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PART III



## DEPARTMENT OF JUSTICE

Law Enforcement Assistance  
Administration

PUBLIC SAFETY OFFICERS'  
DEATH BENEFITS

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## DEPARTMENT OF JUSTICE

Law Enforcement Assistance  
Administration

[28 CFR Part 32]

PUBLIC SAFETY OFFICERS' DEATH  
BENEFITS

## INTRODUCTION

The Public Safety Officers' Benefits Act of 1976, Pub. L. 94-430, 90 Stat. 1346 ("the Act") was signed into law on September 29, 1976. The Act provides for payment of a \$50,000 death benefit to the specified survivors of a public safety officer who dies as the direct and proximate result of a personal injury sustained in the line of duty.

Section 704(a) of the Act, 42 U.S.C. 3796c, authorizes LEAA to "establish such rules, regulations, and procedures as may be necessary to carry out the purposes of (the Act)." The regulations herein proposed are intended to explain which officers are covered by the Act, the standards of eligibility, and the administrative process by which LEAA will make its determinations.

LEAA invites comment on all aspects of the proposed regulations. This introduction highlights several key proposals on which comment is specifically invited. A section-by-section commentary is also appended to the regulations.

In order that there will be a full opportunity to consider the opinions of interested persons, written comments, suggestions, and data or arguments may be submitted to the Administrator, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C. 20531, Attention: Thomas J. Madden, General Counsel, on or before February 20, 1977. LEAA will consider these comments and publish final rules no later than April 6, 1977. Public hearings will be held in Washington at LEAA offices if requested on or before January 31, 1977. Requests for hearings should be sent to Thomas J. Madden at the above address.

Comment is specifically invited on the following issues:

**Officers covered.** The Act defines "public safety officer" as "a person serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a fireman." "Law enforcement officer" means "a person involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws. This includes, but is not limited to, police, corrections, probation, parole, and judicial officers." "Fireman" is defined by the Act to include "a person serving as an officially recognized or designated member of a legally organized volunteer fire department." The definitions in § 32.2 (g) and (h), and the Commentary on those sections, elaborate further on the scope of "fireman" and "law enforcement officer."

LEAA has generally proposed to make the authority of the deceased officer the touchstone of the Act's applicability, rather than his status. Classifications such as sworn and non-sworn, uniformed and civilian, full-time and part-time,

paid and volunteer, and the difference between agencies in duties assigned persons in those classifications make an analysis of authority rather than status more appropriate. In short, the duties the decedent was authorized to perform in the line of duty will determine whether he was a "public safety officer" within the meaning of the Act. See the Commentary on § 32.2 (g) and (h). Comment is specifically invited on this approach as well as other possible criteria for determining which officers are covered by the Act.

**Potential beneficiaries.** The eligibility of a deceased officer's spouse or children for benefits under the Act is not conditioned on any demonstration of dependence. Only the officer's parents must show they were "substantially reliant for support" on the officer to be eligible for benefits. Accordingly, the terms "spouse" (§ 32.2(i)) and "stepchild" (§ 32.2(j)) are defined very broadly. A spouse living apart from a deceased officer "for any reason" at the time of death is eligible for benefits, as is a stepchild whose parent may no longer be married to the deceased officer. See the Commentary of § 32.2(j).

Comment on these definitions in particular is specifically invited.

**Representation of claimants.** The "rules, regulations, and procedures" LEAA is authorized to establish by section 704(a) may include:

regulations governing the recognition of agents or other persons representing claimants under this part before the Administration. The Administration may prescribe the maximum fees which may be charged for services performed in connection with any claim under this part before the Administration, and any agreement in violation of such rules and regulations shall be void.

During the debate of an earlier Public Safety Officers' Benefits bill, Congressman Hamilton Fish of New York, a manager of the bill, explained the intent of a provision identical to present section 704(a):

To avoid development of a so-called "bar association" of lawyers who file questionable claims for benefits, with a high percentage of the \$50,000 as their contingent fee, one committee amendment provides that LEAA may, by regulation prescribe the maximum fee allowable for representing claimants. Cong. Rec. H 3121 (April 24, 1974, daily ed.).

