

## § 32.6

it is described in the Act, at 42 U.S.C. 3796b(9)(B) or (C)); and

(iv) Killed (with respect to a claim under subpart B of this part), or totally and permanently disabled (with respect to a claim under subpart C of this part), as a direct and proximate result of a line of duty injury; and

(2) That there are no eligible payees other than those identified in the certification.

### § 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.

(b) No payment shall be made, save—

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

(2) Pursuant to—

(i) A claim filed by (or on behalf of) such payee; 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 or inaccurate statements, 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.

## 28 CFR Ch. I (7-1-08 Edition)

### § 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:

## Department of Justice

## § 32.13

(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

### § 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 the receipt or denial of any benefits described in § 32.15(a)(1)(i) (or the receipt of the certification described in § 32.15(a)(1)(ii)).

(b) A claimant may file with his claim such supporting 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.