

§ 32.35

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

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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.

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).

[73 FR 76535, Dec. 17, 2008]

§ 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.

[73 FR 76535, Dec. 17, 2008]

§ 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.

[73 FR 76535, Dec. 17, 2008]

§ 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