620.5 Introduction

Under the RRB's regulations, when determining if a benefit is payable and an estate is involved, designated personnel in the Office of Programs have the authority to:

- Require formal administration of an estate; or
- Require reopening of an estate; or
- Make certification of payment using informal or no administration procedures, if allowed by the statutes of the state of the last domicile of the decedent.

This chapter describes what is required for an estate to be payable, when an estate is not payable, and how cases involving estates should be handled. These instructions apply to estates of beneficiaries as well as employees.

620.10 When Railroad Retirement Act Benefits Are Payable To An Estate

620.10.1 When an LSDP Is Payable to an Estate

All or part of a Lump-Sum Death Payment (LSDP) is payable to an estate when any of the following conditions exist:

A. The LSDP is payable to payers of burial expenses and estate funds were used to pay those expenses; or

B. The LSDP is payable to payers of burial expenses and a person who paid part of those expenses with personal funds dies before receiving his share of the LSDP as an equitably entitled person.

620.10.2 When an Annuity Due but Unpaid at Death Is Payable to an Estate

All or part of annuities due but unpaid at death, except survivor annuities, are payable to an estate when any of the following conditions exist:

A. The annuity unpaid at death is payable to payers of the employee's burial expenses not previously reimbursed in full by any LSDP and estate funds are involved; or

B. The annuity unpaid at death is payable to payers of the employee's burial expenses not previously reimbursed in full by any LSDP, and an eligible person dies before receiving his share of the annuity due but unpaid at death as an equitably entitled person.

620.10.3 When an RLS Is Payable to an Estate

A residual lump-sum (RLS) is payable to an estate when any of the following conditions exist:

A. The employee designated his estate as beneficiary to receive the RLS; or

B. The employee died before 10-1958 and he either did not designate a beneficiary, or if he designated one, the beneficiary is not living at the time the RLS is to be paid, and no qualified relative survives who is living on the date his relationship is determined by the RRB; or

C. The employee died after 9-1958 and he either did not designate a beneficiary, or if he designated one, the beneficiary is not living at the time the RLS is to be paid, and no qualified relative survives or each surviving relative who can qualify dies before negotiating his check for the RLS.

NOTE: In B and C above, if the designated beneficiary survives the employee, but dies before receiving the RLS payment, entitlement passes to the estate of the designated beneficiary.

620.15 How Benefits Are Paid To An Estate

When benefits are payable to an estate, payment can be made under one of the following procedures:

- Formal administration (legal representative appointed).
- Informal administration (court order under small estate statutes).
- No administration (no legal representative appointed or court order secured).

620.20 Definition Of Terms

The following is a list of terms most commonly used in the administration of estates.

- Administrator - The person appointed by a law court to settle an estate under state probate proceedings when the decedent died without a will. The property of the decedent is vested in the administrator only from the time of the appointment.
- Administrator Cum Testamento Annexo - Performs the same function as an administrator, except that the decedent died testate.
- Assets (of an Estate) - Any possessions, property, goods, capital, etc., owned by the decedent at the time of his death. Included among a decedent's assets are:

  Money found among his effects.

Funds obtained by selling real or personal property.

Money on deposit to his credit at a bank (except monies in a joint account and the joint owner survives the decedent).

Unpaid wages his employer was holding for him.

- Decedent - A person who has died.
- Distributee - A person or persons related to the deceased who may inherit his personal property under the intestacy laws of the state of his last legal residence.
- Domicile - The location accepted as the last legal residence of a deceased person.
- Escheat - The reversion of an estate to the state government because there is no legal heir.
- Estate - The property, possessions and funds of the deceased person.
- Executor - The person named in a will to settle an estate. The property of the decedent is vested in the executor from the moment of the testator's death.
- Formal Administration - The settlement of an estate under probate proceedings of the state of the decedent's legal residence at death.
- General Creditor - The person to whom the decedent is indebted to at death for such items as board, rent, laundry, personal loans, balance remaining on installment purchases, etc. [NOTE: This is no longer a factor in determining entitlement when an estate is involved].
- Heir - One who is entitled to receive all or part of the property of a deceased person.
- Informal Administration - The settlement of an estate without formal probate procedures.
- Intestate - Absence of a will.
- No Administration – An administrator of the estate has not been appointed, either formally or informally.
- Personal Representative - A title given a person appointed to settle an estate whether under the provisions of the deceased person's will or under the provisions of the State's intestacy laws. Maryland has done away with both of the titles "executor" and "administrator" and now uses only "personal representative" to designate a person charged with performing the duties associated with either of the former titles.
- Primary Estate - The estate of the deceased employee.

