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System’s Objective

The Federated States of Micronesia Social Security Administration, (hereinafter “FSMSSA”) intends to administer and carry out the intent and purposes of the FSM Social Security Act, (the Act), P.L. No. 2-74, 53 FSMC, subtitle II, as amended, to assure efficiency, accuracy and proficiency in making decisions relating to retirement (old age) benefits, surviving spouse and/or child dependent’s benefits, disability benefits and other benefits to eligible and qualified beneficiaries, and for other social security purposes.

Declaration of Policy

The purpose of the proposed Regulations is to implement the policy of the Congress as declared in the Act, namely, to effect economy and efficiency in the fields of government and business by providing a means whereby employees may be ensured a measure of security in their old age and given an opportunity for leisure without hardship and complete loss of income, and further, to provide survivors’ insurance for wage earners and their dependents. (53 FSMC §602 (PL 2-74 §102).

Authority: 53 FSMC, Sections 603, 604; 605(1); 607; 702; 706; 708; 801(2); 802; 803; 804; 805; 806; 807; 808; 810; 901 & 902. and encompassing amendments by PL 12-51, PL 12-76, PL 14-37, PL 14-86, PL 15-73, PL 16-10, and the FSM Secured Transactions Law, PL 14-34.

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General

§100.1 Introduction

These Regulations formulate the eligibility criteria for benefits for retirement (old age), dependents, survivors, and disability insurance programs, and contain principles on internal control of the FSM Social Security Administration. Moreover, these Regulations embody addendums introduced by recent legislation.

§100.2 Definitions

As used in these Regulations:

Application Date means the date that a completed application is filed with the local Social Security Office. The application should be reviewed prior to acceptance by Social Security to make sure it is minimally complete. Upon acceptance, the application will be date stamped, and this date will become the application date for the determination of retroactive benefits, and for purposes of processing the application.

Application Package means the FSMSSA application form including necessary documents that may be requested by FSMSSA personnel to complete that application process. For example: Birth Certificates, Termination Letter from applicant's recent employer, Marriage Certificates, Adoption Documents, Dependency Documents, Tax Information if employed outside the FSM, etc.

Apply means to submit to FSMSSA a signed form or statement that FSMSSA accepts as an application for benefits.

Benefit means any retirement (old age), disability, dependent's, survivor's or other insurance benefit prescribed in the Act, as may from time to time be amended.

Benefit, reduced. Pursuant to PL 16-10, the benefits for old age retirement are reduced by half for employees from age 60 to 64. This reduction only applies to persons who turned 60 on or after January 1, 2011. Benefits will automatically increase to full benefits when the employee turns age 65. During this time period while the employee is aged 60 to 64, he may continue working and still receive benefits. Additionally during this time period, the earnings test that reduces benefits when employees receiving benefits continue to work will not apply. The earnings test then will start to apply again after the employee's 65th birthday.

Board means the Federated States of Micronesia Social Security Board established by 53 FSMC 701 and 702.

Burden of Proof- Applicant means the applicant has the burden of proof to prove that he/she meets the requirements for entitlement to benefits. The burden of proof is by a preponderance of evidence. In order to meet this standard, FSMSSA reviews evidence provided by the applicant, giving the most weight to the evidence as defined in sections 100.8 and 100.9.

Burden of Proof- Employer, means that in the event of an audit of records and contributions submitted by an employer, FSMSSA will provide a preliminary audit and a final audit subject to review and appeal by the employer. The employer must provide evidence to show by a preponderance of the evidence that the audit figures of FSMSSA are incorrect, and show by a preponderance of the evidence what the correct audit figures should be.

Child means a surviving child of an insured person. "Child" shall include the deceased individual's biological children and such adopted children whose confirmed petition for adoption by the wage earner has been approved by a Court of competent jurisdiction prior to the wage earner's death subject to section 100.21-100.26. Additionally, the child must be adopted prior to the adopting wage earner's 55th birthday, except for very limited circumstances.

Contributions means the social security tax imposed upon income of covered employees and social security tax imposed upon employers on account of wages paid to covered employees, as set forth in 53 FSMC 901 and 902.

Contributions, Minimum

Effective January 1, 2007, and thereafter in addition to the requirements of being fully and/or currently insured to qualify for benefits, each employee must also meet standards for minimum contributions during their employment.

1. For retirement benefits an employee must have contributed at least \$2,500.00 in contributions from his contributions under 53 FSMC 901.
2. For disability benefits an employee must have contributed at least \$1,500.00 in contributions from his contributions under 53 FSMC 901.

3. This minimum contribution can be paid at the time of application for benefits, and the employee can still qualify for benefits if they have sufficient quarters of employment to be fully insured or fully and currently insured as required, and they otherwise qualify for benefits.

4. Failure to make the minimum contribution is a separate ground for denial of benefits for those applying on or after January 1, 2007.

5. Once an applicant is provided written notice that he is deficient in payment of the minimum contributions to qualify for retirement or disability benefits, his application will be placed on hold until payment of the minimum contribution is received, or further action is taken by the Administration. At the discretion of the Administrator, a second notice may be issued, providing notice to the applicant that he has a specified time to submit the additional contribution, and if he fails to do so in the allotted time, he or she will be processed for a lump sum benefit based on actual contributions. The minimum contribution cannot be paid from accrued retroactive benefits that would have accrued due to the minimum contribution not being made.

Contributions, Voluntary

A person who is self employed or working outside of the FSM, Republic of Palau, and Republic of the Marshall Islands may voluntarily contribute to the Social Security system under certain circumstances and receive quarters of coverage and accumulate payments to their minimum contribution requirements.

1. For persons who are self-employed sole proprietors with no employees in the FSM, which can include farmers and fishermen, and who make less than \$10,000.00 per year, may make contributions to the Social Security System. The person will be deemed to make \$1,250.00 per quarter, and they must pay the employee and the employer's share. Through January 1, 2013, this payment would be \$87.50 for the employee's share and \$87.50 for the employer's share, totaling \$175.00 per quarter. After January 1, 2013, the payment would increase to \$93.75 for the employee's share and \$93.75 for the employer's share, totaling \$187.50 per quarter. Any self-employed person electing to make such voluntary contributions, must file quarterly returns and is subject to the same deadlines as any other taxpayer. If revenue received by a self-employed person is \$10,000.00 or more, they are subject to the regular mandatory contribution provisions.

2. For persons who are self-employed or regular employees outside of the FSM, Republic of Palau and Republic of the Marshall Islands, they may make voluntary contributions to receive quarters of coverage and to accumulate payments to their minimum contribution requirements, even if they are contributing to another Social Security system. The person must make payments to FSM SSA in the FSM, and file a quarterly return. Any person making these voluntary contributions is subject to the same deadlines as any other taxpayer. The person must also pay both the employee and employer's share of the social security tax. The minimum declaration of earnings is \$1,250.00 per quarter, but the employee may declare more earnings, and pay the tax on the earnings declared.

Disability means inability to engage in any substantial gainful employment by reason of any physical or mental impairment determined by medical evidences provided, which can be expected to last for a continuous period of not less than 12 months.

Date of Disability. The date of the onset of the disability under the amendments is an important date to be determined by the Administration. The date of disability is a separate determination from the date of application. The date of disability is the first date that the employee was unable to engage in any substantial gainful employment. This date must be determined by the Administration in order to determine what are the requirements needed to be fully or fully and currently insured. The date of disability may be determined to be more than two years prior to the application date, however, retroactive disability benefits will only be awarded up to two years prior to the application date.

Divorce means annulment or other ending of marriage, by way of a legal or court finding, or by customary means accepted in the jurisdiction of domicile or residence of the married couple while last living together.

