

provide evidence of the attorney's opinion. If OWCP or SOL agrees, the beneficiary will not be required to take further action against the third party.

§ 10.710 Under what circumstances must a recovery of money or other property in connection with an injury or death for which benefits are payable under the FECA be reported to OWCP or SOL?

Any person who has filed a FECA claim that has been accepted by OWCP (whether or not compensation has been paid), or who has received FECA benefits in connection with a claim filed by another, is required to notify OWCP or SOL of the receipt of money or other property as a result of a settlement or judgment in connection with the circumstances of that claim. This includes an injured employee, and in the case of a claim involving the death of an employee, a spouse, children or other dependents entitled to receive survivor's benefits. OWCP or SOL should be notified in writing within 30 days of the receipt of such money or other property or the acceptance of the FECA claim, whichever occurs later.

§ 10.711 How is the amount of the recovery of the FECA beneficiary determined?

(a) When a FECA beneficiary is entitled to receive money as a result of a judgment entered in a lawsuit or settlement of a lawsuit or any other settlement or recovery from a responsible third party, the entire amount of the award is reported as the gross recovery. To determine the amount of the recovery of the FECA beneficiary, deductions are made for the portion representing damage to real or personal property, the portion representing loss of consortium, the portion representing wrongful death and the portion representing a survival action. To make deductions for loss of consortium, wrongful death and survival action, it must be established that:

(1) These claims were asserted in the suit (or if there was no suit that these claims were included in the settlement or recovery); and

(2) That such claims are permissible under the state law where the action was brought.

(b) OWCP or SOL will determine the appropriate percentage of the total judgment or settlement that will be allocated for loss of consortium, wrongful death action and survival action. FECA beneficiaries may accept OWCP's or SOL's determination or demonstrate good cause in writing for a different allocation. Whether to accept a specific allocation is at the discretion of OWCP or SOL, even where it has been incorporated into the settlement agreement. OWCP or SOL will not determine the appropriate percentage to be allocated for loss of consortium, wrongful death action and survival action if a judge or jury specifies the percentage to be awarded of a contested verdict attributable to each of several plaintiffs; in such case, OWCP or SOL will accept that percentage allocation.

(c) The amount of the recovery of the FECA beneficiary will be determined as followed:

(1) If a settlement or judgment is paid to or for one individual, the recovery is the gross recovery less the portion representing damage to real or personal property. The portion representing damage to real or personal property must be established in writing and approved by OWCP or SOL.

(2) In any case involving an injury to an employee where a judgment or settlement is paid to or on behalf of more than one individual, the recovery is the gross recovery less the portion representing damage to real or personal property and less the portion representing loss of consortium. OWCP or SOL will allocate up to 25% for a spouse and up to 5% for each child not to exceed 15% for all children for loss of consortium.

(3) In any case involving the death of an employee, where both wrongful death and survival actions have been asserted, separate statements of recovery are completed for the deceased employee and the surviving FECA beneficiaries. For the deceased employee, the recovery is the gross recovery less the portion representing damage to real or personal property, less the portion representing loss of consortium, less the portion representing the

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wrongful death action. For the surviving spouse and children, the recovery is the gross recovery less the portion representing damage to real or personal property, less the portion representing loss of consortium, less the portion representing the survival action. OWCP or SOL will allocate the total judgment or settlement as follows:

(i) For loss of consortium, OWCP or SOL will allocate up to 15% for a spouse and up to 5% for each child not to exceed 10% for all children;

(ii) For the wrongful death action, OWCP or SOL will allocate 65% of the remainder after subtraction of the amounts attributed to loss of consortium;

(iii) For the survival action, OWCP or SOL will allocate 35% percent of the remainder after subtraction of the amounts attributed to loss of consortium.

(d) In any case involving an injury to an employee where a judgment or settlement is paid to or on behalf of more than one individual and in any case involving the death of an employee, court costs will be attributed using the same percentages as was used for loss of consortium, wrongful death action and survival action. Attorney fees will be determined using the same percentage that was used for the gross recovery. These calculations are used only for the purpose of determining the amount of the refund and if applicable the surplus.

§ 10.712 How much of any settlement or judgment must be paid to the United States?

The statute permits a FECA beneficiary to retain, as a minimum, one-fifth of the net amount of money or property remaining after a reasonable attorney's fee and the costs of litigation have been deducted from the third-party recovery. The United States shares in the attorney fees by allowing the beneficiary to retain, at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund due the United States. After the refund owed to the United States is calculated, the FECA beneficiary retains any surplus remaining, and this amount is credited,

dollar for dollar, against future compensation including wage-loss compensation, schedule award benefits and medical benefits for the same injury, as defined in § 10.719. OWCP will resume the payment of compensation only after the FECA beneficiary has been awarded compensation which exceeds the amount of the surplus.

(a) The refund to the United States is calculated as follows, using the Statement of Recovery form approved by OMB:

(1) Determine the amount of the recovery of the FECA beneficiary as set forth in § 10.711 as follows:

(i) Set out the gross recovery which is the entire amount of the award;

(ii) Subtract the amount of award representing damage to real or personal property approved by OWCP or SOL (Subtotal A);

(iii) Multiply Subtotal A by the appropriate percentage in § 10.711(c), or if it is a contested verdict by the percentage allocated by the judge or jury, and subtract this amount from Subtotal A (Subtotal B);

(iv) If both a wrongful death action and survival action have been asserted, multiply Subtotal B by 65% to determine the amount allocated to the wrongful death case and multiply Subtotal B by 35% to determine the amount allocated to the survival action, or if it is a contested verdict, by the percentage allocated by the judge or jury. Separate Statements of Recovery must be completed for each cause of action. For the wrongful death action use the result of Subtotal B times 65% for Subtotal C and for the survival action use the result of Subtotal B times 35% for Subtotal C. If both a wrongful death and survival have not been asserted the amount in Subtotal B is used for Subtotal C;

(v) Subtotal C is the amount of recovery of the FECA beneficiary;

(2) Subtract the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, from Subtotal C. This is calculated by first determining the attorney fee percentage which is determined by dividing the gross recovery into the amount of attorney's fees actually paid, but the attorney's fee