- Priority Creditor - One whose claim against an estate has rights superior to those of general creditors. In most states, a claim by the PB/E has rights superior to those of other priority creditors. In No Administration cases, a priority creditor is a person who paid part of the B/E when estate funds were also used to pay part of the B/E and a legal representative has not been appointed (see FOM1 620.45.2 item B.).

- Secondary Estate - The estate of a deceased priority creditor or distributor.

- Small Estates Statutes - The laws of a state which permit settlement of an estate without the usual formal probate procedures.

- Testate - Having a will.

- Testator - Person making a will.

620.25 Evidence Requirements

In addition to any other proofs needed to pay either an LSDP, RLS or accrued annuity, the following evidence is also required when an estate is involved:

Evidence	**When Required**
Application (AA-21)	Always. Only one AA-21 is needed when co-executors are filing on behalf of the estate.
Proof of Death	Always (for each person whose estate is to be distributed).
Proof of Relationship	If payment of more than $25 is being made to distributees or if the relationship of a distributee is questionable.
Proof of Payment of B/E	When applicant has paid any burial expenses. In some cases, listing the paid B/E on the signed application or in a signed statement is acceptable (see FOM1 605.65.4)
Affidavit or Certified Copy of Court Order Dispensing with Administration. Only one or the other is needed. The small estate statutes of the state of the employee's last domicile determines which of the two is required.	If payment will be made without formal administration under a state's small estate statutes.

Certified Copy of Appointment as Legal Representative	If formal administration is required for payment to an estate. NOTE: If the proof of appointment of legal representative was issued more than 1 year prior to the date it is submitted to the RRB, inform the applicant that the certification must show that the appointment is still in full force and effect.
Certified Copy of Final Accounting	If the estate has been closed and payment is to be made without reopening.

620.30 Formal Administration

620.30.1 When Formal Administration Is Required

A. Amount of Each Type of Benefit Exceeds $1,000 - Formal administration of an estate is required when each type of benefit, considered separately, exceeds $1,000 and:

1. The applicant does NOT request that payment be made under the "Small Estate" statutes of the state of the decedent's domicile at death; or

2. The applicant requests application of the "Small Estate" statutes but the state has adopted no "Small Estate" statutes (see FOM1 Art 6 App C), or the amount of the benefit payable exceeds the limit specified in the "Small Estate" statutes; or

3. The decedent is survived by relatives entitled to inherit his personal property under the intestacy laws of the state of his domicile at death (seeFOM1 Art 6 App D); or

4. The decedent was NOT survived by a relative entitled to inherit his personal property but there are unpaid creditors of his estate and:

   a. The creditors are other than priority creditors, or

   b. The sole creditors are priority creditors whose claims exceed $1,000.

B. Amount of Benefit Less Than $1,000 - Formal administration is required when each type of benefit, considered separately, is less than $1,000 and:

1. There is a creditor of the estate who possesses the rights superior to those of the surviving spouse or kindred and has not waived their claims against the estate (see FOM1 Art 6 App C); or

2. Heirs of the deceased reside in a foreign country and, although their whereabouts are unknown, there is no definite proof that they are dead.

620.30.2 Development

When benefits are payable to an estate and a legal representative is required to effect the payment, secure the following from the executor or administrator (including public administrators):

A. An application Form AA-21; and

B. Certified copy of:

1. Letters testamentary if there is a executor named in the decedent's will; or

2. Letters of administration if there is or will be an administrator appointed.

NOTE: If the proof of appointment of legal representative was issued more than 1 year prior to the date it is submitted to the RRB, inform the applicant that the certification must show that the appointment is still in full force and effect.

C. Remaining information necessary for payment of benefits.

620.30.3 Escheat

Escheat occurs when no heirs of an estate exist and any assets remaining, after the debts of an estate have been paid, would revert to the state of the deceased's domicile at death. Escheat is not possible when a will is involved. Advise the potential applicant that any part of an Railroad Retirement Act benefit due an estate which would escheat to the state cannot be paid.

