

3 FAM 3650

DEATH BENEFITS FOR DEATH IN THE PERFORMANCE OF DUTY

(TL:PER-473; 05-29-2003)
(Office of Origin HR/ER/EP)

3 FAM 3651 GENERAL INFORMATION

3 FAM 3651.1 Authorities

(TL:PER-471; 05-05-2003)
(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)
(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

- a. The authorities are found in:
 - (1) Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101-8152; 20 C.F.R. Parts 1, 10 and 25;
 - (2) Title VI, Section 651 of Public Law 104-208 (The Omnibus Consolidated Appropriations Act of 1996), effective September 30, 1996; and
 - (3) Victims of Terrorism Compensation Act, codified in 5 U.S.C. 5570; Executive Order 12598; 22 C.F.R. Part 192.
- b. The following authority applies to Foreign Service employees only: Section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973).
- c. For USAID, also see ADS 467, Benefits, and AIDAR, Appendix D and Appendix J. In addition to direct hires, Personal Services Contract (PSC) employees, both U. S. and FSN, are also covered by these provisions.

3 FAM 3651.2 Introduction

(TL:PER-471; 05-05-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

Benefits in the event of the death of an U. S. Government employee in the performance of duty covered in this section are derived from the authorities listed in 3 FAM 3651.1. Procedures and guidelines to be followed in processing claims for these death benefits are found in 3 FAM 3652 through 3 FAM 3656. The Office of Employee Relations (HR/ER/EP) in the Department of State, in consultation with HR/OCA and L, provides interpretive and advisory services relating to policy aspects of death benefits.

3 FAM 3652 BENEFITS UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)

3 FAM 3652.1 Eligibility

(TL:PER-473; 05-29-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

Benefits under FECA are payable when an employee dies as a result of an injury sustained in the performance of duty. For purposes of these benefits, employee is generally defined as an officer or employee in any branch of the Government of the United States or an individual rendering personal services similar to that of an officer or employee, other than an independent contractor (see 5 U.S.C. 8101). The Office of Workers' Compensation Programs (OWCP), in the Department of Labor, administers FECA benefits and maintains records of all claims under 5 U.S.C. 8101, et. seq. An eligible dependent or the personal representative of the deceased must file a claim for benefits with OWCP within *three years* after the death.

3 FAM 3652.2 Amount Payable

(TL:PER-473; 05-29-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

- a. Under FECA, the following benefits may be payable with respect to an employee as defined in 5 U.S.C. 8101 who is a U. S. citizen or resident of the United States, any territory or Canada:
 - (1) At the discretion of the Secretary of Labor, burial and funeral expenses (generally up to \$800 under 5 U.S.C. 8134(a));
 - (2) \$200 payable under 5 U.S.C. 8133(f) for reimbursement of costs of termination of decedent's status as an employee of United States; and
 - (3) Monthly *compensation shall be paid to eligible* dependents. Payments will be for the lifetime of the widow or widower if he or she does not remarry before age 55. Remarriage after age 55 does not affect benefits. Children are eligible to receive a *monthly compensation* until age 18 (or age 23 if they remain full-time students, and for life if they are disabled and incapable of self-support). Total *compensation* payments (for spouse and children) must not exceed 75 percent of the employee's base salary at the time of death (5 U.S.C. 8133).

3 FAM 3652.3 Recipient(s)

(TL:PER-473; 05-29-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

- a. With respect to an employee as defined in 5 U.S.C. 8101 who is a UNITED STATES citizen or resident of the United States, any territory or Canada: the burial and funeral expenses under 3 FAM 3652.2, paragraphs (1) & (2), are payable to the personal representative of the deceased employee. The *monthly compensation payment* described in 3 FAM 3652.2 paragraph (3) can only be made to an eligible survivor or survivors and must be made as follows:

- (1) 50 percent to the widow or widower, if there is no child;
 - (2) 45 percent to the widow or widower with a child, and an additional 15 percent for each child not to exceed a total of 75 percent;
 - (3) 40 percent for one child and an additional 15 percent for each additional child not to exceed a total of 75 percent divided among the children, if there is no widow or widower;
 - (4) 25 percent, if there is no widow or widower, or child, to one dependent parent of the employee at the time of death, or 20 percent to each parent if wholly dependent; or
 - (5) If there is no survivor entitled to payment, no payment will be made.
- b. With respect to an employee as defined in 5 U.S.C. 8101 who is neither a citizen nor resident of the United States, any territory or Canada, compensation is in accordance with 5 U.S.C. 8137, 5 U.S.C. 8138 and 20 CFR Part 25, terms "widow", "widower", "child", and "parent" have the same meaning given to such terms under 5 U.S.C. 8101 (6), (7), (9), and (11).
- c. In accordance with 5 U.S.C. 8116, *monthly compensation payment* under FECA cannot be received concurrent with a survivor annuity under a retirement system for U. S. Government employees (e.g., Civil Service Retirement System, Federal Employees Retirement System, Foreign Service Retirement and Disability System or Foreign Service Pension System). The survivor must choose among FECA benefits and CSRS, FERS, FSRDS, or FSPS retirement benefits.

3 FAM 3652.4 Application

(TL:PER-473; 05-29-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

Applicants for applying for death benefits are responsible for completing the necessary forms and obtaining the necessary supporting documentation. Action offices (see 3 FAM 3652.6) within the responsible employing agency of the deceased employee will assist the eligible survivor(s) in the application for benefits (e.g., answer questions regarding the procedures for filing for death benefits, *provide claim forms and ensure* that forms are completed properly and provide assistance with the *filing* process through OWCP). Claims will be processed in accordance with 3 FAM 3652.6.

3 FAM 3652.5 Documentation to Accompany Application

(TL:PER-471; 05-05-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

- a. The following forms or documentation must be submitted by the eligible survivor(s) to OWCP, Department of Labor, (through the appropriate action office listed in 3 FAM 3652.6) when applying for death benefits:
 - (1) CA-5 Claim for Compensation by Widow, Widower, and/or Children, as appropriate;
 - (2) CA-5b *Claim for Compensation by Parents, Brothers, Sisters, Grandparents, or Grandchildren*, as appropriate;
 - (3) CA-6 *Official Supervisor's Report of Employee's Death*;
 - (4) Name(s) and address (es) of eligible surviving family members; only, where applicable, submit:
 - (5) Marriage Certificates;
 - (6) Birth Certificates for each child (to show the legal relationship upon which the claim is based);
 - (7) For prior marriage, surviving widow (er) must present proof that prior marriages have been dissolved (i.e., divorce decree, dissolution papers or death certificate of previous spouse(s); and
 - (8) Itemized burial bills (receipted, if paid).
- b. OWCP, Department of Labor will review the application, assign a case number, and render a decision on the claim for death benefits. OWCP also maintains records of all death benefit claims.

3 FAM 3652.6 Action Office–Processing Claim

(TL:PER-471; 05-05-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

- a. Submit forms and documentation to OWCP, Department of Labor through the following action offices:

State Department of State, Office of Employee Relations
(HR/ER/EP), Room H-236, SA-1
Washington, DC 20522-0102

USAID U.S. Agency for International Development Office
of Human Resources, Labor and Employee and
Performance Management Division (M/HR/LERPM)
1300 Pennsylvania Avenue, N. W.
Washington, DC 20523

BBG International Broadcasting Bureau
Office of Personnel and Administration Labor and
Employee Relations Division (B/PA/PL)
Room 1543
330 Independence Avenue, S.W.
Washington, DC 20547

USDA USDA/FAS-HRD-PMBAB-Stop 0595
1400 Independence Avenue S.W.
Washington, DC 20250-0595

Commerce Department of Commerce
Office of Foreign Service Personnel (USFCS/OFSP)
Room 3226H
14th and Constitution Avenue, N.W.
Washington, DC 20230

- b. Once an application for benefits under FECA (3 FAM 3652) has been approved by OWCP, Department of Labor, the appropriate action office in each agency (see above) will take the necessary steps to determine whether the death gratuities under Section 413 of the Foreign Service Act and Public Law 104-208 may be paid.

- c. A copy of the written approval by OWCP, Department of Labor, will be submitted by OWCP to the appropriate action office.

