



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

SEP 16 2016

The Honorable Paul Ryan
Speaker
United States House of Representatives
H-232 The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Enclosed for consideration of the Congress is a draft bill that would greatly improve, expand, and harmonize death gratuities and other related allowances for the survivors of Federal civilian employees killed in the line of duty.

Death gratuities paid to the families of Federal civilian employees killed in the line of duty have varied based on a number of factors, including the specific segment of the Federal workforce that the employee was part of, the agency administering the benefit, and a differing set of rules related to offset requirements, tax treatment, and eligible beneficiaries. As detailed by the Office of Personnel Management in a report to the Congress in December 2012, there are significant disparities and inequities across the Federal Government with respect to the administration of death gratuities. Without legislation in this area, the disparities will continue to persist and the problems will only worsen with time. Consider, for example, the amount of the death gratuity currently payable to the survivor of a Federal employee killed in the line of duty—\$10,000. This amount has remained static since its inception in 1997. Even worse, the current authorized funeral allowance for a Federal employee who dies due to an injury sustained in the performance of duties—\$800—has not changed since 1966 when President Lyndon Johnson was in office.

Helping to ensure that Federal employees who are killed in the line of duty can count on their Government to treat them fairly and to provide their loved ones with all the benefits they are entitled to under the law is an area of mutual interest for Members of the Congress and this Administration. Public servants risk their lives every day and their deaths often do not make headlines. This proposal will guarantee a death gratuity to Federal civilian employees killed in the line of duty, including as a result of a terrorist attack, a criminal act or exposure to extreme risk while performing their jobs, or retaliation for carrying out their responsibilities. These are just some of the dangerous situations today's Federal employees face in the workplace. Those public servants who are killed in the line of duty deserve to be treated with dignity and respect.

The proposed bill being transmitted represents good government at its best. Building on the unanimous resolution passed this year by the Senate honoring Government employees who have given their lives in service to the country, I urge the Congress to give prompt and favorable consideration to this bill.

The Office of Management and Budget has advised that there is no objection to the transmittal of this draft bill to the Congress.

Sincerely,

A handwritten signature in blue ink, appearing to read "Beth F. Cobert", with a long horizontal flourish extending to the right.

Beth F. Cobert
Acting Director

Enclosures



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

SEP 16 2016

The Honorable Joseph R. Biden, Jr.
President of the Senate
United States Senate
S-212 The Capitol
Washington, DC 20510

Dear Mr. President:

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Beth F. Cobert
Acting Director

Enclosures

A BILL

To increase outdated death gratuities and funeral allowances for Federal civilian employees killed in the line of duty, to expand the scope of eligible beneficiaries, to codify tax treatment, to change offset requirements, and to harmonize death gratuities across Federal agencies.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASING THE DEATH GRATUITY FOR A FEDERAL CIVILIAN EMPLOYEE KILLED IN THE LINE OF DUTY.

(a) AMENDMENT TO TITLE 5.—Subchapter VII of chapter 55 of title 5, United States Code, is amended by adding at the end the following new section:

“SEC. 5571. CERTAIN EMPLOYEE DEATH GRATUITIES PAYABLE BY REASON OF DEATH OF A FEDERAL CIVILIAN EMPLOYEE RESULTING FROM AN INJURY SUSTAINED IN THE LINE OF DUTY.

“(a) For deaths occurring on or after the date of enactment of this section, notwithstanding section 8116, and in addition to any payment made under subchapter I of chapter 81, the head of any department or agency shall pay from appropriations made available for salaries and expenses of the relevant department or agency a death gratuity to the person or persons as described in subsection (b) surviving a civilian employee of that department or agency whose death resulted from an injury sustained in the line of duty; provided that death was not the result of natural causes or the result of serious and willful misconduct by the employee. For all employees except those compensated under local compensation plans established under section 3968 of title 22, the amount of the death gratuity set forth in this subsection shall initially be \$100,000 per employee and shall be adjusted annually on March 1st by the amount determined by the Secretary of Labor to represent the percent change in the Consumer Price Index (all items-United States city average) published for December of the preceding year over such price index published for the December of the year prior to the preceding year, adjusted to the nearest one-tenth of 1 percent. For employees compensated

under local compensation plans established under section 3968 of title 22, the amount of the death gratuity set forth in this subsection shall be determined by regulations implemented by the Secretary of State.

