

**SELECTED LEGAL MATERIALS  
RELATING TO  
THE PUBLIC SAFETY OFFICERS' BENEFITS ACT OF 1976  
(GENERALLY CODIFIED AT  
42 U.S.C. CHAPTER 46, SUBCHAPTER XII)**

Public Safety Officers' Benefits Act of 1976 — **general statutory codification** (42 U.S.C. ch. 46, subch. XII) (as of Jan. 3, 2013)

Public Safety Officers' Benefits Act of 1976 — **implementing regulations** (28 C.F.R. pt. 32) (as of Jan. 3, 2013)

**Selected legal provisions** referenced in or having direct application to the Public Safety Officers' Benefits Act of 1976 or its implementing regulations (as of Jan. 3, 2013)

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**PUBLIC SAFETY OFFICERS' DEATH BENEFITS**  
**Pub. L. No. 90-351, Title I, Part L**  
**[42 U.S.C. Chapter 46, Subchapter XII]**

Death Benefits

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**DEATH BENEFITS**  
**Pub. L. No. 90-351, Title I, Part L, Subpart 1**  
**[42 U.S.C. Chapter 46, Subchapter XII, Part A]**

- 1201 [§ 3796] Payments
- 1202 [§ 3796a] Limitations
- 1203 [§ 3796a-1] National programs for families of public safety officers who have died in the line of duty
- 1204 [§ 3796b] Definitions
- 1205 [§ 3796c] Administrative provisions
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- [§ 3796c-2] [Use of funds for appeals and expenses of representation of hearing examiners]

42 U.S.C. § 3796

**Sec. 1201 Payments**

(a) In any case in which the Bureau of Justice Assistance (hereinafter in [this part \[subchapter\]](#) referred to as the "Bureau") [determines](#), under [regulations](#) issued pursuant to this part [\[subchapter\]](#) that a [public safety officer](#) has died as the [direct and proximate result](#) of a personal [injury sustained in the line of duty](#), the Bureau shall [pay](#) a benefit of \$250,000, adjusted in accordance with [subsection \(h\)](#), as follows (if the payee indicated is living on the date on which the determination is made)—

- (1) if there is no [child](#) who survived [the public safety officer](#), to the surviving [spouse](#) of the public safety officer;
- (2) if there is at least 1 [child](#) who survived [the public safety officer](#) and a surviving [spouse](#) of the public safety officer, 50 percent to the surviving child (or children, in equal shares) and 50 percent to the surviving spouse;
- (3) if there is no surviving [spouse](#) of [the public safety officer](#), to the surviving [child \(or children\)](#), in equal shares);
- (4) if there is no surviving [spouse](#) of [the public safety officer](#) and no surviving [child](#)—
  - (A) to the surviving [individual \(or individuals, in shares per the designation, or, otherwise, in equal shares\) designated](#) by [the public safety officer](#) to receive benefits under [this subsection](#) in the [most recently executed designation of beneficiary](#) of the public safety officer [on file](#) at the time of death with the [public safety agency, organization, or unit](#); or
  - (B) if there is no individual qualifying under [subparagraph \(A\)](#), to the surviving [individual \(or individuals, in equal shares\) designated](#) by [the public safety officer](#) to receive benefits under the [most recently executed life insurance policy](#) of the public safety officer [on file](#) at the time of death with the [public safety agency, organization, or unit](#);
- (5) if there is no individual qualifying under [paragraph \(1\), \(2\), \(3\), or \(4\)](#), to the surviving [parent \(or parents\)](#), in equal shares) of [the public safety officer](#); or
- (6) if there is no individual qualifying under [paragraph \(1\), \(2\), \(3\), \(4\), or \(5\)](#), to the surviving individual (or individuals, in equal shares) who would qualify under the definition of the term '[child](#)' under [section 1204](#) but for age.

(b) In accordance with [regulations](#) issued pursuant to [this part \[subchapter\]](#), in any case in which the [Bureau determines](#) that a [public safety officer](#) has become [permanently](#) and [totally](#) disabled as the [direct and proximate result](#) of a personal [injury sustained in the line of duty](#), the Bureau shall [pay the same benefit](#) to the public safety officer (if living on the date on which the determination is made) that is payable under [subsection \(a\)](#) with respect to the date on which the [catastrophic injury](#) occurred, as adjusted in accordance with [subsection \(h\)](#): Provided, That for the purposes of making these benefit payments, there are authorized to be appropriated for each fiscal year such sums as may be necessary: Provided further, That the amount payable under [this subsection](#) shall be the amount payable as of the date of catastrophic injury of such public safety officer.

(c) Whenever the [Bureau determines](#) upon showing of need and prior to [final action](#) that the [death](#) of a [public safety officer](#) is one with respect to which a [benefit](#) will

probably be paid, the Bureau may make an interim benefit payment not exceeding \$3,000 to the [individual](#) entitled to receive a benefit under [subsection \(a\)](#) of [this section](#).

(d) The amount of an [interim payment](#) under [subsection \(c\)](#) shall be deducted from the amount of any final [benefit](#) paid to such [individual](#).

(e) Where there is no final [benefit](#) paid, the [recipient](#) of any [interim payment](#) under [subsection \(c\)](#) shall be liable for repayment of such [amount](#). The [Bureau](#) may waive all or part of such repayment, considering for this purpose the hardship which would result from such repayment.

(f) The benefit payment under [this part \[subchapter\]](#), shall be in addition to any other benefit that may be due from any other source, except—

(1) payments authorized by [section 12\(k\) of the Act of September 1, 1916 \[D.C. Code § 5-716\]](#);

(2) benefits authorized by [section 8191 of title 5, United States Code](#)", such that beneficiaries shall receive only such benefits under such section 8191 as are in excess of the benefits received under [this part \[subchapter\]](#); or

(3) payments under the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101 note; Public Law 107-42).

(g) No benefit paid under [this part \[subchapter\]](#) shall be subject to execution or attachment.

(h) On October 1 of each fiscal year beginning after the effective date of [this subsection](#), the [Bureau](#) shall adjust the level of the [benefit](#) payable immediately before such October 1 under [subsection \(a\)](#), to reflect the annual percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, occurring in the 1-year period ending on Jun. 1 immediately preceding such October 1.

(i) The [amount payable](#) under [subsection \(a\)](#) with respect to the [death](#) of a [public safety officer](#) shall be the amount payable under subsection (a) as of the date of death of such officer.

(j)(1) No [benefit](#) is payable under [this part \[subchapter\]](#) with respect to the [death](#) of a [public safety officer](#) if a [benefit](#) is paid under this part [\[subchapter\]](#) with respect to the [disability](#) of [such officer](#).

(2) No [benefit](#) is payable under [this part \[subchapter\]](#) with respect to the [disability](#) of a [public safety officer](#) if a [benefit](#) is payable under this part [\[subchapter\]](#) with respect to the [death](#) of such [public safety officer](#).

(k) As [determined](#) by the [Bureau](#), a [heart attack](#), [stroke](#), or vascular rupture suffered by a [public safety officer](#) shall be presumed to constitute a personal [injury](#) within the meaning of [subsection \(a\)](#), [sustained in the line of duty](#) by the officer and [directly and](#)

proximately resulting in death, if—

(1) the public safety officer, while on duty—

(A) engages in a situation involving nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or

(B) participates in a training exercise involving nonroutine stressful or strenuous physical activity;

(2) the heart attack, stroke, or vascular rupture commences—

(A) while the officer is engaging or participating as described in paragraph (1);

(B) while the officer remains on that duty after being engaged or participating as described in paragraph (1); or

(C) not later than 24 hours after the officer is engaged or participating as described in paragraph (1); and

(3) the heart attack, stroke, or vascular rupture directly and proximately results in the death of the public safety officer,

unless competent medical evidence establishes that the heart attack, stroke, or vascular rupture was unrelated to the engagement or participation or was directly and proximately caused by something other than the mere presence of cardiovascular-disease risk factors.

(l) For purposes of subsection (k), "nonroutine stressful or strenuous physical" excludes actions of a clerical, administrative, or nonmanual nature.

(m) The Bureau may suspend or end collection action on an amount disbursed pursuant to a statute enacted retroactively or otherwise disbursed in error under subsection (a) or (c), where such collection would be impractical, or would cause undue hardship to a debtor who acted in good faith.

(n) The public safety agency, organization, or unit responsible for maintaining on file an executed designation of beneficiary or executed life insurance policy for purposes of subsection (a)(4) shall maintain the confidentiality of the designation or policy in the same manner as the agency, organization, or unit maintains personnel or other similar records of the public safety officer.

42 U.S.C. § 3796a

## Sec. 1202 Limitations

No benefit shall be paid under this part [subchapter]—

(1) if the fatal or catastrophic injury was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about his death, disability, or injury;

(2) if the public safety officer was voluntarily intoxicated at the time of his fatal or catastrophic injury;

(3) if the public safety officer was performing his duties in a grossly

[negligent manner](#) at the time of his [fatal](#) or [catastrophic injury](#);

(4) to any individual who would otherwise be entitled to a benefit under [this part \[subchapter\]](#) if such individual's actions were a [substantial contributing factor](#) to the [fatal](#) or [catastrophic injury](#) of the [public safety officer](#); or

(5) with respect to any [individual employed](#) in a [capacity other than a civilian capacity](#).

42 U.S.C. § 3796a-1      **Sec. 1203 National programs for families of public safety officers who have sustained [fatal](#) or [catastrophic injury](#) in the [line of duty](#)**

The [Director](#) is authorized to use no less than \$150,000 of the funds appropriated for [this part \[subchapter\]](#) to maintain and enhance national peer support and counseling programs to assist families of [public safety officers](#) who have sustained [fatal](#) or [catastrophic injury](#) in the [line of duty](#).

42 U.S.C. § 3796b      **Sec. 1204 Definitions**

As used in [this part \[subchapter\]](#)—

(1) "catastrophic injury" means an [injury](#), the [direct and proximate consequences](#) of which [permanently](#) prevent an individual from performing any [gainful work](#);

(2) "chaplain" includes any individual serving as an [officially recognized or designated member](#) of a legally organized volunteer fire department or legally organized police department, or an [officially recognized or designated public employee](#) of a legally organized fire or police department who was responding to a [fire, rescue, or police emergency](#);

(3) "child" means any [natural](#), [illegitimate](#), [adopted](#), or [posthumous child](#) or [stepchild](#) of a deceased or permanently and totally disabled [public safety officer](#) who, at the time of the public safety officer's [fatal](#) or [catastrophic injury](#), is—

(A) 18 years of age or under;

(B) over 18 years of age and a [student](#) as defined in [section 8101 of title 5, United States Code](#); or

(C) over 18 years of age and [incapable of self-support because of physical or mental disability](#);

(4) "firefighter" includes an individual serving as an [officially recognized or designated member](#) of a legally organized volunteer fire department;

(5) "intoxication" means a [disturbance](#) of [mental](#) or physical faculties resulting from the introduction of alcohol into the body as [evidenced](#) by—

(A) a post-[injury](#) blood alcohol level of .20 per centum or greater; or

(B) a post-[injury](#) blood alcohol level of at least .10 per centum but less than .20 per centum unless the [Bureau](#) receives [convincing evidence](#)

that the [public safety officer](#) was not acting in an intoxicated manner immediately prior to his [fatal](#) or [catastrophic injury](#); or resulting from [drugs or other substances](#) in the body;

(6) "law enforcement officer" means an individual [involved](#) in [crime](#) and juvenile delinquency control or reduction, or enforcement of the [criminal laws](#) (including juvenile delinquency), including, but not limited to, police, [corrections](#), probation, parole, and judicial officers;

(7) "member of a rescue squad or ambulance crew" means an [officially recognized or designated employee](#) or volunteer [member](#) of a [rescue squad or ambulance crew](#) (including a ground or air ambulance service) that—

(A) is a [public agency](#); or

(B) is (or is a part of) a nonprofit entity serving the public that—

(i) is officially authorized or licensed to engage in [rescue activity](#) or to provide [emergency medical services](#); and

(ii) engages in [rescue activities](#) or provides [emergency medical services](#) as part of an official emergency response system;

(8) "public agency" means the United States, any [State](#) of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any [unit of local government](#), [department](#), [agency](#), or [instrumentality](#) of any of the foregoing; and

(9) "public safety officer" means—

(A) an individual serving a [public agency](#) in an [official capacity](#), with or without compensation, as a [law enforcement officer](#), as a [firefighter](#), or as a [chaplain](#);

(B) an [employee](#) of the Federal Emergency Management Agency who is performing [official duties](#) of the Agency in an area, if those official duties—

(i) are related to a major disaster or emergency that has been, or is later, declared to exist with respect to the area under the [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#); and

(ii) are determined by the Administrator of the Federal Emergency Management Agency to be hazardous duties;

(C) an [employee](#) of a [State](#), [local](#), or [tribal](#) emergency management or civil defense agency who is performing [official duties](#) in cooperation with the Federal Emergency Management Agency in an area, if those official duties—

(i) are related to a major disaster or emergency that has been, or is later, declared to exist with respect to [the area](#) under the [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#); and

(ii) are determined by the head of [the agency](#) to be hazardous duties; or

(D) a [member of a rescue squad or ambulance crew](#) who, [as authorized or licensed by law](#) and by [the applicable agency or entity](#), is engaging in [rescue activity](#) or in the provision of [emergency medical services](#).

42 U.S.C. § 3796c

**Sec. 1205 Administrative provisions**

(a) The [Bureau](#) is authorized to establish such rules, [regulations](#), and procedures as may be necessary to carry out the purposes of [this part \[subchapter\]](#). Such rules, regulations, and procedures will be determinative of conflict of laws issues arising under this part [\[subchapter\]](#). Rules, regulations, and procedures issued under this part [\[subchapter\]](#) may include [regulations governing the recognition of agents or other persons representing claimants](#) under this part [\[subchapter\]](#) before the Bureau. The Bureau may prescribe the [maximum fees which may be charged for services performed in connection with any claim](#) under this part [\[subchapter\]](#) before the Bureau, and any agreement in violation of such rules and regulations shall be void.

(b) In making [determinations](#) under [section 1201](#) the [Bureau](#) may utilize such administrative and investigative assistance as may be available from [State](#) and [local](#) agencies. Responsibility for making final determinations shall rest with the Bureau.

(c) Notwithstanding any other provision of law, the [Bureau](#) is authorized to use appropriated funds to conduct appeals of [public safety officers' death](#) and [disability claims](#).

(d) Unless expressly provided otherwise, any reference in [this part](#) to any provision of law not in this part shall be understood to constitute a general reference under the doctrine of incorporation by reference, and thus to include any subsequent amendments to the provision.