A. <u>When Escheat Is Possible</u> - The probability of escheat strongly exists in cases in which:

1. A public administrator has been appointed to represent the estate; and

2. The decedent was not survived by a relative who could be considered an heir of his estate.

B. <u>When Development for Escheat Is Not Necessary</u> - If the decedent left a will and an executor or administrator has been appointed, there can be no escheat. The fact that the will has been submitted for probate is sufficient basis to assume that there are persons legally entitled to share in the estate. The total amount due the estate may be paid to the executor or administrator cum-testamento annexo (CTA) without developing for escheat. The proof of legal appointment serves as evidence a will exists.

620.30.4 Amount Payable to Estate

If there is an executor, the examiner will pay the full amount of benefit to him/her. If there is an administrator, the possibility of escheat must be considered. Advise the potential applicant that, if escheat is possible, the application will be denied unless he voluntarily furnishes the information in B below.

A. Escheat Is Not Possible - The examiner will pay the full amount of the benefit to the administrator.

B. Escheat Is Possible - The examiner will deny the application unless the administrator shows that the benefit will not escheat, by:

1 Providing the name and address of an heir; or

2. Showing that the liabilities of the estate are greater than the assets and the total benefit payable. This information must be submitted voluntarily by the administrator either when the application is filed or after the denial letter is released. In no way can the administrator be requested to submit this information. The administrator must submit this information on his own.

620.35 Reopening Of Estate

620.35.1 Employee or Beneficiary Died Intestate

When an administrator was previously appointed and the estate has been closed, the estate may have to be reopened.

A. When Estate Need Not Be Reopened - Reopening of an estate is not required when the applicant voluntarily advises that:

1. The employee's estate was solvent (i.e., there were sufficient assets of the estate to pay all creditors) and the amount of each type of benefit payable, if considered separately, does not exceed $1,000; or

2. The employee's estate was insolvent and:

a. The only creditors having claims against the estate are priority creditors and the amount of each type of benefit, when considered separately, does not exceed $1,000, or

b. The amount of each type of benefit exceeds $1,000 but there are no heirs, the total of the priority creditor claims against the estate are $1,000 or less, and reopening would result in an escheat of the balance of the amount payable; or

3. The beneficiary's estate was solvent.

B. When Estate Must Be Reopened - The employee's estate must be reopened when conditions 1 and 2, above, are not met. A beneficiary's estate must be reopened when condition 3 is not met.

620.35.2 Employee or Beneficiary Died Testate

A. When Estate Need Not Be Reopened - The estate need not be reopened when the applicant voluntarily advises that:

1. The estate was solvent; and

2. Sufficient assets were available to fulfill the bequests of the testator; and

3. The amount of each type of benefit is less than $1,000.

B. When Estate Must Be Reopened - An estate must be reopened when the conditions listed in "A" are not met. When reopening is required but the heirs, or their attorneys, insist that it is not required under the probate laws of the state in question, notify Survivor Benefits. They will refer the case informally to the deputy general counsel.

620.35.3 Development When Reopening of Estate Not Required

A. Decedent Died Intestate - Secure the following from the heir:

1. Application Form AA-21; and

2. A certified copy of the final accounting.

B. Decedent Died Testate - Secure the following from the heir:

1. Application Form AA-21; and

2. A certified copy of the will; and

3. A certified copy of the final accounting.

NOTE: When a primary and secondary estate are involved, and neither will be reopened, the same development is required for each estate.

620.35.4 Development When Reopening of Estate Is Required

Secure the following from the legal representative:

A. Application Form AA-21; and

B. Copy of the court order reopening the estate.

620.40 Small Estate Statutes (Informal Administration)

620.40.1 General

Some states have statutes which permit the settlement of estates without the usual formal probate procedures. Such statutes authorize a court to either appoint some person who is considered the legal representative to collect and receive all assets of the estate, or to designate who shall share in the distribution of the estate (see FOM1 Art 6 App C).

The court may appoint some person in an order dispensing with formal administration or in an order refusing letters of credit. In an order refusing letters of credit, a creditor may be named by the probate court. The creditor so named would then have the same powers as if appointed as an executor or administrator of the estate. Such an order may be considered the same as letters of administration. The following states have adopted statutes under the Model Small Estates Act which dispense with formal administration of an estate by way of an order refusing letters of credit.

