

## § 110.82

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the reasonableness of the number of work days (or partial work days) lost as a result of a covered injury or its health complications in this calculation, and to consider alternative work schedules in determining the number of work days lost.

(2) *Annual limitation.* The maximum amount that an injured countermeasure recipient may receive in any one year in benefits for lost employment income under this Program is \$50,000.

(3) *Lifetime limitation.* The maximum amount that an injured countermeasure recipient can receive during his or her lifetime in benefits for lost employment income under this Program is the amount of the death benefit calculated under the PSOB Program in the same fiscal year as the year in which this lifetime cap is reached. This amount is the maximum death benefit payable to survivors under this Program using the standard calculation described in §110.82(b). However, this lifetime cap does not apply if the Secretary determines that the countermeasure recipient has a covered injury (or injuries) meeting the definition of “disability” in section 216(i) of the Social Security Act, 42 U.S.C. 416(i).

(4) *Termination of payments.* The Secretary will not pay benefits for lost employment income after the injured countermeasure recipient reaches the age of 65.

(d) *Reductions for other coverage.* From the amount of benefits calculated under paragraphs (a), (b), and (c) of this section, the Secretary will make reductions:

(1) For all payments made, or expected to be made in the future, to the injured countermeasure recipient for compensation of lost employment income or disability or retirement benefits, by any third-party payer in relation to the covered injury or its health complications, consistent with §110.32(b); and

(2) So that the total amount of benefits for lost employment income paid to an injured countermeasure recipient under this Program, together with the total amounts paid (or payable) by third-party payers, as described in paragraph (d)(1) of this section, does

not exceed 66⅔ percent (or 75 percent, if the injured countermeasure recipient had at least one dependent at the time the covered injury was sustained) of his or her employment income at the time of the covered injury for the lost work days.

(3) If an injured countermeasure recipient receives a lump-sum payment from any third-party payer under any obligation described in paragraph (d)(1) of this section, the Secretary shall consider such a payment to be received over a period of years, rather than in a single year. The Secretary has discretion as to how to apportion such payments over multiple years.

### § 110.82 Calculation of death benefits.

(a) *General.* (1) If the legal guardian(s) of dependents younger than 18 years of age does not file a written selection to receive death benefits under the alternative calculation, as described in paragraph (c)(1) of this section, or if the Secretary does not approve such a selection, the Secretary will pay proportionate death benefits under the standard calculation to all of the eligible survivors with priority to receive death benefits under the standard calculation, as described in §110.33(b) and paragraph (b) of this section.

(2) If the Secretary approves a written selection to receive benefits under the alternative calculation, as described in paragraph (c)(1) of this section:

(i) If no other eligible survivors are of equal priority to receive death benefits, the Secretary will pay a death benefit in an amount calculated under the alternative calculation to the aggregate of the dependents on whose behalf the election was filed; and

(ii) If other eligible survivors are of equal priority to receive death benefits as the dependents receiving death benefits under the alternative calculation, the Secretary will pay the other eligible survivors a proportionate amount of the death benefit available and calculated under the standard calculation. In such circumstances, the Secretary will pay the aggregate of the dependents receiving a death benefit under the alternative calculation a proportionate share of the benefits available under that calculation (in place of the

proportionate share of the death benefit that would be available under the standard calculation). For example, if a deceased countermeasure recipient is survived by a dependent ten year-old child and a spouse who is not the child's legal guardian (e.g., the dependent child's parents were the deceased injured countermeasure recipient and his or her former spouse), the current surviving spouse would be able to receive his or her share of the death benefit under the standard calculation, and the dependent child's legal guardian, on behalf of the minor, would receive either the child's proportionate share of the death benefit under the standard calculation or the child's proportionate share of the death benefit available under the alternative calculation (if the legal guardian filed a written selection for such a death benefit and the Secretary approved the selection).

(b) *Standard calculation of death benefits.* (1) The maximum death benefit available under the standard calculation of death benefits (described in this paragraph) is the amount of the comparable death benefit calculated under the PSOB Program in the same fiscal year in which the injured countermeasure recipient died (regardless of whether the PSOB Program reduces the amount of its death benefits because of a limit in appropriations).

(2) No death benefit will be paid under the standard calculation if a death benefit is paid, or if survivors are eligible to receive a death benefit, under the PSOB Program with respect to the deceased injured countermeasure recipient.

(3) The death benefit will not be reduced under the standard calculation if a total and permanent disability benefit has been, or will be paid under the PSOB Program with respect to the deceased injured countermeasure recipient. However, the death benefit will be reduced if a temporary and partial disability benefit has been, or will be paid under the PSOB Program with respect to that individual. If the PSOB Program disability benefit paid was reduced because of a limitation on appropriations, a death benefit will be available under the standard calculation to the extent necessary to ensure that the

total amount of disability benefits paid under the PSOB Program, together with the amount of death benefits paid under the standard calculation, equals the amount of the death benefit described in paragraph (b)(1) of this section.