3 FAM 3653 DEATH GRATUITY UNDER SECTION 413 OF THE FOREIGN SERVICE ACT OF 1980

3 FAM 3653.1 Eligibility

(TL:PER-473; 05-29-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Foreign Service Employees, and Locally Employed Staff)

- a. A death gratuity may be payable under section 413 of the Foreign Service Act when any member of the Foreign Service or a U.S. representative to an international organization or commission dies as a result of injuries sustained in the performance of duty abroad (outside the United States) provided that a survivor is entitled to elect monthly compensation benefits under the Federal Employees' Compensation Act (FECA).
- b. "Members of the Foreign Service" as defined in section 103 of the Foreign Service Act, and include foreign nationals and U.S. citizens appointed under Section 303 of the Foreign Service Act, including, as applicable, family member employees.
- c. Although individuals employed under personal service contracts or agreements are not members of the Service, this death gratuity payment may be payable to individuals employed under personal service contracts or agreements when it is included in such individual's contract or agreement pursuant to 22 U.S.C. 2669(c). (See 3 FAM 7261.6-1).

3 FAM 3653.2 Authorizing Official

(TL:PER-471; 05-05-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Foreign Service Employees, and Locally Employed Staff)

The following officials are authorized to approve payment of a death gratuity under Section 413 of the Foreign Service Act to the eligible surviving dependent(s) of a eligible employees under his or her respective jurisdictions.

Agency	Authorizing Official
State	Director General of the Foreign Service and Director of Human Resources (Delegation of Authority DA1-221-2, dated 02/23/00)
USAID	Director, Office of Human Resources
BBG	Director of Personnel (B/PA, Office of Personnel and Administration)
USDA	Deputy Assistant Secretary for Personnel, Department of Agriculture
Commerce	Director of Human Resources Management

3 FAM 3653.3 Amount Payable

(TL:PER-473; 05-29-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Foreign Service Employees, and Locally Employed Staff)

- a. The survivor is eligible for one year's salary of the employee at the time of death. For purposes of the death gratuity under Section 413 of the Foreign Service Act, one year's salary includes the employee's full annual salary (*rate of basic pay*) or full cash wage, locality pay, and law enforcement availability pay *that the employee was receiving at the time of death. For Locally Employed Staff paid under a Local Compensation Plan, one year's salary is one year's basic salary and does not include allowances, bonuses, or other separate payments.*
- b. This death gratuity is in addition to benefits that also may be payable under other authorities, including FECA (3 FAM 3652) and Public Law 104-208 (3 FAM 3654).

3 FAM 3653.4 Recipient(s)

(TL:PER-473; 05-29-2003)

(Uniform State/USAID/BBG/Commerce/USDA)

(Applies to Foreign Service Employees, and Locally Employed Staff)

- a. A death gratuity payment under this subsection can only be made to an eligible survivor or survivors and is made in the following order:
 - (1) To the widow or widower;

- (2) If there is no widow or widower, then to the child or children in equal shares;
 - (3) If there is no widow or widower, or child, then to the dependent parent or parents in equal shares; and
 - (4) If there is no survivor entitled to payment, no payment will be made.
- b. The terms "widow", "widower", "child", and "parent" have the same meaning given to such terms under 5 U.S.C. 8101 (6), (7), (9), and (11).

3 FAM 3654 BENEFITS UNDER PUBLIC LAW 104-208

3 FAM 3654.1 Eligibility

(TL:PER-471; 05-05-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

- a. Title VI, Section 651 of Public Law 104-208 (the Omnibus Consolidated Appropriations Act of 1996) provides that agency heads may pay an amount up to \$10,000 as a death gratuity to the personal representative of any Federal civilian employee who dies from an injury sustained in the performance of duty on or after August 2, 1990. This includes an employee who dies after separation from service if the death is the result of an injury sustained in the line of duty. Benefits under this provision are reduced by certain amounts payable under FECA (3 FAM 3652.2, items (a)(1) or (2)) and under a local burial benefit for locally employed staff.
- b. For purposes of this death gratuity payment, "employee" includes:
 - (1) All Foreign Service and Civil Service employees regardless of duty station, including Locally Employed Staff employees); and
 - (2) Individuals employed under personal service contracts or agreements where the employing agency has the authority to treat such individuals as employees for purposes of this death gratuity benefit. For USAID, it includes individuals employed under personal service contracts.