LEAA has not proposed fixed-dollar fee ceilings; the appropriate fee for each case will be determined on the basis of the representative's petition (§ 32.2(e)) and the review criteria listed in § 32.2(f). Stipulated and contingency fee contracts are expressly prohibited.

The LEAA fee determination applies only to the representation of a claimant "before the Administration"; it does not purport to limit an attorney's fees if the claimant seeks judicial review of a final determination by the Administration.

Comment is specifically invited on whether a fixed-dollar ceiling for specific services rendered is an appropriate alternative to the fee determination method proposed and on the scope and adequacy of the review criteria proposed in § 32.2(f).

PART 32—PUBLIC SAFETY OFFICERS'  
DEATH BENEFITS

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**AUTHORITY:** Secs. 501 and 704(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503).

## Subpart A—Introduction

## § 32.1 Purpose.

The purpose of this regulation is to implement Part J, "Public Safety Officers' Death Benefits," of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430 and Pub. L. 94-503).

## § 32.2 Definitions.

(a) "The Act" means the Public Safety Officers' Benefits Act of 1974, 42 U.S.C. 3796, et seq., Pub. L. 94-430, 90 Stat. 1346 (September 29, 1976).

(b) "Administration" means the Law Enforcement Assistance Administration.

(c) "Line of duty" means any action which an officer is obligated or authorized by rule, regulation, condition of employment, or law to perform, including those social, ceremonial, or athletic functions to which he is assigned, or for which he is compensated, by the public agency he serves.

(d) "Direct and proximate" or "proximate" means that the antecedent event is a substantial factor in the result.

(e) "Personal injury" means any injury to the body which is inflicted by an outside force, whether or not it is accompanied by physical impact, as well as diseases which are caused by or result from such an injury, but not diseases

which arise merely out of the performance of duty.

(f) "Public safety officer" means any person serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or firefighter.

(g) "Law enforcement officer" means any official involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws, including but not limited to police, corrections, probation, parole, and judicial officers, and officials engaged in programs relating to narcotics addiction, such as those responsible for screening arrestees or prisoners for possible diversion into drug treatment programs, who are exposed, on a regular basis, to criminal offenders.

(h) "Firefighter" includes all fire service personnel serving a public agency in an official capacity, including any individual serving as an officially recognized or designated member of a legally-organized volunteer fire department.

(i) "Child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is—

- (1) Eighteen years of age or under;
- (2) Over eighteen years of age and a student; or
- (3) Over eighteen years of age and incapable of selfsupport because of physical or mental disability.

(j) "Stepchild" means a child of the officer's spouse. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural parent.

(k) "Student" means an individual under 23 years of age who has not completed four 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—

- (1) 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;
- (2) 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;
- (3) 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
- (4) 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 four months and if he shows to the satisfaction of the Administration 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 Administration, 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.

(l) "Spouse" means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

(m) "Dependent" means a person who was substantially reliant for support upon the income of the deceased public safety officer.

(n) "Intoxication" means a disturbance of mental or physical faculties resulting from the introduction of alcohol, drugs, or other substances into the body.

(o) "Public agency" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, or any unit of local government, combination of such States, or units, or any department, agency, or instrumentality of any of the foregoing.

(p) "Support" means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for maintenance of the person supported.

#### Subpart B—Officers Covered

##### § 32.3 Coverage.

In any case in which the Administration determines, pursuant to these regulations, that a public safety officer, as defined in § 32.2(f), has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of \$50,000 in the order specified in § 32.10, subject to the conditions set forth in §§ 32.6, 32.9, or 32.11.

##### § 32.4 Reasonable doubt of coverage.

The Administration shall resolve any reasonable doubt arising from the circumstances of the officer's death in favor of payment of the death benefit.

##### § 32.5 Findings of State and local agencies.

The Administration will give substantial weight to the evidence and findings presented by State and local administrative and investigative agencies. The Administration will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Administration a rational basis for a decision on a material element of eligibility.