Earnings Test applies to all beneficiaries of FSM SSA benefits. The earnings test applies to the recipient of the FSM SSA benefits. If a recipient of benefits, while receiving benefits, is also working in covered and non-covered employment and receiving earnings, the income received will reduce the benefits to be received by the recipient. The quarterly benefit, (all benefits received in a quarterly period), shall be reduced by one dollar (\$1.00) for every two dollars (\$2.00) earned in a quarter, with no reduction being given for the first \$300.00 earned in a quarter. The earnings test applies to all survivor's benefits, and applies to the beneficiaries receiving the benefits. The earnings test applies to all disability benefits, but in most circumstances receipt of earnings would disqualify a disabled person from further benefits as it may lead to a determination of an ability to participate in substantial gainful employment by the disabled person. Lastly, the earnings test applies to all recipients of retirement benefits, unless the recipient has turned aged 60 after January 1, 2011. Based on current law, any person who turns 60 after January 1, 2011, will only receive half the normal retirement benefits, but the earnings test will not apply to these benefits. This exemption will remain until the recipient turns age 65. At age 65 the recipient will receive full retirement benefits, but the earnings test will apply to benefits received.

Eligible means that a person meets all the requirements for entitlement to benefits, but the person has not yet applied.

Entitled means that a person has applied and has provided convincing evidence of his or her entitlement to benefits.

Evidence means any record, document, signed statement or other matter that helps to show whether a person is eligible for benefits or is entitled to benefits.

Insured person means someone who has enough quarters of coverage to entitle that person to the payment of benefits on his or her earnings record. He or she is fully insured or currently insured subject to 53 FSMC 603 (13).

The following is a chart showing the requirements to qualify for disability and retirement benefits as an insured person, and whether you must be fully or both fully and currently insured.

Fully Insured person,

The following are the relevant time frames and guidelines to be a fully insured employee. There are different requirements for a person applying for disability or for death or retirement benefits. A fully insured person is one who dies or turns age 60 with the minimum number of quarters of coverage to qualify for benefits. A fully insured person who was disabled prior to or on December 31, 2009 and files for disability benefits, is a person who has the minimum number of quarters of coverage to qualify for benefits.

Guidelines

Death	<u>Prior to January 1, 2007</u> 1 quarter per year from age 21 to 60, maximum of 38 quarters, minimum of 12 quarters.	<u>Prior to or on January 1, 2010</u> 1 quarter per year from age 21 to 60 maximum of 50 quarters, (but 39 is actual maximum), minimum of 12 quarters
	<u>After January 1, 2010</u> 50 quarters minimum	
Retirement	<u>Prior to January 1, 2007</u> 1 quarter per year from age 21 to 60, maximum of 38 quarters,	<u>Prior to or on January 1, 2010</u> 1 quarter per year from age 21 to 60 maximum of 50 quarters, (but 39 is actual maximum)
	<u>After January 1, 2010</u> 50 quarters minimum	
Disability	<u>Prior to January 1, 2007</u> 1 quarter per year from age 21 to 60, maximum of 38 quarters, minimum of 12 quarters.	<u>Prior to or on January 1, 2010</u> 1 quarter per year from age 21 to 60 maximum of 50 quarters, (but 39 is actual maximum), minimum of 12 quarters
	<u>On or after January 1, 2010</u> 45 quarters minimum (plus the employee must be currently insured)	

Currently Insured person

This definition only applies to disability claims with an onset of disability on or after January 1, 2010, or to a surviving child who is seeking dependent's benefits from a worker who died while currently insured.

Prior to December 31, 2006
8 of the last 13 quarters
ending when the employee
dies or turns age 60

On or after January 1, 2007
20 of the last 25 quarters
ending when the employee
dies or turns age 60

Marriage means the status or relation of a man and a woman who have been legally united as husband and wife in accordance with the law of the jurisdiction where marriage ceremony took place. Marriage also means the voluntary union for life of a man and a woman as husband and wife, to the exclusion of all others, for the discharge, to each other and to the community, of the duties legally, religiously or customarily incumbent on married persons. The definition of marriage in these regulations, and all relevant state laws, limits a man or a woman, to only one spouse at any given time, and FSMSSA can require evidence to determine who is the appropriate spouse in any given situation. Any benefits due under a claim of marriage will be reviewed pursuant to this regulation, and in no instance may more than one spouse be awarded benefits.

Medical Evidence means any written reports or other documentation prepared by a doctor or other medical personnel, as a result of examination or review of the applicant's physical or mental condition, or oral testimony by a doctor before FSMSSA at any hearing or investigation of the matter. FSMSSA has the right to utilize its own medical examiner to review the medical records of the applicant, or to conduct his or her own examination of the applicant, and prepare a report or present oral testimony. In the event of a conflict of evidence concerning disability of the applicant, or any related issue, the FSMSS Administrator will make his own findings on the issue of disability based on the standard of a preponderance of the evidence presented.

Minimum Benefits are the minimum that an applicant may receive from FSMSSA per month if they are a qualified beneficiary. Minimum benefits only applies to a beneficiary receiving retirement or disability benefits. Dependents or spouses receiving benefits, may receive less than the minimum benefits, and benefits received by dependents or spouses shall be based on actual benefits due the employee, if he or she were still alive.

The following time frames show the monthly minimum benefits.

Prior to January 1, 2007	\$ 50.00 per month
On or after January 1, 2007 and prior to January 1, 2011	\$ 75.00 per month
After January 1, 2011	\$100.00 per month

If back benefits are awarded on an application and the minimum benefits are owed, the back benefits will be calculated based on the minimum benefit in effect for the month that the back benefit is awarded.

Quarters means the time period from January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

Quarters of Coverage means quarters of employment in which contributions have been paid to FSMSSA under 53 FSMC 901 and 902. The following minimum earnings are required.

1. Prior to January 1, 2007, for a quarter to count as a quarter of coverage, the employee must have earned a minimum of \$50.00 in that quarter.

2. Effective January 1, 2007, for a quarter to count as a quarter of coverage, the employee must have earned a minimum of \$300.00 in that quarter. PL. 14-86, effective January 01, 2007.

Remarriage is reviewed by FSMSSA under the same standards used to determine if a marriage has taken place, including if the remarriage was statutory (ceremonial), customary, common law, or a deemed valid marriage. FSMSSA may discontinue benefits based on remarriage in certain situations, though such decision may be appealed by the beneficiary.

Spouse means a surviving spouse of an insured person. Only one spouse may be eligible for benefits, and in the case of competing spouses, the eligible surviving spouse is the individual who last married to the wage earner prior to his/her death subject to section 100.18 of this regulation.

Substantial Gainful Employment means not only an inability to engage in your previous occupation or work, but also means that based on your education, experience and limitations there are no other occupations that you could perform. Substantial gainful employment also is defined as any position for which you receive compensation or earnings for which you provide services, even if it is not in your usual occupation or background, or even if the compensation received is described as allowances, commissions or per diem, as opposed to wages or salary.

We or **Us** refer to the FSM Social Security Administration.

You refer to a person who has applied for or is applying for benefits, or a person on whose behalf someone else has applied or is applying.

§100.3 Evidence to support an application.

These Regulations prescribe the nature and extent of evidence required to prove a claim, as well as the method of taking and furnishing such evidence. FSMSSA considers “evidence” to mean any record, document, signed statement or other matter that helps to show whether an applicant is entitled to benefits or whether a beneficiary continues to be entitled to benefits. Evidence may be presented orally or in writing. However, in making adjudicative decisions on an individual’s right to benefits or payments, FSMSSA generally assigns greater weight to written evidence. Consequently, to be considered evidence for FSMSSA purpose, oral statements must be reduced to writing and signed by the

maker. If the maker cannot sign his name, he may mark his statement with an “X” or other marks and witnessed by at least two disinterested persons, preferably FSMSSA staff. FSMSSA shall accept only relevant evidence, i.e. evidence that tends to make the existence of fact more or less probable than it would be without that evidence. When the best evidence of a fact is presented and the claimant also offers secondary evidence of the same fact, the FSMSSA need not accept redundant evidence, unless secondary evidence raises a substantive question.

