment in advance of appropriations, rule of construction and severability, and effective date and applicability)), as applicable (*cf.* § 32.4(d)) according to its effective date and those of its various amendments (*e.g.*, Sept. 29, 1976 (deaths of State and local law enforcement officers and firefighters); Jan. 1, 1978 (educational assistance (officer died)); Oct. 1, 1984 (deaths of federal law enforcement officers and firefighters); Oct. 18, 1986 (deaths of rescue squad and ambulance crew members); Nov. 29, 1990 (disabilities); Oct. 3, 1996 (educational assistance (officer disabled)); Oct. 30, 2000 (disaster relief workers); Sept. 11, 2001 (chaplains and insurance beneficiaries); Dec. 15, 2003 (certain heart attacks and strokes); and Apr. 5, 2006 (designated beneficiaries)); and also includes Public Law 107-37 and section 611 of the USA PATRIOT Act (both of which relate to payment of benefits, described under subpart 1 of such part L, in connection, respectively, with the terrorist attacks of Sept. 11, 2001, or with such terrorist attacks as may occur after Oct. 26, 2001), as well as the proviso under the Public Safety Officers Benefits heading in title II of division B of section 6 of Public Law 110-161.

*Adopted child*—An individual is an adopted child of a public safety officer only if—

(1) The individual is legally adopted by the officer; or

(2) As of the injury date, and not being a stepchild, the individual was—

(i) Known by the officer not to be his biological first-generation offspring; and

(ii) After the officer obtained such knowledge, in a parent-child relationship with him.

*Authorized commuting* means travel (not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or a detour) by a public safety officer—

(1) In the course of actually responding (as authorized) to a fire-, rescue-, or police emergency, or to a particular and extraordinary request (by the public agency he serves) for that specific officer to perform public safety activity (including emergency response activity the agency is authorized to perform), within his line of duty; or

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(2) Between home and work (at a situs (for the performance of line of duty activity or action) authorized or required by the public agency he serves), or between any such authorized or required situs and another—

(i) Using a vehicle provided by such agency, pursuant to a requirement or authorization by such agency that he use the same for commuting; or

(ii) Using a vehicle not provided by such agency, pursuant to a requirement by such agency that he use the same for work.

*Biological* means genetic, but does not include circumstances where the genetic donation (under the laws of the jurisdiction where the offspring is conceived) does not (as of the time of such conception) legally confer parental rights and obligations.

*BJA* means the Bureau of Justice Assistance, OJP.

*Cause*—A death, injury, or disability is caused by intentional misconduct if—

(1) The misconduct is a substantial factor in bringing it about; and

(2) It is a reasonably foreseeable result of the misconduct.

*Certification* means a formal assertion of a fact (or facts), in a writing that is—

(1) Expressly intended to be relied upon by the PSOB determining official in connection with the determination of a claim specifically identified therein;

(2) Expressly directed to the PSOB determining official;

(3) Legally subject to the provisions of 18 U.S.C. 1001 (false statements) and 1621 (perjury), and 28 U.S.C. 1746 (declarations under penalty of perjury), and expressly declares the same to be so;

(4) Executed by a natural person with knowledge of the fact (or facts) asserted and with legal authority to execute the writing (such as to make the assertion legally that of the certifying party), and expressly declares the same (as to knowledge and authority) to be so;

(5) In such form as the Director may prescribe from time to time;

(6) True, complete, and accurate (or, at a minimum, not known or believed by the PSOB determining official to

contain any material falsehood, incompleteness, or inaccuracy); and

(7) Unambiguous, precise, and unequivocal, in the judgment of the PSOB determining official, as to any fact asserted, any matter otherwise certified, acknowledged, indicated, or declared, and any provision of this definition.

*Certification described in the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37*, means a certification, acknowledging all the matter specified in §32.5(f)(1) and (2)—

(1) In which the fact (or facts) asserted is the matter specified in §32.5(f)(3);

(2) That expressly indicates that all of the terms used in making the assertion described in paragraph (1) of this definition (or used in connection with such assertion) are within the meaning of the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37, and of this part; and

(3) That otherwise satisfies the provisions of the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37, and of this part.

*Chaplain* means a clergyman, or other individual trained in pastoral counseling, who meets the definition provided in the Act, at 42 U.S.C. 3796b(2).

*Child of a public safety officer* means an individual—

(1) Who—

(i) Meets the definition provided in the Act, at 42 U.S.C. 3796b(3), in any claim—

(A) Arising from the public safety officer's death, in which the death was simultaneous (or practically simultaneous) with the injury; or

(B) Filed after the public safety officer's death, in which the claimant is the officer's—

(1) Biological child, born after the injury date;

(2) Adopted child, adopted by him after the injury date; or

(3) Stepchild, pursuant to a marriage entered into by him after the injury date; or

(ii) In any claim not described in paragraph (1)(i) of this definition—

(A) Meets (as of the injury date) the definition provided in the Act, at 42 U.S.C. 3796b(3), *mutatis mutandis* (i.e., with “deceased” and “death” being substituted, respectively, by “deceased or disabled” and “injury”); or

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(B) Having been born after the injury date, is described in paragraph (1)(i)(B)(I), (2), or (3) of this definition; and

(2) With respect to whom the public safety officer's parental rights have not been terminated, as of the injury date.

*Commonly accepted* means generally agreed upon within the medical profession.

*Consequences of an injury that permanently prevent an individual from performing any gainful work* means an injury whose consequences permanently prevent an individual from performing any gainful work.

*Convincing evidence* means clear and convincing evidence.

*Crime* means an act or omission punishable as a criminal misdemeanor or felony.

*Criminal laws* means that body of law that declares what acts or omissions are crimes and prescribes the punishment that may be imposed for the same.

*Department or agency*—An entity is a department or agency within the meaning of the Act, at 42 U.S.C. 3796b(8), and this part, only if the entity is—

- (1) A court;
- (2) An agency described in the Act, at 42 U.S.C. 3796b(9)(B) or (C); or
- (3) Otherwise a public entity—
  - (i) That is legally an express part of the internal organizational structure of the relevant government;
  - (ii) That has no legal existence independent of such government; and
  - (iii) Whose obligations, acts, omissions, officers, and employees are legally those of such government.

*Determination* means the approval or denial of a claim (including an affirmation or reversal pursuant to a motion for reconsideration under §32.27), the determination described in the Act, at 42 U.S.C. 3796(c), or any recommendation under §32.54(c)(3).

*Director* means the Director of BJA.

*Direct and proximate cause*—Except as may be provided in the Act, at 42 U.S.C. 3796(k), something directly and proximately causes a wound, condition, or cardiac-event, if it is a substantial factor in bringing the wound, condition, or cardiac-event about.

*Direct and proximate result of an injury*—Except as may be provided in the Act, at 42 U.S.C. 3796(k), a death or disability results directly and proximately from an injury if the injury is a substantial factor in bringing it about.

*Disaster relief activity* means activity or an action encompassed within the duties described in the Act, at 42 U.S.C. 3796b(9)(B) or (C).

*Disaster relief worker* means any individual who meets the definition provided in the Act, at 42 U.S.C. 3796b(9)(B) or (C).

*Disturbance* includes any significant and negative alteration, any significant negative deviation from the objectively normal, or any significant deterioration.

*Divorce* means a legally-valid divorce from the bond of wedlock (i.e., the bond of marriage), except that, otherwise, and notwithstanding any other provision of law, a spouse (or purported spouse) of an individual shall be considered to be divorced from that individual within the meaning of this definition if, subsequent to his marriage (or purported marriage) to that individual (and while that individual is living), the spouse (or purported spouse)—

- (1) Holds himself out as being divorced from, or not being married to, the individual;
- (2) Holds himself out as being married to another individual; or
- (3) Was a party to a ceremony purported by the parties thereto to be a marriage between the spouse (or purported spouse) and another individual.

*Drugs or other substances* means controlled substances within the meaning of the drug control and enforcement laws, at 21 U.S.C. 802(6).

*Educational/academic institution* means an institution whose primary purpose is educational or academic learning.

*Eligible payee* means—

- (1) An individual (other than the officer) described in the Act, at 42 U.S.C. 3796(a), with respect to a claim under subpart B of this part; or

- (2) An individual described in the Act, at 42 U.S.C. 3796(b), with respect to a claim under subpart C of this part.

*Emergency medical services* means—

(1) Provision of first-response emergency medical care (other than in a permanent medical-care facility); or

(2) Transportation of persons in medical distress (or under emergency conditions) to medical-care facilities.

*Emergency response activity* means response to a fire-, rescue-, or police emergency.

*Employed by a public agency*—A public safety officer is employed, within the meaning of the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37, by a public agency, when he—

(1) Is employed by the agency in a civilian capacity; and

(2) Is—

(i) Serving the agency in an official capacity (with respect to officers of any kind but disaster relief workers); or

(ii) Performing official duties as described in the Act, at 42 U.S.C. 3796b(9)(B) or (C) (with respect to disaster relief workers).

*Employee* does not include—

(1) Any independent contractor; or

(2) Any individual who is not eligible to receive death or disability benefits from the purported employer on the same basis as a regular employee of such employer would.

*Employment in a civilian capacity* refers to status as a civilian, rather than to the performance of civilian functions.

*Filing* means any claim, request, motion, election, petition, or appeal, and any item or matter (e.g., evidence, certifications, authorizations, waivers, legal arguments, or lists) that is, or may be, filed with the PSOB Office.

*Fire protection* means—

(1) Suppression of fire;

(2) Hazardous-material response; or

(3) Emergency medical services or rescue activity of the kind performed by firefighters.

*Fire-, rescue-, or police emergency* includes disaster-relief emergency.

*Firefighter* means an individual who—

(1) Is trained in—

(i) Suppression of fire; or

(ii) Hazardous-material response; and

(2) Has the legal authority and responsibility to engage in the suppression of fire, as—

(i) An employee of the public agency he serves, which legally recognizes him

to have such (or, at a minimum, does not deny (or has not denied) him to have such); or

(ii) An individual otherwise included within the definition provided in the Act, at 42 U.S.C. 3796b(4).

