



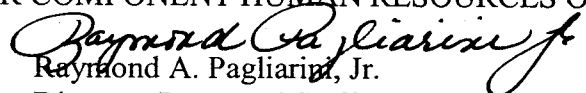
U.S. Department of Justice
Justice Management Division
Personnel Staff
Web Site: <http://www.usdoj.gov/jmd/ps>

Washington, D.C. 20530

APR 30 2008

MEMORANDUM FOR COMPONENT HUMAN RESOURCES OFFICERS

FROM:


Raymond A. Pagliarini, Jr.
Director, Personnel Staff

SUBJECT:

New Death Gratuity for Federal Employees

The Federal Employees' Compensation Act (FECA) was amended by adding a new section 8102a (5 U.S.C. § 8102a) which was authorized by Section 1105 of the National Defense Authorization Act for FY 2008, Public Law 110-181. A copy of Section 1105 of the Public Law is attached. This new provision creates a death gratuity for Federal employees by authorizing the United States to pay up to \$100,000 to the survivors of "an employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation." This death gratuity will be administered by the Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) as part of the FECA program.

This provision became effective on January 28, 2008, and OWCP is currently drafting regulations implementing the amendment. This one-time death gratuity is to be disbursed to the survivors of the employee in a specific order of precedence set forth in the statute. It is important to note that these beneficiary stipulations are unique to this new provision, and no existing DOL rules or guidelines cover these circumstances.

The statute also provides the employee the opportunity to change the order of precedence in regard to certain survivors as well as designate up to 50 percent of the benefit to any person. Since the death gratuity is now in effect, it is imperative that potentially affected Federal employees be provided the opportunity to exercise the designation option for any death gratuity that unfortunately may be payable.

Therefore, OWCP has created a form, a copy of which is attached, to be used by employees to designate the distribution of the death gratuity, should one be payable. The instructions accompanying the form explain the order of precedence that governs awarding the death gratuity and the optional designations that an employee can make. No designation is necessary if an employee wishes any death gratuity to be distributed in accordance with the order of precedence set out in the statute.

We recommend that any time a Federal employee is assigned to provide service to an Armed Force in a contingency operation, as defined in this provision, he or she be informed of this death gratuity and be given the opportunity to designate a beneficiary on the enclosed form. Employees already assigned should also be given this opportunity. An employee desiring to designate one or more beneficiaries of a death gratuity payable under this provision should complete and sign a copy of this form, retain a copy, and give the original to his or her servicing personnel office to be maintained in the employee's official personnel file, or a related system of records, in case it should be needed at any time in the future.

We recommend very strongly that an employee desiring to make a designation varying the order of precedence in the statute, or awarding some of the benefit to another person, utilize the form to avoid potential difficulties in discerning their intentions. However, DOL recognizes that there will be exigent circumstances where this is not possible. In the event that the attached form is not utilized to make a desired designation, DOL will recognize any document specifying the beneficiary designation that an employee desires to make if it is both signed and dated by the employee, and signed and dated by an official of the employing agency involved prior to the death of the employee. Employees not using the form should clearly specify any designation they wish to make.

OWCP's implementing regulations will be forwarded as soon as they become available.

For additional information or assistance, please contact Jamie Higgins, HR Policy, on (202) 514-5781 or by electronic mail at Jamie.A.Higgins@usdoj.gov.

Attachments

“(A) from the employee’s official duty station to a temporary duty station; and

“(B) for which such employee is eligible for expenses under section 5737; and

“(3) the term ‘contingency operation’ has the meaning given such term by section 1482a(c) of title 10.

“(b) **QUARTERS AND RATIONS.**—The head of an agency may provide quarters and rations, without charge, to any covered employee of such agency during the period of such employee’s temporary assignment (as described in subsection (a)(1)(B)).

“(c) **STORAGE OF MOTOR VEHICLE.**—The head of an agency may provide for the storage, without charge, or for the reimbursement of the cost of storage, of a motor vehicle that is owned or leased by a covered employee of such agency (or by a dependent of such an employee) and that is for the personal use of the covered employee. This subsection shall apply—

“(1) with respect to storage during the period of the employee’s temporary assignment (as described in subsection (a)(1)(B)); and

“(2) in the case of a covered employee, with respect to not more than one motor vehicle as of any given time.

“(d) **RELATIONSHIP TO OTHER BENEFITS.**—Any benefits under this section shall be in addition to (and not in lieu of) any other benefits for which the covered employee is otherwise eligible.”.