§100.4 When evidence is needed.

When you apply for benefits, we will ask for evidence that you are eligible for such benefits. After you become entitled to and are receiving benefits, we may ask for evidence to show whether you continue to be entitled to benefits, or evidence showing whether your benefit payments should be reduced or terminated pursuant to the applicable provisions of the Act or Policies or Regulations promulgated thereunder.

The following are examples of evidence, which would show whether you continue to be entitled to benefits, or whether your benefits should be reduced or even terminated.

1. Evidence received by our offices that you are reemployed, with either cover or non-covered employment, will automatically halt or reduce your benefits due to the application of the earning test as provided in 53 FSMC § 805 and 53 FSMC 603(6). Evidence of employment included employment contract, personal action form, reporting of wages to FSMSSA by employers, information received from an individual although our office is required to make follow-ups to ensure the validity of that person’s re-employment and other documents to prove that re-employment of a person exists.
2. Evidence received by our offices that you are remarried will automatically halt your benefits unless proven otherwise as provided in 53 FSMC §802. Remarriage shall be determined according to Section 100.16 to 100.20 of these Regulations.
3. For eligible workers who reach age 60 after January 1, 2011, PL. 1610, section 804, they may apply for old age benefits, upon turning age 60. The earnings test under section 603(7) will not apply from age 60 to 64, but employees will only receive 50% of their total calculated benefits for old age benefits. When they turn 65, they will qualify for their total calculated benefits for old age benefits, however the earnings test will apply to any additional earnings.

§100.5 Responsibility for giving evidence.

When evidence is needed to prove your entitlement to receive or to continue to receive benefits, you will be responsible for obtaining and providing the evidence to us. Upon your request, we will advise you as to what kinds of evidence would be convincing, and we will consider any relevant evidence you give us. Evidence given to us will be kept confidential and not disclosed to anyone but you except as provided in 53 FSMC 704. You should be aware that 53 FSMC 605 provides criminal penalties for knowingly misrepresenting the facts or for making false statements to obtain social security benefits for yourself or someone else.

§100.6 Failure to provide requested evidence.

Generally, you will be asked to provide us by a certain date specific kinds of evidence to prove you are entitled to benefits. If we do not receive the evidence by that date, we may decide to close your claim at the time. If you are already receiving benefits, you may be asked to provide us by a certain date evidence needed to determine whether you continue to be entitled to benefits or whether your benefits should be terminated or reduced. If you do not provide us the requested evidence by the date given, we may decide that you are no longer entitled to benefits or that your benefits should be terminated or reduced. You may let us know if you are unable to provide us the requested evidence within the specified time, explain why there will be a delay and request additional time. If this delay is due to illness, inability to receive timely evidence you have requested from another source, or a similar circumstance, you will be given additional time to provide us the evidence.

§100.7 Where to provide evidence.

Evidence must be provided to the FSMSSA staffs at the FSMSSA Branch office where you applied for benefits or which requested the information from you. If you are outside the Federated States of Micronesia, evidence should be mailed to the following address:

FSM Social Security Administration
P.O. Box L
Kolonias, Pohnpei FM 96941

§100.8 Original records or copies as evidence.

- (a) General. To prove your entitlement or continuing entitlement to benefits, you may be asked to show us an original document or record. Originals will be returned to you after we have photocopied them. We will also accept copies of original records that are properly authenticated or certified. Uncertified Birth Certificates and other written documents purporting to show evidence of a given fact or event may also be accepted.
- (b) Certified or authenticated copies of original records. You may give us copies of original records or extracts from records if they are certified or authenticated as true and exact copies of the original. Examples of documents of which certified or authenticated copies may be acceptable include:
 - (1) Records of birth, death, or other vital statistics prepared by the appropriate public official and filed with the Clerk of Court or other designated public official;
 - (2) Public records or reports required by law to be recorded and filed in a public office;
 - (3) Records of regularly conducted business activities, created for financial statement, tax, or wages purposes;
 - (4) Other records required by law or regulation to be recorded or filed in a public office.
- (c) Certification or Authentication. Custodians of such records, or employees of FSMSSA, are authorized to certify or authenticate copies of records recorded and filed in their respective offices.

- (d) Uncertified copies of original records. You may give us an uncertified copy of a birth registration or another public record as evidence where it is the practice of the local registrar to issue them in this way. However, we may require you to provide an original letter from the local birth registrar, stating that it is not their practice to issue certified copies.

§100.9 How we decide what is sufficient evidence to meet your burden of proof.

When you give us evidence, we will examine it to see if it is relevant, reliable, and meets the standards set for you to qualify for the benefits claimed. In deciding if evidence is relevant and reliable, we consider whether:

- (a) Information contained in the evidence was given by a person in a position to know the facts;
- (b) There was any reason to give false information when the evidence was created;
- (c) Information contained in the evidence was given under oath, or with witnesses present, or with the knowledge there was a penalty for giving false information;
- (d) The evidence was created at the time when the event took place or shortly thereafter;
- (e) The evidence has been altered or has any erasures on it without justification;
- (f) Information contained in the evidence agrees with other available evidence, including our records; and
- (g) Any other factors affecting the weight to be accorded the evidence.

Evidence of Age, Death, Dependency and Disability

§100.11 Evidence of age.

- (a) When applying for retirement benefits, as provided in 53 FSMC 801 (2), and dependent child's, or child disability, benefit under 53 FSMC 803, evidence of age must be produced by or on behalf of the applicant.

§100.12 Evidence of Birth

A public, religious or family record of birth established before a person reaches the age of 5 constitutes preferred evidence of that person's date of birth.

- (a) In most cases at least two of the following types of evidence shall be required:
- (i) Birth Registration or Hospital Birth Record obtainable from the Office of Clerk of Court of the State or other public office where such records are maintained in your State or jurisdiction;
 - (ii) Church Record of baptismal certificates, maintained by churches or religious groups;
 - (iii) Employment record;
 - (iv) Family record or personal Bible record;
 - (v) School record;
 - (vi) Census record*;
 - (vii) Official Passport;

- (viii) Election record;
- (ix) Immigration record;
- (x) Marriage record; and
- (xi) Insurance policy or policies.

*Census record may be considered but may not always be considered convincing.

- (b) Other evidence of age. If you cannot obtain any of the preferred evidence listed above to prove your age, you may provide a sworn statement signed by a physician or midwife who was present at your birth.
- (c) In case there exists any reasonable doubt as to the accuracy of the evidence of age you provide, we may require you to provide other documentary material, prepared within the five (5) years preceding the date you filed your application, which provides evidence of your date of birth.
- (d) With the recent changes in Social Security laws, the date of birth is very important as it may affect different requirements for the employee to be fully or currently insured.

§100.13 Evidence of Death.

- (a) When evidence of death is required. If you apply for survivor's benefits on the basis of the earnings record of a deceased person, we will ask for evidence of the date and place of his or her death.
- (b) Preferred evidence of death. The preferred evidence of a person's death includes:
 - (i) A certified copy of the person's Death Certificate, or its equivalent, or an extract of it, from the Office of the Clerk of Court of the State where the individual died, or other public office in the locality where the applicant resides;
 - (ii) A coroner's report of death, or verdict of a coroner's jury;
 - (iii) A statement of a funeral director, or an attending physician or intern of an institution where death occurred;
 - (iv) A certified copy of, or an extract from, an official report or finding of death made by an agency or department of the FSM National or a State government; or
 - (v) If death occurred outside the FSM, an official report of death by an FSM Consul or other appropriate employee of the FSM Department of Foreign Affairs; or a certified copy of the public record of death from the foreign country.
- (c) Other evidence of death. If you cannot obtain the preferred evidence of a person's death, you will be asked to explain why and to give us other and competent evidence such as: the signed and sworn statements of two or more people with personal knowledge of the death, giving the place, date and cause of death.