*Functionally within or -part of*—No individual shall be understood to be functionally within or -part of a public agency solely by virtue of an independent contractor relationship.

*Gross negligence* means great, heedless, wanton, indifferent, or reckless departure from ordinary care, prudence, diligence, or safe practice—

(1) In the presence of serious risks that are known or obvious;

(2) Under circumstances where it is highly likely that serious harm will follow; or

(3) In situations where a high degree of danger is apparent.

*Hazardous-material response* means emergency response to the threatened or actual release of hazardous materials, where life, property, or the environment is at significant risk.

*Heart attack* means—

(1) A myocardial infarction; or

(2) A cardiac-event (i.e., cessation, interruption, arrest, or other similar disturbance of heart function), not included in paragraph (1) of this definition, that is—

(i) Acute; and

(ii) Directly and proximately caused by a pathology (or pathological condition) of the heart or of the coronary arteries.

*Illegitimate child*—An individual is an illegitimate child of a public safety officer only if he is a natural child of the officer, and the officer is not married to the other biological parent at (or at any time after) the time of his conception.

*Incapable of self-support because of physical or mental disability*—An individual is incapable of self-support because of physical or mental disability if he is under a disability within the meaning of the Social Security Act, at 42 U.S.C. 423(d)(1)(A), applicable *mutatis mutandis*.

*Independent contractor* includes any volunteer, servant, employee, contractor, or agent, of an independent contractor.

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*Injury* means a traumatic physical wound (or a traumatized physical condition of the body) directly and proximately caused by external force (such as bullets, explosives, sharp instruments, blunt objects, or physical blows), chemicals, electricity, climatic conditions, infectious disease, radiation, virii, or bacteria, but does not include—

- (1) Any occupational disease; or
- (2) Any condition of the body caused or occasioned by stress or strain.

*Injury date*—Except with respect to claims under the Act, at 42 U.S.C. 3796(k) (where, for purposes of determining beneficiaries under the Act, at 42 U.S.C. 3796(a), it generally means the time of the heart attack or stroke referred to in the Act, at 42 U.S.C. 3796(k)(2)), injury date means the time of the line of duty injury that—

(1) Directly and proximately results in the public safety officer's death, with respect to a claim under—

- (i) Subpart B of this part; or
- (ii) Subpart D of this part, by virtue of his death; or

(2) Directly (or directly and proximately) results in the public safety officer's total and permanent disability, with respect to a claim under—

- (i) Subpart C of this part; or
- (ii) Subpart D of this part, by virtue of his disability.

*Instrumentality* means entity, and does not include any individual, except that no entity shall be considered an instrumentality within the meaning of the Act, at 42 U.S.C. 3796b(8), or this part, unless, as of the injury date,

(1) The entity—

(i) Is legally established, -recognized, or -organized, such that it has legal existence; and

(ii) Is so organized and controlled, and its affairs so conducted, that it operates and acts solely and exclusively as a functional part of the relevant government, which legally recognizes it as such (or, at a minimum, does not deny (or has not denied) it to be such); and

(2) The entity's—

(i) Functions and duties are solely and exclusively of a public character;

(ii) Services are provided generally to the public as such government would provide if acting directly through its

public employees (*i.e.*, they are provided without regard to any particular relationship (such as a subscription) a member of the public may have with such entity); and

(iii) Acts and omissions are, and are recognized by such government as (or, at a minimum, not denied by such government to be), legally—

(A) Those of such government, for purposes of sovereign immunity; or

(B) The responsibility of such government, for purposes of tort liability.

*Intention*—A death, injury, or disability is brought about by a public safety officer's intention if—

(1) An intentional action or activity of his is a substantial factor in bringing it about; and

(2) It is a reasonably foreseeable result of the intentional action or activity.

*Intentional action or activity* means activity or action (other than line of duty activity or action), including behavior, that is—

(1) A result of conscious volition, or otherwise voluntary;

(2) Not a result of legal insanity or of impulse that is legally and objectively uncontrollable; and

(3) Not performed under legal duress or legal coercion of the will.

*Intentional misconduct*—A public safety officer's action or activity is intentional misconduct if—

(1) As of the date it is performed,

(i) Such action or activity—

(A) Is in violation of, or otherwise prohibited by, any statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law; or

(B) Is contrary to the ordinary, usual, or customary practice of similarly-situated officers within the public agency in which he serves; and

(ii) He knows, or reasonably should know, that it is so in violation, prohibited, or contrary; and

(2) Such action or activity—

(i) Is intentional; and

(ii) Is—

(A) Performed without reasonable excuse; and

(B) Objectively unjustified.

*Involvement*—An individual is involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), only if he is an officer of a public agency and, in that capacity, has legal authority and responsibility to arrest, apprehend, prosecute, adjudicate, correct or detain (in a prison or other detention or confinement facility), or supervise (as a parole or probation officer), persons who are alleged or found to have violated the criminal laws, and is recognized by such agency, or the relevant government (or, at a minimum, not denied by such agency, or the relevant government), to have such authority and responsibility.

*Itemized description of representative services provided*—A description of representative services provided is itemized only when it includes—

(1) The beginning and end dates of the provision of the services;

(2) An itemization of the services provided and the amount of time spent in providing them; and

(3) An itemization of the expenses incurred in connection with the services provided for which reimbursement is sought.

*Kinds of public safety officers*—The following are the different kinds of public safety officers:

(1) Law enforcement officers;

(2) Firefighters;

(3) Chaplains;

(4) Members of rescue squads or ambulance crews; and

(5) Disaster relief workers.

*Law enforcement* means enforcement of the criminal laws, including—

(1) Control or reduction of crime or of juvenile delinquency;

(2) Prosecution or adjudication of individuals who are alleged or found to have violated such laws;

(3) Prison security activity; and

(4) Supervision of individuals on parole or probation for having violated such laws.

*Line of duty activity or action*—Activity or an action is performed in the line of duty, in the case of a public safety officer who is—

(1) A law enforcement officer, a firefighter, or a member of a rescue squad or ambulance crew—

(i) Whose primary function (as applicable) is public safety activity, only if, not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or detour, it is activity or an action that he is obligated or authorized by statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law, to perform (including any social, ceremonial, or athletic functions (or any official training programs of his public agency) to which he is assigned, or for which he is compensated), under the auspices of the public agency he serves, and such agency (or the relevant government) legally recognizes that activity or action to have been so obligated or authorized at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such); or

(ii) Whose primary function is not public safety activity, only if, not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or detour—

(A) It is activity or an action that he is obligated or authorized by statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law, to perform, under the auspices of the public agency he serves, and such agency (or the relevant government) legally recognizes that activity or action to have been so obligated or authorized at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such); and

(B) It is performed (as applicable) in the course of public safety activity (including emergency response activity the agency is authorized to perform), or taking part (as a trainer or trainee) in an official training program of his public agency for such activity, and such agency (or the relevant government) legally recognizes it to have been such at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such);

(2) A disaster relief worker, only if, not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or detour, it is disaster relief activity, and the agency he serves (or the relevant government), being described in the Act, at 42 U.S.C. 3796b(9)(B) or (C), legally recognizes it to have been such

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at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such); or

(3) A chaplain, only if, not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or detour—

(i) It is activity or an action that he is obligated or authorized by statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law, to perform, under the auspices of the public agency he serves, and such agency (or the relevant government) legally recognizes it to have been such at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such); and

(ii) It is performed in the course of responding to a fire-, rescue-, or police emergency, and such agency (or the relevant government) legally recognizes it to have been such at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such).

*Line of duty injury*—An injury is sustained in the line of duty only if—

(1) It is sustained in the course of—

(i) Performance of line of duty activity or a line of duty action; or

(ii) Authorized commuting; or

(2) Convincing evidence demonstrates that such injury resulted from the injured party's status as a public safety officer.

*Mental faculties* means brain function.

*Natural child*—An individual is a natural child of a public safety officer only if he is a biological child of the officer, and the officer is alive at the time of his birth.

*Occupational disease* means a disease (including an ailment or condition of the body) that routinely constitutes a special hazard in, or is commonly regarded as a concomitant of, an individual's occupation.

*Official capacity*—An individual serves a public agency in an official capacity only if—

(1) He is officially authorized, -recognized, or -designated (by such agency) as functionally within or -part of it; and

(2) His acts and omissions, while so serving, are legally those of such agency, which legally recognizes them as

such (or, at a minimum, does not deny (or has not denied) them to be such).

*Official duties* means duties that are officially authorized, -recognized, or -designated by an employing entity, such that the performance of those duties is legally the action of such entity, which legally recognizes it as such (or, at a minimum, does not deny (or has not denied) it to be such).

*Official training program of a public safety officer's public agency* means a program—

(1) That is officially sponsored, -conducted, or -authorized by the public agency in which he serves; and

(2) Whose purpose is to train public safety officers of his kind in (or to improve their skills in), specific activity or actions encompassed within their respective lines of duty.

*Officially recognized or designated member of a department or agency* means a member of a department or agency, or of an instrumentality, of a government described in the Act, at 42 U.S.C. 3796b(8), who is officially recognized (or officially designated) as such a member by the same.

*Officially recognized or designated public employee of a department or agency* means a public employee of a department or agency who is officially recognized (or officially designated) as a public safety officer, by the same.

*Officially recognized or designated public employee member of a squad or crew* means a public employee member of a squad or crew who is officially recognized (or officially designated) as such a public employee member, by the public agency under whose auspices the squad or crew operates.

*OJP* means the Office of Justice Programs, U.S. Department of Justice.

*Parent* means a father or a mother.

*Parent-child relationship* means a relationship between a public safety officer and another individual, in which the officer has the role of parent (other than biological or legally-adoptive), as shown by convincing evidence.