42 U.S.C. § 3796c-1

**Expedited payment for public safety officers involved in the prevention, investigation, rescue, or recovery efforts related to a terrorist attack**

(a) In general. Notwithstanding the [limitations](#) of [subsection \(b\)](#) of [section 1201](#) or the provisions of [subsections \(c\), \(d\), and \(e\)](#) of such section or [section 1202](#) of [title I of the Omnibus Crime Control and Safe Streets Act of 1968](#), upon [certification](#) (containing identification of all [eligible payees](#) of benefits pursuant to section 1201 of such Act) by a [public agency](#) that a [public safety officer employed by such agency](#) or an entity described in [section 1204\(7\)\(B\) of the Omnibus Crime Control and Safe Streets Act of 1968 \(42 U.S.C. 3796b\(7\)\(B\)\)](#) was [killed](#) or [suffered a catastrophic injury producing permanent and total disability as a direct and proximate result of a personal injury sustained in the line of duty](#) as described in section 1201 of such Act in connection with prevention, investigation, [rescue](#), or recovery efforts related to a [terrorist attack](#), the

Director of the Bureau of Justice Assistance shall authorize payment to [qualified beneficiaries](#), said payment to be made not later than 30 days after receipt of such certification, benefits [*sic*] described under [subpart 1](#) of [part L of \[title I of\] such Act](#).

(b) Definitions. For purposes of [this section](#), the terms "[catastrophic injury](#)", "[public agency](#)", and "[public safety officer](#)" have the same meanings given such terms in [section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968](#).

42 U.S.C. § 3796c-2      *[Use of funds for appeals and expenses of representation of hearing examiners]*

[On and after December 26, 2007], funds available to conduct [appeals](#) under [section 1205\(c\) of \[title I of the Omnibus Crime Control and Safe Streets Act of 1968\]](#), which includes all claims processing, shall be available also for the same under [subpart 2](#) of . . . [part L](#) [of [such title I](#)] and under any statute authorizing payment of benefits described under [subpart 1 thereof](#), and for [appeals](#) from [final determinations](#) of the [Bureau](#) (under [such part](#) or any [such statute](#)) to the Court of Appeals for the Federal Circuit, which shall have exclusive jurisdiction thereof, and for expenses of representation of [hearing examiners](#) (who shall be presumed irrebuttably to enjoy quasi-judicial immunity in the discharge of [their duties](#) under such part or any such statute) in connection with litigation against them arising from such discharge: *Provided Further*, That, on and after the date of enactment of the Dale Long Public Safety Officers' Benefits Improvements Act of 2012, as to each [such statute](#)—

(1) the provisions of [section 1001\(a\)\(4\) of such title I](#) ([42 U.S.C. 3793\(a\)\(4\)](#)) shall apply;

(2) payment (consistent with [section 611 of the Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001](#) ([42 U.S.C. 3796c-1](#))) shall be made only upon a [determination](#) by the [Bureau](#) that the facts legally warrant the payment; and

(3) any reference to [section 1202 of such title I](#) shall be deemed to be a reference to [paragraphs \(2\)](#) and [\(3\)](#) of such section 1202:

*Provided further*, That, on and after the date of enactment of the Dale Long Public Safety Officers' Benefits Improvements Act of 2012, no [appeal](#) shall bring any [final determination](#) of the [Bureau](#) before any court for review unless notice of appeal is filed (within the time specified herein and in the manner prescribed for appeal to United States courts of appeals from United States district courts) not later than 90 days after the date on which the Bureau [serves notice](#) of the final determination: *Provided further*, That any regulations promulgated by the [Bureau](#) under [such part](#) (or any [such statute](#)) before, on, or after the date of enactment of the Dale Long Public Safety Officers' Benefits Improvements Act of 2012 shall apply to any matter pending on, or filed or accruing after, the effective date specified in the regulations.

**EDUCATIONAL ASSISTANCE TO DEPENDENTS OF PUBLIC SAFETY  
OFFICERS KILLED OR DISABLED IN THE LINE OF DUTY**

**Pub. L. No. 90-351, Title I, Part L, Subpart 2  
[42 U.S.C. Chapter 46, subchapter XII, Part B]**

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*42 U.S.C. § 3796d*                      **Sec. 1211 Purposes**

The purposes of [this subpart \[this part of this subchapter\]](#) are—

- (1) to enhance the appeal of service in [public safety agencies](#);
- (2) to extend the benefits of higher education to qualified and deserving persons who, by virtue of the [death](#) of or [total disability](#) of an [eligible officer](#), may not be able to afford it otherwise; and
- (3) to allow the family members of [eligible officers](#) to attain the vocational and educational status which they would have attained had a [parent](#) or [spouse](#) not been killed or disabled [in the line of duty](#).

*42 U.S.C. § 3796d-1*                      **Sec. 1212 Basic eligibility**

(a) Benefits.

(1) The [Attorney General](#) shall provide [financial assistance](#) to a person who attends a [program of education](#) and is—

(A) the [child of any eligible public safety officer](#) under [subpart 1](#); or

(B) the [spouse of an officer](#) described in [subparagraph \(A\)](#) at the time of [the officer's](#) death or on the date of a [totally](#) and [permanently disabling injury](#).

(2) Except as provided in [paragraph \(3\)](#), [financial assistance](#) under [this subpart \[this part of this subchapter\]](#) shall consist of direct [payments](#) to an [eligible person](#) and shall be computed on the basis set forth in [section 3532 of title 38, United States Code](#).

(3) The [financial assistance](#) referred to in [paragraph \(2\)](#) shall be reduced by the amount, if any, [determined](#) under [section 1214\(b\)](#).

(b) Duration of benefits. No person shall receive [assistance](#) under [this subpart \[this part of this subchapter\]](#) for a period in excess of forty-five months of full-time

education or training or a proportional period of time for a part-time program.

(c) Age limitation for children. No [child](#) shall be eligible for [assistance](#) under [this subpart \[this part of this subchapter\]](#) after the child's 27<sup>th</sup> birthday absent a finding by the [Attorney General](#) of extraordinary circumstances precluding the child from pursuing a [program of education](#).

42 U.S.C. § 3796d-2      **Sec. 1213 Applications; approval**

(a) Application. A person seeking [assistance](#) under [this subpart \[this part of this subchapter\]](#) shall submit an [application](#) to the [Attorney General](#) in such form and containing such information as the Attorney General reasonably may require.

(b) Approval. The [Attorney General](#) shall [approve](#) an [application](#) for [assistance](#) under [this subpart \[this part of this subchapter\]](#) unless the Attorney General finds that—

(1) the person is not eligible for, is no longer eligible for, or is not entitled to [the assistance](#) for which [application](#) is made;

(2) the person's selected educational institution fails to meet a requirement under [this subpart \[this part of this subchapter\]](#) for [eligibility](#);

(3) the person's enrollment in or pursuit of the educational program selected would fail to meet the criteria established in [this subpart \[this part of this subchapter\]](#) for [programs](#); or

(4) the person already is qualified by previous education or training for the educational, professional, or vocational objective for which the [educational program](#) is offered.

(c) Notification. The [Attorney General](#) shall [notify](#) a person [applying](#) for [assistance](#) under [this subpart \[this part of this subchapter\]](#) of [approval or disapproval](#) of the application in [writing](#).

42 U.S.C. § 3796d-3      **Sec. 1214 Regulations**

(a) In general. The [Attorney General](#) may promulgate reasonable and necessary [regulations](#) to implement [this subpart \[this part of this subchapter\]](#).

(b) Sliding scale. Notwithstanding [section 1213\(b\)](#), the [Attorney General](#) shall issue [regulations](#) regarding the use of a sliding scale based on [financial need](#) to ensure that an [eligible person](#) who is in financial need receives priority in receiving [funds](#) under [this subpart \[this part of this subchapter\]](#).

42 U.S.C. § 3796d-4      **Sec. 1215 Discontinuation for unsatisfactory conduct or progress**

The [Attorney General](#) may discontinue [assistance](#) under [this subpart \[this part of this subchapter\]](#) when the Attorney General finds that, according to the regularly prescribed standards and practices of the [educational institution](#), the recipient fails to maintain satisfactory progress as described in [section 484\(c\) of the Higher Education Act of 1965](#).

42 U.S.C. § 3796d-5      **Sec. 1216 Special rule**

(a) Retroactive eligibility. Notwithstanding any other provision of law, a [spouse](#) or [child](#) of a Federal [law enforcement officer killed in the line of duty](#) on or after [January 1, 1978](#), and a spouse or child of a [public safety officer](#) killed in the line of duty on or after [January 1, 1978](#), shall be eligible for [assistance](#) under [this subpart \[this part of this subchapter\]](#), subject to the other limitations of this subpart *[this part of this subchapter]*.

(b) Retroactive assistance. The [Attorney General](#) may provide retroactive [assistance](#) to a person eligible under [this section](#) for each month in which the person pursued a [program of education](#) at an [eligible educational institution](#). The Attorney General shall apply the limitations contained in [this subpart \[this part of this subchapter\]](#) to retroactive assistance.

(c) Prospective assistance. The [Attorney General](#) may provide prospective [assistance](#) to a person eligible under [this section](#) on the same basis as assistance to a person otherwise eligible. In applying the limitations on assistance under [this subpart \[this part of this subchapter\]](#), the Attorney General shall include assistance provided retroactively. A person eligible under this section may waive retroactive assistance and apply only for prospective assistance on the same basis as a person otherwise eligible.

42 U.S.C. § 3796d-6      **Sec. 1217 Definitions**

For purposes of [this subpart \[this part of this subchapter\]](#):

(1) The term "Attorney General" means the Attorney General of the United States.

(2) The term "program of education" means any curriculum or any combination of unit courses or subjects pursued at an [eligible educational institution](#), which generally is accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. It includes course work for the attainment of more than one objective if in addition to the previous requirements, all the objectives generally are recognized as reasonably related to a single career field.

(3) The term "eligible educational institution" means an institution which—

- (A) is an institution of higher education, as defined in [section 102 of the Higher Education Act of 1965 \(20 U.S.C. 1002\)](#); and
- (B) is eligible to participate in programs under [title IV of such Act](#).

*42 U.S.C. § 3796d-7*      **Sec. 1218 Authorization of appropriations**

There are authorized to be appropriated to carry out [this subpart \[this part of this subchapter\]](#) such sums as may be necessary.

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## 28 C.F.R.

### **Part 32 - PUBLIC SAFETY OFFICERS' DEATH, DISABILITY, AND EDUCATIONAL ASSISTANCE BENEFIT CLAIMS**

Sec.

[32.0](#) [Scope of part.](#)

#### **Subpart A - General Provisions**

Sec.

[32.1](#) [Scope of subpart.](#)

[32.2](#) [Computation of time; filing.](#)

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[32.4](#) [Terms; construction, severability.](#)

[32.5](#) [Evidence.](#)

[32.6](#) [Payment and repayment.](#)

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[32.8](#) [Exhaustion of administrative remedies.](#)

#### **Subpart B - Death Benefit Claims**

Sec.

[32.11](#) [Scope of subpart.](#)

[32.12](#) [Time for filing claim.](#)

[32.13](#) [Definitions.](#)

[32.14](#) [PSOB Office determination.](#)

[32.15](#) [Prerequisite certification.](#)

[32.16](#) [Payment.](#)

[32.17](#) [Request for Hearing Officer determination.](#)

#### **Subpart C - Disability Benefit Claims**

Sec.

[32.21](#) [Scope of subpart.](#)

[32.22](#) [Time for filing claim.](#)

[32.23](#) [Definitions.](#)

[32.24](#) [PSOB Office determination.](#)

[32.25](#) [Prerequisite certification.](#)

[32.26](#) [Payment.](#)

[32.27](#) [Motion for reconsideration of negative disability finding.](#)

[32.28](#) [Reconsideration of negative disability finding.](#)

[32.29](#) [Request for Hearing Officer determination.](#)

#### **Subpart D - Educational Assistance Benefit Claims**

Sec.

[32.31](#) [Scope of subpart.](#)

[32.32](#) [Time for filing claim.](#)

[32.33](#) [Definitions.](#)

[32.34](#) [PSOB Office determination.](#)

[32.35](#) [Disqualification.](#)

[32.36](#) [Payment and repayment.](#)

[32.37](#) [Request for Hearing Officer determination.](#)

### **Subpart E - Hearing Officer Determinations**

Sec.

- [32.41](#) [Scope of subpart.](#)
- [32.42](#) [Time for filing request for determination.](#)
- [32.43](#) [Appointment and assignment of Hearing Officers.](#)
- [32.44](#) [Hearing Officer determination.](#)
- [32.45](#) [Hearings.](#)
- [32.46](#) [Director appeal.](#)

### **Subpart F - Director Appeals & Reviews**

Sec.

- [32.51](#) [Scope of subpart.](#)
- [32.52](#) [Time for filing Director appeal.](#)
- [32.53](#) [Review.](#)
- [32.54](#) [Director determination.](#)
- [32.55](#) [Judicial appeal.](#)

#### **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, Pub. L. 90-351](#), 82 Stat. 239; [secs. 4 through 6, Pub. L. 94-430](#), 90 Stat. 1348; [secs. 1 and 2, Pub. L. 107-37](#), 115 Stat. 219.

#### **§ 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](#).

### **Subpart A - General Provisions**

- [32.1](#) [Scope of subpart.](#)
- [32.2](#) [Computation of time; filing.](#)
- [32.3](#) [Definitions.](#)
- [32.4](#) [Terms; construction, severability.](#)
- [32.5](#) [Evidence.](#)
- [32.6](#) [Payment and repayment.](#)
- [32.7](#) [Fees for representative services.](#)
- [32.8](#) [Exhaustion of administrative remedies.](#)

### § 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 (uncodified) [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.*, [Sep. 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](#)); [Sep. 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 OF 2001](#) (both of which relate to payment of benefits, described under [subpart 1](#) of such part L, in connection, respectively, with the terrorist attacks of Sep. 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 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
- (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
    - (B) Having been born after the [injury date](#), is described in [paragraph \(1\)\(i\)\(B\)\(1\)](#), [\(2\)](#), 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 affirmance 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.

*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 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 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](#), affirmance, 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 [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—

(I) 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](#).

#### **§ 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.

#### **§ 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, 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

(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.

## § 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 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 collectable 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.

### **§ 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 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**

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### **§ 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.

### § 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 untermiated, 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 untermiated, 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 untermiated.

*Nonroutine strenuous physical activity* means [line of duty activity](#) that—

- (1) Is not excluded by [the Act](#), at [42 U.S.C. 3796\(l\)](#);
- (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\(l\)](#);
- (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.