§100.14 Presumption of Death

- (a) You may provide a certified copy of, or extract from, an official report or finding by an agency or department of the national or state government that a missing person is presumed to be dead. Unless we have other evidence showing an actual date of death, we may use the date he was reported missing as the date of death.
- (b) Signed statements by those in a position to know, and other records, which show that the person has been absent from his residence and has not been heard from for at least 7 years, may create a presumption of death. Before a presumption of death will arise from the fact that a person has neither been seen nor heard from for 2 years, it must be affirmatively shown that the person has been absent from his place of residence or usual place of abode, that the absence is unexplained, that there are persons who would have been likely to have heard from the person during the 2-year period if he were alive, that those persons have not heard from him during that period, and that a diligent search and all inquiries appropriate to the circumstances have been made. The period of absence must be a continuous one. If the presumption of death is not rebutted pursuant to §100.15, we will use either the date he became absent, the date ending the 2-year period, or some other date, as the person's date of death, depending upon the weight of the evidence presented; or
- (c) You may provide an order from a court of competent jurisdiction declaring or confirming the death of a person.

§100.15 Rebuttal of the presumption of death.

A presumption of death based on §100.14 can be rebutted by evidence that establishes that the person is still alive or explains the individual's absence in a manner consistent with continued life rather than death.

Example 1: Evidence in a claim for surviving child's benefits showed that the worker had wages posted to his earnings record in the year following the disappearance. It was established that the wages belonged to the worker and were for work done after his "disappearance". In this situation, the presumption of death is rebutted by evidence (wages belonging to the worker) that the person is still alive after the disappearance.

Example 2: Evidence shows that the worker left the family home shortly after a woman, whom he had been seeing, also disappeared, and that the worker phoned his wife several days after the disappearance to state he intended to begin a new life in the United States, or elsewhere. In this situation the presumption of death is rebutted because the evidence explains the worker's absence in a manner consistent with continued life.

EVIDENCE OF MARRIAGE OR REMARRIAGE

§100.16 Evidence of Marriage – Surviving Spouse

General. Surviving spouse. If you apply for benefits as the insured person's surviving spouse under 53 FSMC 802, we will ask for evidence of the marriage and where and when it took place. If you are a surviving spouse who has been remarried after your marriage to the insured person ended, we may also ask for evidence of the subsequent marriage. In deciding whether the marriage to the insured person is valid or not, we will follow the law of the jurisdiction where the marriage took place. In addition, what evidence we will request depends upon whether the insured person's marriage was a statutory (ceremonial) marriage, a customary marriage, a common-law marriage, or other marriage otherwise deemed valid for purposes of the Act.

Re-Marriage: if you are a surviving spouse who is receiving social security benefits and FSMSSA receives convincing evidence from any credible source that you have re-married, your surviving spouse benefits will cease unless you prove that you have not remarried.

Discontinuation of surviving spouse social security insurance benefits may be instituted by the Administrator based upon receipt of evidence from a credible source that the surviving spouse has re-married. Written notice of such discontinuation will be issued by the Administrator and served on the surviving spouse.

A written notice will be mailed to the address of record of the surviving spouse, or if there is no address of record, will be available at the local office of the FSM Social Security Administration, with notice going out over the radio no less than four times in a one month period starting from the date of the decision, that the surviving spouse must come to his Social Security Office to pick up a copy of the order.

The right of appeal of this decision is the same as described in §100.50, and a failure to appeal within the relevant time frames, renders the decision of the Administrator final.

§100.17 Evidence of a valid statutory (ceremonial) marriage.

- (a) *General.* A valid statutory (ceremonial) marriage is one that follows the requirements set by law in the State or jurisdiction where the marriage ceremony took place; for example, requirements regarding who may perform the marriage ceremony, what licenses are required, number of witnesses needed, capacity and ages of the parties, residency requirements, consent of the parties or their parents or guardians or relatives, and other such rules.
- (b) *Preferred evidence.* Preferred evidence of a statutory (ceremonial) marriage includes:
- (1) A Marriage Certificate duly executed and signed by the parties and the person who performed the marriage ceremony;
 - (2) If the marriage is between a citizen of the FSM and a non-FSM citizen, a license to marry if required by applicable law;
 - (3) Religious record of marriage; or
 - (4) Copy or extract of a marriage registry maintained at the Office of the Clerk of Court in the various State Courts, or other government offices.

- (c) Other evidence of a ceremonial marriage. If preferred evidence of a ceremonial marriage cannot be obtained; we will ask you to explain why and to give us a signed statement of the clergyman or official who performed the marriage ceremony, or other convincing evidence of the marriage. An affidavit of marriage may be considered under the discretion of the FSMSSA Administrator.

§100.18 Evidence of customary marriage and common-law marriage.

- (a) ***Customary Marriage.*** Customary marriage is a marriage between two citizens or habitual residents of the same jurisdiction or State solemnized in accordance with the recognized custom of that jurisdiction or State. State court decisions on this subject may be consulted in cases of doubt, but such Court decisions shall not be given conclusive effect unless they are supported by written findings of fact.
- (b) ***Common-law Marriage.*** A common-law marriage is one based not upon ceremony and compliance with legal formalities, but upon the agreement of two persons, legally competent to marry, to cohabit with each other in the same household, or as is sometimes referred to as “under one roof”, who in fact cohabited in the same household for a period of no less than a year, with the intention of being husband and wife.
- (c) ***Evidence of a claimed “customary marriage” or “common-law marriage”*** would require the same degree of evidence to prove such a marriage in the court of the jurisdiction of the domicile of the marriage.
- (d) ***Preferred evidence – Customary Marriage:*** For proof of customary marriage the following minimum evidence is required:
- (1) Nationality, citizenship and legal residence of the parties;
 - (2) Evidence of consent given by parents or relatives of both parties;
 - (3) Solemnization, and customary or traditional rituals practiced to effect a marriage.
 - (4) Signed statement or notice of the marriage, showing the names and addresses of the persons married, their ages and the date of marriage, or signed statement of the Village Chief or Traditional Leader, or counterpart in the community, with at least 2 witness signatures declaring that the marriage is or was recognized in the community in which the couple reside or resided, or sufficient oral declarations of the same to the FSMSSA Branch Manager by members of the community. The Branch Manager will report all such oral declarations to the Administrator in a written report.
- (e) ***Preferred evidence – Common-law Marriage:*** Preferred evidence of a common-law marriage includes:
- (1) Copy of a contract of marriage executed by the parties to the marriage;
 - (2) If both the husband or wife are dead, the signed sworn statements of one blood relative of each;
 - (3) If either the husband or wife is dead, the signed sworn statements of the one who is alive and those of two blood relatives of the deceased person;

- (f) ***Other evidence of common-law marriage.*** If you cannot provide preferred evidence of a common-law marriage, we will ask you to explain why and to provide us other convincing evidence of the marriage. We may also ask other persons, including blood relative others in the community in which the couple resided to provide us such evidence.