*Performance of duties in a grossly negligent manner at the time of death or catastrophic injury* means gross negligence, as of or near the injury date, in the course of authorized commuting or performance of line of duty activity or a

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line of duty action, where such negligence is a substantial contributing factor in bringing such death or injury about.

*Posthumous child*—An individual is a posthumous child of a public safety officer only if he is a biological child of the officer, and the officer is—

- (1) Alive at the time of his conception; and
- (2) Deceased at or before the time of his birth.

*Prison security activity* means correctional or detention activity (in a prison or other detention or confinement facility) of individuals who are alleged or found to have violated the criminal laws.

*PSOB determining official* means, as applicable, any of the following:

- (1) The PSOB Office;
- (2) The Hearing Officer; or
- (3) The Director.

*PSOB Office* means the unit of BJA that directly administers the Public Safety Officers' Benefits program, except that, with respect to the making of any finding, determination, affirmation, reversal, assignment, authorization, decision, judgment, waiver, or other ruling, it means such unit, acting with the concurrence of OJP's General Counsel.

*Public employee* means—

(1) An employee of a government described in the Act, at 42 U.S.C. 3796b(8), (or of a department or agency thereof) and whose acts and omissions while so employed are legally those of such government, which legally recognizes them as such (or, at a minimum, does not deny (or has not denied) them to be such); or

(2) An employee of an instrumentality of a government described in the Act, at 42 U.S.C. 3796b(8), who is eligible to receive disability benefits (or whose survivors are eligible to receive death benefits) from such government on the same basis as an employee of that government (within the meaning of paragraph (1) of this definition), or his survivors, would.

*Public employee member of a squad or crew* means a member of a squad or crew who is a public employee under the auspices of whose public agency employer the squad or crew operates.

*Public employee of a department or agency* means a public employee whose public agency employer is the department or agency.

*Public safety activity* means any of the following:

- (1) Law enforcement;
- (2) Fire protection;
- (3) Rescue activity; or
- (4) The provision of emergency medical services.

*Qualified beneficiary*—An individual is a qualified beneficiary under the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37, only if he is an eligible payee—

(1) Who qualifies as a beneficiary pursuant to a final agency determination that—

(i) The requirements of the Act, at 42 U.S.C. 3796(a) or (b) (excluding the limitations relating to appropriations), as applicable, have been met; and

(ii) The provisions of this part, as applicable, relating to payees otherwise have been met; and

(2) Whose actions were not a substantial contributing factor to the death of the public safety officer (with respect to a claim under subpart B of this part).

*Representative services* include expenses incurred in connection with such services.

*Rescue activity* means search or rescue assistance in locating or extracting from danger persons lost, missing, or in imminent danger of serious bodily harm.

*Rescue squad or ambulance crew* means a squad or crew whose members are rescue workers, ambulance drivers, paramedics, health-care responders, emergency medical technicians, or other similar workers, who—

(1) Are trained in rescue activity or the provision of emergency medical services; and

(2) As such members, have the legal authority and -responsibility to—

- (i) Engage in rescue activity; or
- (ii) Provide emergency medical services.

*Spouse* means an individual's lawful husband, -wife, -widower, or -widow (*i.e.*, with whom the individual lawfully entered into marriage), and includes a spouse living apart from the individual, other than pursuant to divorce, except

that, notwithstanding any other provision of law—

(1) For an individual purporting to be a spouse on the basis of a common-law marriage (or a putative marriage) to be considered a spouse within the meaning of this definition, it is necessary (but not sufficient) for the jurisdiction of domicile of the parties to recognize such individual as the lawful spouse of the other; and

(2) In deciding who may be the spouse of a public safety officer—

(i) The relevant jurisdiction of domicile is the officer's (as of the injury date); and

(ii) With respect to a claim under subpart B of this part, the relevant date is that of the officer's death.

*Stepchild*—An individual is a stepchild of a public safety officer only if the individual is the legally-adoptive or biological first-generation offspring of a public safety officer's current, deceased, or former spouse, which offspring (not having been legally adopted by the officer)—

(1) Was conceived before the marriage of the officer and the spouse; and

(2) As of the injury date—

(i) Was known by the officer not to be his biological first-generation offspring; and

(ii) After the officer obtained such knowledge—

(A) Received over half of his support from the officer;

(B) Had as his principal place of abode the home of the officer and was a member of the officer's household; or

(C) Was in a parent-child relationship with the officer.

*Stress or strain* includes physical stress or strain, mental stress or strain, post-traumatic stress disorder, and depression.

*Stroke* means cerebral vascular accident.

*Student* means an individual who meets the definition provided in the Act, at 42 U.S.C. 3796b(3)(ii), with respect to an educational/academic institution.

*Substantial contributing factor*—A factor substantially contributes to a death, injury, or disability, if the factor—

(1) Contributed to the death, injury, or disability to a significant degree; or

(2) Is a substantial factor in bringing the death, injury, or disability about.

*Substantial factor*—A factor substantially brings about a death, injury, disability, wound, condition, cardiac-event, heart attack, or stroke if—

(1) The factor alone was sufficient to have caused the death, injury, disability, wound, condition, cardiac-event, heart attack, or stroke; or

(2) No other factor (or combination of factors) contributed to the death, injury, disability, wound, condition, cardiac-event, heart attack, or stroke to so great a degree as it did.

*Suppression of fire* means extinguishment, physical prevention, or containment of fire, including on-site hazard evaluation.

*Terrorist attack*—An event or act is a terrorist attack within the meaning of the Act, at 42 U.S.C. 3796c-1(a), only if the Attorney General determines that—

(1) There is a reasonable indication that the event or act was (or would be or would have been, with respect to a *priori* prevention or investigation efforts) an act of domestic or international terrorism within the meaning of the criminal terrorism laws, at 18 U.S.C. 2331; and

(2) The event or act (or the circumstances of death or injury) was of such extraordinary or cataclysmic character as to make particularized factual findings impossible, impractical, unnecessary, or unduly burdensome.

*Voluntary intoxication at the time of death or catastrophic injury* means the following, as shown by any commonly-accepted tissue, -fluid, or -breath test or by other competent evidence:

(1) With respect to alcohol, (i) In any claim arising from a public safety officer's death in which the death was simultaneous (or practically simultaneous) with the injury, it means intoxication as defined in the Act, at 42 U.S.C. 3796b(5), unless convincing evidence demonstrates that the officer did not introduce the alcohol into his body intentionally; and

(ii) In any claim not described in paragraph (1)(i) of this definition, unless convincing evidence demonstrates that the officer did not introduce the

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alcohol into his body intentionally, it means intoxication—

(A) As defined in the Act, at 42 U.S.C. 3796b(5), *mutatis mutandis* (i.e., with “post-mortem” (each place it occurs) and “death” being substituted, respectively, by “post-injury” and “injury”); and

(B) As of the injury date; and

(2) With respect to drugs or other substances, it means intoxication as defined in the Act, at 42 U.S.C. 3796b(5), as evidenced by the presence (as of the injury date) in the body of the public safety officer—

(i) Of any controlled substance included on Schedule I of the drug control and enforcement laws (see 21 U.S.C. 812(a)), or any controlled substance included on Schedule II, III, IV, or V of such laws (see 21 U.S.C. 812(a)) and with respect to which there is no therapeutic range or maximum recommended dosage, unless convincing evidence demonstrates that such introduction was not a culpable act of the officer’s under the criminal laws; or

(ii) Of any controlled substance included on Schedule II, III, IV, or V of the drug control and enforcement laws (see 21 U.S.C. 812(a)) and with respect to which there is a therapeutic range or maximum recommended dosage—

(A) At levels above or in excess of such range or dosage, unless convincing evidence demonstrates that such introduction was not a culpable act of the officer’s under the criminal laws; or

(B) At levels at, below, or within such range or dosage, unless convincing evidence demonstrates that—

(1) Such introduction was not a culpable act of the officer’s under the criminal laws; or

(2) The officer was not acting in an intoxicated manner immediately prior to the injury date.

[71 FR 46037, Aug. 10, 2006, as amended at 73 FR 76528, Dec. 17, 2008]

### § 32.4 Terms; construction, severability; effect.

(a) In determining the meaning of any provision of this part, unless the context should indicate otherwise, the first three provisions of 1 U.S.C. 1 (rules of construction) shall apply.

(b) If benefits are denied to any individual pursuant to the Act, at 42 U.S.C. 3796a(4), or otherwise because his actions were a substantial contributing factor to the death of the public safety officer, such individual shall be presumed irrebuttably, for all purposes, not to have survived the officer.

(c) Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

(d) Unless the same should expressly provide otherwise (e.g., by use of the word “hereafter” in an appropriations proviso), any amendment to the Act (or any statutory enactment otherwise directly referent or -applicable to the program that is the subject of this part), shall apply only with respect to injuries (or, in connection with claims under the Act, at 42 U.S.C. 3796(k), shall apply only with respect to heart attacks or strokes referred to in the Act, at 42 U.S.C. 3796(k)(2)) occurring on or after the date it takes effect.

[73 FR 76531, Dec. 17, 2008]

### § 32.5 Evidence.

(a) Except as otherwise may be expressly provided in the Act or this part, a claimant has the burden of persuasion as to all material issues of fact, and by the standard of proof of “more likely than not.”

(b) Except as otherwise may be expressly provided in this part, the PSOB determining official may, at his discretion, consider (but shall not be bound by) the factual findings of a public agency.

(c) Rules 301 (presumptions), 401 (relevant evidence), 402 (admissibility), 602 to 604 (witnesses), 701 to 704 (testimony), 901 to 903 (authentication), and 1001 to 1007 (contents of writings, records, and photographs) of the Federal Rules of Evidence shall apply, *mutatis mutandis*, to all filings, hearings,

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and other proceedings or matters. No extrinsic evidence of authenticity as a condition precedent to admissibility shall be required with respect to any document purporting to bear the signature of an expert engaged by the BJA.

