

## § 234.12

## 20 CFR Ch. II (4-1-07 Edition)

### § 234.12 1937 Act lump-sum death payment.

(a) The 1937 Act LSDP is payable in the following order and amounts:

(1) The employee's "living with" widow(er) is paid the total amount of the LSDP. (Refer to §234.21 for an explanation of "living with.")

(2) A funeral home, which has unpaid expenses, is paid the amount of the unpaid expenses or the total amount of the LSDP, whichever is less.

(3) An equitably entitled person is paid the total amount of the LSDP or a proportionate share of the LSDP, depending upon the amount of burial expenses he or she paid.

(b) The 1937 Act LSDP is equal to ten times the basic amount. (Refer to §234.20 for an explanation of the computation of the employee's basic amount.)

### § 234.13 Payment to a funeral home.

The 1937 Act LSDP is paid to a funeral home under the following conditions:

(a) A person who has assumed responsibility for all or part of the burial expenses files an application authorizing payment to the funeral home. Usually, the Board considers the person who makes the arrangements with the funeral home or makes a voluntary payment to the funeral home to be the person who has assumed responsibility for the burial expenses.

(b) An official of the funeral home with unpaid expenses files an application on behalf of the funeral home after 90 days have elapsed from the date of the employee's death, if during that 90-day period no one has assumed responsibility for the payment of the burial expenses.

(Approved by the Office of Management and Budget under control number 3220-0031)

### § 234.14 Payment to an equitably entitled person.

(a) An equitably entitled person's funds used to pay burial expenses may consist of:

(1) The individual's own money;

(2) Money in a joint account with the employee or another individual;

(3) Money paid to an individual who was named beneficiary to receive the money;

(4) A promissory note; or

(5) Money which several people placed into a pooled fund.

(b) Payment is made to equitably entitled persons in the following order:

(1) The person who paid the funeral home expenses;

(2) The person who paid the grave opening and closing expenses;

(3) The person who provided the burial plot; and

(4) The person who paid any type of expenses not listed in paragraphs (b)(1) through (3) of this section.

### § 234.15 When an employee's estate is entitled.

(a) The employee's estate is considered an equitably entitled person if the funds used to pay burial expenses consisted of:

(1) Money in the employee's single-ownership bank account;

(2) Money paid directly to the funeral home by the employee before death;

(3) Money paid by the employee under a contract, plan, system or general practice where no beneficiary was named to receive the money;

(4) Money found among the employee's effects;

(5) Unpaid salary due the employee by the employee's employer;

(6) Money obtained by selling the employee's real or personal property; or

(7) Money from a trust fund.

(b) If the employee's estate is the equitably entitled person, the Board will pay the LSDP to the legal representative of the employee's estate. When no legal representative of the employee's estate has been or is expected to be appointed, the Board will pay the LSDP according to state statutory procedures applicable when no formal probate or administration occurs.

### § 234.16 When a widow(er) is eligible as an equitably entitled person.

When a widow(er) files for an LSDP and the "living with" requirement (described in §234.21) is not met, the widow(er) could be paid as an equitably entitled person.

### § 234.17 When an equitably entitled person's estate is payable.

When an equitably entitled person dies before negotiating the LSDP

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check, that person's share is payable to his or her estate.

### § 234.18 Payment of a deferred lump-sum to a widow(er).

In certain cases, a deferred LSDP may be payable to the employee's widow(er), even if someone may be entitled to a monthly annuity in the month of the employee's death. A deferred LSDP is the difference between the amount of the LSDP and the total of the monthly survivor annuities paid during the 12-month period which begins in the month of the employee's death.

### § 234.19 Effect of payment on future entitlement.

Payment of an LSDP does not affect the entitlement of survivors to monthly annuities at a later date.

### § 234.20 Computation of the employee's 1937 Act LSDP basic amount.

(a) Definition of terms used in this section:

*Average monthly remuneration (AMR)* means the amount obtained by adding together the creditable compensation and wages earned by the employee after 1936 and before the LSDP closing date and dividing that sum by three times the number of calendar quarters in that period. (Refer to part 211 of this chapter for a definition of creditable compensation and section 209 of the Social Security Act for a definition of creditable wages.)

*Closing date* means whichever of the following produce the highest AMR:

(1) The first day of the calendar year in which the employee both attained age 65 and was completely insured;

(2) The first day of the calendar year in which the employee died; or

(3) The first day of the calendar year following the year in which the employee died;

(4) However, if paragraphs (a)(1) through (3) of this definition do not occur before January 1, 1975, the closing date is January 1, 1975.

(b) *LSDP basic amount formula.* The basic amount is computed using the following formula:

(1) Determine 52.4% of the AMR up to and including \$75.00;

(2) Determine 12.8% of the AMR exceeding \$75.00;

(3) Determine 1% of the sum of paragraphs (b)(1) and (2) of this section;

(4) Multiply the result of paragraph (b)(3) of this section by the number of years after 1936 through 1974 in which the employee earned \$200 or more;

(5) Add the results of paragraphs (b)(1), (2) and (3) of this section. If the resulting basic amount is less than \$18.14, increase it to \$18.14.

### § 234.21 Definitions of "living with" and "living in the same household."

(a) *Living with.* A widow(er) is considered "living with" the employee at the time of the employee's death, if one of the following conditions applies:

(1) The employee and spouse were members of the same household;

(2) The spouse was receiving regular contributions for support from the employee; or

(3) The employee was under court order to contribute to the spouse's support.

(b)(1) *Living in the same household.* An employee and spouse were "living in the same household" if they lived together as a married couple in the same residence. However, an employee and spouse, who were temporarily living apart, will be considered "living in the same household" if there was intent to share the same residence had the employee not died. The Board will usually assume that a married couple was living apart temporarily, if the separation was caused by circumstances beyond their control, for example, ill health, financial difficulties, service with the Armed Forces, or confinement in a curative, custodial, or penal institution.

(2) If the employee and spouse were separated solely for medical reasons, the Board will consider them "living in the same household," even if the separation was likely to be permanent.

## Subpart C—Annuities Due but Unpaid at Death

### § 234.30 General.

When an applicant or an annuitant dies before being paid any annuities that may be due, the total of those annuities become payable to certain survivors in a lump-sum. Refer to § 234.31