Note: All signed statements should show why the signer believes there was a marriage between the two persons. If a written statement cannot be obtained from a blood relative, one from another person may be provided instead. If the statement is intended to show there was a common law marriage under the laws of a jurisdiction outside the FSM, then the statement should also include copies of the laws related to common law marriages in the foreign jurisdiction, and explain why the relationship of the couple would be a common law marriage under the laws of such foreign jurisdiction. FSMSSA will only recognize one marriage of any type at any given time.

§100.19 Evidence of a deemed valid marriage.

- (a) ***General.*** A deemed valid marriage is a ceremonial marriage we consider valid for the purpose of the Act even though the correct procedures set by statute were not strictly followed or a former marriage had not yet ended. We will ask for evidence described in this section.
- (b) ***Preferred evidence.*** Preferred evidence of a deemed valid marriage includes:
- (1) Evidence of the ceremonial marriage as described in §100.18(b);
 - (2) If the insured person is alive, his or her signed sworn statement that he or she went through the ceremony in good faith and his or her reasons for believing the marriage was valid;
 - (3) The other party's signed sworn statement that he or she went through the marriage ceremony in good faith and his or her reasons for believing it were valid;
 - (4) If needed to remove a reasonable doubt, the signed sworn statements of others regarding whether the applicant went through the marriage ceremony in good faith; and
 - (5) Evidence the parties were living in the same household.
- (C) ***Other evidence of a deemed valid marriage.*** If you cannot obtain preferred evidence of a deemed valid marriage, we will ask you to explain why and to provide us other convincing evidence of the marriage.

§100.20 Evidence that marriage has ended.

- (a) When evidence is needed that a marriage has ended. If you are an insured person's surviving spouse and you had been married before, but your previous spouse is deceased, we will ask you for evidence of the death of your previous spouse. We may ask for evidence that a previous marriage had otherwise ended before your most recent marriage if this is needed to show the latter marriage was valid. If you apply for benefits as an unmarried person and you had a marriage that was annulled, we will ask for evidence of the annulment.
- (b) ***Preferred evidence.*** Preferred evidence that a marriage has ended is:
- (1) A certified copy of a decree of divorce or annulment;

- (2) Evidence the marriage ended by the death of the former spouse (see §100.13).
- (c) *Other evidence a marriage has ended.* If you cannot obtain preferred evidence your marriage has ended, we will ask you to explain why and to provide us other convincing evidence to prove that the marriage ended.
- (d) If there are two or more applicants for benefits as a surviving spouse, FSMSSA will review all evidence presented to determine if there was a termination of marriage to one or more spouses claiming benefits.

EVIDENCE FOR CHILD'S BENEFITS – DEPENDENT CHILD 53 FSMC 803.

§100.21 Evidence of parent and child relationship.

- (1) A child who is dependent upon a person entitled to old age benefits or who was dependent upon an individual who died fully insured or currently insured, shall be entitled, upon filing an application, to a child's insurance benefit for each month beginning with the month of death of the insured person and ending with the month preceding whichever of the following first occurs:
 - (a) the child attains age 18 years (except that benefits are payable (i) until the child reaches 22 years if a bona fide student, and (ii) during the disability of a child who was disabled before the attainment of age 22; (53 FSMC 803 (1) (a)) (See regulation 100.44 for definition of disability);
 - (b) the child is married; (53 FSMC 803 (1) (b)); or
 - (c) the child is adopted by another parent or parents (53 FSMC S. 803 (1) (C)).
- (2) ***Preferred Evidence.*** We will require at least two types of preferred evidence clearly referring to the deceased wage earner and the claimant as parent and child, including but not limited to the following:
 - (a) Court Decree, Judgment or Order declaring a parent-child relationship of the insured person and the child, provided that the petition for the adoption was filed by the wage earner prior to his/her death;
 - (b) Court decrees or orders appointing the deceased wage earner as the child's legal guardian, provided that the petition of guardianship was filed by the wage earner prior to his/her death;
 - (c) A court's statement of the purpose for which the Court entered any relevant decree or order;
 - (d) A court's statement of the customarily recognized guardian, supervisor or caretaker of a child;
 - (e) Documents referring to the deceased wage earner as the natural parent of the child;
 - (f) Documents referring to date of birth of the child (Birth Registration/Certificate, school record, religious record, family record, civil government record, etc.);
 - (g) Documents referring to school attended in the past or currently being attended by the child;
 - (h) Evidence that the insured person and the child lived in one household, or that the insured person contributed to the support of the child;
 - (i) Evidence that the child was the grandchild and dependent of the insured person for his/her support.
 - (j) Any other relevant evidence tending to prove child-parent relationship.

§100.22 Evidence of dependency.

A child shall be deemed dependent upon his proven natural parent or adoptive parent unless such parent was not living in the same household with or contributing to the support of such child.

- (a) ***When evidence of a child's dependency is needed.*** If you or someone on your behalf apply for child's benefits, we may request evidence that the child was the insured person's dependent at a specific time – usually the time you applied or the time the insured died or became disabled. What evidence we request depends upon how you claim to be related to the insured person.
- (b) ***Preferred Evidence*** – at least two types of preferred evidence shall be required.
 - (1) Evidence that the insured person and child were or are living together in one household;
 - (2) Evidence that the insured person was/is contributing to the support of the child;
 - (3) the child is listed as a child beneficiary on the insured person's life insurance policy, if the insured person has or had insured his life;
 - (4) Official school records showing the insured person as provider for the child; or
 - (5) At the discretion of the FSMSSA Administrator, any other documents or evidence that will prove dependency of the child on the insured person.

§100.23 Evidence of adoption.

In determining the evidence sufficient to establish the adoption of a child by an insured person, consideration will be given to the provisions of 53 FSMC 603 (3), and 53 FSMC 803.

1. *Preferred evidence includes:*

- a. Court decree/order of adoption provided that the petition was filed by the insured person; or
- b. Court decree/order confirming adoption effected under recognized custom, provided that the petition was filed by the insured person.
- c. The child was adopted prior to the adopting wage earner's 55th birthday.
- d. In no event will the adopted child be accepted as a beneficiary if any part of the adoption process took place after the death of the wage earner.

§100.24 Evidence of equitable adoption.

In some jurisdictions, the law will treat someone as child of another if he or she agreed to adopt the child, the natural parents or the person caring for the child were parties to the agreement, he or she and the child then lived together as parent and child, and certain other requirements are met. If you are a child who has this kind of relationship to the insured person, we will ask for documentary evidence of the agreement if it is in writing. If it is not in writing or cannot be produced, other evidence may be accepted. Also, the following evidence may be requested: written statements of your natural parents and the adopting parents (wage earner or insured person) and other evidence of the child's relationship

to the adopting parents. It should also be shown the child was adopted prior to the adopting wage earner's 55th birthday.

§100.25 Evidence of customary adoption.

Preferred evidence. In addition to the types of preferred evidence listed in §100.22 above, evidence of:

- (1) Court decree/order confirming adoption in accordance with recognized custom, provided that the petition was filed by the wage earner prior to his/her death;
- (2) Signed sworn statement by the wage earner who adopted the child;
- (3) Any other signed documents by wage earner to prove a customary adoption, at the FSMSSA Administrator's discretion.
- (4) The child was adopted prior to the adopting wage earner's 55th birthday.

§100.26 Allowance of an adoption after the wage earner's 55th birthday.

The Administrator has discretion to authorize adoption of a child after the wage earner's 55th birthday, but only under extremely limited (exceptional) circumstances.