(d) In determining a claim, the PSOB determining official may, at his discretion, draw an adverse inference if, without reasonable justification or excuse—

(1) A claimant fails or refuses to file with the PSOB Office—

(i) Such material- or relevant evidence or -information within his possession, control, or ken as may reasonably be requested from time to time by such official; or

(ii) Such authorizations or waivers as may reasonably be requested from time to time by such official to enable him (or to assist in enabling him) to obtain access to material- or relevant evidence or -information of a medical, personnel, financial, or other confidential nature;

(2) A claimant under subpart C of this part fails or refuses to appear in person—

(i) At his hearing under subpart E of this part (if there be such a hearing); or

(ii) Before such official (or otherwise permit such official personally to observe his condition), at a time and location reasonably convenient to both, as may reasonably be requested by such official; or

(3) A claimant under subpart B or C of this part fails or refuses to apply for (or to pursue to completion), in timely fashion, the benefits, if any, described in § 32.15(a)(1)(i) or § 32.25(a)(1)(i), respectively.

(e) In determining a claim, the PSOB determining official may, at his discretion, draw an inference of voluntary intoxication at the time of death or catastrophic injury if, without reasonable justification or excuse, appropriate toxicologic analysis (including autopsy, in the event of death) is not performed, and/or the results thereof are not filed with the PSOB Office, where there is credible evidence suggesting that intoxication may have been a factor in the death or injury, or that the public safety officer—

(1) As of or near the injury date, was—

(i) A consumer of alcohol—

(A) In amounts likely to produce a blood-alcohol level of .10 per centum or greater in individuals similar to the officer in weight and sex; or

(B) In any amount, after ever having been treated at an inpatient facility for alcoholism;

(ii) A consumer of controlled substances included on Schedule I of the drug control and enforcement laws (see 21 U.S.C. 812(a)); or

(iii) An abuser of controlled substances included on Schedule II, III, IV, or V of the drug control and enforcement laws (see 21 U.S.C. 812(a)); or

(2) Immediately prior to the injury date, was under the influence of alcohol or drugs or other substances or otherwise acting in an intoxicated manner.

(f) In determining a claim under the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37, the certification described therein shall constitute *prima facie* evidence—

(1) Of the public agency's acknowledgment that the public safety officer, as of the injury date, was—

(i) A public safety officer of the kind described in the certification;

(ii) Employed by the agency (i.e., performing official functions for, or on behalf of, the agency); and

(iii) One of the following:

(A) With respect to a law enforcement officer, an officer of the agency;

(B) With respect to a firefighter,

(1) An officially recognized or designated member of the agency (if it is a legally organized volunteer fire department); or

(2) An employee of the agency;

(C) With respect to a chaplain,

(1) An officially recognized or designated member of the agency (if it is a legally organized police or volunteer fire department); or

(2) An officially recognized or designated public employee of the agency (if it is a legally organized police or fire department);

(D) With respect to a member of a rescue squad or ambulance crew, an officially recognized or designated public employee member of one of the agency's rescue squads or ambulance crews; or

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(E) With respect to a disaster relief worker, an employee of the agency (if it is described in the Act, at 42 U.S.C. 3796b(9)(B) or (C));

(2) Of the public agency's acknowledgment that there are no eligible payees other than those identified in the certification; and

(3) That the public safety officer—

(i) Sustained a line of duty injury in connection with public safety activity (or, otherwise, with efforts described in the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37) related to a terrorist attack (under the former statute) or to the terrorist attacks of September 11, 2001 (under the latter statute); and

(ii) As a direct and proximate result of such injury, was (as applicable)—

(A) Killed (with respect to a claim under subpart B of this part); or

(B) Totally and permanently disabled (with respect to a claim under subpart C of this part).

(g) In determining a claim, the PSOB determining official shall have, in addition to the hearing-examiner powers specified at 42 U.S.C. 3787 (hearings, subpoenas, oaths, witnesses, evidence), and to the authorities specified at 42 U.S.C. 3788(b)–(d) (experts, consultants, government resources) and in the Act and this part, the authority otherwise and in any reasonable manner to conduct his own inquiries, as appropriate.

(h) Acceptance of payment (by a payee (or on his behalf)) shall constitute *prima facie* evidence that the payee (or the pay agent)—

(1) Endorses as his own (to the best of his knowledge and belief) the statements and representations made, and the evidence and information provided, pursuant to the claim; and

(2) Is aware (in connection with the claim) of no—

(i) Fraud;

(ii) Concealment or withholding of evidence or information;

(iii) False, incomplete, or inaccurate statements or representations;

(iv) Mistake, wrongdoing, or deception; or

(v) Violation of 18 U.S.C. 287 (false, fictitious, or fraudulent claims), 1001 (false statements), or 1621 (perjury), or 42 U.S.C. 3795a (falsification or concealment of facts).

(i) A public safety officer's response to an emergency call from his public agency for him to perform public safety activity (including emergency response activity the agency is authorized to perform) shall constitute *prima facie* evidence of such response's non-routine character.

[73 FR 76531, Dec. 17, 2008]

§ 32.6 Payment and repayment.

(a) No payment shall be made to (or on behalf of) more than one individual, on the basis of being a particular public safety officer's spouse. If more than one should qualify, payment shall be made to the one with whom the officer considered himself, as of the injury date, to have the closest relationship, except that the individual (if any) who was a member of the officer's household (as of such date) shall be presumed rebuttably to be such one, unless legal proceedings (by the officer against such member, or vice versa) shall have been pending then in any court.

(b) No payment shall be made, save—

(1) To (or on behalf of) a living beneficiary; and

(2) Pursuant to—

(i) A written claim filed by (or on behalf of) such beneficiary; and

(ii) Except as provided in the Act, at 42 U.S.C. 3796(c), approval of such claim.

(c) Any amounts that would be paid but for the provisions of paragraph (b) of this section shall be retained by the United States and not paid.

(d) With respect to the amount paid to a payee (or on his behalf) pursuant to a claim, the payee shall repay the following, unless, for good cause shown, the Director grants a full or partial waiver pursuant to the Act, at 42 U.S.C. 3796(m):

(1) The entire amount, if approval of the claim was based, in whole or in material part, on the payee's (or any other person's or entity's) fraud, concealment or withholding of evidence or information, false, incomplete, or inaccurate statements or representations, mistake, wrongdoing, or deception; or

(2) The entire amount subject to divestment, if the payee's entitlement to such payment is divested, in whole or

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in part, such as by the subsequent discovery of individuals entitled to make equal or superior claims.

(e) At the discretion of the Director, repayment of amounts owing or collectible under the Act or this part may, as applicable, be executed through setoffs against future payments on financial claims under subpart D of this part.

[73 FR 76532, Dec. 17, 2008]

### § 32.7 Fees for representative services.

(a) A person seeking to receive any amount from (or with respect to) a claimant for representative services provided in connection with any claim may petition the PSOB Office for authorization under this section. Such petition shall include—

(1) An itemized description of the services;

(2) The total amount sought to be received, from any source, as consideration for the services;

(3) An itemized description of any representative or other services provided to (or on behalf of) the claimant in connection with other claims or causes of action, unrelated to the Act, before any public agency or non-public entity (including any insurer), arising from the public safety officer's death, disability, or injury;

(4) The total amount requested, charged, received, or sought to be received, from any source, as consideration for the services described in paragraph (a)(3) of this section;

(5) A statement of whether the petitioner has legal training or is licensed to practice law, and a description of any special qualifications possessed by the petitioner (other than legal training or a license to practice law) that increased the value of his services to (or on behalf of) the claimant;

(6) A certification that the claimant was provided, simultaneously with the filing of the petition, with—

(i) A copy of the petition; and

(ii) A letter advising the claimant that he could file his comments on the petition, if any, with the PSOB Office, within thirty-three days of the date of that letter; and

(7) A copy of the letter described in paragraph (a)(6)(ii) of this section.

(b) Unless, for good cause shown, the Director extends the time for filing, no petition under paragraph (a) of this section shall be considered if the petition is filed with the PSOB Office later than one year after the date of the final agency determination of the claim.

(c) Subject to paragraph (d) of this section, an authorization under paragraph (a) of this section shall be based on consideration of the following factors:

(1) The nature of the services provided by the petitioner;

(2) The complexity of the claim;

(3) The level of skill and competence required to provide the petitioner's services;

(4) The amount of time spent on the claim by the petitioner;

(5) The results achieved as a function of the petitioner's services;

(6) The level of administrative or judicial review to which the claim was pursued and the point at which the petitioner entered the proceedings;

(7) The ordinary, usual, or customary fee charged by other persons (and by the petitioner) for services of a similar nature; and

(8) The amount authorized by the PSOB Office in similar cases.

(d) No amount shall be authorized under paragraph (a) of this section for—

(1) Any stipulated-, percentage-, or contingency fee;

(2) Services at a rate in excess of that specified in 5 U.S.C. 504(b)(1)(A)(ii) (Equal Access to Justice Act); or

(3) Services provided in connection with—

(i) Obtaining or providing evidence or information previously obtained by the PSOB determining official;

(ii) Preparing the petition; or

(iii) Explaining or delivering an approved claim to the claimant.

(e) Upon a petitioner's failure (without reasonable justification or excuse) to pursue in timely fashion his filed petition under paragraph (a) of this section, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the petitioner

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and the claimant with notice of the Director's intention to exercise such discretion.

(f) Upon its authorizing or not authorizing the payment of any amount under paragraph (a) of this section, the PSOB Office shall serve notice of the same upon the claimant and the petitioner. Such notice shall specify the amount, if any, the petitioner is authorized to charge the claimant and the basis of the authorization.

(g) No agreement for representative services in connection with a claim shall be valid if the agreement provides for any consideration other than under this section. A person's receipt of consideration for such services other than under this section may, among other things, be the subject of referral by BJA to appropriate professional, administrative, disciplinary, or other legal authorities.

