

judgment in connection with the circumstances of that claim. This includes an injured employee, and in the case of a claim involving the death of an employee, a spouse, children or other dependents entitled to receive survivor's benefits. OWCP or SOL should be notified in writing within 30 days of the receipt of such money or other property or the acceptance of the FECA claim, whichever occurs later.

**§ 10.711 How much of any settlement or judgment must be paid to the United States?**

The statute permits a FECA beneficiary to retain, as a minimum, one-fifth of the net amount of money or property remaining after a reasonable attorney's fee and the costs of litigation have been deducted from the third-party recovery. The United States shares in the litigation expense by allowing the beneficiary to retain, at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund due the United States. After the refund owed to the United States is calculated, the FECA beneficiary retains any surplus remaining, and this amount is credited, dollar for dollar, against future compensation for the same injury, as defined in § 10.719. OWCP will resume the payment of compensation only after the FECA beneficiary has been awarded compensation which exceeds the amount of the surplus.

(a) The refund to the United States is calculated as follows, using the Statement of Recovery form approved by OWCP:

- (1) Determine the gross recovery as set forth in § 10.712;
- (2) Subtract the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, from the gross recovery (Subtotal A);
- (3) Subtract the costs of litigation, as allowed by OWCP or SOL (Subtotal B);
- (4) Subtract one fifth of Subtotal B from Subtotal B (Subtotal C);
- (5) Compare Subtotal C and the refundable disbursements as defined in § 10.714. Subtotal D is the lower of the two amounts.

(6) Multiply Subtotal D by a percentage that is determined by dividing the gross recovery into the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, to determine the Government's allowance for attorney's fees, and subtract this amount from Subtotal D.

(b) The credit against future benefits (also referred to as the surplus) is calculated as follows:

(1) If Subtotal C, as calculated according to paragraph (a)(4) of this section, is less than the refundable disbursements, as defined in § 10.714, there is no credit to be applied against future benefits;

(2) If Subtotal C is greater than the refundable disbursements, the credit against future benefits (or surplus) amount is determined by subtracting the refundable disbursements from Subtotal C.

(c) An example of how these calculations are made follows. In this example, a Federal employee sues another party for causing injuries for which the employee has received \$22,000 in benefits under the FECA, subject to refund. The suit is settled and the injured employee receives \$100,000, all of which was for his injury. The injured worker paid attorney's fees of \$25,000 and costs for the litigation of \$3,000.

(1) Gross recovery .....	\$100,000
Attorney's fees .....	-25,000
(2) Subtotal A .....	75,000
(3) Costs of suit .....	-3,000
Subtotal B .....	72,000
One-fifth of Subtotal B .....	-14,400
(4) Subtotal C .....	57,600
Refundable Disbursements .....	22,000
(5) Subtotal D (lower of Subtotal C or refundable disbursements) .....	22,000
(6) Government's allowance for attorney's fees [25,000 / 100,000] × 22,000 (attorney's fees divided by gross recovery then multiplied by Subtotal D) .....	-5,500
Refund to the United States .....	16,500
(7) Credit against future benefits [57,600 - 22,000] (Subtotal C minus refundable disbursements) .....	35,600