- (1) It is a discretionary decision by the Administrator and based on the following factors.
- (2) Court decree/order of adoption provided that the petition was filed by the insured person;
or
- (3) Court decree/order confirming adoption effected under recognized custom, provided that the petition was filed by the insured person.
- (4) Whether the adopted child's biological mother, and/or biological father were alive at the time the adoption took place;
- (5) If one or both biological parents were alive at the time of adoption, whether one or both parents were acting or were capable of acting as a primary caregiver at that time;
- (4) Whether the adopting parent is a relative of the adopted child;
- (5) Whether, at the time the adoption took place, there were relatives, not including the adopting parents, who would have been appropriate guardians for the adopted child;
- (6) Whether the adopting parent was a primary caregiver for the adopted child at the time of adoption and continued in that role after the adoption took place;
- (7) Whether future eligibility for Social Security benefits was a significant factor

Exceptional circumstances that may qualify would be a situation where the natural parents were deceased, no siblings of either parent were either alive or could reasonably take the child, and the child actually was dependent and lived with a grandparent.

§100.27 Evidence of school attendance for child age 18 or older.

If you apply for child's benefits as a student age 18 or over, we will ask for evidence that you are attending school as provided under 53 FSMC §803 (1) (a). We may also ask for evidence from the school that you attend, showing your status at the school. We will ask for the following evidence (subject to 53 FSMC 803):

- (a) A certification from the school's admissions office that you are attending the school as a bona fide student.
- (b) If you apply before the school year has started and the school is a college, university or other post-secondary institution, a letter of acceptance from the school, receipt for payment of tuition and/or fees, or other evidence showing you are enrolled or have been accepted at that school will be required.

OTHER EVIDENCE REQUIREMENTS

§100.28 Evidence of Employment

From FSMSSA's perspective, the usual evidence of employment is social security tax returns filed by an employer. If such returns have not been filed, and an application for benefits is presented to FSMSSA on the basis of claimed but undocumented past employment, the preferred evidence will be documentary evidence contemporaneous with the claimed past employment, such as pay stubs, time sheets, and FSM wages and salaries tax returns from the time of the past employment. If there is no such preferred evidence, a claimant may present signed and sworn written statements regarding the claimed past employment for FSMSSA's consideration.

§100.29 Evidence of having a child in your care.

If you apply for surviving child's benefits based upon your caring for a child, we will request evidence that you have the insured person's child in your care. What evidence we will request depends upon whether the child is living with you or with someone else. You will be asked to give the following evidence:

- (a) If the child is living with you, your signed sworn statements showing that the child is living with you.
- (b) If the child is living with someone else:
 - (1) Your signed sworn statement showing with whom the child is living and why the child is living with someone other than you. We will also ask when the child last lived with you and how long this separation will last, and what care and contributions you provide for the child;
 - (2) The signed sworn statement of the one with whom the child is living showing what care you provide and the sources and amounts of support received for the child. If the child is in an institution, the official in charge of the institution should sign the statement. These statements

- are preferred evidence. If there is a court order, or written agreement, showing who has custody of the child, you will be asked to give us a copy; and
- (3) If you cannot get the preferred evidence described in paragraph (b) (2) of this section, we will request other convincing evidence that the child is in your care.

§100.30 Evidence of insured person's domicile.

- (a) ***When evidence of the insured's domicile is needed.*** We may ask for evidence of where the insured person's domicile was at the time you applied, or the time he or she died, if:
 - (1) You apply for benefits as the insured's surviving spouse or child; and
 - (2) Your relationship to the insured depends upon the law of the jurisdiction of the place where the insured had his or domicile when you applied for benefits or when he or she died.
- (b) ***What evidence is needed?*** We will ask for the following evidence of the insured person's domicile:
 - (1) your signed statement showing where the insured individual resided.
 - (2) If the statement in paragraph (b) (1) of this section, or other evidence, raises a reasonable doubt about where the insured individual's permanent home was, evidence of where he or she paid personal income taxes, or voted; or other convincing evidence of where his or her permanent home was; and
 - (3) His or her Post Office address.

MISCELLANEOUS PROVISIONS

§100.31 Request for change in Social Security Records.

1. ***Name change.*** The individual must fill out the FSMSSA Request for Change in Records form and attach the following documents:
 - (a) A court order confirming the name change;
 - (b) Copy of the individual's social security card.
2. ***Name Spelling Error.*** The individual must fill out the FSMSSA request for change in SS record form and attach the following documents:
 - (a) Copy of the individual's social security card;
 - (b) Copy of birth certificate.
3. ***Change in name due to marriage.*** The individual must fill out the FSMSSA Request for Change in Record form and attach a marriage certificate.
4. ***Change in Date of Birth.*** The individual must provide documents of the kinds listed in Section 100.12 of this regulation. Such documents must be at least within five years preceding the date of the filed application.

§100.32 Amount of retirement, disability and survivor insurance benefits (53 FSMC §804 and 806).

A. Retirement

For benefits beginning after January 1, 2011

1. For employees who are 65 and over after January 1, 2011; 16.5% of the first \$10,000 of cumulative covered earnings, plus 3 percent of cumulative covered earnings in excess of \$10,000 but not in excess of the next \$30,000.00, plus 2% of the cumulative covered earnings in excess of \$40,000 but not in excess of the next \$262,500, plus one percent of cumulative covered earnings in excess of \$302,500.
2. For employees who turn 60 after January 1, 2011, such individual from ages 60 to 64 will receive fifty percent (50%) of the total of all the described benefits in this subsection, 16.5% of the first \$10,000 of cumulative covered earnings, plus 3 percent of cumulative covered earnings in excess of \$10,000 but not in excess of the next \$30,000, plus 2% of the cumulative covered earnings in excess of \$40,000 but not in excess of the next \$262,500, plus one percent of cumulative covered earnings in excess of \$302,500. These payments in this subsection only, shall be made without reduction pursuant to the earnings test in section 603(7).

For benefits beginning after January 1, 2007, but before January 1, 2011.

3. For employees who turn 60 between January 1, 2007 but before January 1, 2011; 16.5% of the first \$10,000 of cumulative covered earnings, plus 3 percent of cumulative covered earnings in excess of \$10,000 but not in excess of the next \$30,000.00, plus 2% of the cumulative covered earnings in excess of \$40,000 but not in excess of the next \$262,500, plus one percent of cumulative covered earnings in excess of \$302,500.

For benefits beginning before January 1, 2007

4. For employees who turn 60 prior to January 1, 2007; 16.5 percent of the first \$10,000 of cumulative covered earnings, plus three percent of cumulative covered earnings in excess of \$10,000 but not in excess of the next \$30,000, plus two percent of cumulative covered earnings in excess of \$40,000.

B. Disability

For benefits beginning after January 1, 2007

1. For an employee with a date of disability of January 1, 2007 or later; 16.5% of the first \$10,000 of cumulative covered earnings, plus 3 percent of cumulative covered earnings in excess of \$10,000 but not in excess of the next \$30,000.00, plus 2% of the cumulative covered earnings in excess of \$40,000 but not in excess of the next \$262,500, plus one percent of cumulative covered earnings in excess of \$302,500, through the date of disability.

For benefits beginning before January 1, 2007

2. For an employee with a date of disability prior to January 1, 2007, 16.5 percent of the first

\$10,000 of cumulative covered earnings, plus three percent of cumulative covered earnings in excess of \$10,000 but not in excess of the next \$30,000, plus two percent of cumulative covered earnings in excess of \$40,000, through the date of disability.

C. The surviving spouse of a fully insured eligible worker shall be paid a monthly benefit in an amount equal to sixty percent of the retirement or disability insurance benefit for the deceased spouse at the date of death. If the insured eligible worker died after January 1, 2011, and was between the ages of 60 and 64 when he died, the monthly benefit shall be calculated as though the eligible worker was age 65 but using the same formula through the date of death.

D. If the spouse of the deceased insured worker is eligible for retirement or disability benefits based on his or her own employment coverage, and is also eligible for survivor's benefits, the spouse shall receive whatever benefit pays the highest monthly payment, but under no circumstances can the spouse receive both benefits.