### § 32.8 Exhaustion of administrative remedies.

No determination or negative disability finding that, at the time made, may be subject to a request for a Hearing Officer determination, a motion for reconsideration, or a Director appeal, shall be considered a final agency determination for purposes of judicial review, unless all administrative remedies have been exhausted.

### Subpart B—Death Benefit Claims

#### § 32.11 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to claims made under the Act—

- (a) At 42 U.S.C. 3796(a); or
- (b) At 42 U.S.C. 3796c–1 or Public Law 107–37, with respect to a public safety officer's death.

#### § 32.12 Time for filing claim.

(a) Unless, for good cause shown, the Director extends the time for filing, no claim shall be considered if it is filed with the PSOB Office after the later of—

- (1) Three years after the public safety officer's death; or
- (2) One year after—
  - (i) A final determination of entitlement to receive, or of denial of, the

benefits, if any, described in § 32.15(a)(1)(i); or

(ii) The receipt of the certification described in § 32.15(a)(1)(ii).

(b) A claimant may file with his claim such supporting documentary, electronic, video, or other nonphysical evidence and legal arguments as he may wish to provide.

[73 FR 76532, Dec. 17, 2008]

### § 32.13 Definitions.

*Adoptive parent of a public safety officer* means any individual who (not being a step-parent), as of the injury date, was the legally-adoptive parent of the public safety officer, or otherwise was in a child-parent relationship with him.

*Beneficiary of a life insurance policy of a public safety officer*—An individual (living or deceased on the date of death of the public safety officer) is designated as beneficiary of a life insurance policy of such officer as of such date, only if the designation is, as of such date, legal and valid (as a designation of beneficiary of a life insurance policy) and unrevoked (by such officer or by operation of law) or otherwise unterminated, except that—

(1) Any designation of an individual (including any designation of the biological or adoptive offspring of such individual) made in contemplation of such individual's marriage (or purported marriage) to such officer shall be considered to be revoked by such officer as of such date of death if the marriage (or purported marriage) did not take place, unless preponderant evidence demonstrates that—

(i) It did not take place for reasons other than personal differences between the officer and the individual; or

(ii) No such revocation was intended by the officer; and

(2) Any designation of a spouse (or purported spouse) made in contemplation of or during such spouse's (or purported spouse's) marriage (or purported marriage) to such officer (including any designation of the biological or adoptive offspring of such spouse (or purported spouse)) shall be considered to be revoked by such officer as of such date of death if the spouse (or purported spouse) is divorced from such officer after the date of designation and

before such date of death, unless preponderant evidence demonstrates that no such revocation was intended by the officer.

*Beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A)*—An individual (living or deceased on the date of death of the public safety officer) is designated, by such officer (and as of such date), as beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A), only if the designation is, as of such date, legal and valid and unrevoked (by such officer or by operation of law) or otherwise untruncated, except that—

(1) Any designation of an individual (including any designation of the biological or adoptive offspring of such individual) made in contemplation of such individual's marriage (or purported marriage) to such officer shall be considered to be revoked by such officer as of such date of death if the marriage (or purported marriage) did not take place, unless preponderant evidence demonstrates that—

(i) It did not take place for reasons other than personal differences between the officer and the individual; or

(ii) No such revocation was intended by the officer; and

(2) Any designation of a spouse (or purported spouse) made in contemplation of or during such spouse's (or purported spouse's) marriage (or purported marriage) to such officer (including any designation of the biological or adoptive offspring of such spouse (or purported spouse)) shall be considered to be revoked by such officer as of such date of death if the spouse (or purported spouse) is divorced from such officer subsequent to the date of designation and before such date of death, unless preponderant evidence demonstrates that no such revocation was intended by the officer.

*Cardiovascular disease* includes heart attack and stroke.

*Child-parent relationship* means a relationship between a public safety officer and another individual, in which the individual (other than the officer's biological or legally-adoptive parent) has the role of parent, as shown by convincing evidence.

*Competent medical evidence to the contrary*—The presumption raised by the Act, at 42 U.S.C. 3796(k), is overcome

by competent medical evidence to the contrary, when evidence indicates to a degree of medical probability that extrinsic circumstances, considered in combination (as one circumstance) or alone, were a substantial factor in bringing the heart attack or stroke about.

*Designation on file*—A designation of beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A), is on file with a public safety agency, -organization, or -unit, only if it is deposited with the same by the public safety officer making the designation, for it to maintain with its personnel or similar records pertaining to him.

*Direct and proximate result of a heart attack or stroke*—A death results directly and proximately from a heart attack or stroke if the heart attack or stroke is a substantial factor in bringing it about.

*Engagement in a situation involving law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity*—A public safety officer is so engaged only when, within his line of duty—

(1) He is in the course of actually—

(i) Engaging in law enforcement;

(ii) Suppressing fire;

(iii) Responding to a hazardous-material emergency;

(iv) Performing rescue activity;

(v) Providing emergency medical services;

(vi) Performing disaster relief activity; or

(vii) Otherwise engaging in emergency response activity; and

(2) The public agency he serves (or the relevant government) legally recognizes him to have been in such course at the time of such engagement (or, at a minimum, does not deny (or has not denied) him so to have been).

*Event* includes occurrence, but does not include any engagement or participation described in the Act, at 42 U.S.C. 3796(k)(1).

*Excessive consumption of alcohol*—An individual is an excessive consumer of alcohol if he consumes alcohol in amounts commonly accepted to be associated with substantially-increased risk of cardiovascular disease.

*Execution of a designation of beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A)* means the legal and valid execution, by the public safety officer, of a writing that, designating a beneficiary, expressly, specifically, or unmistakably refers to—

(1) The Act (or the program it creates); or

(2) All the death benefits with respect to which such officer lawfully could designate a beneficiary (if there be no writing that satisfies paragraph (1) of this definition).

*Execution of a life insurance policy* means, with respect to a life insurance policy, the legal and valid execution, by the individual whose life is insured thereunder, of—

(1) The approved application for coverage;

(2) A designation of beneficiary; or

(3) A designation of the mode of benefit.

*Extrinsic circumstances* means—

(1) An event or events; or

(2) An intentional risky behavior or intentional risky behaviors.

*Life insurance policy on file*—A life insurance policy is on file with a public safety agency, -organization, or -unit, only if—

(1) It is issued through (or on behalf of) the same; or

(2) The original (or a copy) of one of the following is deposited with the same by the public safety officer whose life is insured under the policy, for it to maintain with its personnel or similar records pertaining to him:

(i) The policy (itself);

(ii) The declarations page or -statement from the policy's issuer;

(iii) A certificate of insurance (for group policies);

(iv) Any instrument whose execution constitutes the execution of a life insurance policy; or

(v) The substantial equivalent of any of the foregoing.

*Medical probability*—A fact is indicated to a degree of medical probability, when, pursuant to a medical assessment, the fact is indicated by a preponderance of such evidence as may be available.

*Most recently executed designation of beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A)* means the most recently

executed such designation that, as of the date of death of the public safety officer, designates a beneficiary.

*Most recently executed life insurance policy of a public safety officer* means the most recently executed policy insuring the life of a public safety officer that, being legal and valid (as a life insurance policy) upon its execution, as of the date of death of such officer—

(1) Designates a beneficiary; and

(2) Remains legally unrevoked (by such officer or by operation of law) or otherwise untermiinated.

*Nonroutine strenuous physical activity* means line of duty activity that—

(1) Is not excluded by the Act, at 42 U.S.C. 3796(1);

(2) Is not performed as a matter of routine; and

(3) Entails an unusually-high level of physical exertion.

*Nonroutine stressful or strenuous physical activity* means nonroutine stressful physical activity or nonroutine strenuous physical activity.

*Nonroutine stressful physical activity* means line of duty activity that—

(1) Is not excluded by the Act, at 42 U.S.C. 3796(1);

(2) Is not performed as a matter of routine;

(3) Entails non-negligible physical exertion; and

(4) Occurs—

(i) With respect to a situation in which a public safety officer is engaged, under circumstances that objectively and reasonably—

(A) Pose (or appear to pose) significant dangers, threats, or hazards (or reasonably-foreseeable risks thereof), not faced by similarly-situated members of the public in the ordinary course; and

(B) Provoke, cause, or occasion an unusually-high level of alarm, fear, or anxiety; or

(ii) With respect to a training exercise in which a public safety officer participates, under circumstances that objectively and reasonably—

(A) Simulate in realistic fashion situations that pose significant dangers, threats, or hazards; and

(B) Provoke, cause, or occasion an unusually-high level of alarm, fear, or anxiety.

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*Parent of a public safety officer* means a public safety officer's surviving—

(1) Biological or adoptive parent whose parental rights have not been terminated, as of the injury date; or

(2) Step-parent.

*Participation in a training exercise*—A public safety officer participates (as a trainer or trainee) in a training exercise only when actually taking formal part in a structured activity that itself is—

(1) Within an official training (or -fitness) program of his public agency; and

(2) Mandatory, rated (i.e., officially tested, -graded, -judged, -timed, etc.), or directly supervised, -proctored, or -monitored.

*Public safety agency, -organization, or -unit* means a department or agency (or component thereof)—

(1) In which a public safety officer serves in an official capacity, with or without compensation, as such an officer (of any kind but disaster relief worker); or

(2) Of which a public safety officer is an employee, performing official duties as described in the Act, at 42 U.S.C. 3796b(9)(B) or (C), as a disaster relief worker.

