

## DEPARTMENT OF JUSTICE

## Bureau of Justice Assistance; Public Safety Officers' Educational Assistance Program

## 28 CFR Part 32

[OJP(BJA)-1216f]

RIN 1121-AA51

**AGENCY:** Office of Justice Programs, Bureau of Justice Assistance, Public Safety Officers' Benefits Office, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Justice Assistance (BJA) is amending the regulation on Federal Law Enforcement Dependents Assistance (FLEDA) to effectuate changes made to FLEDA's underlying statutory authority by the Police, Fire, and Emergency Officers' Educational Assistance Act of 1998. These amendments expand the FLEDA program to authorize financial educational assistance to the dependents of all public safety officers whose deaths or permanent disabilities resulted in the payment of benefits under the Public Safety Officers' Benefits (PSOB) Program.

**EFFECTIVE DATE:** September 14, 1999.

**FOR FURTHER INFORMATION CONTACT:**

Ashton Flemmings, Chief, Public Safety Officers' Benefits Office, 810 7th Street, N.W., Washington, D.C. 20531. Telephone: (202) 307-0635 or toll free at 1-888-744-6513.

**SUPPLEMENTARY INFORMATION:**

The Bureau of Justice Assistance (BJA) is amending the regulation governing the Federal Law Enforcement Dependents' Assistance (FLEDA) program, found at 28 CFR Part 32, Subpart B, to comply with the amendments to Title I of the Omnibus Crime Control and Safe Streets Act its authorizing statute, 42 U.S.C. 3796 *et seq.*, by the Police, Fire, and Emergency Officers' Educational Assistance Act of 1998, Public Law 104-238, 112 Stat. 3495, (November 13, 1998), (hereinafter the Public Safety Officers' Educational Assistance Act or PSOE Act). On May 25, 1999, in 64 FR 28123, BJA proposed these amendments, and invited comments from the public, asking that they be submitted no later than July 9, 1999. Only one comment was received. One State's Department of Corrections wrote in to offer its strongest support for the passage of the PSOE Act. Consequently, these proposed amendments are being adopted as final with no further change.

The PSOE Act expands the scope of eligibility for financial assistance for higher education to the dependents of

all public safety officers, including Federal firefighters and state and local officers, who are killed or permanently and totally disabled in the line of duty. Previously, the FLEDA program only made available financial assistance for higher education to the dependents of Federal law enforcement officers who were killed or permanently and totally disabled in the line of duty. The amendments to this subpart, in accordance with the PSOE Act, will allow the spouses and children of all public safety officers who are killed or permanently and totally disabled in the line of duty, and with respect to whom a claim has been approved under the Public Safety Officers' Benefits (PSOB) program, to receive these educational benefits.

This program will continue to recognize the sacrifices and invaluable contributions made to the nation's safety by all public safety officers through the availability of this assistance. The program authorizes the payment of benefits to eligible dependents for attendance only at an approved program of education at institutions for higher education. The standards regarding eligible institutions and the calculation of education benefits remain unchanged from the standards currently used under the FLEDA program, and readers are encouraged to consult the preamble to the FLEDA final rule at 62 FR 37713, July 15, 1997, for a detailed discussion of the operation and mechanics of the program.

Below is an explanation of how the regulation is changed by these amendments:

1. To reflect the expansion of the program, the name of the program is being changed from the "Federal Law Enforcement Dependents' Assistance" (FLEDA) program to the "Public Safety Officers' Educational Assistance" (PSOE) program.

2. All references in subpart B to "Civilian federal law enforcement" or "Federal law enforcement" are changed to "public safety."

3. Section 32.37 of the regulation is changed to comply with the mandate of section 2(4) of the PSOE Act, which requires the issuance of regulations regarding the use of "sliding scale based on financial need to ensure that an eligible dependent who is in financial need receives priority in receiving funds" under this program. In accordance with this section, BJA will calculate the amount of assistance, if needed, in such a manner so to ensure those applicants who are in the greatest financial need, *i.e.*, would be unable to attend a program of study at a qualified

institution of higher education in the absence of some measure of assistance, receive an amount that would allow them to do so and to which they would otherwise be entitled to under this provision. While the PSOE Act requires, if needed, reduction of the total amount of assistance by the amount calculated using the sliding scale, it is anticipated that no such reduction will be necessary, and that all eligible dependents will be able to receive the total amount of benefits for which they qualify. In order to do this, applicants may submit a statement of financial need, with documentation of such need, including information regarding all assets and sources of income, such as the Internal Revenue Service's form 1040. If the student is dependent on his or her parents for support, information regarding the parents' income and assets may be required. This information will only be used to give priority in awarding funds in the event that it appears that amounts appropriated for the program are not sufficient to allow for all eligible applicants to receive the total amount for which they qualify.

4. Retroactive eligibility to on or after May 1, 1992 will continue for the dependents of Federal law enforcement officers killed in the line of duty. The dependents of Federal law enforcement officers, who were permanently and totally disabled in the line of duty, are entitled to receive benefits under this program if the disability occurred on or after October 1, 1996, the date of the enactment of the original authorizing legislation for FLEDA. The dependents of all other public safety officers, consistent with the authorization, will be eligible for benefits on a retroactive basis if the public safety officer was killed in the line of duty on or after October 1, 1997. The regulations are being amended at section 32.35(a) to reflect this allowance.