*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.

### **§ 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 supporting documentary, electronic, video, or other nonphysical [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.

### **§ 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 sufficient, 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 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](#).

### **§ 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\(a\)\(4\)\(i\)](#) [*sic*], 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\(a\)\(4\)\(ii\)](#) [*sic*], payment shall be made to each of them in equal shares.

### **§ 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.](#)

[32.22](#) [Time for filing claim.](#)

[32.23](#) [Definitions.](#)

[32.24](#) [PSOB Office determination.](#)

[32.25](#) [Prerequisite certification.](#)

[32.26](#) [Payment.](#)

[32.27](#) [Motion for reconsideration of negative disability finding.](#)

[32.28](#) [Reconsideration of negative disability finding.](#)

[32.29](#) [Request for Hearing Officer determination.](#)

### § 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.

### § 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 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](#).

### **§ 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 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](#).

## **Subpart D - Educational Assistance Benefit Claims**

[32.31 Scope of subpart.](#)

[32.32 Time for filing claim.](#)

[32.33 Definitions.](#)

[32.34 PSOB Office determination.](#)

[32.35 Disqualification.](#)

[32.36 Payment and repayment.](#)

[32.37 Request for Hearing Officer determination.](#)

### **§ 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.

### § 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. 1087ll\(1\)](#) (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; and
  - (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](#);
- (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 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](#).

*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](#).

(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](#).

[32.42](#) [Time for filing request for determination](#).

[32.43](#) [Appointment and assignment of Hearing Officers](#).

[32.44](#) [Hearing Officer determination](#).

[32.45](#) [Hearings](#).

[32.46](#) [Director appeal](#).

### **§ 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\(c\)](#).

### **§ 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.

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

(a) Pursuant to [42 U.S.C. 3787](#) (employment and authority of hearing officers), 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](#).

### **§ 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—

(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 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.

### **§ 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 & Reviews**

[32.51](#) [Scope of subpart.](#)

[32.52](#) [Time for filing Director appeal.](#)

[32.53](#) [Review.](#)

[32.54](#) [Director determination.](#)

[32.55](#) [Judicial appeal.](#)

### **§ 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.

### **§ 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.

#### **§ 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](#).

\*\*\*\*\*

**SELECTED LEGAL PROVISIONS  
REFERENCED IN OR HAVING DIRECT APPLICATION TO  
THE PUBLIC SAFETY OFFICERS' BENEFITS ACT OF 1976  
(GENERALLY CODIFIED AT  
42 U.S.C. CHAPTER 46, SUBCHAPTER XII)  
OR  
ITS IMPLEMENTING REGULATIONS**

*(updated as of Jan. 3, 2013)*

<a href="#">1 U.S.C. § 1</a>	<a href="#">Words denoting number, gender, and so forth</a>
<a href="#">1 U.S.C. § 7</a>	<a href="#">Definition of "marriage" and "spouse"</a>
<a href="#">5 U.S.C. § 504</a>	<a href="#">Costs and fees of parties</a>
<a href="#">5 U.S.C. § 8101</a>	<a href="#">Definitions</a>
<a href="#">5 U.S.C. § 8191</a>	<a href="#">Determination of eligibility</a>
<a href="#">18 U.S.C. § 287</a>	<a href="#">False, fictitious or fraudulent claims</a>
<a href="#">18 U.S.C. § 1001</a>	<a href="#">Statements or entries generally</a>
<a href="#">18 U.S.C. § 1621</a>	<a href="#">Perjury generally</a>
<a href="#">18 U.S.C. § 2331</a>	<a href="#">Definitions</a>
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<a href="#">Pub. L. 90-351, § 1601</a>	<a href="#">Omnibus Crime Control and Safe Streets Act of 1968</a>
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<a href="#">Pub. L. 99-500, § 101(b), tit. II</a>	<a href="#">Department of Justice Appropriation Act, 1987 (reference)</a>
<a href="#">Pub. L. 101-647, § 1303</a>	<a href="#">Crime Control Act of 1990</a>
<a href="#">Pub. L. 104-238</a>	<a href="#">Federal Law Enforcement Dependents Assistance Act of 1996</a>
<a href="#">Pub. L. 105-390</a>	<a href="#">Police, Fire, and Emergency Officers Educational Assistance Act of 1996</a>
<a href="#">Pub. L. 106-276</a>	<a href="#">Act of October 2, 2000</a>
<a href="#">Pub. L. 106-390, § 305</a>	<a href="#">Disaster Mitigation Act of 2000</a>
<a href="#">Pub. L. 107-37</a>	<a href="#">Act of September 18, 2001 (as amended by Pub. L. 107-56)</a>
<a href="#">Pub. L. 107-56, §§ 2, 612</a>	<a href="#">USA PATRIOT Act of 2001</a>
<a href="#">Pub. L. 107-196, § 2</a>	<a href="#">Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act of 2002</a>
<a href="#">Pub. L. 108-182</a>	<a href="#">Hometown Heroes Survivors Benefits Act of 2003 (reference)</a>
<a href="#">Pub. L. 109-162, § 1164</a>	<a href="#">Department of Justice Appropriations Authorization Act, 2006</a>
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<a href="#">Pub. L. No. 112-239</a>	<a href="#">Dale Long Public Safety Officers' Benefits Improvements Act of 2012</a>

[28 C.F.R. § 0.94-1](#) [Bureau of Justice Assistance](#)

<a href="#">Fed R. Evid. 301</a>	<a href="#">Presumptions in General in Civil Actions and Proceedings</a>
<a href="#">Fed R. Evid. 401</a>	<a href="#">Definition of "Relevant Evidence"</a>
<a href="#">Fed R. Evid. 402</a>	<a href="#">Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible</a>
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<a href="#">Fed R. Evid. 1005</a>	<a href="#">Public Records</a>



1 U.S.C. § 1

**Words denoting number, gender, and so forth**

*[as in effect on Jan. 3, 2013]*

In determining the meaning of any Act of Congress, unless the context indicates otherwise—

words importing the singular include and apply to several persons, parties, or things;

words importing the plural include the singular;

words importing the masculine gender include the feminine as well;

....

*1 U.S.C. § 1 (as in effect on Jan. 3, 2013)*

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*1 U.S.C. § 7*

**Definition of "marriage" and "spouse"**

*[as in effect on Jan. 3, 2013]*

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife.

*1 U.S.C. § 7 (as in effect on Jan. 3, 2013)*

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5 U.S.C. § 504

**Costs and fees of parties**

*[as in effect on Jan. 3, 2013]*

....

**(b)(1)** For the purposes of this section—

**(A) . . . (ii)** attorney or agent fees shall not be awarded in excess of \$125 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.);

....

*5 U.S.C. § 504 (as in effect on Jan. 3, 2013)*

\*\*\*\*\*

**Definitions**

*[as in effect on Jan. 3, 2013]*

For the purpose of this subchapter—

....

(17) "student" means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(B) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(D) an additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period;

....

*5 U.S.C. § 8101 (as in effect on Jan. 3, 2013)*

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**Determination of eligibility**

*[as in effect on Jan. 3, 2013]*

The benefits of this subchapter are available as provided in this subchapter to eligible law enforcement officers (referred to in this subchapter as "eligible officers") and their survivors. For the purposes of this subchapter, an eligible officer is any person who is determined by the Secretary of Labor in his discretion to have been on any given occasion—

- (1) a law enforcement officer and to have been engaged on that occasion in the apprehension or attempted apprehension of any person—
  - (A) for the commission of a crime against the United States, or
  - (B) who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States, or
  - (C) who at that time was sought as a material witness in a criminal proceeding instituted by the United States; or
- (2) a law enforcement officer and to have been engaged on that occasion in protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such a crime; or
- (3) a law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States;

and to have been on that occasion not an employee as defined in section 8101(1), and to have sustained on that occasion a personal injury for which the United States would be required under subchapter I of this chapter to pay compensation if he had been on that occasion such an employee engaged in the performance of his duty. No person otherwise eligible to receive a benefit under this subchapter because of the disability or death of an eligible officer shall be barred from the receipt of such benefit because the person apprehended or attempted to be apprehended by such officer was then sought for the commission of a crime against a sovereignty other than the United States.

*5 U.S.C. § 8191 (as in effect on Jan. 3, 2013)*

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18 U.S.C. § 287

**False, fictitious or fraudulent claims**

*[as in effect on Jan. 3, 2013]*

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

*18 U.S.C. § 287 (as in effect on Jan. 3, 2013)*

\*\*\*\*\*

18 U.S.C. § 1001      **Statements or entries generally**  
[as in effect on Jan. 3, 2013]

(a) Except as otherwise provided in [this section](#), whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in [section 2331](#)), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under [this section](#) shall be not more than 8 years.

....

18 U.S.C. § 1001 (as in effect on Jan. 3, 2013)

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18 U.S.C. § 1621      **Perjury generally**  
*[as in effect on Jan. 3, 2013]*

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under [section 1746 of title 28, United States Code](#), willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

*18 U.S.C. § 1621 (as in effect on Jan. 3, 2013)*

\*\*\*\*\*

**Definitions**

*[as in effect on Jan. 3, 2013]*

As used in this chapter—

- (1) the term "international terrorism" means activities that—
  - (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
  - (B) appear to be intended—
    - (i) to intimidate or coerce a civilian population;
    - (ii) to influence the policy of a government by intimidation or coercion; or
    - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
  - (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

....

- (5) the term "domestic terrorism" means activities that—
  - (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
  - (B) appear to be intended—
    - (i) to intimidate or coerce a civilian population;
    - (ii) to influence the policy of a government by intimidation or coercion; or
    - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
  - (C) occur primarily within the territorial jurisdiction of the United States.

*18 U.S.C. § 2331 (as in effect on Jan. 3, 2013)*

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20 U.S.C.

Chapter 28

**Education**

**Higher Education Resources and Student Assistance**

*Subchapter IV*      **Student Assistance**

*[as in effect on Jan. 3, 2013]*

**Sec. 1070.      Statement of purpose; program authorization**

*through*

**Sec. 1099d.    Competitive Loan Auction Pilot Program**

\*\*\*\*\*

**Definition of institution of higher education for purposes of student assistance programs**  
*[as in effect on Jan. 3, 2013]*

**(a) Definition of institution of higher education for purposes of student assistance programs.**

**(1) Inclusion of additional institutions.** Subject to [paragraphs \(2\) through \(4\)](#) of [this subsection](#), the term "institution of higher education" for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of Title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

**(A)** a proprietary institution of higher education (as defined in [subsection \(b\)](#) of [this section](#));

**(B)** a postsecondary vocational institution (as defined in [subsection \(c\)](#) of [this section](#)); and

**(C)** only for the purposes of part C of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part C of subchapter IV of this chapter, consistent with the requirements of section 1087b(d) of this title.

**(2) Institutions outside the United States.**

**(A) In general.** For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, nursing school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001(a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made under part C of subchapter IV of this chapter unless—

**(i)** except as provided in [subparagraph \(B\)\(iii\)\(IV\)](#), in the case of a graduate medical school located outside the United States—

**(I)(aa)** at least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part C of subchapter IV of this chapter; and

**(bb)** at least 75 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others)

taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part C of subchapter IV of this chapter; or

**(II)** the institution—

**(aa)** has or had a clinical training program that was approved by a State as of January 1, 1992; and

**(bb)** continues to operate a clinical training program in at least one State that is approved by that State;

**(ii)** in the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States; or

**(iii)** in the case of a nursing school located outside of the United States—

**(I)** the nursing school has an agreement with a hospital, or accredited school of nursing (as such terms are defined in section 296 of Title 42 located in the United States that requires the students of the nursing school to complete the students' clinical training at such hospital or accredited school of nursing;

**(II)** the nursing school has an agreement with an accredited school of nursing located in the United States providing that the students graduating from the nursing school located outside of the United States also receive a degree from the accredited school of nursing located in the United States;

**(III)** the nursing school certifies only Federal Direct Stafford Loans under section 1087e(a)(2)(A) of this title, Federal Direct Unsubsidized Stafford Loans under section 1087e(a)(2)(D) of this title, or Federal Direct PLUS Loans under section 1087e(a)(2)(B) of this title for students attending the institution;

**(IV)** the nursing school reimburses the Secretary for the cost of any loan defaults for current and former students included in the calculation of the institution's cohort default rate during the previous fiscal year; and

**(V)** not less than 75 percent of the individuals who were students or graduates of the nursing school, and who took the National Council Licensure Examination for

Registered Nurses in the year preceding the year for which the institution is certifying a Federal Direct Stafford Loan under section 1087e(a)(2)(A) of this title, a Federal Direct Unsubsidized Stafford Loan under section 1087e(a)(2)(D) of this title, or a Federal Direct PLUS Loan under section 1087e(a)(2)(B) of this title, received a passing score on such examination.

**(B) Advisory panel.**

**(i) In general.** For the purpose of qualifying as an institution under [paragraph \(1\)\(C\)](#) of [this subsection](#), the Secretary shall establish an advisory panel of medical experts that shall—

**(I)** evaluate the standards of accreditation applied to applicant foreign medical schools; and

**(II)** determine the comparability of those standards to standards for accreditation applied to United States medical schools.

**(ii) Special rule.** If the accreditation standards described in [clause \(i\)](#) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

**(iii) Report.**

**(I) In general.** Not later than 1 year after August 14, 2008, the advisory panel described in [clause \(i\)](#) shall submit a report to the Secretary and to the authorizing committees recommending eligibility criteria for participation in the loan programs under part C of subchapter IV of this chapter for graduate medical schools that—

**(aa)** are located outside of the United States;

**(bb)** do not meet the requirements of [subparagraph \(A\)\(i\)](#); and

**(cc)** have a clinical training program approved by a State prior to January 1, 2008.

**(II) Recommendations.** In the report described in [subclause \(I\)](#), the advisory panel's eligibility criteria shall include recommendations regarding the appropriate levels of performance for graduate medical schools described in such subclause in the following areas:

**(aa)** Entrance requirements.

**(bb)** Retention and graduation rates.

**(cc)** Successful placement of students in United States medical residency programs.

**(dd)** Passage rate of students on the United States Medical Licensing Examination.

**(ee)** The extent to which State medical

boards have assessed the quality of such school's program of instruction, including through on-site reviews.

(ff) The extent to which graduates of such schools would be unable to practice medicine in 1 or more States, based on the judgment of a State medical board.

(gg) Any areas recommended by the Comptroller General of the United States under section 1101 of the Higher Education Opportunity Act.

(hh) Any additional areas the Secretary may require.