*Risky behavior* means—

(1) Failure (without reasonable justification or excuse) to undertake treatment—

(i) Of any commonly-accepted cardiovascular-disease risk factor associated with clinical values, where such risk factor is—

(A) Known (or should be known) to be present; and

(B) Present to a degree that substantially exceeds the minimum value commonly accepted as indicating high risk;

(ii) Of any disease or condition commonly accepted to be associated with substantially increased risk of cardiovascular disease, where such associated disease or condition is known (or should be known) to be present; or

(iii) Where a biological parent, -sibling, or -first-generation offspring, is known to have (or have a history of) cardiovascular disease;

(2) Smoking an average of more than one-half of a pack of cigarettes (or its equivalent) per day;

(3) Excessive consumption of alcohol;

(4) Consumption of controlled substances included on Schedule I of the drug control and enforcement laws (*see* 21 U.S.C. 812(a)), where such consumption is commonly accepted to be associated with increased risk of cardiovascular disease;

(5) Abuse of controlled substances included on Schedule II, III, IV, or V of the drug control and enforcement laws (*see* 21 U.S.C. 812(a)), where such abuse is commonly accepted to be associated with increased risk of cardiovascular disease; or

(6) Any activity or action, specified in the Act, at 42 U.S.C. 3796a(1), (2), or (3), that is commonly accepted to be associated with substantially increased risk of cardiovascular disease.

*Routine*—Neither of the following shall be dispositive in determining whether an activity or action shall be understood to have been performed as a matter of routine:

(1) Being generally described by the public agency as routine or ordinary; or

(2) The frequency with which it may be performed.

*Step-parent of a public safety officer* means a current or former spouse of the legally-adoptive or biological parent (living or deceased) of a public safety officer conceived (or legally adopted) by that parent before the marriage of the spouse and the parent, which spouse (not being a legally-adoptive parent of the officer), as of the injury date,

(1) Received over half of his support from the officer;

(2) Had as his principal place of abode the home of the officer and was a member of the officer's household; or

(3) Was in a child-parent relationship with the officer.

*Undertaking of treatment*—An individual undertakes treatment, when he consults with a physician licensed to practice medicine in any jurisdiction described in the Act, at 42 U.S.C. 3796b(8), and complies substantially with his recommendations.

[61 FR 50213, Sept. 24, 1996, as amended at 73 FR 76832, Dec. 17, 2008]

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**§ 32.14 PSOB Office determination.**

(a) Upon its approving or denying a claim, the PSOB Office shall serve notice of the same upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer). In the event of a denial, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to requesting a Hearing Officer determination.

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination, by the PSOB Office, of his filed claim, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

(c) In connection with its determination (pursuant to a filed claim) of the existence of competent medical evidence to the contrary, the PSOB Office shall serve the claimant with notice (indicating that he may file such documentary, electronic, video, or other non-physical evidence (such as medical-history records, as appropriate) and legal arguments in support of his claim as he may wish to provide), where there is evidence before it that affirmatively suggests that—

(1) The public safety officer actually knew or should have known that he had cardio-vascular disease risk factors and appears to have worsened or aggravated the same through his own intentional and risky behavior (as opposed to where the evidence affirmatively suggests merely that cardio-vascular disease risk factors were present); or

(2) It is more likely than not that a public safety officer's heart attack or stroke was imminent.

[73 FR 76534, Dec. 17, 2008]

**§ 32.15 Prerequisite certification.**

(a) Except as provided in the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37, and unless, for good cause shown, the Director grants a waiver, no claim shall be approved unless the following (which shall be necessary, but not suf-

ficient, for such approval) are filed with the PSOB Office:

(1) Subject to paragraphs (b) and (d) of this section, a certification from the public agency in which the public safety officer served (as of the injury date) that he died as a direct and proximate result of a line of duty injury, and either—

(i) That his survivors (listed by name, address, relationship to him, and amount received) have received (or legally are entitled to receive) the maximum death benefits legally payable by the agency with respect to deaths of public safety officers of his kind, rank, and tenure; or

(ii) Subject to paragraph (c) of this section, that the agency is not legally authorized to pay—

(A) Any benefits described in paragraph (a)(1)(i) of this section, to any person; or

(B) Any benefits described in paragraph (a)(1)(i) of this section, to public safety officers of the kind, rank, and tenure described in such paragraph;

(2) A copy of any findings or rulings made by any public agency that relate to the officer's death; and

(3) A certification from the claimant listing every individual known to him who is or might be the officer's child, spouse, or parent.

(b) The provisions of paragraphs (a)(1) and (d) of this section shall also apply with respect to every public agency that legally is authorized to pay death benefits with respect to the agency described in that paragraph.

(c) No certification described in paragraph (a)(1)(ii) of this section shall be deemed complete for purposes of this section unless it—

(1) Lists every public agency (other than BJA) that legally is authorized to pay death benefits with respect to the certifying agency; or

(2) States that no public agency (other than BJA) legally is authorized to pay death benefits with respect to the certifying agency.

(d) Subject to paragraphs (b) and (c) of this section, if the Director finds that the conditions specified in the Act, at 42 U.S.C. 3796(k), are satisfied with respect to a particular public safety officer's death, and that no circumstance specified in the Act, at 42

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U.S.C. 3796a(1), (2), or (3), applies with respect thereto—

(1) The certification as to death, described in paragraph (a)(1) of this section, shall not be required; and

(2) The certification as to benefits, described in paragraph (a)(1)(ii) of this section, shall be deemed complete for purposes of this section if it—

(i) Describes the public agency's understanding of the circumstances (including such causes of which it may be aware) of the officer's death; and

(ii) States that, in connection with deaths occurring under the circumstances described in paragraph (d)(2)(i) of this section, the public agency is not legally authorized to pay any benefits described in paragraph (a)(1)(i) of this section.

[73 FR 76534, Dec. 17, 2008]

### § 32.16 Payment.

(a) No payment shall be made to (or on behalf of) more than one individual, on the basis of being a public safety officer's parent as his mother, or on that basis as his father. If more than one parent qualifies as the officer's mother, or as his father, payment shall be made to the one with whom the officer considered himself, as of the injury date, to have the closest relationship, except that any biological or legally adoptive parent whose parental rights have not been terminated as of the injury date shall be presumed rebuttably to be such one.

(b) Any amount payable with respect to a minor or incompetent shall be paid to his legal guardian, to be expended solely for the benefit of such minor or incompetent.

(c) If more than one individual should qualify for payment—

(1) Under the Act, at 42 U.S.C. 3796(a)(4)(i), payment shall be made to each of them in equal shares, except that, if the designation itself should manifest a different distribution, payment shall be made to each of them in shares in accordance with such distribution; or

(2) Under the Act, at 42 U.S.C. 3796(a)(4)(ii), payment shall be made to each of them in equal shares.

[73 FR 76535, Dec. 17, 2008]

### § 32.17 Request for Hearing Officer determination.

In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall request a Hearing Officer determination under subpart E of this part. Consistent with § 32.8, any denial that is not the subject of such a request shall constitute the final agency determination.

## Subpart C—Disability Benefit Claims

### § 32.21 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to claims made under the Act—

(a) At 42 U.S.C. 3796(b); or

(b) At 42 U.S.C. 3796c-1 or Public Law 107-37, with respect to a public safety officer's disability.

### § 32.22 Time for filing claim.

(a) Unless, for good cause shown, the Director extends the time for filing, no claim shall be considered if it is filed with the PSOB Office after the later of—

(1) Three years after the injury date; or

(2) One year after—

(i) A final determination of entitlement to receive, or of denial of, the benefits, if any, described in § 32.25(a)(1)(i); or

(ii) The receipt of the certification described in § 32.25(a)(1)(ii).

(b) A claimant may file with his claim such supporting documentary, electronic, video, or other nonphysical evidence and legal arguments as he may wish to provide.

[73 FR 76535, Dec. 17, 2008]

### § 32.23 Definitions.

*Direct result of an injury*—A disability results directly from an injury if the injury is a substantial factor in bringing the disability about.

*Gainful work* means full-or part-time activity that actually is compensated or commonly is compensated.

*Medical certainty*—A fact exists to a degree of medical certainty, when, pursuant to a medical assessment, the fact

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is demonstrated by convincing evidence.

*Permanently disabled*—An individual is permanently disabled only if there is a degree of medical certainty (given the current state of medicine in the United States) that his disabled condition—

(1) Will progressively deteriorate or remain constant, over his expected lifetime; or

(2) Otherwise has reached maximum medical improvement.

*Product of an injury*—Permanent and total disability is produced by a catastrophic injury suffered as a direct and proximate result of a personal injury if the disability is a direct result of the personal injury.

*Residual functional capacity* means that which an individual still is capable of doing, as shown by medical (and, as appropriate, vocational) assessment, despite a disability.

*Totally disabled*—An individual is totally disabled only if there is a degree of medical certainty (given the current state of medicine in the United States) that his residual functional capacity is such that he cannot perform any gainful work.

**§ 32.24 PSOB Office determination.**

(a) Upon its approving or denying a claim, the PSOB Office shall serve notice of the same upon the claimant. In the event of a denial, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to—

(i) Requesting a Hearing Officer determination; or

(ii) As applicable, moving to reconsider a negative disability finding.

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his filed claim, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

**§ 32.25 Prerequisite certification.**

(a) Except as provided in the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37,

and unless, for good cause shown, the Director grants a waiver, no claim shall be approved unless the following (which shall be necessary, but not sufficient, for such approval) are filed with the PSOB Office:

(1) Subject to paragraph (b) of this section, a certification from the public agency in which the public safety officer served (as of the injury date) that he was permanently and totally disabled as a direct result of a line of duty injury, and either—

(i) That he has received (or legally is entitled to receive) the maximum disability benefits (including workers' compensation) legally payable by the agency with respect to disabled public safety officers of his kind, rank, and tenure; or

(ii) Subject to paragraph (c) of this section, that the agency is not legally authorized to pay—

(A) Any benefits described in paragraph (a)(1)(i) of this section, to any person; or

(B) Any benefits described in paragraph (a)(1)(i) of this section, to public safety officers of the kind, rank, and tenure described in such paragraph; and

(2) A copy of—

(i) Each State, local, and federal income tax return filed by or on behalf of the public safety officer from the year before the injury date to the date of determination by the PSOB determining official; and

(ii) Any rulings made by any public agency that relate to the claimed disability.

(b) The provisions of paragraph (a)(1) of this section shall also apply with respect to every public agency that legally is authorized to pay disability benefits with respect to the agency described in that paragraph.

