

argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decision process.

(d) The Director for Federal Employees' Compensation shall order reinstatement only in instances where such reinstatement is clearly consistent with the goal of this subpart to protect the FECA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

### Subpart J—Death Gratuity

AUTHORITY: 5 U.S.C. 8102a.

SOURCE: 74 FR 41627, Aug. 18, 2009, unless otherwise noted.

#### § 10.900 What is the death gratuity under this subpart?

(a) The death gratuity authorized by 5 U.S.C. 8102a and payable pursuant to the provisions of this subpart is a payment to a claimant who is an eligible survivor (as defined in §§ 10.906 and 10.907) or a designated alternate beneficiary (as defined in §§ 10.908 and 10.909) of an employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation. This payment was authorized by section 1105 of Public Law 110-181 (2008). For the purposes of this subchapter, the term "Armed Force" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) This death gratuity payment is a FECA benefit, as defined by § 10.5(a) of this part. All the provisions and definitions in this part apply to claims for payment under this subpart unless otherwise specified.

#### § 10.901 Which employees are covered under this subpart?

For purposes of this subpart, the term "employee" means all employees defined in 5 U.S.C. 8101 and § 10.5(h) of this part and all non-appropriated fund instrumentality employees as defined in section 1587(a)(1) of title 10 of the United States Code.

#### § 10.902 Does every employee's death due to injuries incurred in connection with his or her service with an Armed Force in a contingency operation qualify for the death gratuity?

Yes. All such deaths that occur on or after January 28, 2008 (the date of enactment of Public Law 110-181 (2008)) qualify for the death gratuity administered by this subpart.

#### § 10.903 Is the death gratuity payment applicable retroactively?

An employee's death qualifies for the death gratuity if the employee died on or after October 7, 2001, and before January 28, 2008, if the death was a result of injuries incurred in connection with the employee's service with an Armed Force in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom.

#### § 10.904 Does a death as a result of occupational disease qualify for payment of the death gratuity?

Yes—throughout this subpart, the word "injury" is defined as it is in 5 U.S.C. 8101(5), which includes a disease proximately caused by employment. If an employee's death results from an occupational disease incurred in connection with the employee's service in a contingency operation, the death qualifies for payment of the death gratuity under this subpart.

#### § 10.905 If an employee incurs a covered injury in connection with his or her service with an Armed Force in a contingency operation but does not die of the injury until years later, does the death qualify for payment of the death gratuity?

Yes—as long as the employee's death is a result of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation, the death qualifies for the death gratuity of this subpart regardless of how long after the injury the employee's death occurs.

#### § 10.906 What special statutory definitions apply to survivors under this subpart?

For the purposes of paying the death gratuity to eligible survivors under this subpart, OWCP will use the following definitions:

## § 10.907

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(a) “Surviving spouse” means the person who was legally married to the deceased employee at the time of his or her death.

(b) “Children” means, without regard to age or marital status, the deceased employee’s natural children and adopted children. It also includes any stepchildren who were a part of the decedent’s household at the time of death.

(1) A stepchild will be considered part of the decedent’s household if the decedent and the stepchild share the same principal place of abode in the year prior to the decedent’s death. The decedent and stepchild will be considered as part of the same household notwithstanding temporary absences due to special circumstances such as illness, education, business travel, vacation travel, military service, or a written custody agreement under which the stepchild is absent from the employee’s household for less than 180 days of the year.

(2) A natural child who is an illegitimate child of a male decedent is included in the definition of “children” under this subpart if:

(i) The child has been acknowledged in writing signed by the decedent;

(ii) The child has been judicially determined, before the decedent’s death, to be his child;

(iii) The child has been otherwise proved, by evidence satisfactory to the employing agency, to be the decedent’s child; or

(iv) The decedent had been judicially ordered to contribute to the child’s support.

(c) “Parent” or “parents” mean the deceased employee’s natural father and mother or father and mother through adoption. It also includes persons who stood *in loco parentis* to the decedent for a period of not less than one year at any time before the decedent became an employee.

(1) A person stood *in loco parentis* when the person assumed the status of parent toward the deceased employee. (Any person who takes a child of another into his or her home and treats the child as a member of his or her family, providing parental supervision, support, and education as if the child were his or her own child, will be considered to stand *in loco parentis*.)

(2) Only one father and one mother, or their counterparts *in loco parentis*, may be recognized in any case.

(3) Preference will be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent became an employee.

(d) “Brother” and “sister” mean any person, without regard to age or marital status, who is a natural brother or sister of the decedent, a half-brother or half-sister, or a brother or sister through adoption. Step-brothers or step-sisters of the decedent are not considered a “brother” or a “sister.”

### **§ 10.907 What order of precedence will OWCP use to determine which survivors are entitled to receive the death gratuity payment under this subpart?**

If OWCP determines that an employee’s death qualifies for the death gratuity, the FECA provides that the death gratuity payment will be disbursed to the living survivor(s) highest on the following list:

(a) The employee’s surviving spouse.

(b) The employee’s children, in equal shares.

(c) The employee’s parents, brothers, and sisters, or any combination of them, if designated by the employee pursuant to the designation procedures in § 10.909.

(d) The employee’s parents, in equal shares.

(e) The employee’s brothers and sisters, in equal shares.

### **§ 10.908 Can an employee designate alternate beneficiaries to receive a portion of the death gratuity payment?**

An employee may designate another person or persons to receive not more than 50 percent of the death gratuity payment pursuant to the designation procedures in § 10.909. Only living persons, rather than trusts, corporations or other legal entities, may be designated under this subsection. The balance of the death gratuity will be paid according to the order of precedence described in § 10.907.