- Arkansas
- Delaware
- Florida
- Missouri
- Texas

620.40.2 Court Order Dispensing With Formal Administration

The order dispensing with formal administration is acceptable, even though the amount of the Railroad Retirement Act benefit exceeds $1,000, if:

- The Deputy General Counsel has previously ruled on the statute of the state (see FOM1 Art 6 App C); and
- The statutory requirements of the state have been met.

When these conditions have not been met, submit a copy of the court order to Survivor Benefits. They will consult the attorney advisor.

620.40.3 Providing Information About Small Estates

When the estate can be handled under a small estate statute, advise the inquirer, applicant or estate's representative that this option is available and that (s)he should

contact the local probate court, or other court with jurisdiction over probate issues, for more information. Do not solicit any detailed information about the estate.

620.40.4 Development

When a benefit is to be paid under the small estate statutes, secure the following:

- The court order or other document which permits settlement of an estate without formal administration; and
- An application from the legal representative or each distributee of the estate, whichever is appropriate.

When a public administrator has been assigned by the court to settle an estate under the small estate statutes, the administrator must submit letters of administration specifically covering the estate in question. These cases are not to be considered under the "no administration" procedure.

620.45 No Administration

620.45.1 General

When an LSDP, RLS or accrued annuity is due an estate and there is no formal or informal administration of the entitled estate, payment of the benefit may not be possible. The following sections explain when a benefit is or is not be payable to the estate in these cases and how they should be handled.

HISTORICAL NOTE: Until 1980, the RRB was able to pay benefits in no administration cases because, at the time, Part 236 of the Code of Federal Regulations (CFR) gave it the authority to act as the administrator of the estate when none was appointed. Form AA-21a (obsolete) was used to obtain the detailed information necessary (i.e. last illness expenses, distributees of estate, etc.) for the RRB to determine the entitlement of claimants against the estate or the estate's distributees according to the laws of the state of the decedent's legal residence at death, and pay benefits accordingly. In June 1980, OMB rescinded its approval of the continued use of the AA-21a because that agency determined that the RRB did not have the statutory authority "to ask detailed questions of a sensitive nature which are inessential to determine eligibility or amount payable", nor did the form meet "The President's Paperwork Reduction Guidelines" limiting questions on applications "to those necessary to determine eligibility or amount of benefit". In other words, the RRB was no longer allowed to solicit the type of detailed information it needed to determine how a benefit should be distributed. In effect, it could no longer act as administrator and, therefore, determine how benefits should be paid in these cases. Part 236 was eventually removed from the CFR.

620.45.2 Payment of Lump-Sum Death Benefit (LSDP)

When an LSDP is payable to payers of the employee's burial expenses (PB/E), and any portion of the reimbursable burial expenses (B/E) were paid from estate funds, and a legal representative for the estate has not or will not be appointed, payment of the LSDP is determined by SURVIVOR BENEFITS.

A. All the burial expenses, including all non-funeral home expenses, were paid from estate funds and a legal representative has not been appointed:

1. Provide the inquirer with the amount of the LSDP. When available, base the LSDP on the lump-sum basic amount figure on the MARC file. If information is not available in the office, send an e-mail to SURVIVOR BENEFITS requesting the LSDP amount.

2. Advise that no payment can be made unless a legal representative for the estate is appointed.

3. If a person insists on filing, take a Form AA-21 application. Do not develop any proofs. If payment cannot be made to a funeral home, PB/E or priority creditor as described in section B below, SURVIVOR BENEFITS will deny the application, incorporating code paragraphs 571 and 571.1 in the denial letter.

B. Part of the burial expenses were paid from estate funds and a legal representative has not been appointed:

1. Develop a Form AA-21 application and necessary proofs from the person who paid a portion of the burial expenses or who is authorizing payment of an outstanding balance to the funeral home.

2. If the state of the decedent's domicile is one of those listed below, the PB/E can be paid the estate's portion (until fully reimbursed) of the LSDP or accrued annuity as a priority creditor. The probate laws of these states give first consideration to reimbursing payers of burial expenses before satisfying other priority creditors. RRB benefits can be paid to PB/E as a priority creditor only in cases involving the states listed. In all other states, RRB benefits due the estate cannot be paid unless a legal representative for the estate is appointed.