(c) No certification described in paragraph (a)(1)(ii) of this section shall be deemed complete unless it—

(1) Lists every public agency (other than BJA) that legally is authorized to pay disability benefits with respect to the certifying agency; or

(2) States that no public agency (other than BJA) legally is authorized to pay disability benefits with respect to the certifying agency.

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### § 32.26 Payment.

The amount payable on a claim shall be the amount payable, as of the injury date, pursuant to the Act, at 42 U.S.C. 3796(b).

### § 32.27 Motion for reconsideration of negative disability finding.

A claimant whose claim is denied in whole or in part on the ground that he has not shown that his claimed disability is total and permanent may move for reconsideration, under § 32.28, of the specific finding as to the total and permanent character of the claimed disability (in lieu of his requesting a Hearing Officer determination with respect to the same).

### § 32.28 Reconsideration of negative disability finding.

(a) Unless, for good cause shown, the Director extends the time for filing, no negative disability finding described in § 32.27 shall be reconsidered if the motion under that section is filed with the PSOB Office later than thirty-three days after the service of notice of the denial.

(b) Notwithstanding any other provision of this section, no negative disability finding described in § 32.27 shall be reconsidered—

(1) If or after such reconsideration is rendered moot (*e.g.*, by the final denial of the claim on other grounds, without possibility of further administrative or judicial recourse); or

(2) If a request for a Hearing Officer determination has been filed in timely fashion with respect to such finding.

(c) Unless, for good cause shown, the Director grants a waiver, upon the making of a motion under § 32.27, reconsideration of the negative disability finding described in that section shall be stayed for three years. Upon the conclusion of the stay, the claimant shall have not more than six years to file evidence with the PSOB Office in support of his claimed disability.

(d) Upon a claimant's failure (without reasonable justification or excuse) to file in timely fashion evidence pursuant to paragraph (c) of this section, the Director may, at his discretion, deem the motion for reconsideration to be abandoned, as though never filed. Not less than thirty-three days prior

thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

(e) No negative disability finding described in § 32.27 shall be reversed unless a copy (which shall be necessary, but not sufficient, for such reversal) of each federal, State, and local income tax return filed by or on behalf of the claimant from the year before the date of the motion for reconsideration under that section to the date of reversal is filed with the PSOB Office.

(f) Upon its affirming or reversing a negative disability finding described in § 32.27, the PSOB Office shall serve notice of the same upon the claimant. In the event of an affirmance, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to requesting a Hearing Officer determination of the disability finding.

### § 32.29 Request for Hearing Officer determination.

(a) In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall request a Hearing Officer determination under subpart E of this part—

(1) Of—

(i) His entire claim, if he has not moved for reconsideration of a negative disability finding under § 32.27; or

(ii) Consistent with § 32.42(c), the grounds (if any) of the denial that are not the subject of such motion, if he has moved for reconsideration of a negative disability finding under § 32.27; and

(2) Of a negative disability finding that is affirmed pursuant to his motion for reconsideration under § 32.27.

(b) Consistent with § 32.8, the following shall constitute the final agency determination:

(1) Any denial not described in § 32.27 that is not the subject of a request for a Hearing Officer determination under paragraph (a)(1)(i) of this section;

(2) Any denial described in § 32.27 that is not the subject of a request for a Hearing Officer determination under paragraph (a)(1)(ii) of this section, unless the negative disability finding is

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the subject of a motion for reconsideration; and

(3) Any affirmance that is not the subject of a request for a Hearing Officer determination under paragraph (a)(2) of this section.

[73 FR 76535, Dec. 17, 2008]

#### Subpart D—Educational Assistance Benefit Claims

##### § 32.31 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to claims (*i.e.*, threshold claims and financial claims) made under the Act, at 42 U.S.C. 3796d–1.

##### § 32.32 Time for filing claim.

(a) Subject to the Act, at 42 U.S.C. 3796d–1(c), and to paragraph (b) of this section, a claim may be filed with the PSOB Office at any time after the injury date.

(b) Unless, for good cause shown, the Director grants a waiver, no financial claim may be filed with the PSOB Office, with respect to a grading period that commences more than six months after the date of filing.

(c) A claimant may file with his claim such supporting documentary, electronic, video, or other nonphysical evidence and legal arguments as he may wish to provide.

[73 FR 76535, Dec. 17, 2008]

##### § 32.33 Definitions.

*Application* means claim (*i.e.*, a threshold claim or a financial claim).

*Assistance* means financial assistance.

*Child of an eligible public safety officer* means the child of a public safety officer, which officer is an eligible public safety officer.

*Dependent*—An individual is a dependent of an eligible public safety officer, if—

(1) Being a child of the officer, the individual—

(i) Was claimed properly as the officer's dependent (within the meaning of the Internal Revenue Code, at 26 U.S.C. 152) on the officer's federal income-tax return (or could have been claimed if such a return had been required by law)—

(A) For the tax year of (or immediately preceding) either the injury date or the date of the officer's death (with respect to a claim by virtue of such death); or

(B) For the relevant tax year (with respect to a claim by virtue of the officer's disability); or

(ii) Is the officer's posthumous child; or

(2) Being a spouse of the officer at the time of the officer's death or on the date of the officer's totally and permanently disabling injury, the individual received over half of his support from the officer (or had as his principal place of abode the home of the officer and was a member of the officer's household)—

(i) As of either the injury date or the date of the officer's death (with respect to a claim by virtue of such death); or

(ii) In the relevant tax year (with respect to a claim by virtue of the officer's disability).

*Educational assistance benefits* means benefits specifically to assist in paying educational expenses.

*Educational expenses* means such of the following as may be in furtherance of the educational, professional, or vocational objective of the program of education that forms the basis of a financial claim:

(1) Tuition and fees, as described in 20 U.S.C. 1087l(1) (higher education assistance);

(2) Reasonable expenses for—

(i) Room and board (if incurred for attendance on at least a half-time basis);

(ii) Books;

(iii) Computer equipment;

(iv) Supplies;

(v) Transportation; and

(3) For attendance on at least a three-quarter-time basis, a standard allowance for miscellaneous personal expenses that is the greater of—

(i) The allowance for such expenses, as established by the eligible educational institution for purposes of financial aid; or

(ii) \$200.00 per month.

*Eligible dependent* means an individual who—

(1) Is a dependent of an eligible public safety officer;

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(2) Attends a program of education, as described in the Act, at 42 U.S.C. 3796d-1(a)(1); and

(3) Is otherwise eligible to receive financial assistance pursuant to the Act or this subpart.

*Eligible educational expenses* means a claimant's educational expenses, reduced by the amount of educational assistance benefits from non-governmental organizations that the claimant has received or will receive.

*Eligible public safety officer* means a public safety officer—

(1) With respect to whose death, benefits under subpart B of this part properly have been paid; or

(2) With respect to whose disability, benefits under subpart C of this part properly—

(i) Have been paid; or

(ii) Would have been paid, but for the operation of paragraph (b)(1) of § 32.6.

*Financial assistance* means financial assistance, as described in the Act, at 42 U.S.C. 3796d-1.

*Financial claim* means a request for financial assistance, with respect to attendance at a program of education, for a particular grading period.

*Financial need*—An individual is in financial need for a particular grading period to the extent that the amount of his eligible educational expenses for that period exceed the sum of—

(1) The amount of his educational assistance benefits as described in the Act, at 42 U.S.C. 3796d-1(a)(3)(A); and

(2) His expected family contribution calculated pursuant to 20 U.S.C. 1087nn (higher education assistance).

*Funds* means financial assistance.

*Grading period* means the period of attendance (*e.g.*, a semester, a trimester, a quarter) in a program of education, after (or with respect to) which period grades are assigned, units of credit are awarded, or courses are considered completed, as determined by the eligible educational institution.

*Prospective financial claim* means a financial claim with respect to a grading period that ends after the claim is filed.

*Public safety agency* means a public agency—

(1) In which a public safety officer serves in an official capacity, with or without compensation, as such an offi-

cer (of any kind but disaster relief worker); or

(2) Of which a public safety officer is an employee, performing official duties as described in the Act, at 42 U.S.C. 3796b(9)(B) or (C), as a disaster relief worker.

*Retroactive financial claim* means a financial claim with respect to a grading period that ends before the claim is filed.

*Spouse of an eligible public safety officer at the time of the officer's death or on the date of a totally and permanently disabling injury* means the spouse of a public safety officer (which officer is an eligible public safety officer) as of—

(1) The date of the officer's death (with respect to a claim by virtue of such death); or

(2) The injury date (with respect to a claim by virtue of the officer's disability).

*Tax Year*—With respect to a claim by virtue of an eligible public safety officer's disability, the relevant tax year is—

(1) The tax year of (or immediately preceding) the injury date;

(2) Any tax year during which the program of education that forms the basis of the claim is attended or is pursued;

(3) The tax year immediately preceding the date on which the program of education that forms the basis of the claim commenced (or is to commence); or

(4) The tax year of (or immediately preceding) the officer's death, where the program of education that forms the basis of the claim commenced (or is to commence) after the date of such death.

*Threshold claim* means a request for determination of general eligibility to receive financial assistance.

### § 32.34 PSOB Office determination.

(a) In the event of the PSOB Office's denying a claim, the notice it serves upon the claimant shall—

(1) Specify the factual findings and legal conclusions that support the denial; and

(2) Provide information as to requesting a Hearing Officer determination.

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(b) No financial claim shall be approved, unless the claimant's threshold claim has been approved.

(c) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his filed claim, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

**§ 32.35 Disqualification.**

No claim shall be approved if the claimant is—

(a) In default on any student loan obtained under 20 U.S.C. 1091 (higher education assistance), unless, for good cause shown, the Director grants a waiver; or

(b) Subject to a denial of federal benefits under 21 U.S.C. 862 (drug traffickers and possessors).

**§ 32.36 Payment and repayment.**

(a) The computation described in the Act, at 42 U.S.C. 3796d-1(a)(2), shall be based on a certification from the eligible educational institution as to the claimant's full-, three-quarter-, half-, or less-than-half-time student status, according to such institution's own academic standards and practices.

