

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

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 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

Table with 3 columns: Section of title 5, Source (U.S. Code), Source (Statutes at Large). Row 1: 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".

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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
- (2) 75 percent of the monthly pay of the maximum rate of basic pay for GS-15.

(f) Notwithstanding any funeral and burial expenses paid under section 8134, there shall be paid a sum of \$200 to the personal representative of a deceased employee within the meaning of section 8101(1) of this title for reimbursement of the costs of termination of the decedent's status as an employee of the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 547; Pub. L. 90-83, §1(62), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93-416, §§16(a), 17, 18, Sept. 7, 1974, 88 Stat. 1147, 1149; Pub. L. 101-303, §3(1), May 29, 1990, 104 Stat. 251.)

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. 760 (less last 23 words of 1st sentence in (B); and less (H) and (L)). | Sept. 7, 1916, ch. 458, §10 (less last 15 words of 1st sentence in (B); and less (H) and (L)). 39 Stat. 744.<br>Feb. 12, 1927, ch. 110, §3, 44 Stat. 1087.<br>July 28, 1945, ch. 328, §2 (less last 24 words), 3, 59 Stat. 503. |

HISTORICAL AND REVISION NOTES—CONTINUED  
1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>                                                                                                                         |
|-------------------|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   |                  | Oct. 14, 1949, ch. 691, §106 (less last 23 words of 1st sentence in "(B)" of (c); and less (e)), 63 Stat. 859.<br>Sept. 13, 1960, Pub. L. 86-767, §102, 74 Stat. 906. |

In subsection (a), the words "an injury sustained in the performance of duty" are substituted for "the injury" to clearly identify the type of injury to which the section refers.

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>                  |
|---------------------------|---------------------------------|----------------------------------------------------|
| 8133(b) .....             | 5 App.: 760(G) (last sentence). | July 4, 1966, Pub. L. 89-488, §7(a), 80 Stat. 253. |
| 8133(e) .....             | 5 App.: 760(K).                 | July 4, 1966, Pub. L. 89-488, §3(c), 80 Stat. 252. |

In subsection (b), the words "Notwithstanding paragraph (3) of this subsection" are substituted for "Notwithstanding any other provision of this section" for clarity. The words "section 8101 of this title" are substituted for "section 10(M) of this Act" to reflect the codification of that section in title 5.

In subsection (e), the words "is deemed" are substituted for "shall be considered to be". The words "minimum rate of basic pay for GS-2" and "maximum rate of basic pay for GS-15" are substituted for "lowest rate of basic compensation provided for grade 2 by the General Schedule of the Classification Act of 1949" and "highest rate of basic compensation provided for grade 15 of the General Schedule of the Classification Act of 1949," respectively, for consistency of style and to reflect the codification of the Classification Act of 1949 in title 5. The words "under section 8114 of this title" are substituted for "as provided in section 12" to reflect the codification of that section in title 5.

Editorial Notes

AMENDMENTS

- 1990—Subsec. (b)(1). Pub. L. 101-303 substituted "age 55" for "age 60".
- 1974—Subsec. (a)(1). Pub. L. 93-416, §16(a), substituted "50" for "45".
- Subsec. (a)(2). Pub. L. 93-416, §16(a), substituted "45" for "40".
- Subsec. (a)(3). Pub. L. 93-416, §16(a), substituted "40" for "35".
- Subsec. (b). Pub. L. 93-416, §16(a), inserted "before reaching age 60" after "remarries" in par. (1), struck out par. (2) referring to widower who dies, remarries or becomes capable of self-support, redesignated pars. (3) and (4) as (2) and (3), respectively, changed the reference in closing paragraph from paragraph (3) of this subsection to paragraph (2) of this subsection, and inserted provision for election by widower or widow of benefits derived from more than one husband or wife.
- Subsec. (e)(1). Pub. L. 93-416, §17, inserted "except for increases authorized by section 8146a of this title" before "or".
- Subsec. (f). Pub. L. 93-416, §18, added subsec. (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 16(a) and 17 of Pub. L. 93-416 applicable to cases where injury or death occurred

prior to Sept. 7, 1974 but only to a period beginning 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.

Amendment by section 18 of Pub. L. 93-416 effective on 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.