**(III) Minimum eligibility requirement.** In the recommendations described in [subclause \(II\)](#), the criteria described in [subparagraph \(A\)\(i\)\(I\)\(bb\)](#), as amended by section 102(b) of the Higher Education Opportunity Act, shall be a minimum eligibility requirement for a graduate medical school described in [subclause \(I\)](#) to participate in the loan programs under part C of subchapter IV of this chapter.

**(IV) Authority.** The Secretary may—

(aa) not earlier than 180 days after the submission of the report described in [subclause \(I\)](#), issue proposed regulations establishing criteria for the eligibility of graduate medical schools described in such subclause to participate in the loan programs under part C of subchapter IV of this chapter based on the recommendations of such report; and

(bb) not earlier than one year after the issuance of proposed regulations under [item \(aa\)](#), issue final regulations establishing such criteria for eligibility.

**(C) Failure to release information.** The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by [subparagraph \(A\)](#) shall render such institution ineligible for the purpose of part C of subchapter IV of this chapter.

**(D) Special rule.** If, pursuant to [this paragraph](#), an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of Title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part C of subchapter IV of this chapter while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

**(3) Limitations based on course of study or enrollment.** An institution shall not be considered to meet the definition of an institution of higher education in [paragraph \(1\)](#) if such institution—

(A) offers more than 50 percent of such institution's courses by correspondence (excluding courses offered by telecommunications as defined in section 1091(1)(4) of this title), unless the institution is an institution that meets the definition in section 2302(3)(C) of this title;

(B) enrolls 50 percent or more of the institution's students in correspondence courses (excluding courses offered by telecommunications as defined in section 1091(1)(4) of this title), unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2- or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

(C) has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2- or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2- or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

**(4) Limitations based on management.** An institution shall not be considered to meet the definition of an institution of higher education in [paragraph \(1\)](#) if—

(A) the institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of Title 11 between July 1, 1998, and December 1, 1998; or

(B) the institution, the institution's owner, or the institution's chief

executive officer has been convicted of, or has pled [*sic*] nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of Title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of Title 42.

**(5) Certification.** The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

**(6) Loss of eligibility.** An institution of higher education shall not be considered to meet the definition of an institution of higher education in [paragraph \(1\)](#) if such institution is removed from eligibility for funds under subchapter IV of this chapter as a result of an action pursuant to part G of subchapter IV of this chapter and part C of subchapter I of chapter 34 of Title 42.

**(b) Proprietary institution of higher education.**

**(1) Principal criteria.** For the purpose of [this section](#), the term "proprietary institution of higher education" means a school that—

**(A)(i)** provides an eligible program of training to prepare students for gainful employment in a recognized occupation; or

**(ii)(I)** provides a program leading to a baccalaureate degree in liberal arts, and has provided such a program since January 1, 2009; and

**(II)** is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

**(B)** meets the requirements of paragraphs (1) and (2) of section 1001(a) of this title;

**(C)** does not meet the requirement of paragraph (4) of section 1001(a) of this title;

**(D)** is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter; and

**(E)** has been in existence for at least 2 years.

**(F)** [*Repealed. Pub. L. 110-315, Title I, § 102(c)(3), Aug. 14, 2008, 122 Stat. 3085.*]

**(2) Additional institutions.** The term "proprietary institution of higher education" also includes a proprietary educational institution in any State that, in lieu of the requirement in section 1001(a)(1) of this title, admits as regular students individuals—

**(A)** who are beyond the age of compulsory school attendance in the State in which the institution is located; or

**(B)** who will be dually or concurrently enrolled in the institution and a secondary school.

**(c) Postsecondary vocational institution.**

**(1) Principal criteria.** For the purpose of [this section](#), the term "postsecondary vocational institution" means a school that—

**(A)** provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

**(B)** meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001(a) of this title; and

**(C)** has been in existence for at least 2 years.

**(2) Additional institutions.** The term "postsecondary vocational institution" also includes an educational institution in any State that, in lieu of the requirement in section 1001(a)(1) of this title, admits as regular students individuals—

**(A)** who are beyond the age of compulsory school attendance in the State in which the institution is located; or

**(B)** who will be dually or concurrently enrolled in the institution and a secondary school.

*20 U.S.C. § 1002 (as in effect on Jan. 3, 2013)*

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20 U.S.C. § 10871l **Cost of attendance**  
*[as in effect on Jan. 3, 2013]*

For the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42, the term "cost of attendance" means—

- (1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

....

20 U.S.C. § 10871l *(as in effect on Jan. 3, 2013)*

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20 U.S.C. § 1087nn **Determination of expected family contribution; data elements**  
[as in effect on Jan. 3, 2013]

**(a) General rule for determination of expected family contribution.** The expected family contribution—

- (1) for a dependent student shall be determined in accordance with section 1087oo of this title;
- (2) for a single independent student or a married independent student without dependents (other than a spouse) shall be determined in accordance with section 1087pp of this title; and
- (3) for an independent student with dependents other than a spouse shall be determined in accordance with section 1087qq of this title.

**(b) Data elements.** The following data elements are considered in determining the expected family contribution:

- (1) the available income of (A) the student and the student's spouse, or (B) the student and the student's parents, in the case of a dependent student;
- (2) the number of dependents in the family of the student;
- (3) the number of dependents in the family of the student, excluding the student's parents, who are enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title and for whom the family may reasonably be expected to contribute to their postsecondary education;
- (4) the net assets of (A) the student and the student's spouse, and (B) the student and the student's parents, in the case of a dependent student;
- (5) the marital status of the student;
- (6) the age of the older parent, in the case of a dependent student, and the student; and
- (7) the additional expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when the student is married and the student's spouse is employed, or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of title 26.

20 U.S.C. § 1087nn (as in effect on Jan. 3, 2013)

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**Student eligibility**

[as in effect on Jan. 3, 2013]

**(a) In general.** In order to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, a student must—

(1) be enrolled or accepted for enrollment in a degree, certificate, or other program (including a program of study abroad approved for credit by the eligible institution at which such student is enrolled) leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 1094 of this title, except as provided in [subsections \(b\)\(3\)](#) and [\(b\)\(4\)](#) of [this section](#), and not be enrolled in an elementary or secondary school;

(2) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with the provisions of [subsection \(c\)](#) of [this section](#);

(3) not owe a refund on grants previously received at any institution under this subchapter and part C of subchapter I of chapter 34 of title 42, or be in default on any loan from a student loan fund at any institution provided for in part D of this subchapter, or a loan made, insured, or guaranteed by the Secretary under this subchapter and part C of subchapter I of chapter 34 of title 42 for attendance at any institution;

(4) file with the Secretary, as part of the original financial aid application process, a certification, which need not be notarized, but which shall include—

(A) a statement of educational purpose stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution; and

(B) such student's social security number;

(5) be a citizen or national of the United States, a permanent resident of the United States, or able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(6) if the student has been convicted of, or has pled [*sic*] nolo contendere or guilty to, a crime involving fraud in obtaining funds under this subchapter and part C of subchapter I of chapter 34 of title 42, have completed the repayment of such funds to the Secretary, or to the holder in the case of a loan under this subchapter and part C of subchapter I of chapter 34 of title 42 obtained by fraud.

**(b) Eligibility for student loans.**

(1) In order to be eligible to receive any loan under this subchapter and part C of subchapter I of chapter 34 of title 42 (other than a loan under section 1078-2 or 1078-3 of this title, or under section 1078-8 of this title pursuant to an exercise of discretion under section 1087tt of this title) for any period of enrollment, a student who is not a graduate or professional student (as

defined in regulations of the Secretary), and who is enrolled in a program at an institution which has a participation agreement with the Secretary to make awards under subpart 1 of part A of this subchapter, shall—

(A)(i) have received a determination of eligibility or ineligibility for a Pell Grant under such subpart 1 for such period of enrollment; and

(ii) if determined to be eligible, have filed an application for a Pell Grant for such enrollment period; or

(B) have—

(i) filed an application with the Pell Grant processor for such institution for such enrollment period, and

(ii) received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a grant under such subpart 1.

(2) In order to be eligible to receive any loan under section 1078-1 of this title for any period of enrollment, a student shall—

(A) have received a determination of need for a loan under section 1078(a)(2)(B) of this title;

(B) if determined to have need for a loan under section 1078 of this title, have applied for such a loan; and

(C) has applied for a loan under section 1078-8 of this title, if such student is eligible to apply for such a loan.

(3) A student who—

(A) is carrying at least one-half the normal full-time work load for the course of study that the student is pursuing, as determined by an eligible institution, and

(B) is enrolled in a course of study necessary for enrollment in a program leading to a degree or certificate,

shall be, notwithstanding [paragraph \(1\)](#) of [subsection \(a\)](#) of [this section](#), eligible to apply for loans under part B or C of this subchapter. The eligibility described in [this paragraph](#) shall be restricted to one 12-month period.

(4) A student who—

(A) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution, and

(B) is enrolled or accepted for enrollment in a program at an eligible institution necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State,

shall be, notwithstanding [paragraph \(1\)](#) of [subsection \(a\)](#) of [this section](#), eligible to apply for loans under part B, C, or D of this subchapter or work-study assistance under part C of subchapter I of chapter 34 of title 42.

(5) Notwithstanding any other provision of [this subsection](#), no incarcerated student is eligible to receive a loan under this subchapter and part C

of subchapter I of chapter 34 of title 42.

**(c) Satisfactory progress.**

(1) For the purpose of [subsection \(a\)\(2\)](#) of [this section](#), a student is maintaining satisfactory progress if—

(A) the institution at which the student is in attendance, reviews the progress of the student at the end of each academic year, or its equivalent, as determined by the institution, and

(B) the student has a cumulative C average, or its equivalent or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

(2) Whenever a student fails to meet the eligibility requirements of [subsection \(a\)\(2\)](#) of [this section](#) as a result of the application of [this subsection](#) and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(2) of this section for a grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(3) Any institution of higher education at which the student is in attendance may waive the provisions of [paragraph \(1\)](#) or [paragraph \(2\)](#) of [this subsection](#) for undue hardship based on—

(A) the death of a relative of the student,

(B) the personal injury or illness of the student, or

(C) special circumstances as determined by the institution.

**(d) Students who are not high school graduates.** In order for a student who does not have a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, to be eligible for any assistance under subparts 1, 3, and 4 of part A and parts B, C, and D of this subchapter and part C of subchapter I of chapter 34 of title 42, the student shall have completed a secondary school education in a home school setting that is treated as a home school or private school under State law.

**(e) Certification for GSL eligibility.** Each eligible institution may certify student eligibility for a loan by an eligible lender under part B of this subchapter prior to completing the review for accuracy of the information submitted by the applicant required by regulations issued under this subchapter and part C of subchapter I of chapter 34 of Title 42, if—

(1) checks for the loans are mailed to the eligible institution prior to disbursements;

(2) the disbursement is not made until the review is complete; and

(3) the eligible institution has no evidence or documentation on which the institution may base a determination that the information submitted by the applicant is incorrect.

**(f) Loss of eligibility for violation of loan limits.**

(1) No student shall be eligible to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 if the eligible institution determines that the student fraudulently borrowed in violation of the annual loan limits under part B, part C, or part D of this subchapter in the same academic year, or if the student fraudulently borrowed in excess of the aggregate maximum loan limits under such part B, part C, or part D.

(2) If the institution determines that the student inadvertently borrowed amounts in excess of such annual or aggregate maximum loan limits, such institution shall allow the student to repay any amount borrowed in excess of such limits prior to certifying the student's eligibility for further assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

**(g) Verification of immigration status.**

(1) **In general.** The Secretary shall implement a system under which the statements and supporting documentation, if required, of an individual declaring that such individual is in compliance with the requirements of [subsection \(a\)\(5\) of this section](#) shall be verified prior to the individual's receipt of a grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

(2) **Special rule.** The documents collected and maintained by an eligible institution in the admission of a student to the institution may be used by the student in lieu of the documents used to establish both employment authorization and identity under section 1324a(b)(1)(B) of title 8 to verify eligibility to participate in work-study programs under part C of subchapter I of chapter 34 of title 42.

(3) **Verification mechanisms.** The Secretary is authorized to verify such statements and supporting documentation through a data match, using an automated or other system, with other Federal agencies that may be in possession of information relevant to such statements and supporting documentation.

(4) **Review.** In the case of such an individual who is not a citizen or national of the United States, if the statement described in [paragraph \(1\)](#) is submitted but the documentation required under [paragraph \(2\)](#) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under [paragraph \(3\)](#)—

(A) the institution—

(i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the institution determines constitute reasonable evidence indicating such status—

(i) the institution shall transmit to the Immigration and Naturalization Service either photostatic or other similar copies of such documents, or information from such documents, as specified by the Immigration and Naturalization Service, for official verification,

(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status, and

(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

**(h) Limitations of enforcement actions against institutions.** The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an institution of higher education with respect to any error in the institution's determination to make a student eligible for a grant, loan, or work assistance based on citizenship or immigration status—

(1) if the institution has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the institution, under [subsection \(g\)\(4\)\(A\)\(i\) of this section](#), was required to provide a reasonable opportunity to submit documentation, or

(3) because the institution, under [subsection \(g\)\(4\)\(B\)\(i\) of this section](#), was required to wait for the response of the Immigration and Naturalization Service to the institution's request for official verification of the immigration status of the student.

**(i) Validity of loan guarantees for loan payments made before immigration status verification completed.** Notwithstanding [subsection \(h\) of this section](#), if—

(1) a guaranty is made under this subchapter and part C of subchapter I of chapter 34 of title 42 for a loan made with respect to an individual,

(2) at the time the guaranty is entered into, the provisions of [subsection \(h\) of this section](#) had been complied with,

(3) amounts are paid under the loan subject to such guaranty, and

(4) there is a subsequent determination that, because of an unsatisfactory immigration status, the individual is not eligible for the loan,

the official of the institution making the determination shall notify and instruct the entity making the loan to cease further payments under the loan, but such guaranty shall not be voided or otherwise nullified with respect to such payments made before the date the entity receives the notice.

(j) [repealed]

**(k) Special rule for correspondence courses.** A student shall not be eligible to

receive grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 for a correspondence course unless such course is part of a program leading to an associate, bachelor or graduate degree.

**(l) Courses offered through distance education.**

**(1) Relation to correspondence courses.**

**(A) In general.** A student enrolled in a course of instruction at an institution of higher education that is offered principally through distance education and leads to a recognized certificate, or recognized associate, recognized baccalaureate, or recognized graduate degree, conferred by such institution, shall not be considered to be enrolled in correspondence courses.

**(B) Exception.** An institution of higher education referred to in [subparagraph \(A\)](#) shall not include an institution or school described in section 2302(3)(C) of this title.