(4) Under the standard calculation, death benefits will be paid in a lump sum.

(c) *Alternative calculation of death benefits available to surviving dependents younger than the age of 18.* If a deceased countermeasure recipient had at least one dependent who is younger than the age of 18 (and will be younger than the age of 18 at the time of the payment), the legal guardian(s) of all such dependents may request benefits under the alternative calculation described in this paragraph. To receive such a benefit, the legal guardian, on behalf of all such dependents for whom he or she is the legal guardian, must file a selection to receive benefits under the alternative calculation, as described in paragraph (c)(1) of this section, and the Secretary must approve such selection. If multiple dependents have different legal guardians, each legal guardian is responsible for requesting benefits under the standard calculation or for filing a selection for a death benefit under the alternative calculation. If a single dependent has more than one legal guardian, one legal guardian may file the selection. Payments made under the alternative calculation will be made to the legal guardian(s) of all of the dependents on behalf of all of those dependents until they reach the age of 18.

(1) *Selection of benefits under the alternative calculation.* Before a payment of a death benefit will be approved under the alternative calculation, the legal guardian(s) of the dependents for whom he or she is the legal guardian must file a written selection, on behalf of all such dependents, to receive a death benefit under the alternative calculation. If such a selection is approved by the Secretary, these dependents will be paid a proportionate share of the death benefit under the alternative calculation in place of the proportionate share of benefits that would otherwise be available to them under the standard calculation.

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(2) *Amount of payments.* The maximum death benefit available under this paragraph is 75 percent of the deceased injured countermeasure recipient's income (including income from self-employment) at the time he or she sustained the covered injury that resulted in death, adjusted to account for inflation, except as follows:

(i) The maximum payment of death benefits that may be made on behalf of the aggregate of the dependents in any one year is \$50,000;

(ii) All payments made under this paragraph will stop once the youngest of the dependents reaches the age of 18.

(3) *Reductions for other coverage.* The total amount of death benefits provided under the alternative calculation (described in this paragraph) will be reduced so that the total amount of payments made (or expected to be made) under obligations described in paragraph (c)(3)(i) of this section, together with the death benefits paid under the alternative calculation, is not greater than the amount of payments described in paragraph (c)(2) of this section. In other words, the total amount of death benefits paid to dependents under the alternative calculation may be reduced if third-party payers have paid (or are expected to pay) for certain benefits so that such dependents will receive a total sum (combining the death benefit under the alternative calculation and the actual and expected benefits covered by third-party payers) that is not greater than the death benefit that would be available under the alternative calculation if there were no third-party payer(s) to pay such benefits. The total amount of death benefits will *not* be reduced by lost employment income paid by the Program.

(i) The amount of death benefits paid under the alternative calculation will be reduced for all payments made, or expected to be made in the future, by any third-party payer for:

(A) Compensation for the deceased countermeasure recipient's loss of employment income on behalf of the dependents or their legal guardians(s) (but not any lost employment income benefits paid by the Program);

(B) Disability, retirement, or death benefits in relation to the deceased countermeasure recipient (including,

but not limited to, death and disability benefits under the PSOB Program) on behalf of the dependents or their legal guardian(s); and

(C) Life insurance benefits on behalf of the dependents;

(4) *Timing of payments.* Payments made under this paragraph will be made on an annual basis, beginning from the time of the initial payment, to the legal guardian(s) on behalf of the aggregate of the dependents receiving the payment. In the year in which the youngest dependent reaches the age of 18, payments under this section will be paid on a *pro rata* basis for the period of time before that dependent reaches the age of 18. Once a dependent reaches the age of 18, the payments under this alternative calculation will no longer be made on his or her behalf. Because payments under the alternative calculation are to be made on behalf of dependents who are younger than the age of 18, if a dependent meets this requirement at the time of filing of the Request Form, but reaches the age of 18 (or is older than 18 years of age) at the time of the initial payment, no payment will be made to the dependent's legal guardian on his or her behalf under the alternative calculation.

**§ 110.83 Payment of all benefits.**

(a) The Secretary determines the mechanism of payment of Program benefits. She may choose to pay any benefits under this Program through lump-sum payments. If the Secretary determines that there is a reasonable likelihood that the payments of medical benefits, benefits for lost employment income, or death benefits paid under the alternative calculation (described in §110.82(c)) will be required for a period in excess of one year from the date the Secretary determines the requester is eligible for such benefits, payments may be made through a lump-sum payment, the purchase of an annuity or medical insurance policy, establishment of a trust (including a U.S. grantor reversionary trust) or execution of an appropriate structured settlement agreement, at the Secretary's discretion. Payments, annuities, policies, or agreements must be actuarially determined to have a value