##### § 32.6 Conditions on payment.

- (a) No benefit shall be paid—
  - (1) If the death was caused by—
    - (i) The intentional misconduct of the public safety officer; or
    - (ii) The officer's intention to bring about his death;
  - (2) If voluntary intoxication of the public safety officer was the proximate cause of death; or
  - (3) To any person whose actions were a substantial contributing factor to the death of the officer.

(b) The Act applies only to deaths occurring from injuries sustained on or after September 29, 1976.

##### § 32.7 Intentional misconduct of the officer.

The Administration will consider at least the following factors in determining whether death was caused by the intentional misconduct of the officer:

(a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws; and

(1) Whether the officer knew the conduct was prohibited and understood its import;

(2) Whether there was a reasonable excuse for the violation; or

(3) Whether the rule violated is habitually observed and enforced;

(b) Whether the conduct involved either intentional wrongdoing or reckless disregard of its probable consequence;

(c) Whether the officer had previously engaged in similar misconduct;

(d) Whether the officer's intentional misconduct was a substantial factor in the officer's death; and

(e) The existence of an intervening force which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

##### § 32.8 Intention to bring about death.

The Administration will consider at least the following factors in determining whether the officer intended to bring about his own death:

(a) Whether the suicide was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death;

(b) Whether the insanity resulted directly from an injury which would otherwise be within the scope of the Act if death had directly resulted from the injury;

(c) Whether the officer had a prior history of attempted suicide;

(d) Whether the officer's intent to bring about his death was a substantial factor in the officer's death; and

(e) The existence of an intervening force or action which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

##### § 32.9 Voluntary intoxication.

The Administration will consider at least the following factors in determining whether voluntary intoxication was the proximate cause of the officer's death:

(a) The evidence of intoxication at the time the injury from which death resulted was sustained;

(b) Whether, and to what extent, the officer had a prior history of voluntary intoxication while in the line of duty;

(c) Whether and to what degree the officer had previously used the intoxicant in question;

(d) Whether the intoxicant was prescribed medically and was taken within the prescribed dosage;



(e) Whether the voluntary intoxication was a substantial factor in the officer's death; and

(f) The existence of an intervening force or action which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

#### Subpart C—Beneficiaries

##### § 32.10. Order of priority.

(a) When the Administration has determined that a benefit may be paid according to the provisions of Subpart B of this part and § 32.11, a benefit of \$50,000 shall be paid in the following order of precedence—

(1) If there is no surviving child of the deceased officer, to the spouse of such officer;

(2) If there is no spouse, to the child or children, in equal shares;

(3) If there are both a spouse and one or more children, one-half to the spouse and one-half to the child or children, in equal shares; and

(4) If there is no survivor in the above classes, to the dependent parent or parents, in equal shares.

(b) If no one qualifies as provided in paragraph (a) of this section, no benefit shall be paid.

##### § 32.11. Contributing factor to death.

(a) No benefit shall be paid to any person who would otherwise be entitled to a benefit under this part if such person's intentional actions were a substantial contributing factor to the death of the public safety officer.

(b) When a potential beneficiary is denied benefits under paragraph (a) of this section, the benefits shall be paid to the remaining eligible survivors, if any, of the officer as if the potential beneficiary denied benefits did not survive the officer.

##### § 32.12. Determination of relationship of spouse.

(a) Marriage should be established by one (or more) of the following types of evidence in the following order of preference—

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(2) Official report from a public agency as to a marriage which occurred while the officer was employed with such agency;

(3) The affidavit of the clergyman or magistrate who officiated;

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;

(5) The affidavits or certified statements of two or more eyewitnesses to the ceremony;

(6) In jurisdictions where marriages other than by ceremony are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife, and whether they were generally accepted as such in the communities in which they lived; or

(7) Any other evidence which would reasonably support a belief by the Administration that a valid marriage actually existed.

(b) If applicable, certified copies of divorce decrees of previous marriages of either party must be submitted.

##### § 32.13. Determination of relationship of child.

(a) *In general.* A claimant is the child of a public safety officer if his birth certificate shows the officer as his parent.