**(2) Reductions of financial aid.** A student's eligibility to receive grants, loans, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall be reduced if a financial aid officer determines under the discretionary authority provided in section 1087tt of this title that distance education results in a substantially reduced cost of attendance to such student.

**(3) Special rule.** For award years beginning prior to Jul. 1, 2008, the Secretary shall not take any compliance, disallowance, penalty, or other action based on a violation of [this subsection](#) against a student or an eligible institution when such action arises out of such institution's prior award of student assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 if the institution demonstrates to the satisfaction of the Secretary that its course of instruction would have been in conformance with the requirements of this subsection.

**(m) Students with a first baccalaureate or professional degree.** A student shall not be ineligible for assistance under parts B, C, and D of this subchapter and part C of subchapter I of chapter 34 of title 42 because such student has previously received a baccalaureate or professional degree.

**(n) Data base matching.** To enforce the Selective Service registration provisions of section 12(f) of the Military Selective Service Act (50 U.S.C. App. 462(f)), the Secretary shall conduct data base matches with the Selective Service, using common demographic data elements. Appropriate confirmation, through an application output document or through other means, of any person's registration shall fulfill the requirement to file a separate statement of compliance. In the absence of a confirmation from such data matches, an institution may also use data or documents that support either the student's registration, or the absence of a registration requirement for the student, to fulfill the requirement to file a separate statement of compliance. The mechanism for reporting the resolution of nonconfirmed matches shall be prescribed by the Secretary in regulations.

**(o) Study abroad.** Nothing in this chapter shall be construed to limit or otherwise prohibit access to study abroad programs approved by the home institution at which a student is enrolled. An otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled shall be eligible to receive grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42, without regard to whether such study abroad program is required as part of the student's degree program.

**(p) Verification of social security number.** The Secretary of Education, in cooperation with the Commissioner of the Social Security Administration, shall verify any social security number provided by a student to an eligible institution under [subsection \(a\)\(4\) of this section](#) and shall enforce the following conditions:

(1) Except as provided in [paragraphs \(2\) and \(3\)](#), an institution shall not deny, reduce, delay, or terminate a student's eligibility for assistance under this part because social security number verification is pending.

(2) If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, the institution shall deny or terminate the student's eligibility for any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 until such time as the student provides documented evidence of a social security number that is determined by the institution to be correct.

(3) If there is a determination by the Secretary that the social security number provided to an eligible institution by a student is incorrect, and a correct social security number cannot be provided by such student, and a loan has been guaranteed for such student under part B of this subchapter, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, but such guaranty shall not be voided or otherwise nullified with respect to such disbursements made before the date that the lender and the guaranty agency receives such notice.

(4) Nothing in [this subsection](#) shall permit the Secretary to take any compliance, disallowance, penalty, or other regulatory action against—

(A) any institution of higher education with respect to any error in a social security number, unless such error was a result of fraud on the part of the institution; or

(B) any student with respect to any error in a social security number, unless such error was a result of fraud on the part of the student.

**(q) Use of income data.**

(1) **Matching with IRS.** The Secretary, in cooperation with the Secretary of the Treasury, is authorized to obtain from the Internal Revenue Service such information reported on Federal income tax returns by applicants, or by any other person whose financial information is required to be provided on the Federal student financial aid application, as the Secretary determines is necessary for the purpose of—

(A) prepopulating the Federal student financial aid application described in section 1090 of this title; or

(B) verifying the information reported on such student financial aid applications.

**(2) Consent.** The Secretary may require that applicants for financial assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 provide a consent to the disclosure of the data described in [paragraph \(1\)](#) as a condition of the student receiving assistance under this subchapter and part C of subchapter I of chapter 34 of title 42. The parents of an applicant, in the case of a dependent student, or the spouse of an applicant, in the case of an applicant who is married but files separately, may also be required to provide consent as a condition of the student receiving assistance under this subchapter and part C of subchapter I of chapter 34 of title 42.

**(r) Suspension of eligibility for drug-related offenses.**

**(1) In general.** A student who is convicted of any offense under any Federal or State law involving the possession or sale of a [controlled substance](#) for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 shall not be eligible to receive any grant, loan, or work assistance under this subchapter and part C of subchapter I of chapter 34 of title 42 from the date of that conviction for the period of time specified in the following table:

If convicted of an offense involving:

The possession of a [controlled substance](#): Ineligibility period is:

First offense.....1 year  
Second offense.....2 years  
Third offense.....Indefinite.

The sale of a [controlled substance](#): Ineligibility period is:

First offense.....2 years  
Second offense..... Indefinite.

**(2) Rehabilitation.** A student whose eligibility has been suspended under [paragraph \(1\)](#) may resume eligibility before the end of the ineligibility period determined under such paragraph if—

(A) the student satisfactorily completes a drug rehabilitation program that—

- (i) complies with such criteria as the Secretary shall prescribe in regulations for purposes of this paragraph; and
- (ii) includes two unannounced drug tests;

(B) the student successfully passes two unannounced drug tests conducted by a drug rehabilitation program that complies with such

criteria as the Secretary shall prescribe in regulations for purposes of [paragraph \(A\)\(i\)](#); or

(C) the conviction is reversed, set aside, or otherwise rendered nugatory.

**(3) Definitions.** In [this subsection](#), the term "[controlled substance](#)" has the meaning given the term in [section 802\(6\) of title 21](#).

**(s) Students with intellectual disabilities.**

**(1) Definitions.** In [this subsection](#), the terms "comprehensive transition and postsecondary program for students with intellectual disabilities" and "student with intellectual disability" have the meanings given the terms in section 1140 of this title.

**(2) Requirements.** Notwithstanding [subsections \(a\)](#), [\(c\)](#), and [\(d\)](#), in order to receive any grant or work assistance under section 1070a of this title, subpart 3 of part A of this subchapter, or part C of subchapter I of chapter 34 of title 42, a student with an intellectual disability shall—

(A) be enrolled or accepted for enrollment in a comprehensive transition and postsecondary program for students with intellectual disabilities at an institution of higher education;

(B) be maintaining satisfactory progress in the program as determined by the institution, in accordance with standards established by the institution; and

(C) meet the requirements of [paragraphs \(3\)](#), [\(4\)](#), [\(5\)](#), and [\(6\)](#) of [subsection \(a\)](#).

**(3) Authority.** Notwithstanding any other provision of law, unless such provision is enacted with specific reference to [this section](#), the Secretary is authorized to waive any statutory provision applicable to the student financial assistance programs under section 1070a of this title, subpart 3 of part A of this subchapter, or part C of subchapter I of chapter 34 of title 42 (other than a provision of part E of this subchapter related to such a program), or any institutional eligibility provisions of this subchapter and part C of subchapter I of chapter 34 of title 42, as the Secretary determines necessary to ensure that programs enrolling students with intellectual disabilities otherwise determined to be eligible under [this subsection](#) may receive such financial assistance.

**(4) Regulations.** Notwithstanding regulations applicable to grant or work assistance awards made under section 1070a of this title, subpart 3 of part A of this subchapter, and part C of subchapter I of chapter 34 of title 42 (other than a regulation under part E of this subchapter related to such an award), including with respect to eligible programs, instructional time, credit status, and enrollment status as described in section 1088 of this title, the Secretary shall promulgate regulations allowing programs enrolling students with intellectual disabilities otherwise determined to be eligible under [this subsection](#) to receive such awards.

**(t) Data analysis on access to Federal student aid for certain populations.**

**(1) Development of the system.** Within one year of August 14, 2008, the Secretary shall analyze data from the FAFSA containing information regarding

the number, characteristics, and circumstances of students denied Federal student aid based on a drug conviction while receiving Federal aid.

**(2) Results from analysis.** The results from [the analysis](#) of [such information](#) shall be made available on a continuous basis via the Department website and the Digest of Education Statistics.

**(3) Data updating.** [The data analyzed](#) under [this subsection](#) shall be updated at the beginning of each award year and at least one additional time during such award year.

**(4) Report to Congress.** The Secretary shall prepare and submit to the authorizing committees, in each fiscal year, a report describing [the results](#) obtained by the establishment and operation of the data system authorized by [this subsection](#).

*20 U.S.C. § 1091 (as in effect on Jan. 3, 2013)*

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21 U.S.C. § 802

**Definitions**

*[as in effect on Jan. 3, 2013]*

As used in this subchapter:

....

(6) The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

....

*21 U.S.C. § 802 (as in effect on Jan. 3, 2013)*

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21 U.S.C. § 812

**Schedules of controlled substances**

*[as in effect on Jan. 3, 2013]*

**(a) Establishment.** There are established five schedules of [controlled substances](#), to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in [this section](#). The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.

....

*21 U.S.C. § 812 (as in effect on Jan. 3, 2013)*

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**Denial of Federal benefits to drug traffickers and possessors**  
*[as in effect on Jan. 3, 2013]*

**(a) Drug traffickers.**

(1) Any individual who is convicted of any Federal or State offense consisting of the distribution of [controlled substances](#) shall—

(A) at the discretion of the court, upon the first conviction for such an offense be ineligible for any or all [Federal benefits](#) for up to 5 years after such conviction;

(B) at the discretion of the court, upon a second conviction for such an offense be ineligible for any or all [Federal benefits](#) for up to 10 years after such conviction; and

(C) upon a third or subsequent conviction for such an offense be permanently ineligible for all [Federal benefits](#).

(2) The benefits which are denied under [this subsection](#) shall not include benefits relating to long-term drug treatment programs for addiction for any person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

**(b) Drug possessors.**

(1) Any individual who is convicted of any Federal or State offense involving the possession of a [controlled substance](#) (as such term is defined for purposes of this subchapter) shall—

(A) upon the first conviction for such an offense and at the discretion of the court—

(i) be ineligible for any or all [Federal benefits](#) for up to one year;

(ii) be required to successfully complete an approved drug treatment program which includes periodic testing to insure that the individual remains drug free;

(iii) be required to perform appropriate community service; or

(iv) any combination of [clause \(i\)](#), [\(ii\)](#), or [\(iii\)](#); and

(B) upon a second or subsequent conviction for such an offense be ineligible for all [Federal benefits](#) for up to 5 years after such conviction as determined by the court. The court shall continue to have the discretion in [subparagraph \(A\)](#) above. In imposing penalties and conditions under [subparagraph \(A\)](#), the court may require that the completion of the conditions imposed by [clause \(ii\)](#) or [\(iii\)](#) be a requirement for the reinstatement of benefits under [clause \(i\)](#).

(2) The penalties and conditions which may be imposed under [this subsection](#) shall be waived in the case of a person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict

and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

**(c) Suspension of period of ineligibility.** The period of ineligibility referred to in [subsections \(a\)](#) and [\(b\)](#) of [this section](#) shall be suspended if the individual—

(A) completes a supervised drug rehabilitation program after becoming ineligible under [this section](#);

(B) has otherwise been rehabilitated; or

(C) has made a good faith effort to gain admission to a supervised drug rehabilitation program, but is unable to do so because of inaccessibility or unavailability of such a program, or the inability of the individual to pay for such a program.

**(d) Definitions.** As used in [this section](#)—

(1) the term "Federal benefit"—

(A) means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) does not include any retirement, welfare, Social Security, health, disability, [veterans benefit](#), public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

(2) the term "veterans benefit" means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.

**(e) Inapplicability of this section to Government witnesses.** The penalties provided by [this section](#) shall not apply to any individual who cooperates or testifies with the Government in the prosecution of a Federal or State offense or who is in a Government witness protection program.

**(f) Indian provision.** Nothing in [this section](#) shall be construed to affect the obligation of the United States to any Indian or Indian tribe arising out of any treaty, statute, Executive order, or the trust responsibility of the United States owing to such Indian or Indian tribe. Nothing in [this subsection](#) shall exempt any individual Indian from the sanctions provided for in this section, provided that no individual Indian shall be denied any benefit under Federal Indian programs comparable to those described in [subsection \(d\)\(1\)\(B\)](#) or [\(d\)\(2\)](#) of this section.

**(g) Presidential report.**

(1) On or before May 1, 1989, the President shall transmit to the Congress a report—

(A) delineating the role of State courts in implementing [this section](#);

(B) describing the manner in which Federal agencies will implement and enforce the requirements of [this section](#);

(C) detailing the means by which Federal and State agencies, courts, and law enforcement agencies will exchange and share the data and information necessary to implement and enforce the withholding of [Federal benefits](#); and

(D) recommending any modifications to improve the administration of [this section](#) or otherwise achieve the goal of discouraging the trafficking and possession of [controlled substances](#).

(2) No later than September 1, 1989, the Congress shall consider the report of the President and enact such changes as it deems appropriate to further the goals of [this section](#).

**(h) Effective date.** The denial of [Federal benefits](#) set forth in [this section](#) shall take effect for convictions occurring after September 1, 1989.

*21 U.S.C. § 862 (as in effect on Jan. 3, 2013)*

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**Dependent defined**

*(as effective for taxable years beginning after Dec. 31, 2004)*

**(a) In general.** For purposes of this subtitle, the term "dependent" means—

- (1) a qualifying child, or
- (2) a qualifying relative.

**(b) Exceptions.** For purposes of [this section](#)—

**(1) Dependents ineligible.** If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

**(2) Married dependents.** An individual shall not be treated as a dependent of a taxpayer under [subsection \(a\)](#) if such individual has made a joint return with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

**(3) Citizens or nationals of other countries.**

**(A) In general.** The term "dependent" does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

**(B) Exception for adopted child.** [Subparagraph \(A\)](#) shall not exclude any child of a taxpayer (within the meaning of [subsection \(f\)\(1\)\(B\)](#)) from the definition of "dependent" if—

- (i) for the taxable year of the taxpayer, the child has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and
- (ii) the taxpayer is a citizen or national of the United States.

**(c) Qualifying child.** For purposes of [this section](#)—

**(1) In general.** The term "qualifying child" means, with respect to any taxpayer for any taxable year, an individual—

**(A)** who bears a relationship to the taxpayer described in [paragraph \(2\)](#),

**(B)** who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

**(C)** who meets the age requirements of [paragraph \(3\)](#),

**(D)** who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins, and

**(E)** who has not filed a joint return (other than only for a claim of refund) with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

**(2) Relationship.** For purposes of [paragraph \(1\)\(A\)](#), an individual bears a relationship to the taxpayer described in [this paragraph](#) if such individual is—

(A) a child of the taxpayer or a descendant of such a child, or

(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

**(3) Age requirements.**

(A) **In general.** For purposes of [paragraph \(1\)\(C\)](#), an individual meets the requirements of [this paragraph](#) if such individual is younger than the taxpayer claiming such individual as a qualifying child and—

(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

(B) **Special rule for disabled.** In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during such calendar year, the requirements of [subparagraph \(A\)](#) shall be treated as met with respect to such individual.