(b) **CLERICAL AMENDMENT.**—The table of sections for chapter 57 of such title is amended by inserting after the item relating to section 5737 the following:

“5737a. Employees temporarily deployed in contingency operations.”.

SEC. 1105. DEATH GRATUITY AUTHORIZED FOR FEDERAL EMPLOYEES.

(a) **DEATH GRATUITY AUTHORIZED.**—Chapter 81 of title 5, United States Code, is amended by inserting after section 8102 the following:

“§ 8102a. Death gratuity for injuries incurred in connection with employee’s service with an Armed Force

“(a) **DEATH GRATUITY AUTHORIZED.**—The United States shall pay a death gratuity of up to \$100,000 to or for the survivor prescribed by subsection (d) immediately upon receiving official notification of the death of an employee who dies of injuries incurred in connection with the employee’s service with an Armed Force in a contingency operation.

“(b) **RETROACTIVE PAYMENT IN CERTAIN CASES.**—At the discretion of the Secretary concerned, subsection (a) may apply in the case of an employee who died, on or after October 7, 2001, and before the date of enactment of this section, as 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.

“(c) **RELATIONSHIP TO OTHER BENEFITS.**—The death gratuity payable under this section shall be reduced by the amount of any death gratuity provided under section 413 of the Foreign Service Act of 1980, section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, or any other law of the United States based on the same death.

“(d) **ELIGIBLE SURVIVORS.**—

Applicability.

“(1) Subject to paragraph (5), a death gratuity payable upon the death of a person covered by subsection (a) shall be paid to or for the living survivor highest on the following list:

“(A) The employee’s surviving spouse.

“(B) The employee’s children, as prescribed by paragraph (2), in equal shares.

“(C) If designated by the employee, any one or more of the following persons:

“(i) The employee’s parents or persons in loco parentis, as prescribed by paragraph (3).

“(ii) The employee’s brothers.

“(iii) The employee’s sisters.

“(D) The employee’s parents or persons in loco parentis, as prescribed by paragraph (3), in equal shares.

“(E) The employee’s brothers and sisters in equal shares.

Subparagraphs (C) and (E) of this paragraph include brothers and sisters of the half blood and those through adoption.

“(2) Paragraph (1)(B) applies, without regard to age or marital status, to—

“(A) legitimate children;

“(B) adopted children;

“(C) stepchildren who were a part of the decedent’s household at the time of death;

“(D) illegitimate children of a female decedent; and

“(E) illegitimate children of a male decedent—

“(i) who have been acknowledged in writing signed by the decedent;

“(ii) who have been judicially determined, before the decedent’s death, to be his children;

“(iii) who have been otherwise proved, by evidence satisfactory to the employing agency, to be children of the decedent; or

“(iv) to whose support the decedent had been judicially ordered to contribute.

“(3) Subparagraphs (C) and (D) of paragraph (1), so far as they apply to parents and persons in loco parentis, include fathers and mothers through adoption, and 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. However, only one father and one mother, or their counterparts in loco parentis, may be recognized in any case, and preference shall 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.

“(4) Beginning on the date of the enactment of this paragraph, a person covered by this section may designate another person to receive not more than 50 percent of the amount payable under this section. The designation shall indicate the percentage of the amount, to be specified only in 10 percent increments up to the maximum of 50 percent, that the designated person may receive. The balance of the amount of the death gratuity shall be paid to or for the living survivors of the person concerned in accordance with subparagraphs (A) through (E) of paragraph (1).

Effective date.

“(5) If a person entitled to all or a portion of a death gratuity under paragraph (1) or (4) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by paragraph (1).

“(e) DEFINITIONS.—(1) The term ‘contingency operation’ has the meaning given to that term in section 1482a(c) of title 10, United States Code.

“(2) The term ‘employee’ has the meaning provided in section 8101 of this title, but also includes a nonappropriated fund instrumentality employee, as defined in section 1587(a)(1) of title 10.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 81 of such title is amended by inserting after the item relating to section 8102 the following:

“8102a. Death gratuity for injuries incurred in connection with employee’s service with an Armed Force.”.

SEC. 1106. MODIFICATIONS TO THE NATIONAL SECURITY PERSONNEL SYSTEM.