“(b) Payments under this section shall be paid, on the establishment of a valid claim, to the person or persons surviving a civilian employee at the date of the civilian employee’s death and alive at the date title to the payment arises, in the following order of precedence, and the payment bars recovery by another person of amounts so paid:

“First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office, to receive an amount payable under this section. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

“Second, if there is no designated beneficiary, to the surviving spouse of the employee.

“Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

“Fourth, if none of the above, to the surviving parent or parents of the employee.

“Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

“Sixth, if none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of the employee’s death.

“For the purposes of this subsection, 'child' includes a natural child and an adopted child but not a stepchild.

“(c) Notwithstanding section 61 of the Internal Revenue Code, payments under this section shall be excluded from gross income.

“(d) Notwithstanding section 5561(2), for the purposes of this section, 'employee' is defined as an individual who has been determined by the Secretary of Labor to be an employee within the meaning of section 8101; employee status under that section is a decision reserved exclusively to the Secretary of Labor.”.

(b) AMENDMENT TO TITLE 49.—Section 40122(g)(2) of title 49, United States Code, is amended by re-designating subparagraphs (C) through (I) as subparagraphs (D) through (J), respectively, and by inserting after subparagraph (B) the following new subparagraph:

“(C) section 5571, relating to death gratuities resulting from an injury sustained in the line of duty;”.

(c) CONFORMING AMENDMENTS.—

(1) The heading of subchapter VII of chapter 55 of title 5, United States Code, is amended to read as follows:

“SUBCHAPTER VII—PAYMENTS TO MISSING PERSONS AND PAYMENTS FOR DISABILITY OR DEATH”.

(2) The analysis of chapter 55 of title 5, United States Code, is amended—

(A) by striking the matter relating to the subchapter heading of subchapter VII and inserting the following new item:

“SUBCHAPTER VII—PAYMENTS TO MISSING PERSONS AND PAYMENTS FOR DISABILITY OR DEATH”; and

(B) by inserting after the item relating to section 5570 the following new item:

“5571. Certain Employee Death Gratuities Payable By Reason of Death of a Federal Civilian Employee Resulting From An Injury Sustained In the Line of Duty.”.

SEC. 2. REPEAL OF 1996 DEATH GRATUITY PAYMENT AUTHORITY.

Section 651 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (Public Law 104-208) regarding death gratuities is repealed.

SEC. 3. FUNERAL AND BURIAL EXPENSES.

Section 8134 of title 5, United States Code, is amended by redesignating the current subsection (b) as subsection (c) and inserting a new subsection (b) to read as follows:

“(b) In lieu of the funeral benefit set forth in subsection (a), for deaths occurring on or after the date of enactment of this subsection, 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 \$8,800 in the discretion of the Secretary of Labor. The applicable maximum compensation for funeral expenses set forth above shall be adjusted annually on March 1st in accordance with the percentage amount determined by the cost of living adjustment in section 8146a.”.

SEC. 4. FEDERAL EMPLOYEES’ COMPENSATION ACT (FECA) DEATH GRATUITY.

Section 8102a of title 5, United States Code, is amended—

(1) in subsection (d), by adding the following new paragraph:

“(7) In the event that there are no eligible survivors as set forth above and that the employee has not designated an alternate person to receive an amount payable under this section, such amount shall be paid to the personal representative of the employee’s estate.”; and

(2) by adding at the end the following new subsection:

“(f) DEATH GRATUITY AUTHORIZED.—In lieu of the gratuity payable under subsection (a), for deaths occurring on or after the date of enactment of this subsection, the United States shall pay a death gratuity of \$100,000, which shall be adjusted annually on March 1st by the amount determined by the Secretary of Labor to represent the percent change in the

Consumer Price Index (all items-United States city average) published for December of the preceding year over such price index published for the December of the year prior to the preceding year, adjusted to the nearest one-tenth of 1 percent, 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. For claims arising under section 8137, the amount of the death gratuity shall be subject to the authorities contained in, and the regulations promulgated under, that section. In addition, for deaths occurring on or after the date of enactment of this subsection, the death gratuity payable under this section shall not be reduced by the amount of any other death gratuity provided under Federal law based on the same death.”.