**(4) Special rule relating to 2 or more who can claim the same qualifying child.**

(A) **In general.** Except as provided in [subparagraphs \(B\)](#) and [\(C\)](#), if (but for [this paragraph](#)) an individual may be claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

(i) a parent of the individual, or

(ii) if [clause \(i\)](#) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

(B) **More than 1 parent claiming qualifying child.** If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of—

(i) the parent with whom the child resided for the longest period of time during the taxable year, or

(ii) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

(C) **No parent claiming qualifying child.** If the parents of an individual may claim such individual as a qualifying child but no parent so claims the individual, such individual may be claimed as the qualifying child of another taxpayer but only if the adjusted gross income of such taxpayer is higher than the highest adjusted gross income of any parent of the individual.

**(d) Qualifying relative.** For purposes of [this section](#)—

(1) **In general.** The term "qualifying relative" means, with respect to any taxpayer for any taxable year, an individual—

(A) who bears a relationship to the taxpayer described in [paragraph \(2\)](#),

(B) whose gross income for the calendar year in which such taxable year begins is less than the exemption amount (as defined in section 151(d)),

(C) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which such taxable year begins, and

(D) who is not a qualifying child of such taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

**(2) Relationship.** For purposes of [paragraph \(1\)\(A\)](#), an individual bears a relationship to the taxpayer described in this paragraph if the individual is any of the following with respect to the taxpayer:

(A) A child or a descendant of a child.

(B) A brother, sister, stepbrother, or stepsister.

(C) The father or mother, or an ancestor of either.

(D) A stepfather or stepmother.

(E) A son or daughter of a brother or sister of the taxpayer.

(F) A brother or sister of the father or mother of the taxpayer.

(G) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

(H) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

**(3) Special rule relating to multiple support agreements.** For purposes of [paragraph \(1\)\(C\)](#), over one-half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

(A) no one person contributed over one-half of such support,

(B) over one-half of such support was received from 2 or more persons each of whom, but for the fact that any such person alone did not contribute over one-half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year,

(C) the taxpayer contributed over 10 percent of such support, and

(D) each person described in [subparagraph \(B\)](#) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such person will not claim such individual as a dependent for any taxable year beginning in such calendar year.

**(4) Special rule relating to income of handicapped dependents.**

(A) **In general.** For purposes of [paragraph \(1\)\(B\)](#), the gross income of an individual who is permanently and totally disabled (as

defined in section 22(e)(3)) at any time during the taxable year shall not include income attributable to services performed by the individual at a sheltered workshop if—

(i) the availability of medical care at such workshop is the principal reason for the individual's presence there, and

(ii) the income arises solely from activities at such workshop which are incident to such medical care.

**(B) Sheltered workshop defined.** For purposes of [subparagraph \(A\)](#), the term "sheltered workshop" means a school—

(i) which provides special instruction or training designed to alleviate the disability of the individual, and

(ii) which is operated by an organization described in section 501(c)(3) and exempt from tax under section 501(a), or by a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

**(5) Special rules for support.** For purposes of [this subsection](#)—

(A) payments to a spouse which are includible in the gross income of such spouse under section 71 or 682 shall not be treated as a payment by the payor spouse for the support of any dependent, and

(B) in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

**(e) Special rule for divorced parents, etc.**

**(1) In general.** Notwithstanding [subsection \(c\)\(1\)\(B\)](#), [\(c\)\(4\)](#), or [\(d\)\(1\)\(C\)](#), if—

(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and—

(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

**(2) Exception where custodial parent releases claim to exemption for the year.** For purposes of [paragraph \(1\)](#), the requirements described in [this paragraph](#) are met with respect to any calendar year if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such

custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

**(3) Exception for certain pre-1985 instruments.**

(A) **In general.** For purposes of [paragraph \(1\)](#), the requirements described in [this paragraph](#) are met with respect to any calendar year if—

(i) a qualified pre-1985 instrument between the parents applicable to the taxable year beginning in such calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

(ii) the noncustodial parent provides at least \$600 for the support of such child during such calendar year.

For purposes of [this subparagraph](#), amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

(B) **Qualified pre-1985 instrument.** For purposes of this [paragraph](#), the term "qualified pre-1985 instrument" means any decree of divorce or separate maintenance or written agreement—

(i) which is executed before January 1, 1985,

(ii) which on such date contains the provision described in [subparagraph \(A\)\(i\)](#), and

(iii) which is not modified on or after such date in a modification which expressly provides that [this paragraph](#) shall not apply to such decree or agreement.

**(4) Custodial parent and noncustodial parent.** For purposes of [this subsection](#)—

(A) **Custodial parent.** The term "custodial parent" means the parent having custody for the greater portion of the calendar year.

(B) **Noncustodial parent.** The term "noncustodial parent" means the parent who is not the [custodial parent](#).

**(5) Exception for multiple-support agreement.** [This subsection](#) shall not apply in any case where over one-half of the support of the child is treated as having been received from a taxpayer under the provision of [subsection \(d\)\(3\)](#).

**(6) Special rule for support received from new spouse of parent.** For purposes of [this subsection](#), in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

**(f) Other definitions and rules.** For purposes of [this section](#)—

**(1) Child defined.**

(A) **In general.** The term "child" means an individual who is—

(i) a son, daughter, stepson, or stepdaughter of the

taxpayer, or

(ii) an eligible foster child of the taxpayer.

**(B) Adopted child.** In determining whether any of the relationships specified in [subparagraph \(A\)\(i\)](#) or [paragraph \(4\)](#) exists, a legally adopted individual of the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer, shall be treated as a child of such individual by blood.

**(C) Eligible foster child.** For purposes of [subparagraph \(A\)\(ii\)](#), the term "eligible foster child" means an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

**(2) Student defined.** The term "student" means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii), or

(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

**(3) Determination of household status.** An individual shall not be treated as a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

**(4) Brother and sister.** The terms "brother" and "sister" include a brother or sister by the half blood.

**(5) Special support test in case of students.** For purposes of [subsections \(c\)\(1\)\(D\)](#) and [\(d\)\(1\)\(C\)](#), in the case of an individual who is—

(A) a child of the taxpayer, and

(B) a student,

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account.

**(6) Treatment of missing children.**

**(A) In general.** Solely for the purposes referred to in [subparagraph \(B\)](#), a child of the taxpayer—

(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

(ii) who had, for the taxable year in which the kidnapping occurred, the same principal place of abode as the taxpayer for more than one-half of the portion of such year before the date of the kidnapping,

shall be treated as meeting the requirement of [subsection \(c\)\(1\)\(B\)](#) with

respect to a taxpayer for all taxable years ending during the period that the child is kidnapped.

**(B) Purposes.** [Subparagraph \(A\)](#) shall apply solely for purposes of determining—

- (i) the deduction under section 151(c),
- (ii) the credit under section 24 (relating to child tax credit),
- (iii) whether an individual is a surviving spouse or a head of a household (as such terms are defined in section 2), and
- (iv) the earned income credit under section 32.

**(C) Comparable treatment of certain qualifying relatives.** For purposes of [this section](#), a child of the taxpayer—

- (i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and
- (ii) who was (without regard to this paragraph) a qualifying relative of the taxpayer for the portion of the taxable year before the date of the kidnapping,

shall be treated as a qualifying relative of the taxpayer for all taxable years ending during the period that the child is kidnapped.

**(D) Termination of treatment.** [Subparagraphs \(A\)](#) and [\(C\)](#) shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age 18).

**(7) Cross references.** For provision treating child as dependent of both parents for purposes of certain provisions, see sections 105(b), 132(h)(2)(B), and 213(d)(5).

*26 U.S.C. § 152 (as effective for taxable years beginning after Dec. 31, 2004)*

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**Unsworn declarations under penalty of perjury**

*[as in effect on Jan. 3, 2013]*

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

*28 U.S.C. § 1746 (as in effect on Jan. 3, 2013)*

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**Computation of educational assistance allowance***[as in effect on Jan. 3, 2013]*

**(a)(1)** The educational assistance allowance on behalf of an eligible person who is pursuing a program of education consisting of institutional courses shall be paid at the monthly rate of \$788 for full-time, \$592 for three-quarter-time, or \$394 for half-time pursuit.

**(2)** The educational assistance allowance on behalf of an eligible person pursuing a program of education on less than a half-time basis shall be paid at the rate of the lesser of—

**(A)** the established charges for tuition and fees that the educational institution involved requires similarly circumstanced nonveterans enrolled in the same program to pay; or

**(B)** \$788 per month for a full-time course.

**(b)** The educational assistance allowance to be paid on behalf of an eligible person who is pursuing a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion, shall be computed at the rate of \$788 per month.

**(c)(1)** An eligible person who is enrolled in an educational institution for a "farm cooperative" program consisting of institutional agricultural courses prescheduled to fall within forty-four weeks of any period of twelve consecutive months and who pursues such program on—

**(A)** a full-time basis (a minimum of ten clock hours per week or four hundred and forty clock hours in such year prescheduled to provide not less than eighty clock hours in any three-month period),

**(B)** a three-quarter-time basis (a minimum of seven clock hours per week), or

**(C)** a half-time basis (a minimum of five clock hours per week), shall be eligible to receive an educational assistance allowance at the appropriate rate provided in paragraph (2) of this subsection, if such eligible person is concurrently engaged in agricultural employment which is relevant to such institutional agricultural courses as determined under standards prescribed by the Secretary. In computing the foregoing clock hour requirements there shall be included the time involved in field trips and individual and group instruction sponsored and conducted by the educational institution through a duly authorized instructor of such institution in which the person is enrolled.

**(2)** The monthly educational assistance allowance to be paid on behalf of an eligible person pursuing a farm cooperative program under this chapter shall be \$636 for full-time, \$477 for three-quarter-time, or \$319 for half-time pursuit.

**(d)** If a program of education is pursued by an eligible person at an institution located in the Republic of the Philippines, the educational assistance allowance computed

for such person under this section shall be paid at the rate of \$0.50 for each dollar.

(e) In the case of an eligible person who is pursuing a program of education under this chapter while incarcerated in a Federal, State, local, or other penal institution or correctional facility for conviction of a felony, the educational assistance allowance shall be paid in the same manner prescribed in section 3482(g) of this title for incarcerated veterans, except that the references therein to the monthly educational assistance allowance prescribed for a veteran with no dependents shall be deemed to refer to the applicable allowance payable to an eligible person under corresponding provisions of this chapter or chapter 36 of this title, as determined by the Secretary.

(f)(1) Subject to [paragraph \(3\)](#), the amount of educational assistance payable under this chapter for a licensing or certification test described in section 3501(a)(5) of this title is the lesser of \$2,000 or the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for such licensing or certification test is equal to the number (including any fraction) determined by dividing the total amount paid to such individual for such test by the full-time monthly institutional rate of the educational assistance allowance which, except for [paragraph \(1\)](#), such individual would otherwise be paid under this chapter.

(3) In no event shall payment of educational assistance under this subsection for such a test exceed the amount of the individual's available entitlement under this chapter.

(g)(1) Subject to [paragraph \(3\)](#), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3501(a)(5) of this title is the amount of the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for a test described in [paragraph \(1\)](#) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

(3) In no event shall payment of educational assistance under this subsection for a test described in [paragraph \(1\)](#) exceed the amount of the individual's available entitlement under this chapter.

*38 U.S.C. § 3532 (as in effect on Jan. 3, 2013)*

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...

**(d) "Disability" defined.**

(1) The term "disability" means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of [paragraph \(1\)\(A\)](#)—

(A) An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Commissioner of Social Security shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner of Social Security does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

(C) An individual shall not be considered to be disabled for purposes of this subchapter if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.

(3) For purposes of [this subsection](#), a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and

laboratory diagnostic techniques.

**(4)(A)** The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed an amount equal to the exempt amount which would be applicable under section 403(f)(8) of this title, to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted. Notwithstanding the provisions of [paragraph \(2\)](#), an individual whose services or earnings meet such criteria shall, except for purposes of section 422(c) of this title, be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe.

**(B)** In determining under [subparagraph \(A\)](#) when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity, the Commissioner of Social Security shall apply the criteria described in subparagraph (A) with respect to services performed by any individual without regard to the legality of such services.

**(5)(A)** An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require. An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or

muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability. Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Commissioner of Social Security under this paragraph shall be entitled to payment from the Commissioner of Social Security for the reasonable cost of providing such evidence.

**(B)** In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Commissioner of Social Security shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Commissioner of Social Security shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.

**(6)(A)** Notwithstanding any other provision of this subchapter, any physical or mental impairment which arises in connection with the commission by an individual (after October 19, 1980) of an offense which constitutes a felony under applicable law and for which such individual is subsequently convicted, or which is aggravated in connection with such an offense (but only to the extent so aggravated), shall not be considered in determining whether an individual is under a disability.

**(B)** Notwithstanding any other provision of this subchapter, any physical or mental impairment which arises in connection with an individual's confinement in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of an offense (committed after October 19, 1980) constituting a felony under applicable law, or which is aggravated in connection with such a confinement (but only to the extent so aggravated), shall not be considered in determining whether such individual is under a disability for purposes of benefits payable for any month during which such individual is so confined.

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*42 U.S.C. § 423 (as in effect on Jan. 3, 2013)*

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42 U.S.C. § 3782      **Rules, regulations, and procedures; consultations and establishment**  
*[as in effect on Jan. 3, 2013]*

**(a) General authorization of certain Federal agencies.** The Office of Justice Programs, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Statistics, and the National Institute of Justice are authorized, after appropriate consultation with representatives of [States](#) and [units of local government](#), to establish such rules, [regulations](#), and procedures as are necessary to the exercise of their functions, and as are consistent with the stated purposes of [this title \[chapter\]](#).

...

42 U.S.C. § 3782 *(as in effect on Jan. 3, 2013)*

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42 U.S.C. § 3787      **Subpoena power; employment of hearing officers; authority to hold hearings**  
*[as in effect on Jan. 3, 2013]*

The Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may [appoint](#) such [hearing examiners](#) or administrative law judges or request the use of such administrative law judges selected by the Office of Personnel Management pursuant to section 3344 of Title 5, as shall be necessary to carry out their respective powers and duties under [this title \[chapter\]](#). The Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics or upon authorization, any member thereof or any hearing examiner or administrative law judge [assigned to or employed thereby](#) shall have the power to [hold hearings](#) and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States they respectively may designate.

*42 U.S.C. § 3787 (as in effect on Jan. 3, 2013)*

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...