**Executive Order 12866**

This regulation has been written and reviewed in accordance with Executive Order 12866, Sec. 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Sec. 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

**Executive Order 12612**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on

distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Administrative Procedure Act

This rule expands the scope of eligibility for financial educational assistance to dependents under the PSOB program. Further, this rule imposes no new restrictions. Accordingly, the Bureau of Justice Assistance finds good cause for exempting this rule from the provision of the Administrative Procedure Act, 5 U.S.C. 553, requiring delay in effective date.

#### Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The FLEDA program will be administered by the Office of Justice Programs, and any funds distributed under it shall be distributed to individuals, not entities, and the economic impact is limited to the Office of Justice Program's appropriated funds.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private section, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### Paperwork Reduction Act

The collection of information requirements contained in the regulation have been approved by the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)). In accordance with 5 CFR 1320.5(b), the OMB control number pertaining to the collection of information is 1121-0220.

#### List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Disability benefits, Law enforcement officers.

For the reasons set out in the preamble, the Bureau of Justice Assistance amends 28 CFR part 32 as follows:

#### PART 32—PUBLIC SAFETY OFFICER'S DEATH AND DISABILITY BENEFITS

1. The authority citation for Part 32 continues to read as follows:

**Authority:** Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. § 3711 *et seq.*)

#### Subpart B—[Amended]

2. The heading of Subpart B is amended by revising "Federal Law Enforcement Dependents" to read "Public Safety Officers' Educational".

3. Section 32.31 is revised to read as follows:

##### § 32.31 Purpose.

This subpart implements the Federal Law Enforcement Dependents Assistance Act of 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, which authorizes the payment of financial assistance for the purpose of higher education to the dependents of public safety officers who are found, under the provisions of subpart A of this part, to have died as a direct and proximate result of a personal injury sustained in the line of duty, or to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty.

4. Section 32.32 is amended by revising paragraphs (a), (b)(3), (c), (d), and (f) to read as follows:

##### § 32.32 Definitions.

(a) The *Act* means the Federal Law Enforcement Dependents Assistance Act of 1996, Public Law 104-238, Oct. 3, 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, Public Law 104-238, codified as Subpart 2 of Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796d *et seq.*

(b) \* \* \*

(3) *PSOEA* means the Public Safety Officers' Educational Assistance program administered by the Bureau under this subpart.

(c) *Public safety officer* is an officer as defined in § 32.2(j), with respect to whom PSOB benefits have been approved under subpart A of this part on account of the officer's death or disability in the line of duty.

(d) *Child* means any person who was the biological, adopted, or posthumous child, or the stepchild, of a public safety officer at the time of the officer's death or disabling injury with respect to which PSOB benefits were approved under subpart A of this part. A stepchild must meet the provisions set forth in § 32.15.

\* \* \* \* \*

(f) *Dependent* means the child or spouse of any eligible public safety officer.

\* \* \* \* \*

5. Section 32.33 is amended by revising paragraph(a)(1) to read as follows:

##### § 32.33 Eligibility for assistance.

(a) \* \* \*

(1) The child of any public safety officer with respect to whom PSOB benefits have been approved under subpart A of this part;

\* \* \* \* \*

6. Section 32.34 is amended by revising paragraph (b)(2) to read as follows:

##### § 32.34 Application for assistance.

\* \* \* \* \*

(b) \* \* \*

(2) In the case of a disabled public safety officer approved for PSOB benefits under subpart A of this part, applicants for assistance under this subpart must submit birth or marriage certificates or other proof of relationship consistent with §§ 32.12 (spouse) and 32.13 (child), if such evidence had not been submitted with respect to the PSOB claim.

\* \* \* \* \*

7. Section 32.35 is amended by revising paragraph (a) to read as follows:

##### § 32.35 Retroactive benefits.

(a) Each dependent of a Federal law enforcement officer killed in the line of duty on or after May 1, 1992, or permanently and totally disabled in the line of duty on or after October 3, 1996, and each dependent of a public safety officer killed in the line of duty on or after October 1, 1997, shall be eligible for assistance, on the same basis and subject to the limitations of this subpart,

for each month in which the dependent had pursued a program of education at an eligible educational institution.

\* \* \* \* \*

8. Section 32.37 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

**§ 32.37 Determination of benefits.**

\* \* \* \* \*

(c) Benefits payable under this subpart shall be in addition to any other benefit that may be due from any other source, except that, if the PSOEA assistance in combination with other benefits would exceed the total approved costs for the applicant's

program of education, the assistance under this subpart will be reduced by the amount of such excess.

(d) Benefits will be calculated in such a manner so as to ensure those applicants who qualify for benefits, and who are in financial need, i.e. would be unable to attend a program of study at a qualified institution of higher education in the absence of the total benefit for which they qualify, receive priority in receiving the authorized assistance. Those qualified applicants who are in financial need, as determined by BJA, will receive an amount of benefits to which they are

entitled, and which allow them to attend the approved program of study. Those qualified applicants whose attendance at a program of study at an institution of higher education is not contingent on the award of benefits under this part, may receive a reduced amount of benefits in the event that funds appropriated under this program are not sufficient to award all qualified applicants the total amount of benefits to which they are otherwise entitled.

**Nancy Gist,**

*Director, Bureau of Justice Assistance.*

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