SEC. 5. AGENCY GRATUITY FOR DEATHS SUSTAINED IN THE PERFORMANCE OF DUTY ABROAD.

Section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973) is amended—

(1) in subsection (a)—

(A) by striking “dependents” and inserting “beneficiaries”; and

(B) by inserting “, except as provided in subsection (e)” after “payable from any source”;

(2) by amending subsection (b) to read as follows:

“(b) EXECUTIVE AGENCIES.—The head of an executive agency shall, pursuant to guidance issued under subsection (c), make a death gratuity payment authorized by this section to the surviving beneficiaries of—

“(1) any employee of that agency who dies as a result of injuries sustained in the performance of duty abroad while subject to the authority of the chief of mission pursuant to section 207 of this Act; or

“(2) an individual in a special category serving in an uncompensated capacity for that agency abroad in support of a

diplomatic mission, as identified in guidance issued under subsection (c), who dies as a result of injuries sustained in the performance of duty abroad.”;

(3) by amending subsection (d) to read as follows:

“(d) ELIGIBILITY UNDER CHAPTER 81 OF TITLE 5, UNITED STATES CODE.—A death gratuity payment shall be made under this section only if the death is determined by the Secretary of Labor to have resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty under section 8102 of title 5, United States Code.”;

(4) by re-designating subsection (e) as subsection (g);

(5) in subsection (g), as so re-designated, by amending paragraph (2) to read as follows:

“(2) the term 'surviving beneficiaries' means the person or persons identified pursuant to the order of precedence established by subsection (b) of section 5571 of title 5, United States Code.”; and

(6) by inserting after subsection (d) the following new subsections:

“(e) OFFSET.—For deaths occurring on or after the date of enactment of this subsection, the death gratuity payable under this section shall be reduced by the amount of any death gratuity provided under section 5571 of title 5, United States Code, based on the same death.

“(f) TAX TREATMENT.—Notwithstanding section 61 of the Internal Revenue Code, all death gratuity payments made under this section shall be excluded from gross income.”.

SEC. 6. EMERGENCY SUPPLEMENTAL AUTHORIZATION IN THE EVENT OF AN AGENCY’S INABILITY TO MEET THE REQUIREMENTS OF THIS ACT.

In the event the head of an agency determines, with the concurrence of the Director of the Office of Management and Budget, that a natural disaster, act of terrorism, or other incident results in the inability of an

agency to meet the requirements of this act, additional appropriations are hereby authorized for the purposes of making additional payments pursuant to section 5571(a) of title 5, United States Code, section 8102a of such title 5, and section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973) as a result of such event that would exceed the amount available to the department or agency. Such additional payments shall be made only to the extent that additional appropriations are provided for this purpose and the Congress shall vote on a request for additional appropriations under this section not later than 30 days after the date of submission of such request to the Congress.

Section-by-Section Analysis

Section 1 amends title 5 to create a new provision that: (1) increases the amount of the death gratuity for all Federal civilian employees killed in the line of duty from \$10,000 (last set in 1997) to \$100,000; (2) provides for automatic cost-of-living adjustments so that the new amount does not remain static; (3) expands the scope of beneficiaries who may receive death gratuities; (4) removes the requirement that the death gratuity be offset by other reimbursed expenses; (5) codifies the IRS determination that the gratuity is excludable from taxable income (see attached letter dated 8/31/2016); and (6) eliminates agency discretion to award death gratuities.

Section 2 repeals section 651 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (within the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208), which had originally established the \$10,000 death gratuity. The repeal is necessitated by the codification of the new death gratuity provision in title 5, as reflected above in section 1.

Section 3 amends section 8134 of title 5 to increase the allowance authorized for payment of funeral and burial expenses from \$800 to \$8,800, and to provide for automatic cost-of-living adjustments. This allowance was last updated in 1966.