**(b) Use of available services; reimbursement.** The Office [of Justice Programs], the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of Federal, [State](#), and [local](#) agencies to the extent deemed appropriate after giving due consideration to the effectiveness of such existing services, equipment, personnel, and facilities.

**(c) Other Federal agency performance of functions under [this title \[chapter\]](#); reimbursement.** The Office [of Justice Programs], the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may arrange with and reimburse the heads of other Federal departments and agencies for the performance of any of the functions under [this title \[chapter\]](#).

**(d) [Experts](#) and consultants; compensation.** The Office [of Justice Programs], the Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may procure the services of [experts](#) and consultants in accordance with section 3109 of title 5, relating to appointments in the Federal service, at rates of compensation for individuals not to exceed the daily equivalent of the rate of pay payable from time to time for GS-18 of the General Schedule under section 5332 of title 5.

...

**General provisions**

*[as in effect on Jan. 3, 2013]*

**(a) Definitions.** As used in [this title \[chapter\]](#)—

...

**(2)** "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands . . . ;

**(3)** "unit of local government" means—

**(A)** any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a [State](#);

**(B)** any [law enforcement](#) district or judicial enforcement district that—

**(i)** is established under applicable [State](#) law; and

**(ii)** has the authority to, in a manner independent of other [State](#) entities, establish a budget and impose taxes;

**(C)** an [Indian Tribe](#) that performs [law enforcement](#) functions, as determined by the Secretary of the Interior; or

**(D)** for the purposes of assistance eligibility, any agency of the government of the District of Columbia or the Federal Government that performs [law enforcement](#) functions in and for—

**(i)** the District of Columbia; or

**(ii)** any Trust Territory of the United States;

...

**(7)** "correctional facility" means any place for the confinement or rehabilitation of offenders or individuals charged with or convicted of criminal offenses;

...

**(15)** "Attorney General" means the Attorney General of the United States or his designee;

...

**(26)** the term "Indian tribe" has the meaning given the term "Indian tribe" in section 450b(e) of title 25; . . . .

...

**(28)** the term "hearing examiner" includes any medical or claims

examiner.

*42 U.S.C. § 3791 (as in effect on Jan. 3, 2013)*

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42 U.S.C. § 3793

**Authorization of appropriations**

*[as in effect on Jan. 3, 2013]*

**(a)**

...

**(4)** There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out [part L \[subchapter XII\]](#) of [this title \[chapter\]](#).

...

**(b)** Funds appropriated for any fiscal year may remain available for obligation until expended.

...

*42 U.S.C. § 3793 (as in effect on Jan. 3, 2013)*

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42 U.S.C. § 3795a    **Falsification or concealment of facts**  
*[as in effect on Jan. 3, 2013]*

Whoever knowingly and willfully falsifies, conceals, or covers up by trick, scheme, or device, any material fact in any application for assistance submitted pursuant to [this title \[chapter\]](#) or in any records required to be maintained pursuant to this title *[chapter]* shall be subject to prosecution under the provisions of [section 1001 of title 18](#).

42 U.S.C. § 3795a (as in effect on Jan. 3, 2013)

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42 U.S.C.

**The Public Health and Welfare**  
*Chapter 68*                    **Disaster Relief**  
*[as in effect on Jan. 3, 2013]*

**Sec. 5121. Congressional findings and declarations**

*through*

**Sec. 5207. Firearms policies**

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*Omnibus Crime Control and Safe Streets Act of 1968*, *Pub. L. No. 90-351, tit. XI, § 1601,*  
*82 Stat. 197, 239*

**Sec. 1601.** If the provisions of any part of [this Act](#) or any amendments made thereby or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

*Pub. L. No. 90-351*

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*Public Safety Officers' Benefits Act of 1976, Pub. L. No. 94-430, §§ 3 to 6, 90 Stat. 1346, 1348*

(signed into law by the President on September 29, 1976)

**Sec. 3.** Section 520 of [the Omnibus Crime Control and Safe Streets Act of 1968](#), as amended, is amended by adding at the end thereof the following new subsection:

"(c) There are authorized to be appropriated in each fiscal year such sums as may be necessary to carry out the purposes of [part J](#)."

**Sec. 4.** The authority to make payments under [part J](#) of [the Omnibus Crime Control and Safe Streets Act of 1968](#) (as added by section 2 of [this Act](#)) shall be effective only to the extent provided for in advance by appropriation Acts.

**Sec. 5.** If the provisions of any part of [this Act](#) are found invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby.

**Sec. 6.** The amendments made by [this Act](#) shall become effective and apply to [deaths](#) occurring from [injuries sustained](#) on or after the [date of enactment](#) of this Act.

*Pub. L. No. 94-430*

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*Justice Assistance Act of 1984, Pub. L. No. 98-473, tit. II, § 609AA, 98 Stat. 1837, 2107*

**Sec. 609AA. Effective Dates**

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(b)(1) The amendment made by section 609F shall take effect on October 1, 1984, and shall not apply with respect to [injuries sustained](#) before October 1, 1984.

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*Pub. L. No. 98-473*

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*Department of Justice Appropriation Act, 1987, Pub. L. No. 99-500, § 101(b), tit. II,  
100 Stat. 1783*

(section 207 signed into law by the President on October 18, 1986)

*Pub. L. No. 99-500*

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*Crime Control Act of 1990, Pub. L. No. 101-647, § 1303, 104 Stat. 4789, 4835*

(signed into law by the President on November 29, 1990)

**Sec. 1303. Effective Date.**—The amendments made by this title shall take effect upon [enactment](#) and shall not apply with respect to [injuries occurring](#) before the [effective date](#) of such amendments.

*Pub. L. No. 101-647*

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*Federal Law Enforcement Dependents Assistance Act of 1996, Pub. L. No. 104-238,  
110 Stat. 3114*

(signed into law by the President on October 3, 1996)

*Pub. L. No. 104-238*

\*\*\*\*\*

*Police, Fire, and Emergency Officers Educational Assistance Act of 1996, Pub. L.  
No. 105-390, 112 Stat. 3495*

(signed into law by the President on November 13, 1998)

*Pub. L. No. 105-390*

\*\*\*\*\*

*Pub. L. No. 106-276, 114 Stat. 812, 812 (Oct. 2, 2000)*

An Act

To amend the [Omnibus Crime Control and Safe Streets Act of 1968](#) to extend the retroactive eligibility dates for [financial assistance for higher education](#) for [spouses](#) and [dependent children](#) of Federal, State, and local [law enforcement officers](#) who are [killed in the line of duty](#).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**Sec. 1. Extension of retroactive eligibility dates for financial assistance for higher education for spouses and children of law enforcement officers killed in the line of duty.**

**(a) In General.**—Section [1216\(a\)](#) of [the Omnibus Crime Control and Safe Streets Act of 1968](#) ([42 U.S.C. 3796d-5\(a\)](#)) is amended—

- (1) by striking "May 1, 1992", and inserting "January 1, 1978,"; and
- (2) by striking "October 1, 1997", and inserting "January 1, 1978,".

**(b) Effective Date.**—The amendments made by [subsection \(a\)](#) shall take effect October 1, 1999.

*Pub. L. No. 106-276*

\*\*\*\*\*

*Disaster Mitigation Act of 2000, Pub. L. No. 106-390, § 305, 114 Stat. 1552, 1573 - 1574*

(signed into law by the President on October 30, 2000)

**Sec. 305. Effective Date.**

....

**(b) Effective Date.**—The amendment made by subsection (a) applies only to employees described in subparagraphs [\(B\)](#) or [\(C\)](#) of [section 1204\(7\)](#) of [the Omnibus Crime Control and Safe Streets Act of 1968](#) (as amended by subsection (a)) who are [injured](#) or who [die in the line of duty](#) on or after the [date of the enactment](#) of [this Act](#).

*Pub. L. No. 106-390*

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*Pub. L. No. 107-37, 115 Stat. 219, 219 (Sep. 18, 2001), as amended by [Pub. L. No. 107-56](#)*

An Act

To provide for the expedited payment of certain benefits for a [public safety officer](#) who was [killed](#) or [suffered a catastrophic injury as a direct and proximate result of a personal injury sustained in the line of duty](#) in connection with the terrorist attacks of September 11, 2001.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**Sec. 1. Expedited payment for heroic public safety officers.**

Notwithstanding the [limitations](#) of [subsection \(b\)](#) of [section 1201](#) or the provisions of [subsections \(c\), \(d\), and \(e\)](#) of such section or [section 1202](#) of [title I of the Omnibus Crime Control and Safe Streets Act of 1968 \(42 U.S.C. 3796, 3796a\)](#), upon [certification](#) (containing identification of all [eligible payees](#) of benefits pursuant to section 1201) by a [public agency](#) that a [public safety officer employed by such agency](#) was [killed](#) or [suffered a catastrophic injury producing permanent and total disability as a direct and proximate result of a personal injury sustained in the line of duty](#) as described in section 1201 of such Act in connection with the [rescue or recovery](#) efforts related to the terrorist attacks of September 11, 2001, the Director of the Bureau of Justice Assistance shall authorize payment to [qualified beneficiaries](#), said payment to be made not later than 30 days after receipt of such certification, benefits [*sic*] described under [subpart 1](#) of [part L of \[title I of\] such Act \(42 U.S.C. 3796 et seq.\)](#).

**Sec. 2. Definitions.**

For purposes of [this Act](#), the terms "[catastrophic injury](#)", "[public agency](#)", and "[public safety officer](#)" have the same meanings given such terms in [section 1204](#) of [title I of the Omnibus Crime Control and Safe Streets Act of 1968 \(42 U.S.C. 3796b\)](#).

*Pub. L. No. 107-37, as amended by Pub. L. No. 107-56*

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*USA PATRIOT Act of 2001, Pub. L. No. 107-56, §§ 2, 612, 115 Stat. 272, 275, 369  
(2001)*

(signed into law by the President on October 26, 2001)

**Sec. 2. Construction; severability.**

Any provision of [this Act](#) 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 from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

...

**Sec. 612. Technical correction with respect to expedited payments for heroic public safety officers.**

[Section 1](#) of Public Law 107-37 (an Act to provide for the expedited payment of certain benefits for a [public safety officer](#) who was [killed](#) or [suffered a catastrophic injury as a direct and proximate result of a personal injury sustained in the line of duty](#) in connection with the terrorist attacks of September 11, 2001) is amended by—

(1) inserting before "[by a](#)" the following: "[\(containing identification of all eligible payees of benefits pursuant to section 1201\)](#)";

(2) inserting "[producing permanent and total disability](#)" after "[suffered a catastrophic injury](#)"; and

(3) striking "1201(a)" and inserting "[1201](#)".

*Pub. L. No. 107-56*

\*\*\*\*\*

*Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act of 2002,*  
*Pub. L. No. 107-196, § 2, 116 Stat. 719, 719*

**Sec. 2. Benefits for Chaplains.**

....

**(c) Effective Date.**—The amendments made by this section shall take effect on September 11, 2001, and shall apply to [injuries](#) or [deaths](#) that occur [in the line of duty](#) on or after such date.

*Pub. L. No. 107-196*

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*Hometown Heroes Survivors Benefits Act of 2003, Pub. L. No. 108-182, 117 Stat. 2649*

(signed into law by the President on December 15, 2003)

*Pub. L. No. 108-182*

\*\*\*\*\*

*Department of Justice Appropriations Authorization Act, 2006, Pub. L. No. 109-162,  
§ 1164, 119 Stat. 2960, 3120*

(signed into law by the President on January 5, 2006)

**Sec. 1164. Clarification of persons eligible for benefits under public safety officers' death benefits programs.**

....

**(d) Designation of Beneficiary.**—Section [1201\(a\)\(4\) of such Act \(42 U.S.C. 3796\(a\)\(4\)\)](#) is amended to read as follows:

"(4) if there is no surviving [spouse](#) or surviving [child](#)—

"(A) in the case of a claim made on or after the date that is 90 days after the [date of enactment of this subparagraph](#), to the [individual designated by such officer as beneficiary under this section in such officer's most recently executed designation of beneficiary](#) on file at the time of death with such officer's [public safety agency, organization, or unit](#), provided that such individual survived such officer; or

"(B) if there is no individual qualifying under [subparagraph \(A\)](#), to the [individual designated by such officer as beneficiary under such officer's most recently executed life insurance policy](#) on file at the time of death with such officer's [public safety agency, organization, or unit](#), provided that such individual survived such officer; or".

....

*Pub. L. No. 109-162*

\*\*\*\*\*

*Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295,  
§ 612(c), 120 Stat. 1355, 1410*

(signed into law by the President on October 4, 2006)

**Sec. 612. Technical and Conforming Amendments.**

....

**(c) References.**—Any reference to the Director of the Federal Emergency Management Agency, in any law, rule, regulation, certificate, directive, instruction, or other official paper shall be considered to refer and apply to the Administrator of the Federal Emergency Management Agency.

....

**Sec. 614. Effective Date.**

**(a) In General.**— Except as provided in subsection (b), [this title](#) and the amendments made by this title shall take effect on the [date of enactment](#) of this Act.

....

*Pub. L. No. 109-295*

\*\*\*\*\*

(signed into law by the President on January 2, 2013)

**Sec. 1086. PUBLIC SAFETY OFFICERS' BENEFITS PROGRAM.**

....

**(d) EFFECTIVE DATE.—**

**(1) IN GENERAL.—**Except as provided in [paragraph \(1\)](#), the amendments made by [this section](#) shall—

**(A)** take effect on [the date of enactment](#) of [this Act](#); and

**(B)** apply to any matter pending, before the Bureau of Justice Assistance or otherwise, on [the date of enactment](#) of [this Act](#), or filed or accruing after [that date](#).

**(2) EXCEPTIONS.—**

**(A) RESCUE SQUADS AND AMBULANCE CREWS.—**For a [member of a rescue squad or ambulance crew](#) (as defined in [section 1204\(7\) of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended](#) by [this section](#)), the amendments made by [this Act](#) shall apply to [injuries](#) sustained on or after June 1, 2009.

**(B) HEART ATTACKS, STROKES, AND VASCULAR RUPTURES.—**[Section 1201\(k\) of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended](#) by [this section](#), shall apply to [heart attacks](#), [strokes](#), and vascular ruptures sustained on or after December 15, 2003.

*Pub. L. No. 112-239*

\*\*\*\*\*

28 C.F.R. § 0.94-1 **Bureau of Justice Assistance**  
*[as in effect on Jan. 3, 2013]*

(a) The Bureau of Justice Assistance is headed by a Director . . . . Under the general authority of the Attorney General and reporting through the Assistant Attorney General, Office of Justice Programs, the Director performs functions and administers programs . . . . The Director also administers the Public Safety Officers' Death Benefits Program under 42 U.S.C. 3796, *et seq.*

. . . .