Alabama
Alaska
Arizona
California
Colorado
Connecticut
Delaware
Nebraska
(limited to $300 if estate insolvent)
Nevada
New Hampshire
New Jersey
New York

District of Columbia
(limited to $600)
Florida
Hawaii
Idaho
(Limited to $100
if estate insolvent)
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
(limited to $500
if estate insolvent)
Maine
Maryland
(limited to $1200
if estate insolvent)
Michigan
Minnesota
Missouri
Montana
North Carolina
North Dakota
Ohio
(limited to $800)
Oklahoma
Oregon
Rhode Island
South Dakota
Tennessee
Utah
Vermont
(Funeral not over $1000,
headstone not over $150
where estate is insolvent)
Virginia
(limited to $500)
Washington
West Virginia
(limited to $600)
Wisconsin
(effective April 1, 1971)
Wyoming

NOTE: Limitation on Priorities - This listing contains limitations as to amounts opposite some of the items. These limitations apply, generally speaking, only as against other items of priorities, and not against full reimbursement for any particular item.

3. Pay any amount due the funeral home before paying any prorated share due to a PB/E.

4. Use the following examples as guides in determining the amount payable to a priority creditor.

EXAMPLE 1 – FH expenses paid by estate and non-FH expenses paid by other PB/E

LSDP = $1,000.00; total FH expenses = $2,500.00; EE pre-paid all of the FH expenses; EE's brother paid $250.00 for flowers and $50.00 for long distance phone calls to make the funeral arrangements. If the estate was payable, it would be paid the entire LSDP and the brother would not be reimbursed for any of his expenses. However, since the estate is not payable because no legal representative has been appointed, we can use $300.00 of the estate's share to fully reimburse the brother the amount he paid for the flowers and phone calls. He later submits another claim for reimbursement of $75.00 for additional long distance calls that were not on

his previous phone bill. Because $700.00 of the estate's share remains, we can also reimburse him for the additional $75.00 in long distance phone calls.

EXAMPLE 2 – Both estate and other PB/E paid FH expenses

Use the following formula to determine the share due each PB/E:

(AMT PD BY PB/E ÷ TOTAL B/E PD BY ALL PB/E) X TOTAL LSDP PAYABLE TO PB/E = SHARE DUE PB/E

LSDP = $1,000.00; total FH expenses = $ 3,500.00; EE's estate paid $3000.00 of the FH expenses; EE's son paid the remaining $ 500.00. Using the above formula, if the estate was payable, its share of the LSDP would be $857.14 and the son's share would be $142.86. Since the estate is not payable, $357.14 of its share can be used to reimburse the son for all $500.00 of the FH he paid. If there are also any non-FH expenses, the payer(s) of those expenses can be reimbursed up to a total of $500.00, the remaining amount of the estate's share.

620.45.3 Payment of Accrued Annuity

A situation may arise in which an accrued annuity is payable and the first priority of payment is an estate without a legal representative.

A. If the reimbursable burial expenses exceed the accrued annuity, do not take an application. Should someone insist on filing, take a Form AA-21. No proofs need be developed. The application is denied.

B. If the reimbursable burial expenses are less than the accrued annuity:

1. Secure proof of payment of the burial expenses; and

2. Take the necessary development action with the relative(s) who are entitled according to the established priorities.

If a Form AA-21 is filed for the estate by a person who is not entitled as a relative, the application is denied.

620.45.4 Payment of the Residual Lump-Sum (RLS)

The RLS may be due the employee's estate if the employee designated his/her estate as beneficiary, or the employee did not designate a beneficiary and either was not survived by a qualified relative, or each surviving relative who could qualify died before receiving the RLS.

If an application is received and a legal representative has not been appointed, the application is denied.

620.45.5 Development

Normally, it can be determined from information furnished on either a submitted Form AA-21 or Form Letter RL-94F that part of the B/E was paid from estate funds. If no administrator is apparent, Form AA-21 should be developed from any person who paid burial expenses and appears to be entitled as PB/E or priority creditor. Do not take any action to develop from the estate.

620.50 Foreign Estates

620.50.1 General

When the decedent who died lived in a foreign country, administration of his estate is governed by the laws of that country. In some countries individual administrators or executors are appointed to administer an estate, while in others the courts are authorized to act as administrator.