(b) *Alternative.* If the birth certificate does not show the public safety officer as the claimant's parent, the sufficiency of the evidence will be determined in accordance with the facts of a particular case. Proof of the relationship may consist of—

(1) An acknowledgement in writing signed by the public safety officer; or

(2) Evidence that the officer has been identified as the child's parent by a judicial decree ordering him to contribute to the child's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the officer was the informant and was named as the parent of the child; or

(ii) Statements of persons who know that the officer accepted the child as his; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with his knowledge the officer was named as the parent of the child.

(c) *Adopted child.* Except as may be provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such

documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) *Stepchild.* The relationship of a stepchild to the deceased officer shall be demonstrated by—

(1) Evidence of birth to the spouse of the officer as required by paragraphs (a) and (b) of this section; or

(2) If adopted by the spouse, evidence of adoption as required by paragraph (c) of this section; or

(3) Other evidence, such as that specified in § 32.14(b), which reasonably supports the existence of a parent-child relationship between the child and the spouse; and

(4) Evidence of the marriage of the officer and the spouse, as required by § 32.12.

##### § 32.14. Determination of relationship of parent.

(a) *In general.* A claimant is the parent of a public safety officer if the officer's birth certificate shows the claimant as his parent.

(b) *Alternative.* If the birth certificate does not show the claimant as the officer's parent, proof of the relationship may be shown by—

(1) An acknowledgement in writing signed by the claimant before the officer's death; or

(2) Evidence that the claimant has been identified as the officer's parent by judicial decree ordering him to contribute to the officer's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as:

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the officer; or

(ii) Statements of persons who know the claimant had accepted the officer as his child; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with his knowledge the claimant had been named as the parent of the child.

(c) *Adopted child.* Except as provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the claimant as the officer's parent will suffice.

(d) *Step-parent.* The relationship of a step-parent to the deceased officer shall be demonstrated by—

(1) (i) Evidence of the officer's birth to the spouse of the step-parent as required by § 32.13 (a) and (b); or

(ii) If adopted by the spouse of the step-parent, proof of adoption as required by § 32.13(c); or

(iii) Other evidence, such as that specified in paragraph (b) of this section,

which reasonably supports a parent-child relationship between the spouse and the officer; and

(2) Evidence of the marriage of the spouse and the step-parent, as required by § 32.12.

§ 32.15 Determination of dependency.

(a) To be eligible for a death benefit under the Act, a parent of the deceased officer shall demonstrate that he or she was substantially reliant for support upon the income of the officer.

(b) The claimant parent shall demonstrate that he or she was dependent upon the decedent at either the time of the officer's death or of the personal injury that was a substantial factor in the officer's death.

(c) The claimant parent shall demonstrate dependency by submitting a signed statement of dependency within a year of the officer's death. This statement shall include the following information—

(1) A list of all sources of income or support for the twelve months preceding the officer's injury or death;

(2) The amount of income or value of support derived from each source listed; and

(3) The nature of support provided by each source.

(d) Generally, the Administration will consider a parent "dependent" if he or she was reliant on the income of the deceased officer for over one-third of his or her support.

Subpart D—Interim and Reduced Payments

§ 32.16 Interim payment in general.

Whenever the Administration determines, upon a showing of need and prior to taking final action, that a death of a public safety officer is one with respect to which a benefit will probably be paid, the Administration may make an interim benefit payment not exceeding \$3,000, to a person entitled to receive a benefit under Subpart C of this part.

§ 32.17 Repayment and waiver of repayment.

Where there is no final benefit paid, the recipient of any interim benefit paid under § 32.16 shall be liable for repayment of such amount. The Administration may waive all or part of such repayment and shall consider for this purpose the hardship which would result from repayment.

§ 32.18 Reduction of payment.

(a) The benefit payable under this part shall be in addition to any other benefits that may be due from any other source, but shall be reduced by—

(1) Payments authorized by Section 8191 of Title 5, United States Code, providing compensation for law enforcement officers not employed by the United States killed in connection with the commission of a crime against the United States;

(2) Payments authorized by Section 12(k) of the Act of September 1, 1915, as amended (section 4-531(1) of the District of Columbia Code); and

(3) The amount of the interim benefit payment made to the claimant pursuant to § 32.16.