28 C.F.R. § 0.94-1 (*as in effect on Jan. 3, 2013*)

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*Fed. R. Evid. 301*      **Presumptions in General in Civil Cases**  
*[as in effect on Jan. 3, 2013]*

In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing [evidence](#) to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

*Fed. R. Evid. 301 (as in effect on Jan. 3, 2013)*

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*Fed. R. Evid. 401*      **Test for "Relevant Evidence"**  
*[as in effect on Jan. 3, 2013]*

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

*Fed. R. Evid. 401 (as in effect on Jan. 3, 2013)*

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*Fed. R. Evid. 402*      **General Admissibility of Relevant Evidence**  
*[as in effect on Jan. 3, 2013]*

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Irrelevant evidence is not admissible.

*Fed. R. Evid. 402 (as in effect on Jan. 3, 2013)*

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**Rule 602. Need for Personal Knowledge**

A witness may not testify to a matter unless [evidence is introduced](#) sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of [rule 703](#), relating to opinion testimony by [expert witnesses](#).

**Rule 603. Oath or Affirmation to Testify Truthfully**

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

**Rule 604. Interpreter**

An interpreter must be [qualified](#) and must give [an oath or affirmation](#) to make a true translation.

**Rule 701. Opinion Testimony by Lay Witnesses**

If a witness is not [testifying as an expert](#), testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of [Rule 702](#).

**Rule 702. Testimony by Expert Witnesses**

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is [based upon sufficient facts or data](#);
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

**Rule 703. Bases of an [Expert's Opinion Testimony](#)**

An [expert](#) may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be [admissible](#) for the opinion to be admitted. But if the [facts or data would otherwise be inadmissible](#), the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

**Rule 704. Opinion on an Ultimate Issue**

**(a) In General — Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

**(b) Exception.** In a criminal case, an [expert witness](#) must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

*Fed. R. Evid. 701 - 704 (as in effect on Jan. 3, 2013)*

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## Rule 901. Requirement of Authentication or Identification

(a) **In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce [evidence](#) sufficient to support a finding that the item is what its proponent claims it is.

(b) **Examples.** The following are examples only — not a complete list — of [evidence](#) that satisfies [the requirement](#):

(1) ***Testimony of a Witness with Knowledge.*** Testimony that an item is what it is claimed to be.

(2) ***Nonexpert Opinion About Handwriting.*** A [nonexpert's opinion](#) that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) ***Comparison by an Expert Witness or the Trier of Fact.*** A comparison with an authenticated specimen by an [expert witness](#) or the trier of fact.

(4) ***Distinctive Characteristics and the Like.*** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) ***Opinion About a Voice.*** An opinion identifying a person's voice — whether heard firsthand or through mechanical or electronic transmission or [recording](#) — based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) ***Evidence About a Telephone Conversation.*** For a telephone conversation, [evidence](#) that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) ***Evidence About Public Records.*** [Evidence](#) that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) ***Evidence About Ancient Document or Data compilations.*** For a document or data compilation, [evidence](#) that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) ***Evidence About a Process or System.*** [Evidence](#) describing a process or system and showing that it produces an accurate result.

(10) *Methods Provided by a Statute or Rule.* Any method of authentication or identification allowed by a federal statute or a rule prescribed by the Supreme Court.

## **Rule 902. Evidence That Is Self-Authenticating**

The following items of [evidence](#) are self-authenticating; they require no extrinsic evidence of authenticity in order to be [admitted](#):

(1) *Domestic Public Documents That Are Sealed and Signed.* A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) *Domestic Public Documents That Are Not Sealed but Are Signed and Certified.* A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in [Rule 902\(1\)\(A\)](#); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.

(3) *Foreign Public Documents.* A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester — or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) *Certified Copies of Public Records.* A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with [Rule 902\(1\)](#), [\(2\)](#), or [\(3\)](#), a federal statute, or a rule prescribed by the Supreme Court.

(5) **Official Publications.** A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) **Newspapers and Periodicals.** Printed material purporting to be a newspaper or periodical.

(7) **Trade Inscriptions and the Like.** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) **Acknowledged Documents.** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) **Commercial Paper and Related Documents.** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) **Presumptions Under a Federal Statute.** A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.

(11) **Certified Domestic Records of a Regularly Conducted Activity.** The [original](#) or a copy of a domestic record that meets the requirements of Rule 803(6)(A) - (C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

(12) **Certified Foreign Records of a Regularly Conducted Activity.** In a civil case, the [original](#) or a copy of a foreign record that meets the requirements of [Rule 902\(11\)](#), modified as follows: the certification, rather than complying with a federal statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

### **Rule 903. Subscribing Witness's Testimony**

A subscribing witness's testimony is necessary to authenticate a [writing](#) only if required by the laws of the jurisdiction that governs its validity.

*Fed. R. Evid. 901 - 903 (as in effect on Jan. 3, 2013)*

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### **Rule 1001. Definitions**

In this article:

(a) A "writing" consists of letters, words, numbers, or their equivalent, set down in any form.

(b) A "recording" consists of letters, words, numbers, or their equivalent, set in any form.

(c) A "photograph" means a photographic image or its equivalent stored in any form.

(d) An "original" of a [writing](#) or [recording](#) means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout — or other output readable by sight — if it accurately reflects the information. An "original" of a [photograph](#) includes the negative or a print from it.

(e) A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the [original](#).

### **Rule 1002. Requirement of the [Original](#)**

An [original writing](#), [recording](#), or [photograph](#) is required in order to prove its content unless these rules or a federal statute provides otherwise.

### **Rule 1003. [Admissibility](#) of [Duplicates](#)**

A [duplicate](#) is [admissible](#) to the same extent as the [original](#) unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

### **Rule 1004. [Admissibility](#) of Other [Evidence](#) of Content**

An [original](#) is not required and other [evidence](#) of the content of a [writing](#), [recording](#), or [photograph](#) is [admissible](#) if:

(a) all the [originals](#) are lost or destroyed, and not by the proponent acting in bad faith;

(b) an [original](#) cannot be obtained by any available judicial process;

(c) the party against whom the [original](#) would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the

original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) the [writing](#), [recording](#), or [photograph](#) is not closely related to a controlling issue.

### **Rule 1005. Copies of Public Records to Probe Content**

The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law — if these conditions are met: the record or document is otherwise [admissible](#); and the copy is certified as correct in accordance with [Rule 902\(4\)](#) or is testified to be correct by a witness who has compared it with the [original](#). If no such copy can be obtained by reasonable diligence, then the proponent may use other [evidence](#) to prove the content.

### **Rule 1006. Summaries to Prove Content**

The proponent may use a summary, chart, or calculation to prove the content of voluminous [writings](#), [recordings](#), or [photographs](#) that cannot conveniently be examined in court. The proponent must make the [originals](#), or [duplicates](#) available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

### **Rule 1007. Testimony or Statement of a Party to Prove Content**

The proponent may prove the content of a [writing](#), [recording](#), or [photograph](#) by the testimony, deposition, or written statement of the party against whom the [evidence](#) is offered. The proponent need not account for the [original](#).

*Fed. R. Evid. 1001 - 1007 (as in effect on Jan. 3, 2013)*

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*D.C. Stat. § 5-716*     **Survivor benefits and annuities**  
*[as in effect on Jan. 3, 2013]*

**(a)** If any member:

**(1)** dies in the performance of duty and the Mayor determines that:

**(A)** the member's death was the sole and direct result of a personal injury sustained while performing such duty;

**(B)** his death was not caused by his willful misconduct or by his intention to bring about his own death; and

**(C)** intoxication of the member was not the proximate cause of his death; and

**(2)** is survived by a survivor, parent, or sibling, a lump-sum payment of \$50,000 shall be made to his survivor if the survivor received more than one half of his support from such member, or if such member is not survived by any survivor (including a survivor who did not receive more than one half of his support from such member), to his parent or sibling if the parent or sibling received more than one half of his support from such member. If such member is survived by more than 1 survivor entitled to receive such payment, each such survivor shall be entitled to receive an equal share of such payment; or if such member leaves no survivor and more than 1 parent or sibling who is entitled to receive such payment, each such parent or sibling shall be entitled to receive an equal share of such payment.

**(a-1)** In the case of any member who dies in the performance of duty after December 29, 1993, and leaves a widow or widower entitled to all or a portion of the benefit described in [subsection \(a\)](#) of [this section](#), an additional annuity shall be paid. This annuity shall be equal to 100% of the member's pay at the time of death. The annuity shall be increased at the same rate as the change in the Consumer Price Index, as described in § 5-721. This benefit shall be paid in lieu of benefits provided for by [subsections \(b\)](#) and [\(c\)](#) of this section. However, after benefits provided for in this paragraph end, as provided in [subsection \(e\)](#) of this section, any remaining benefit pursuant to subsection (c) of this section shall commence to be paid.

**(a-2)** The determination of the Mayor authorized by [subsection \(a\)](#) of [this section](#) shall be subject to review and final determination by the District of Columbia Retirement Board.

**(b)** In case of the death of any member before retirement, of any former member after retirement, or of any member entitled to receive an annuity under § 5-717 (regardless of whether such member is receiving such annuity at the time of death), leaving a widow or widower, such widow or widower shall be entitled to receive an annuity in the greater amount of:

**(1)** Forty per centum of such member's average pay at the time of death, or 40%:

**(A)** Of the adjusted average pay of such former member in the case

of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division; or

(B) Of the adjusted average pay of such former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia; or

(2) Forty per centum of the corresponding salary for step 6 of salary class 1 of the District of Columbia Police and Firemen's Salary Act salary schedule currently in effect at the time of such member or former member's death, or, for a member who was an officer or member of the United States Secret Service Uniformed Division, or the United States Secret Service Division, 40 percent of the corresponding salary for step 5 of the Officer rank in section 10203 of title 5, United States Code; provided, that such annuity shall not exceed the current rate of compensation of the position occupied by such member at the time of death, or by such former member immediately prior to retirement.

(c) Each surviving child or student child of any member who dies before retirement, of any former member who dies after retirement, or of any member entitled to receive an annuity under § 5-717 (regardless of whether such member is receiving such annuity at the time of death), shall be entitled to receive an annuity equal to the smallest of:

(1) In the case of a member or former member who is survived by a wife or husband:

(A) Sixty per centum of:

(i) The member's average pay at the time of death; or

(ii) The adjusted average pay of the former member in the case of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, or the adjusted average pay of the former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, divided by the number of eligible children;

(B) \$2,918.00, to be increased on an annual basis by the cost of living adjustment determined pursuant to § 5-718; or

(C) \$8,754.00, divided by the number of eligible children, to be increased on an annual basis by the cost of living adjustment determined pursuant to § 5-718, divided by the number of eligible children; and

(2) In the case of a member or former member who is not survived by a wife or husband:

(A) 75% of the member's average pay at the time of death, divided by the number of eligible children;

(B) In the case of a member who was an officer or member of the United States Park Police Force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, 75% of

the adjusted average pay of the former member, divided by the number of eligible children; or

(C) In the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, 75% of the adjusted average pay of the former member, divided by the number of eligible children.

(d) Each widow or widower who, on the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970, was receiving relief or annuity computed in accordance with the provisions of [this section](#) shall be entitled to receive an annuity in the greater amount of:

(1) \$3,144; or

(2) thirty-five per centum of the basis upon which such relief or annuity was computed.

Each child who, on October 3, 2001, was receiving relief or annuity computed in accordance with the provisions of this section, shall be entitled to benefits computed in accordance with the provisions of [subsection \(c\)](#) of [this section](#).

(e)(1) The annuity of the widow or widower under [this section](#) shall begin on the day after the date on which the member or former member dies, and such annuity or any right thereto shall terminate upon the survivor's death or remarriage before age 60; provided, that any annuity terminated by remarriage may be restored if such remarriage is later terminated by death, annulment, or divorce.

(2) The annuity of any child under [this section](#) shall begin on the day after the date on which the member or former member dies, and the annuity shall terminate upon whichever of the following occurs first:

(A) The child becomes 18 years of age or, if over 18 years of age and incapable of self-support, becomes capable of self-support;

(B) The child marries; or

(C) The child dies.

(3)(A) The annuity of any student child under [this section](#) shall begin on the day after the date on which the member or former member dies, and the annuity shall terminate upon whichever of the following occurs first:

(i) The student child marries;

(ii) The student child ceases to be a student;

(iii) The student child reaches 22 years of age; or

(iv) The student child dies.

(B) For the purposes of [this paragraph](#), a student child whose 22nd birthday falls on or after Jul. 1st shall not be considered to have reached 22 years of age until the Jun. 30th following the student child's actual 22nd birthday.

(4) If the annuity of a child under [paragraph \(2\)](#) or [paragraph \(3\)](#) of [this subsection](#) terminates because of marriage and such marriage ends, the annuity shall resume on the first day of the month in which it ends, but only if the

individual is not otherwise ineligible for the annuity.

(5) Notwithstanding the provisions of [paragraphs \(2\) and \(3\) of this subsection](#), no annuity of a child or student of a widow or widower under [subsection \(a-1\) of this section](#) shall be paid while an annuity benefit to a widow or widower under subsection (a-1) of this section is being paid.

(f) Any member retiring under § 5-709, § 5-710, or § 5-712, may at the time of such retirement, and any member entitled to receive an annuity under § 5-717 may at the time such annuity commences, elect to receive a reduced annuity in lieu of full annuity, and designate in writing the person to receive an increased annuity after such member's death; provided, that the person so designated be the surviving spouse or child of such member. Whenever such an election is made, the annuity of the designee shall be increased by an amount equal to the amount by which the annuity of such member is reduced. The annuity payable to the member making such election shall be reduced by 10% of the annuity computed as provided in § 5-709, § 5-710, or § 5-712. Such increase in annuity payable to the designee shall be reduced by 5% for each full 5 years the designee is younger than the member, but such total reduction shall not exceed 40%. The increase in annuity payable to the designee pursuant to this subsection shall be paid in addition to the annuity provided for such designee pursuant to [subsection \(b\)](#) or [subsection \(c\)](#) of [this section](#) and shall be subject to the same limitations as to duration and other conditions as the annuity paid pursuant to subsections (b), (c), and [\(e\)](#) of this section. If, at any time after such former member's election, the designee dies, and is survived by such former member, the annuity payable to such former member shall be increased to the amount computed as provided in § 5-709, § 5-710, § 5-712, or § 5-717, as the case may be.

*D.C. Stat. § 5-716 (as in effect on Jan. 3, 2013)*

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