E. The surviving children may receive 15% each and up to 40% total of the retirement or disability benefit if the surviving spouse is still living. If the surviving spouse is deceased, each surviving child may receive 15% of the retirement or disability benefit each, not to exceed 100% of the retirement or disability benefit depending on the number of surviving children.

F. The total survivor's benefit paid to the spouse and children may not exceed the retirement or disability benefit calculated for the decedent as of the date of death, or at age 65 if the date of death is after January 1, 2011, and the decedent is between ages 60 and 64.

G. A Surviving child with both parents fully insured will have to receive the highest monthly benefit payment of the two wage earners, and a lump sum 2% of the other deceased parent's cumulative covered earnings, less the sum of all benefits, if any, received by that deceased parent.

H. The minimum monthly benefit for an insured, eligible individual shall be \$100.00 per month effective January 1, 2011, PL 16-10. Prior to January 1, 2011, and on or after January 1, 2007, the minimum monthly benefit for an insured eligible individual was \$75.00 per month. Prior to January 1, 2007, the minimum monthly benefit was \$50.00 per month.

I. The minimum monthly benefit only applies to the individual wage earner, and any benefits paid to dependents may be less than the minimum monthly benefit.

§100.33 Lump sum benefits and Optional Lump sum benefits (53 FSMC Sections 807 and 810).

1. When a worker who is a citizen of the Federated States of Micronesia, Republic of Palau, or Republic of the Marshall Islands, dies and he or she is not fully or currently insured, there shall be a lump sum of 4% of his cumulative earnings paid to his or her survivors in the following order (unless the deceased has provided otherwise by will):

- a. spouse, if living, shall receive the entire lump sum; if spouse is deceased, children in equal shares, or guardian if children are minors;
 - b. parents in equal shares; or
 - c. duly appointed legal representatives of the deceased or, if none, person or persons determined to be entitled thereto under laws and customs of the last residence of the deceased person.
2. An individual who is not fully insured and reaches retirement age may elect to receive an optional lump sum payment of four percent of his or her total cumulative covered earnings. Once the election to accept that lump sum payment is made, the individual shall lose credit for all quarters of coverage earned up to that point. Eligible individuals are those who have resided in the FSM for at least 1 year preceding their applications for benefits, and who have either resided in the FSM for a period of not less than 10 years total, or who were born in the FSM. This provision is based on residency not citizenship.

§100.34 Overpayments and underpayments (53 FSMC Section 808).

Whenever an error has occurred, either by overpayment or underpayment of insurance benefits, adjustment shall be made by increasing or decreasing subsequent payments to which such individual is entitled. If such individual dies before such adjustment has been completed, adjustment shall be made by increasing or decreasing subsequently paid survivor benefit payments payable with respect to the wages which were the basis of benefits of such deceased individual.

§100.35 Reemployment after retirement – (53 FSMC Section 805).

- (a) When a person receiving retirement benefits returns to employment, his or her benefits shall be suspended immediately pending an earning test as set forth in 53 FSMC 603(6), unless the person has turned age 60 after January 1, 2011. Such person will receive 50% of their normal retirement benefit, until they turn age 65, but the earnings test will not apply. The earnings test and this section will apply once a person receiving retirement benefits turns age 65.
- (b) A claimant must provide a wages report consisting of the documentation needed to apply the earning test. If a retiree resumes employment outside of the FSM, the claimant must provide check stubs or W-2 forms or other such documentation as may be needed to apply the earning test. A termination letter from the employer is required before full benefit payments can resume. If a claimant fails to provide documentation requested by FSMSSA, benefit payments to that claimant will automatically cease. The claimant has the right to challenge the decision on the FSMSSA by requesting a hearing from the FSMSSA pursuant to section 100.50, within the relevant time limits provided. This section does not apply to persons who turn age 60 after January 1, 2011, and during the time that they are ages 60 to 64.

(c) New Retirement – (53 FSMC Section 804).

All fully insured wage earners -who turn 60 years old on or after January 01 2011, will receive 50% of his or her total calculated retirement benefits from age 60 to 64 and continued employment shall not be

subject to earnings test adjustments. This provision is mandatory, and a claimant may not select to retire from employment and seek full benefits.

When these fully insured wage earners reach age 65, they will be qualified to receive 100% of their total calculated retirement benefits subject to earnings test adjustments if employment continues.

A claimant must apply for retirement with documents of birth juristic in the FSM Social Security program (see 100.12)

§100.36 Retirement applicants who owe social security tax – (Section 607 [PL 5-120 § 4]).

If a person, whose earnings are from self-employment, which includes partnerships, and corporations in which FSMSSA seeks to pierce the corporate veil, and this person applies for retirement benefits from these self-employment earnings, and the self-employed person, partnership or corporation has failed to make the required social security contributions, his/her benefit application will be put on hold pending a full settlement or satisfactory resolution of the account. The party involved has the right to challenge the decision of the FSMSSA by requesting a hearing from the FSMSSA pursuant to section 100.50, within the relevant time limits provided. An exception may be made at the discretion of FSMSSA if a payment agreement is entered into which would pay 60% of benefits received by the retirement applicant to FSMSSA to pay off the delinquent account.

§100.37 Change of ownership.

Prior to receiving retirement benefits, a sole proprietor or self-employed person, which includes partnerships, and corporation in which FSMSSA seeks to pierce the corporate veil must fill out the FSMSSA change of ownership form and submit documentation of transfer of ownership or dissolution of the business to the nearest FSMSSA branch office. Before eligibility for retirement benefits, the FSMSSA shall verify that the individual has made the social security contributions required by law, or has resolved his or her account under Section 100.36 of these regulations.

§100.38 Corporation

A Corporation is a legal entity which is chartered by the National Government, and separate and distinct from the persons who own it. Nonetheless, it is regarded by the courts as an artificial person; it may own property, incur debts, sue or be sued. It has three chief distinguishing features:

1. Limited Liability – owners can lose only what they invest;
2. Easy transfer of ownership through the shares of stocks;
3. Continuity of existence.

For collection of Social Security Tax Purposes – any officers, directors, management officials or persons with a substantial controlling interest in the corporation who have employee-employer relationship with the Corporation must pay SS tax as an employee. In collecting delinquent accounts, FSMSSA may in appropriate instances ask a Court to disregard the corporate structure of a corporation to “pierce the corporate veil”, when the corporation fails to pay Social Security Tax properly assessed, or pursuant to a

scheduled Payment Agreement executed by an officer of the corporation and a representative of FSMSSA. Determination of whether to ask the Court to pierce the corporate veil, resulting in possible personal liability of the person(s) controlling the business, will depend upon factors including the following:

- (1) Insufficient capitalization;
- (2) Nonobservance of corporate formalities;
- (3) Nonpayment of dividends despite evidence of profit;
- (4) Insolvency of corporation;
- (5) Siphoning of funds by dominant shareholder(s);
- (6) Nonfunctioning of other officers and directors;
- (7) Absence of corporate records (like records unavailable without convincing justification, unaccounted for, etc.); and
- (8) Existence of corporation as merely façade for individual dealings.
- (9) Any other legal or equitable reason so that substantial justice is performed.

In the event FSMSSA seeks to pierce the corporate veil, they have the right to seek both the employee's contributions under 53 FSMC 901 and the employer's contributions under 53 FSMC 902 for any employees of the corporation from any of the individuals who are officers, directors, management officials or persons with a substantial controlling interest in the corporation, on behalf of their own employment relationship with the corporation, and that of any other employee of the corporation.