(b) No benefit paid under this part shall be subject to execution or attachment.

Subpart E—Filing and Processing of Claims

§ 32.19 Persons executing claims.

(a) The Administration shall determine who is the proper party to execute a claim in accordance with the following rules—

(1) The claim shall be executed by the claimant or his legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(2) If the claimant is mentally incompetent or physically unable to execute the claim and

(i) Has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative, or

(ii) Is in the care of an institution, the claim may be executed by the manager or principal officer of such institution.

(3) For good cause shown, such as the age or prolonged absence of the claimant, the Administration may accept a claim executed by a person other than one described in paragraphs (a) (1) and (2) of this section.

(b) Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of his authority to execute the claim on behalf of such claimant in accordance with the following rules—

(1) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(2) If the person executing the claim is not such a legally-designated representative, the evidence shall be a statement describing his relationship to the claimant or the extent to which he has the care of such claimant or his position as an officer of the institution of which the claimant is an inmate or patient. The Administration may, at any time, require additional evidence to establish the authority of any such person to file or withdraw a claim.

§ 32.20 Claims.

(a) Where an individual files a standardized claim form or other written statement with the Administration which indicates an intention to claim benefits, and such statement bears a signature or mark properly witnessed, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(b) A claim by or on behalf of a survivor of a public safety officer shall be filed within one year after the date of death unless the Administration finds that the failure to file was justified by good cause.

(c) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim under § 32.19.

§ 32.21 Evidence.

(a) A claimant for any benefit or fee under the Act and the regulations shall submit such evidence of eligibility or other material facts as is specified by these regulations. The Administration may at any time require additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and the regulations has submitted no evidence or insufficient evidence of any material issue or fact, the Administration shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request him to submit such evidence within a reasonable specified time. The claimant's failure to submit evidence on a material issue or fact, as requested by the Administration, shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

§ 32.22 Representation.

(a) A claimant may be represented in any proceeding before the Administration by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this subsection is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Administration must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee he may charge or receive, if any, shall be determined by the Administration on the basis of the factors described in paragraphs (e) and (f) of this section.

(d) Written notice of a fee determination made in accordance with paragraph (f) of this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact that the Administration assumes no responsibility for payment.

(e) To obtain approval of a fee for services performed before the Administration, a representative, upon completion of the proceedings in which he rendered services, must file with the Administration a written petition containing the following information—

(1) The dates his services began and ended;

(2) An itemization of services rendered with the amount of time spent in hours, or parts thereof;

(3) The amount of the fee he desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered in the same matter before any State or Federal court;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled him to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the person represented.

(f) In evaluating a request for approval of a fee, the purpose of the public safety officers' benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors—

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case;

(5) The results achieved;

(6) The level of administrative review to which the claim was carried within the Administration and the level of such review at which the representative entered the proceedings;

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested;

(8) The customary fee for this kind of service; and

(9) Other awards in similar cases.

(g) In awarding a fee, the Administration shall consider and add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which has previously been obtained by the Administration, and no reimbursement shall be allowed for expenses incurred by him in establishing or pursuing his application for approval of his fee.

#### Subpart F—Determination and Request for Reconsideration

##### § 32.23 Determination.

Upon making a determination of eligibility, the Administration shall notify each claimant of its disposition of his or

her claim. In those cases where the Administration has determined the claimant to be ineligible for a death benefit, the Administration shall specify the reasons for the determination.

##### § 32.24 Request for reconsideration.

(a) A claimant may, within 30 days after notification of ineligibility by the Administration, request the Administration to reconsider its determination of ineligibility. The Administration shall provide the claimant the opportunity for an oral hearing which shall be held within 30 days of the request for reconsideration. The claimant may waive the oral hearing, and present written evidence to the Administration within 30 days of the request.