(a) IN GENERAL.—Section 9902 of title 5, United States Code, is amended to read as follows:

“§ 9902. Establishment of human resources management system

“(a) IN GENERAL.—The Secretary may, in regulations prescribed jointly with the Director, establish, and from time to time adjust, a human resources management system for some or all of the organizational or functional units of the Department of Defense. The human resources management system established under authority of this section shall be referred to as the ‘National Security Personnel System’.

“(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

“(1) be flexible;

“(2) be contemporary;

“(3) not waive, modify, or otherwise affect—

“(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

“(B) any provision of section 2302, relating to prohibited personnel practices;

“(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

“(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

“(I) providing for equal employment opportunity through affirmative action; or

“(II) providing any right or remedy available to any employee or applicant for employment in the public service;

“(D) any other provision of this part (as described in subsection (d)); or

“(E) any rule or regulation prescribed under any provision of law referred to in this paragraph;



U.S. Code collection

TITLE 10 > Subtitle A > PART II > CHAPTER 75 > SUBCHAPTER II > § 1482a

§ 1482a. Expenses incident to death: civilian employees serving with an armed force

(a) Payment of Expenses.—

The Secretary concerned may pay the expenses incident to

the death of a civilian employee who dies of injuries incurred in connection with the employee's service with an armed force in a **contingency operation**, or who dies of injuries incurred in connection with a terrorist incident occurring during the employee's service with an armed force, as follows:

- (1) Round-trip transportation and prescribed allowances for one person to escort the remains of the employee to the place authorized under section 5742 (b)(1) of title 5.
- (2) Presentation of a flag of the United States to the next of kin of the employee.
- (3) Presentation of a flag of equal size to the flag presented under paragraph (2) to the parents or parent of the employee, if the person to be presented a flag under paragraph (2) is other than the parent of the employee.

(b) Regulations.— The Secretary of Defense shall prescribe regulations to implement this section. The Secretary of Homeland Security shall prescribe regulations to implement this section with regard to civilian employees of the Department of Homeland Security. Regulations under this subsection shall be uniform to the extent possible and shall provide for the Secretary's consideration of the conditions and circumstances surrounding the death of an employee and the nature of the employee's service with the armed force.

(c) Definitions.— In this section:

- (1) The term "civilian employee" means a person employed by the Federal Government, including a person entitled to basic pay in accordance with the General Schedule provided in section 5332 of title 5 or a similar basic pay schedule of the Federal Government.
- (2) The term "**contingency operation**" includes humanitarian **operations**, peacekeeping **operations**, and similar **operations**.
- (3) The term "parent" has the meaning given such term in section 1482 (a)(11) of this title.
- (4) The term "Secretary concerned" includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

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Designation of a Recipient of the Death Gratuity Payment under Section 1105 of Public Law 110-181

A Identifying Information about the Federal Employee

Name (Last, First, Middle)	Date of Birth	Social Security Number
Department or Agency in which presently employed (include Bureau, Division, and phone number)		Location (City, State, and ZIP code)

B Designating an Alternate Order of Precedence

If you have no surviving spouse or child eligible to receive the death gratuity, and you wish to designate any one or more of your parents or brothers or sisters to receive specific shares of the gratuity, please fill in the required boxes below. If you designate more than one individual and do not indicate a share for each individual, the death gratuity will be paid to those individuals in equal shares. **An individual designated below must be living at the time of payment to receive any or all of your death gratuity.**

First Name, middle initial, and last name of each designee	Address (including ZIP code) of each designee	Relationship to you (must be parent, brother, or sister)	Share to be provided to each designee

C Additional Designation Provision

In addition to or instead of the above, you may designate any person or persons to receive up to 50% of your death gratuity. If you do not designate anyone in this section, 100% of the death gratuity will be disbursed according to the order of precedence described in the instructions. Under this provision, you may designate a maximum of 50% of the death gratuity in 10% increments. If you utilize this designation provision, the undesignated portion of the death gratuity will be disbursed as specified in the order of precedence. **An individual designated below must be living at the time of payment to receive any of your death gratuity.**

First Name, middle initial, and last name of each designee	Address (including ZIP code) of each designee	Share to be provided to each designee (must be in 10% increments)

D. Statement of Federal Employee Completing this Form

I understand that if this Designation is not valid unless delivered to an official of the employing establishment prior to the death of the employee and that it will stay in effect unless it is cancelled.