Section 4 amends the Federal Employees' Compensation Act (FECA) in section 8102a of title 5 to expand the scope of beneficiaries who may receive a death gratuity where an employee's death occurs supporting a contingency operation by an Armed Force. This section also removes the requirement that the gratuity be offset by any other death gratuity payment, such as the proposed gratuity in section 1. Additionally, this section indexes the gratuity where an employee is killed in a military contingency operation to match the index for the death gratuity in section 1.

Section 5 amends section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973) to expand the scope of beneficiaries who may receive a death gratuity where an employee is killed abroad under chief-of-mission authority. This section also imposes a new offset so that employees killed under chief-of-mission authority do not receive a second death gratuity where an employee is killed in the line of duty based on the same incident. Finally, this section codifies the IRS determination that the chief-of-mission death gratuity is excludable from taxable income (see attached letter dated 3/28/2014).

Section 6 establishes a mechanism by which Federal agencies can seek additional funding from the Congress in the event of a natural disaster, act of terrorism, or other incident. The purpose of this section is to provide agencies a financial reprieve in the event they do not have adequate funding to meet their obligations to beneficiaries. This section also calls upon the Congress to vote on a request for additional appropriations within 30 days.

In addition to the section-by-section analysis above, attached is a chart that summarizes the key changes to death gratuities being proposed in this legislation.

Summary of Proposed Changes to Death Gratuities for Federal Civilian Employees

	Killed in the Line of Duty	Killed Abroad under Chief of Mission Authority	Killed Abroad under Chief of Mission Authority by an Act of Terrorism*	Killed Abroad or in the US in a Contingency Operation
Current Gratuity	\$10,000 + \$800 funeral allowance	One year's salary at EX Level II (currently \$185,100) + \$800 funeral allowance	One year's salary at EX Level II (currently \$185,100) + \$800 funeral allowance	\$100,000 + \$800 funeral allowance
Proposed Gratuity	\$100,000 with COLA + \$8,800 funeral allowance with COLA	One year's salary at EX Level II (currently \$185,100) + \$8,800 funeral allowance with COLA	One year's salary at EX Level II (currently \$185,100) + \$8,800 funeral allowance with COLA	\$100,000 with COLA + \$8,800 funeral allowance with COLA
Current Beneficiaries	Personal representative of the deceased, as defined by State law	Dependent survivors, i.e., spouse, child, or dependent parent. If none exists, no payment is made.	Dependent survivors, i.e., spouse, child, or dependent parent. If none exists, no payment is made.	Employee may designate any person. Absent a designation, gratuity is paid to eligible beneficiaries.
Proposed Beneficiaries	Expand beneficiaries to allow employee to designate any person. Absent designation, gratuity paid to survivors in order of precedence.	Expand beneficiaries to allow employee to designate any person. Absent designation, gratuity paid to survivors in order of precedence.	Expand beneficiaries to allow employee to designate any person. Absent designation, gratuity paid to survivors in order of precedence.	Expand beneficiaries to include the personal representative of the deceased.
Current Offset	Funeral allowance and administrative expenses	None	None	This benefit is offset by any other death gratuity payment
Proposed Offset	Eliminate the offset so that the allowance for funeral and administrative expenses are not deducted	Impose an offset so that employees killed under chief of mission authority do not receive two death gratuities totaling \$285,100	Impose an offset so that employees killed under chief of mission authority do not receive two death gratuities totaling \$285,100	Eliminate the offset so that employees killed in a contingency operation also receive the gratuity for being killed in the line of duty
Current Tax Treatment	Not taxable	Not taxable	Not taxable	Not taxable
Proposed Tax Treatment	Codify non-taxable treatment	Codify non-taxable treatment	Codify non-taxable treatment	No change
Underlying Authority	Section 651 of Public Law 104-208	Section 413 of Public Law 96-465, Section 7082 of Public Law 113-76, & 3 FAM 3650	Section 413 of Public Law 96-465, Section 7082 of Public Law 113-76, & 3 FAM 3650	Section 1105 of Public Law 110-181 & 20 C.F.R. 10.900-10.916

* For deaths caused by an act of terrorism, this death gratuity is payable retroactively and two additional benefits are authorized both prospectively and retroactively – a special payment of \$400,000 to any designee to supplement any existing life insurance policy and educational assistance to a widow (for 10 years) or child (up to 26 years of age).