

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 775.	Sept. 7, 1916, ch. 458, §25, 39 Stat. 747.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8131. Subrogation of the United States

(a) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability on a person other than the United States to pay damages, the Secretary of Labor may require the beneficiary to—

- (1) assign to the United States any right of action he may have to enforce the liability or any right he may have to share in money or other property received in satisfaction of that liability; or
- (2) prosecute the action in his own name.

An employee required to appear as a party or witness in the prosecution of such an action is in an active duty status while so engaged.

(b) A beneficiary who refuses to assign or prosecute an action in his own name when required by the Secretary is not entitled to compensation under this subchapter.

(c) The Secretary may prosecute or compromise a cause of action assigned to the United States. When the Secretary realizes on the cause of action, he shall deduct therefrom and place to the credit of the Employees' Compensation Fund the amount of compensation already paid to the beneficiary and the expense of realization or collection. Any surplus shall be paid to the beneficiary and credited on future payments of compensation payable for the same injury. However, the beneficiary is entitled to not less than one-fifth of the net amount of a settlement or recovery remaining after the expenses thereof have been deducted.

(d) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in the Panama Canal Company to pay damages under the law of a State, a territory or possession of the United States, the District of Columbia, or a foreign country, compensation is not payable until the individual entitled to compensation—

- (1) releases to the Panama Canal Company any right of action he may have to enforce the liability of the Panama Canal Company; or
- (2) assigns to the United States any right he may have to share in money or other property received in satisfaction of the liability of the Panama Canal Company.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 546; Pub. L. 90-83, §1(60), Sept. 11, 1967, 81 Stat. 211.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)-(c)	5 U.S.C. 776.	Sept. 7, 1916, ch. 458, §26, 39 Stat. 747. Sept. 13, 1960, Pub. L. 86-767, §207, 74 Stat. 908.

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(d)	5 U.S.C. 791.	Sept. 7, 1916, ch. 458, §41, 39 Stat. 750.

In subsection (d), the first 45 words of section 41 of the Act of Sept. 7, 1916, are omitted as executed. The words "Panama Canal Company" are substituted for "Panama Railroad Company" on authority of the Act of Sept. 26, 1950, ch. 1049, §2(a) (2), 64 Stat. 1038.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan. No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8131(c)	5 App.: 776 (proviso).	July 4, 1966, Pub. L. 89-488, §10(a), 80 Stat. 255.

REFERENCES IN TEXT

For definition of Panama Canal Company, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8132. Adjustment after recovery from a third person

If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in a person other than the United States to pay damages, and a beneficiary entitled to compensation from the United States for that injury or death receives money or other property in satisfaction of that liability as the result of suit or settlement by him or in his behalf, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the United States the amount of compensation paid by the United States and credit any surplus on future payments of compensation payable to him for the same injury. No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or his designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the United States. The amount refunded to the United States shall be credited to the Employees' Compensation Fund. If compensation has not been paid to the beneficiary, he shall credit the money or property on compensation payable to him by the United States for the same injury. However, the beneficiary is entitled to retain, as a minimum, at least one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition to this minimum and at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund to the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 547; Pub. L. 90-83, §1(61), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93-416, §15, Sept. 7, 1974, 88 Stat. 1147.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 777.	Sept. 7, 1916, ch. 458, §27, 39 Stat. 747.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8132	5 App.: 777(b) (proviso).	July 4, 1966, Pub. L. 89-488, §10(b), 80 Stat. 255.

The words "However, * * * is entitled to retain * * * plus" are substituted for "Provided, That * * * shall have the right to retain * * * and, in addition, to retain".

AMENDMENTS

1974—Pub. L. 93-416 made minor changes in phraseology and inserted provision prohibiting a court, etc., from distributing proceeds of suit or settlement without satisfying or assuring satisfaction of the interests of the United States.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.

§ 8133. Compensation in case of death

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

- (1) To the widow or widower, if there is no child, 50 percent.
- (2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.
- (3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.
- (4) To the parents, if there is no widow, widower, or child, as follows—
 - (A) 25 percent if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;
 - (B) 20 percent to each if both were wholly dependent; or
 - (C) a proportionate amount in the discretion of the Secretary of Labor if one or both were partly dependent.

If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of 75 percent.

(5) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, child, or dependent parent, as follows—

- (A) 20 percent if one was wholly dependent on the employee at the time of death;
- (B) 30 percent if more than one was wholly dependent, divided among the dependents share and share alike; or
- (C) 10 percent if no one is wholly dependent but one or more is partly dependent, divided among the dependents share and share alike.

If there is a widow, widower, child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 75 percent.

(b) The compensation payable under subsection (a) of this section is paid from the time of death until—

- (1) a widow, or widower dies or remarries before reaching age 55;
- (2) a child, a brother, a sister, or a grandchild dies, marries, or becomes 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support; or
- (3) a parent or grandparent dies, marries, or ceases to be dependent.

Notwithstanding paragraph (2) of this subsection, compensation payable to or for a child, a brother or sister, or grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries. A widow or widower who has entitlements to benefits under this title derived from more than one husband or wife shall elect one entitlement to be utilized.

(c) On the cessation of compensation under this section to or on account of an individual, the compensation of the remaining individuals entitled to compensation for the unexpired part of the period during which their compensation is payable, is that which they would have received if they had been the only individuals entitled to compensation at the time of the death of the employee.

(d) When there are two or more classes of individuals entitled to compensation under this section and the apportionment of compensation under this section would result in injustice, the Secretary may modify the apportionment to meet the requirements of the case.

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS-2. However, the total monthly compensation may not exceed—

- (1) the monthly pay computed under section 8114 of this title, except for increases authorized by section 8146a of this title; or