- c. The gratuity payment is not payable in cases where the agency head or delegate determines that the employee's death was the result of willful misconduct.
- d. See 22 U.S.C. 2396(a)(3) for benefits payable to USAID's personal services contract employees.

3 FAM 3654.2 Authorizing Official

(TL:PER-471; 05-05-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

The agency head or delegate must approve the payment and amount of this death gratuity benefit: (Refer to 3 FAM 3653 or 3 FAM 3654.2.)

- (1) For State: The Undersecretary for Management has been delegated authority to approve payment of a death gratuity under Public Law 104-208;
- (2) For USAID: The Director, Office of Human Resources, is authorized to approve payment of a death gratuity under Public Law 104-208; and
- (3) For other Foreign affairs agencies: Contact the appropriate authorizing official.

3 FAM 3654.3 Amount Payable

(TL:PER-471; 05-05-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

- a. Payment of this death gratuity may not exceed \$10,000 per employee **inclusive** of amounts payable under FECA (3 FAM 3652.2, items (a)(1) and (2)) and/or pursuant to a local compensation plan or a personal services contract or agreement that are specifically designated for funeral and/or burial expenses.
- b. This amount is in addition to benefits that may be payable under Section 413 of the Foreign Service Act (3 FAM 3653).

3 FAM 3654.4 Recipient(s)

(TL:PER-471; 05-05-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

The payment must be made to the personal representative of the deceased employee. The Department will consider as the personal representative the formally designated executor or administrator of the employee's estate pursuant to the applicable state law or host country law.

3 FAM 3655 ELIGIBILITY FOR BENEFITS UNDER THE VICTIMS OF TERRORISM COMPENSATION ACT

(TL:PER-471; 05-05-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees, and Locally Employed Staff)

- a. The Victims of Terrorism Compensation Act provides for payment of compensation for the death of an employee or family member of an employee if the death:
 - (1) Was caused by hostile action;
 - (2) Was a result of the individual's relationship with the U.S. Government; and
 - (3) Resulted from an injury that occurred after January 21, 1981.
- b. Detailed regulations are found at 22 C.F.R. Part 192.

3 FAM 3656 OTHER DEATH BENEFITS

3 FAM 3656.1 Additional Benefits and Forms

(TL:PER-471; 05-05-2003)

(Uniform State/USAID/BBG/Commerce/USDA and other Participating Agencies)

(Applies to Civil Service Employees, Foreign Service Employees)

Additional death benefits may be payable including Federal Employees Group Life Insurance (FEGLI), Thrift Savings Plan (TSP), employee retirement contributions, and unpaid compensation that includes, final salary, and a lump sum payment for unused annual leave. To apply for these benefits, the survivor must obtain, complete, and return the forms, listed below, to the Employee Service Center for further processing (State Department only). Action offices for other agencies are listed in 3 FAM 3652.6. The forms are:

- (1) Form FE-6, *Claim for Death Benefits*—Federal Employees Group Life Insurance;
- (2) Form SF-2819, *Notice of Conversion Privilege*—Federal Employees Group Life Insurance;
- (3) TSP-17, *Information Relating to Deceased Participant* – Thrift Savings Plan;
- (4) Form SF-2800, *Application for Death Benefit*, Civil Service Retirement System (CSRS); or Form SF-3104, *Application for Death Benefits*, Federal Employees Retirement System (FERS); or Form JF-38, *Application for Death Benefits*, Foreign Service Pension System (FSPS) and Foreign Service Retirement and Disability System (FSRDS), as appropriate;
- (5) Form SF-1153, *Claim for Unpaid Compensation of Deceased Civilian Employee*—To receive final salary and lump sum annual leave payments; and
- (6) Form SF-2810, *Notice of Change in Health Benefits Enrollment*, is completed to provide health benefits coverage to eligible family members of an employee who was killed in performance of duty.

3 FAM 3657 THROUGH 3659 UNASSIGNED