**GRATUITY FOR DEATH OF CIVILIAN EMPLOYEE FROM INJURY SUSTAINED IN LINE OF DUTY**

Pub. L. 104-208, div. A, title I, §101(f) [title VI, §651], Sept. 30, 1996, 110 Stat. 3009-314, 3009-368, provided that: "Notwithstanding section 8116 of title 5, United States Code, and in addition to any payment made under 5 U.S.C. 8101 et seq., beginning in fiscal year 1997 and thereafter, the head of any department or agency is authorized to pay from appropriations made available to the department or agency a death gratuity to the personal representative (as that term is defined by applicable law) of a civilian employee of that department or agency whose death resulted from an injury sustained in the line of duty on or after August 2, 1990: *Provided*, That payments made pursuant to this section, in combination with the payments made pursuant to sections 8133(f) and 8134(a) of such title 5 and section 312 of Public Law 103-332 (108 Stat. 2537) [5 U.S.C. 8134 note], may not exceed a total of \$10,000 per employee."

**PERSONNEL NOT AFFECTED BY 1967 INCREASE**

Increases authorized under amendment by section 1(62)(B) of 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.

**§ 8134. Funeral expenses; transportation of body**

(a) If death results from an injury sustained in the performance of duty, the United States shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to exceed \$800, in the discretion of the Secretary of Labor.

(b) The body of an employee whose home is in the United States, in the discretion of the Secretary, may be embalmed and transported in a hermetically sealed casket to his home or last place of residence at the expense of the Employees' Compensation Fund if—

- (1) the employee dies from—
  - (A) the injury while away from his home or official station or outside the United States; or
  - (B) from other causes while away from his home or official station for the purpose of receiving medical or other services, appliances, supplies, or examination under this subchapter; and
- (2) the relatives of the employee request the return of his body.

If the relatives do not request the return of the body of the employee, the Secretary may provide for its disposition and incur and pay from the Employees' Compensation Fund the necessary and reasonable transportation, funeral, and burial expenses.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 548.)

**HISTORICAL AND REVISION NOTES**

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>                                            |
|-------------------|------------------|------------------------------------------------------------------------------------------|
| .....             | 5 U.S.C. 761.    | Sept. 7, 1916, ch. 458, §11, 39 Stat. 745.<br>Feb. 12, 1927, ch. 110, §4, 44 Stat. 1087. |

**HISTORICAL AND REVISION NOTES—CONTINUED**

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i>                                                                                                                   |
|-------------------|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                   |                  | July 28, 1945, ch. 328, §2 (last 24 words), 59 Stat. 503.<br>Oct. 14, 1949, ch. 691, §107, 63 Stat. 860.<br>Sept. 13, 1960, Pub. L. 86-767, §103, 74 Stat. 906. |

In subsection (a), the words "an injury sustained in the performance of duty" are substituted for "the injury" to clearly identify the type of injury to which the section refers.

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.

**Statutory Notes and Related Subsidiaries**

**BURIAL ALLOWANCE**

Pub. L. 112-87, title III, §310, Jan. 3, 2012, 125 Stat. 1885, provided that:

"(a) AUTHORIZATION TO PROVIDE.—

"(1) IN GENERAL.—The head of an agency or department containing an element of the intelligence community may pay to the estate of a decedent described in paragraph (2) a burial allowance at the request of a representative of such estate, as determined in accordance with the laws of a State.

"(2) DESCRIPTION.—A decedent described in this paragraph is an individual—

"(A) who served as a civilian officer or employee of such an agency or department;

"(B) who died as a result of an injury incurred during such service; and

"(C) whose death—

"(i) resulted from hostile or terrorist activities; or

"(ii) occurred in connection with an intelligence activity having a substantial element of risk.

"(b) USE OF BURIAL ALLOWANCE.—A burial allowance paid under subsection (a) may be used to reimburse such estate for burial expenses, including recovery, mortuary, funeral, or memorial service, cremation, burial costs, and costs of transportation by common carrier to the place selected for final disposition of the decedent.

"(c) AMOUNT OF BURIAL ALLOWANCE; RELATIONSHIP TO OTHER PROVISIONS.—A burial allowance paid under subsection (a) shall be—

"(1) in an amount not greater than—

"(A) the maximum reimbursable amount allowed under Department of Defense Instruction 1344.08 or successor instruction; plus

"(B) the actual costs of transportation referred to in subsection (b); and

"(2) in addition to any other benefit permitted under any other provision of law, including funds that may be expended as specified in the General Provisions section of the classified annex accompanying this Act.

"(d) REPORT.—Not later than 180 days after the date of the enactment of this Act [Jan. 3, 2012], the Director of the Office of Personnel Management, in consultation with the Director of National Intelligence, the Secretary of Labor, and the Secretary of Defense, shall submit to Congress a report on the feasibility of implementing legislation to provide for burial allowances at a level which adequately addresses the cost of burial expenses and provides for equitable treatment when an officer or employee of a Federal agency or department dies as the result of an injury sustained in the performance of duty."