620.50.2 Development

Development in Canadian or Mexican cases should be handled by the field offices assigned to the provinces, states or territories of those countries. Development in other foreign cases should be handled by the Chicago field office, often with the assistance of the local U.S. Foreign Service Office.

Attempt to determine from the information available (i.e., inquiry from a relative, RL-94F, AA-21, etc.) whether the estate of the deceased will be entitled to benefits and take action as follows:

A. Estate Will Be Formally Administered - Have an application, AA-21, completed by the administrator or executor of the estate and request him to submit:

   1. A certified copy of the letter of appointment; or

   2. A similar document which may be issued by a foreign government; and

   3. Proof of the employee's death and any other proofs required to process the claim.

B. Estate Will Not Be Formally Administered - Have the nearest surviving relative complete and return the application AA-21 and submit proof of death. Payment can be made without formal administration if the laws of the country in which the deceased lived allows for payment to the payer of B/E as priority creditor. Refer these cases to the attorney advisor.

620.50.3 Administration Of Estates In Norway

The Norwegian Government has designated its probate courts to act as administrators of all estates, except where a valid will or testament has named a person as an executor. In these cases, the court and not the judge is the administrator of the estate. When a person dies in Norway, the attending physician or hospital notifies the probate court in the area where death occurred. The probate court, itself, records the notice of death. An estate may then be handled by formal or informal administration.

A. Formal Administration of an Estate - Formal administration of an estate is accomplished in one of the following ways:

1. The probate court will act as administrator in accordance with Norwegian Law; or

2. An executor named in the will of the deceased will act as administrator. As verification such person will furnish a statement from a court that he is the executor; or

3. The probate court will appoint an administrator of an estate. In this instance the person so named is to furnish a copy of the court's certificate designating him as the administrator.

B. Informal Administration of an Estate - Informal administration of an estate may be effected if all the heirs agree to the private handling of an estate. To do this they must all sign a statement assuming full responsibility for the liabilities of the deceased. The probate court will issue a statement that such handling has been approved. Usually, the heirs will appoint one of their own group or an attorney to act for them. In this instance, the certification of the probate court is to be furnished as well as the statements of the heirs agreeing to the appointment of one heir or an attorney to represent them.

C. Validity of Statements Issued by a Norwegian Probate Court - Statements of a Norwegian probate court relating to death and burial expenses are acceptable as evidence in the place of receipts. The probate court is usually required to retain the original receipts covering payments made by the court, or by the authorized representative, on behalf of the estate. Such statements, if submitted, are acceptable as just and correct proofs of payment.

D. Corresponding With a Norwegian Probate Court - When writing to a Norwegian probate court, address the correspondence to the court and not the judge of the court by name.

620.55 Certification of Payments to an Estate

620.55.1 Estate Formally Administered

When an executor named in a will or an administrator has been appointed as legal representative of an estate and has not been discharged, make payment only to the executor or administrator.

620.55.2 Estate Need Not Be Reopened

A. Employee or Beneficiary Died Intestate - If the employee's estate was solvent, make the payments to the same persons in the same proportions as shown in the final accounting.

B. Employee or Beneficiary Died Testate - Consider benefits under the RR Act as residue of the employee's estate if residuary legatees are named in the will. Make payments to the same persons in the same proportions as provided in the will and in the final accounting.

NOTE: Certified copies of the will and the final accounting are required because in some instances the final accounting does not list distributees and the shares paid them.

620.55.3 Probate Of Will Not Contemplated

When the employee died testate and probate of the will is not contemplated, disregard the existence of the will and pay the case under the "No Administration" procedure.

620.55.4 Small Estate Statutes

When the RR Act benefit can be paid under small estate statute, the court has appointed one person to collect and receive all assets of the estate. If an order dispensing with administration is received and the summary in FOM1 Art 6 App C requires a listing of the assets and the RR Act benefit is not listed, it is not an acceptable order. Secure a new order with the RR Act benefit listed. If the summary in Appendix C does not require a listing of the assets, it is not necessary to list the RR Act benefit.

Pay the entire amount due the estate to the person named in the order as representative.

620.55.5 No Administration

Survivor Benefits handles payments in No Administration cases, as described in FOM1 620.45.