(b) If requested, the oral hearing shall be conducted in the LEAA Regional Office most convenient to the claimant, or other mutually agreeable location, before the Deputy Administrator for Policy Development or his designee. The Deputy shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the Deputy shall exclude irrelevant or unduly repetitious evidence. The claimant, his representative, and the representatives of the Administration at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(c) The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by the Deputy at the hearing, shall be made part of the record of the hearing. If either party submits a document that is accepted, he shall furnish a copy to the other.

(d) The Deputy shall, within fifteen days after hearing, transmit the record and his recommendations to the Administrator for reconsideration. The Administrator shall, within fifteen days of the receipt of the record, make a final determination of eligibility and notify the claimant of his determination. The notice of determination shall set forth the findings of fact and conclusions of law supporting the determination.

(e) No payment of any portion of a death benefit may be made until all requests for reconsideration which may affect that payment have been acted on by the Administration.

JAMES M. H. GREGG,  
Acting Administrator.

#### COMMENTARY

Section 32.2(c). An officer is not acting within the line of duty when he is grossly negligent. See the dialogue between Congressmen Brown and Ellberg at Cong. Rec. H 10135-36 (September 15, 1976, daily ed.).

Section 32.2(d). In determining whether an injury was a substantial factor in the officer's death, LEAA will make no presumptions with respect to the length of time between the injury and death. The claimant has the burden in

all cases of showing that the injury was a substantial factor in the officer's death.

Section 32.2(e). Deaths arising from occupational diseases alone are not within the purview of the Act. The officer's death should ordinarily be traceable to a specific event or act. If an officer who has been stabbed while in the line of duty subsequently dies of hepatitis contracted from the knife wound, his death would be covered by the Act. If an officer's death is attributable to the general stress of the job, or prolonged exposure to a poor working environment, however, it would not.

Section 32.2(g) and (h). Civilians are covered by the Act if they are performing an activity, or in a category of personnel listed in the definitions of "law enforcement officer" or "firefighter." Uniformed officers performing clerical or other non-law enforcement or firefighting duties are also covered if they are obligated to be available to perform as specified in §§ 32.2(g) and (h).

Judicial officers include those attorneys involved in enforcement of the criminal law who serve a public agency in an official capacity, e.g., prosecutors and public defenders, as well as those officers of the court engaged in the activities listed in § 32.2(g).

Section 32.2(j). LEAA considered alternative definitions of "stepchild," which would require some dependence or status as a member of the household, but these were rejected for lack of support in either the legislative history of the Act or Federal case law.

Section 32.2(k). As directed by the Act, "student" is defined as provided in 5 U.S.C. 8101.

Section 32.2(o). Neither the United States, nor any of its agencies or instrumentalities, are public agencies within the meaning of the Act. Federal public safety officers are not, therefore, covered by the Act.

Section 32.3. In 42 U.S.C. 3796c, LEAA is authorized to "establish such rules, regulations, and procedures as may be necessary to carry out the purposes of (the Act). Such rules, regulations, and procedures will be determinative of conflict of laws issues arising under this part."

In applying terms such as "direct and proximate result" or "line of duty," or in determining proof of relationship, the applicable State law will be considered, but will not be determinative. LEAA seeks to assure that eligibility will be determined by a uniform set of rules, regardless of where in the country the officer died or his beneficiaries reside. LEAA believes that the establishment of uniform rules and precedents best manifests congressional intent.

Section 32.9. The officer's history of treatment or counseling for alcoholic problems will also be considered in determining whether the voluntary intoxication of the officer was the proximate cause of his death.

Section 32.13(b). The Anti-Assignment Act, 31 U.S.C. 203, also prohibits

transfer or assignment of a claim against the United States prior to the allowance of the claim.

Section 32.24. Because the Act does not require the opportunity for a hearing on the record, the adjudication provisions of the Administrative Procedures Act (APA), 5 U.S.C. 554, do not apply. LEAA has, however, proposed an informal and expedited review process pursuant to which determinations may be reconsidered. The review process is intended to minimize the financial and logistical burden on the claimant, yet provide a fair hearing of his views. A claimant dissatisfied with the Administration's final determination may then proceed to seek such judicial relief as might be available.

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**END**