(b) No payment shall be made with respect to any grading period that ended before the injury date.

(c) With respect to any financial claim, no amount shall be payable that exceeds the amount of the eligible educational expenses that form the basis of the claim.

(d) In the event that appropriations for a fiscal year are insufficient for full payment of all approved or anticipated financial claims, the following payments shall be made—

(1) The amounts payable on approved prospective financial claims from claimants in financial need, to the extent of such need (if sufficient funds be available therefor), in the order the claims are approved;

(2) All other amounts payable on approved prospective financial claims (in the order the claims are approved), if sufficient funds be available therefor—

(i) After payment of all amounts payable pursuant to paragraph (d)(1) of this section; and

(ii) After making allowance for anticipated amounts payable in the fiscal year pursuant to paragraph (d)(1) of this section; and

(3) The amounts payable on approved retroactive financial claims (in the order the claims are approved), if sufficient funds be available therefor—

(i) After payment of all amounts payable pursuant to paragraphs (d)(1) and (2) of this section; and

(ii) After making allowance for anticipated amounts payable in the fiscal year, pursuant to paragraphs (d)(1) and (2) of this section.

(e) In the event that, at the conclusion of a fiscal year, any amounts remain payable on an approved financial claim, such amounts shall remain payable thereafter until paid (when appropriations be sufficient therefor).

(f) In the event that any amounts remain payable on an approved prospective financial claim after the end of the grading period that forms its basis, such claim shall be deemed an approved retroactive financial claim for purposes of paragraph (d) of this section.

(g) No payment shall be made to (or on behalf of) any individual, on the basis of being a particular living public safety officer's spouse, unless the individual is the officer's spouse on the date of payment.

(h) Unless, for good cause shown, the Director grants a full or partial waiver, a payee shall repay the amount paid to him (or on his behalf) pursuant to a prospective financial claim if, during the grading period that forms its basis—

(1) He fails to maintain satisfactory progress under 20 U.S.C. 1091(c) (higher education assistance);

(2) He fails to maintain the enrollment status described in his claim; or

(3) By his acts or omissions, he is or becomes ineligible for financial assistance.

**§ 32.37 Request for Hearing Officer determination.**

In order to exhaust his administrative remedies, a claimant seeking relief

from the denial of his claim shall request a Hearing Officer determination under subpart E of this part. Consistent with § 32.8, any denial that is not the subject of such a request shall constitute the final agency determination.

### Subpart E—Hearing Officer Determinations

#### § 32.41 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to requests for Hearing Officer determination of claims denied under subpart B, C (including affirmances of negative disability findings described in § 32.27), or D of this part, and of claims remanded (or matters referred) under § 32.54(c).

[73 FR 76535, Dec. 17, 2008]

#### § 32.42 Time for filing request for determination.

(a) Subject to paragraph (c) of this section, and unless, for good cause shown, the Director extends the time for filing, no claim shall be determined if the request therefor is filed with the PSOB Office later than thirty-three days after the service of notice of—

(1) The denial (under subpart B, C (except as may be provided in paragraph (a)(2) of this section), or D of this part) of a claim; or

(2) The affirmance (under subpart C of this part) of a negative disability finding described in § 32.27.

(b) A claimant may file with his request for a Hearing Officer determination such supporting documentary, electronic, video, or other non-physical evidence and legal arguments as he may wish to provide.

(c) The timely filing of a motion for reconsideration under § 32.28(a) shall be deemed to constitute a timely filing, under paragraph (a) of this section, of a request for determination with respect to any grounds described in § 32.29(a)(1)(ii) that may be applicable.

[73 FR 76535, Dec. 17, 2008]

#### § 32.43 Appointment and assignment of Hearing Officers.

(a) Pursuant to 42 U.S.C. 3787 (employment and authority of hearing offi-

cers), Hearing Officers may be appointed from time to time by the Director, to remain on the roster of such Officers at his pleasure.

(b) Upon the filing of a request for a Hearing Officer determination (or upon remand or referral), the PSOB Office shall assign the claim to a Hearing Officer on the roster; the PSOB Office may assign a particular claim to a specific Hearing Officer if it judges, in its discretion, that his experience or expertise suit him especially for it.

(c) Upon its making the assignment described in paragraph (b) of this section, the PSOB Office shall serve notice of the same upon the claimant, with an indication that any evidence or legal argument he wishes to provide is to be filed simultaneously with the PSOB Office and the Hearing Officer.

(d) With respect to an assignment described in paragraph (b) of this section, the Hearing Officer's consideration shall be—

(1) *De novo* (unless the Director should expressly prescribe otherwise, with respect to a particular remand or referral), rather than in review of the findings, determinations, affirmances, reversals, assignments, authorizations, decisions, judgments, rulings, or other actions of the PSOB Office; and

(2) Consistent with subpart B, C, or D of this part, as applicable.

(e) OJP's General Counsel shall provide advice to the Hearing Officer as to all questions of law relating to any matter assigned pursuant to paragraph (b) of this section.

[73 FR 76535, Dec. 17, 2008]

#### § 32.44 Hearing Officer determination.

(a) Upon his determining a claim, the Hearing Officer shall file notice of the same simultaneously with the Director (for his review under subpart F of this part (in the event of approval)), the PSOB Office, and OJP's General Counsel, which notice shall specify the factual findings and legal conclusions that support it.

(b) Upon a Hearing Officer's denying a claim, the PSOB Office shall serve notice of the same upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer), which notice shall—

## § 32.45

(1) Specify the Hearing Officer's factual findings and legal conclusions that support it; and

(2) Provide information as to Director appeals.

(c) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his claim pursuant to his filed request therefor, the Director may, at his discretion, deem the request to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

### § 32.45 Hearings.

(a) Except with respect to a remand or referral, at the election of a claimant under subpart B or C of this part, the Hearing Officer shall hold a hearing, at a location agreeable to the claimant and the Officer (or, otherwise, at a location ruled by the Hearing Officer to be suitable), for the sole purposes of obtaining, consistent with § 32.5(c),

(1) Evidence from the claimant and his fact or expert witnesses; and

(2) Such other evidence as the Hearing Officer, at his discretion, may rule to be necessary or useful.

(b) Unless, for good cause shown, the Director extends the time for filing, no election under paragraph (a) of this section shall be honored if it is filed with the PSOB Office later than ninety days after service of the notice described in § 32.43(c).

(c) Not less than seven days prior to any hearing, the claimant shall file simultaneously with the PSOB Office and the Hearing Officer a list of all expected fact or expert witnesses and a brief summary of the evidence each witness is expected to provide.

(d) At any hearing, the Hearing Officer—

(1) May exclude any evidence whose probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence; and

(2) Shall exclude witnesses (other than the claimant, or any person whose presence is shown by the claimant to be essential to the presentation of his

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claim), so that they cannot hear the testimony of other witnesses.

(e) Each hearing shall be recorded, and the original of the complete record or transcript thereof shall be made a part of the claim file.

(f) Unless, for good cause shown, the Director grants a waiver, a claimant's failure to appear at a hearing (in person or through a representative) shall constitute a withdrawal of his election under paragraph (a) of this section.

(g) Upon a claimant's failure to pursue in timely fashion his filed election under paragraph (a) of this section, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

[73 FR 76536, Dec. 17, 2008]

### § 32.46 Director appeal.

(a) In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall appeal to the Director under subpart F of this part.

(b) Consistent with § 32.8, any claim denial that is not appealed to the Director under paragraph (a) of this section shall constitute the final agency determination, unless the denial is reviewed otherwise under subpart F of this part.

## Subpart F—Director Appeals and Reviews

### § 32.51 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to Director appeals and reviews of claim approvals and denials made under subpart E of this part, and reviews of claim approvals under the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37.

### § 32.52 Time for filing Director appeal.

(a) Unless, for good cause shown, the Director extends the time for filing, no Director appeal shall be considered if it is filed with the PSOB Office later than thirty-three days after the service of notice of the denial (under subpart E of this part) of a claim.

(b) A claimant may file with his Director appeal such supporting documentary, electronic, video, or other nonphysical evidence and legal arguments as he may wish to provide.

[73 FR 76536, Dec. 17, 2008]

**§ 32.53 Review.**

(a) Upon the filing of the approval (under subpart E of this part) of a claim, the Director shall review the same.

(b) The Director may review—

(1) Any claim denial made under subpart E of this part; and

(2) Any claim approval made under the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37.

(c) Unless the Director judges that it would be unnecessary, the PSOB Office shall serve notice upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer) of the initiation of a review under paragraph (a) or (b) of this section. Unless the Director judges that it would be unnecessary, such notice shall—

(1) Indicate the principal factual findings or legal conclusions at issue; and

(2) Offer a reasonable opportunity for filing of evidence or legal arguments.

**§ 32.54 Director determination.**

(a) Upon the Director's approving or denying a claim, the PSOB Office shall serve notice of the same simultaneously upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer), and upon any Hearing Officer who made a determination with respect to the claim. In the event of a denial, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to judicial appeals (for the claimant or claimants).

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his claim pursuant to his filed Director appeal, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve

the claimant with notice of the Director's intention to exercise such discretion.

(c) With respect to any claim before him, the Director, as appropriate, may—

(1) Remand the same to the PSOB Office, or to a Hearing Officer;

(2) Vacate any related determination under this part; or

(3) Refer any related matters to a Hearing Officer (as a special master), to recommend factual findings and dispositions in connection therewith.

[73 FR 76536, Dec. 17, 2008]

**§ 32.55 Judicial appeal.**

(a) Consistent with § 32.8, any approval or denial described in § 32.54(a) shall constitute the final agency determination.

(b) A claimant seeking relief from the denial of his claim may appeal judicially pursuant to the Act, at 42 U.S.C. 3796c-2.

[73 FR 76536, Dec. 17, 2008]

**PART 33—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS**

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