I understand that if this Designation is invalid for any reason, the death gratuity will be paid according to the next most recent valid designation. In the event no designation has been made, the death gratuity will pay according to the order of precedence in section 1105 of Public Law 110-181 as described in the instructions.

I am canceling any and all previous Designations of the death gratuity payment under Public Law 110-181, section 1105, and am now designating the recipients named above.

Signature of the Federal Employee. This form is not valid unless the employee signs in this box and enters a date in the box to the right.	Date (mm/dd/yyyy)
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E. Signature of the Employing Establishment Official Receiving this Form

I have received this form from the federal employee who has signed above. To the best of my knowledge and belief, the employee has filled out this form completely in accordance with the instructions on the form.

Signature of the Employing Establishment Official. This form is not valid unless, <u>prior to the death of the employee</u>, the official signs in this box and enters a date in the box to the right.	Date (mm/dd/yyyy)
Printed Name, Title, Address and phone and fax numbers of the Employing Establishment Official. NAME: TITLE: ADDRESS: PHONE NUMBER: FAX NUMBER:	

Privacy Act Notice

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), you are hereby notified that: (1) The Federal Employees' Compensation Act (FECA), as amended and extended (5 U.S.C. 8101, et seq.) including the Death Gratuity in section 1105 of Public Law 110-181 is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor, which receives and maintains personal information on claimants and their immediate families. (2) Information which the Office has will be used to determine eligibility for and the amount of benefits payable under the FECA, and may be verified through computer matches or other appropriate means. (3) Information may be given to the Federal agency which employed the claimant at the time of injury in order to verify statements made, answer questions concerning the status of the claim, verify billing, and to consider issues relating to entitlement to benefits or other relevant matters. (4) Information may be given to Federal, state and local agencies for law enforcement purposes, to obtain information relevant to a decision under the FECA, to determine whether benefits are being paid properly, including whether prohibited dual payments are being made, and, where appropriate, to pursue salary/administrative offset and debt collection actions required or permitted by the FECA and/or the Debt Collection Act. (5) Disclosure of the claimant's social security number (SSN) or tax identifying number (TIN) on this form is mandatory. The SSN (and/or TIN), and other information maintained by the Office, may be used for identification, to support debt collection efforts carried on by the Federal government, and for other purposes required or authorized by law. (6) Failure to disclose all requested information may delay the processing of the claim or the payment of benefits, or may result in an unfavorable decision or reduced level of benefits.

Note: This notice applies to all forms requesting information that you might receive from the Office in connection with the processing and adjudication of the claim you filed under the FECA.

Designation of a Recipient of the Death Gratuity Payment under Section 1105 of Public Law 110-181

INSTRUCTIONS

The Death Gratuity Payment

If a federal civilian employee or an employee of a nonappropriated fund instrumentality dies of injuries incurred in connection with his or her service with an Armed Force in a contingency operation, his or her eligible survivors may receive a death gratuity payment of up to \$100,000. The gratuity is a one-time payment disbursed to the highest ranked survivor or survivors of the employee according to the order of precedence below.

You do not need to fill out this form if you are satisfied that 100% of the gratuity will be paid entirely to the survivor highest on the list below:

1. Your surviving spouse.
2. If you do not have a surviving spouse, your death gratuity will be paid to your children, in equal shares. Your children include any adopted children, stepchildren who are part of your household at the time of death, and any illegitimate children, subject to the following limitation. An illegitimate child of a male decedent only qualifies as an eligible survivor if the child:
 - has been acknowledged in writing signed by the decedent;
 - has been judicially determined, before the decedent's death, to be his child;
 - has been otherwise proved, by evidence satisfactory to the employing agency, to be a child of the decedent; or
 - is a child to whose support the decedent had been judicially ordered to contribute.
3. If you have no surviving spouse or eligible child, you can choose to divide your death gratuity among your parents or brothers or sisters, as you designate in section B of the form.
 - The term "parents" includes adoptive parents and persons who stood in loco parentis to the decedent for not less than one year before the decedent became an employee covered by this provision, but the term is limited to one father or mother or their counterparts.
 - "Brothers" and "sisters" include half-brothers and half-sisters, and brothers and sisters through adoption.
4. If you have no surviving spouse or eligible child and do not designate anyone in section B of the form, your death gratuity will be paid to your living parent or parents, in equal shares.
5. If you have no surviving spouse, eligible child, or living parent and do not designate anyone in section B of the form, your death gratuity will be paid to your brothers and sisters, in equal shares.