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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) 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.

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 evidence and legal arguments as he may wish to provide.

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§ 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. 10871(1) (higher education assistance);

(2) Reasonable expenses for—

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

- (ii) Books;
- (iii) Computer equipment;
- (iv) Supplies;
- (v) Transportation; and

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

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

- (ii) \$200.00 per month.

Eligible dependent means an individual who—

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

(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

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(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