§100.39 Partnership

All partnerships are assumed to be general partnerships, where each partner is responsible for debts and liabilities. A limited partner may be recognized by FSMSSA, however, the burden of proof is on the partner claiming that the partnership is a limited partnership. It is presumed by the FSMSSA that all partners are working partners, earning wages from the partnership. If a partner is involved in a partnership, solely as a limited partner, with no work involved, the burden of proof is on this partner to show to FSMSSA that he is in fact a limited partner.

For Social Security Tax Purposes – The following tax assessment must be adhered to:

1. No Employees – The SS tax will only be assessed on each partner who has an employee-employer relationship and deemed to receive wages based on 2.5% of the gross revenue of the business for the previous year, as applicable to a sole proprietorship with no employees, and as long as the business the previous year had gross revenue in excess of \$10,000;
2. With Employees – The SS tax will only be assessed on each partner who has an employee-employer relationship based on twice as much as the highest paid employee or as applicable to Sole-Proprietorship with employees;
3. If all Partners claim no working relationship with the business organization, the SS tax will be assessed on all of the partners based on the “Self-Employed with employees” or Self-Employed with No Employees” calculation .

§100.40 Deadlines for contributions

All employers are required to file Social Security tax returns and pay social security taxes on a quarterly basis not later than the 10th of the month following the end of the calendar quarter. The quarters and deadlines are as follows:

<u>Period</u>	<u>Deadlines</u>
January 1 to March 31	April 10
April 1 to June 30	July 10
July 1 to September 30	October 10
October 1 to December 31	January 10

If the deadline falls on a weekend or holiday, the working day immediately following the weekend or holiday shall be the filing deadline. Incomplete employer's quarterly tax returns will not be accepted. If an incomplete return is submitted before the due date and is resubmitted after the filing period has ended, penalty and interest assessments will be assessed. Penalties and interest commence on the day after the filing deadline for any individual quarter.

§100.41 Employer contributions

The employee and employer combined contribution shall be 14%, 7% from the employee and 7% from the employer. The employee's contribution shall be collected by the employer by deducting the amount of the tax from the wages when paid. The employer shall pay the entire 14% directly to FSMSSA. Prior to October 1, 2010, the employee and employer combined contribution was 12%, 6% from the employee and 6% from the employer.

For any quarter for which an employer fails to pay the contributions attributable to an employee who worked during that quarter, the employee shall not be credited with coverage for that quarter until the employer pays the arrearage in full. Thus, employer's delinquencies can result in employees' ineligibility to receive benefits, or an eligibility date later than it would have been had contributions been timely made. It is not possible for FSMSSA's auditing and collection staff to timely discover all such delinquencies and collect such arrearages and FSMSSA shall not be liable to employees who are ineligible (or subject to late eligibility) on account of employer's delinquencies. Employees are therefore encourage to periodically check with FSMSSA's State branch offices to verify that their employers are making the required contributions on their behalf.

§100.42 Audit of records; power to subpoena; administration of oaths (53 FSMC §706).

- (a) The Board and its authorized representatives have the power to audit employer records, issue subpoenas and administer oaths. The audit shall be an enforcement tool, but it shall also be used to periodically educate employers to insure that employees receive the benefits due them.
- (b) Audits may be conducted any time during the calendar year as determined by the Branch Managers in each of the FSM States or upon directives from the FSMSSA Administrator.
- (c) In any subsequent legal action by the FSMSSA to collect unpaid taxes, penalties and/or interest, all final audits prepared by FSMSSA will be presumed correct, unless disputed pursuant to

regulation 100.50. Prior to the issuance of the final audit, a preliminary audit will be forwarded to the employer for review, and the employer will have 30 days to provide information or to dispute the findings of the FSMSSA in the preliminary audit. FSMSSA will review any submissions then issue the final audit. If the employer still disputes the findings in the final audit, the employer must appeal under 100.50. Failure to appeal within the time frames by the employer, results in the presumption of correctness as defined in this section.

- (d) Pursuant to 53 FSMC section 904, the employer is required to file reports concerning the number of employees, their names, social security numbers and earnings for that quarter, within the ten day time limit as defined in regulation 100.40. Contributions are required pursuant to 53 FSMC sections 901, 902 and 94, and these regulations. If no report is filed pursuant to the requirements, FSMSSA may subpoena or otherwise collect data from the employer or other sources to assist in an estimate of social security taxes due. This estimate will be issued first as a preliminary audit and then a final audit as described in subsection (c) of this section, and if undisputed or not appealed pursuant to the regulations enjoys the same presumption of correctness in favor of FSMSSA.
- (e) FSMSSA also has the right to challenge or investigate any quarterly reports and contributions filed by the employer to determine if they accurately reflect the number of employees, wages paid, or any other factor that would effect the contributions on behalf of the employer, for the obligations of the employer and the employee. FSMSSA has the right to subpoena or otherwise collect data from the employer or other sources to assist in an estimate of social security taxes due. This estimate will be issued first as a preliminary audit and then a final audit as described in subsection (c) of this section, and if undisputed or not appealed pursuant to the regulations enjoys the same presumption of correctness in favor of FSMSSA.
- (f) FSMSSA is not bound by an employer's determination of who is or is not an employee of the employer. FSMSSA may assess tax, penalties and interest on employees that it deems to be employed by the employer, subject to appeal rights as defined in these regulations.
- (g) In an audit, FSMSSA will review the reports filed and contributions paid by the employer for the audit quarters. FSMSSA reserves the right to investigate and challenge any of the figures in the submitted reports and contributions supplied by the employer in determining if the correct amount of payments and withholdings were reported and made. In reviewing the evidence sufficient to establish the correctness of the employer's reporting and payments, FSMSSA will review the following evidence.

Preferred evidence includes:

1. Payroll records for the relevant quarters.
2. Time cards for the relevant quarters.
3. Employment agreements.
4. Partnership agreements.
5. Personnel records of employees reflecting hiring, termination and wage information.
6. Business contracts.

7. FSM and state tax returns.
- (h) Along with the preferred evidence above, Social Security can take statements under oath from the employer, the management of the employer, and any relevant employees. Social Security also has the right to conduct spot audits of any employer to verify any information provided by an employer.
- (i) The Social Security Administration may conduct spot audits of previously audited employers. The scope of such spot audit shall be the two most recent quarters, and the Administration may use all necessary audit procedures to execute such audit.

§100.43 Update of cumulative wages

There shall be only two updates of reported cumulative wages per year.

- (1) Before the printing of July automated checks.
- (2) Before the printing of January automated checks.

There shall be retroactive adjustment to payments to those recipients who are already receiving benefits and part of their cumulative wages was not reported to FSMSSA prior to the initial payment of benefits.

§100.44 Evidence of Disability

The Act provides that “every individual who is fully and currently insured and is disabled and has been disabled for at least three full calendar months, upon filing an application for disability insurance benefits, shall be entitled to a disability insurance benefit for each month beginning with the first month of the waiting period and ending with the month preceding the month in which he dies or recovers from his disability...” 53 FSMC 803(3). An individual becomes “disabled” the first month in which he is under a disability and fully insured.

- a. Definition. Disability means inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.
- b. Evidence Needed. A claimant shall be required to provide FSMSSA proof of the following:
 - (1) Eligibility fact – the individual is fully insured;
 - (2) Medical fact – evidence proving that the claimant has the claimed disability;
 - (3) Durational fact – proof that the disability has lasted for at least three full calendar months, and that it is expected to result in death, or to last not less than 12 months; and
 - (4) Vocational fact – proof that the disability prevents the claimant from engaging in substantial gainful employment.

The burden is upon the claimant to furnish the medical and other evidence needed for the processing of his/her disability claim. However, recognizing the fact that a number of

people in the FSM are not experienced in filling out forms and securing information lodged in medical or Government offices, if requested to do so, SSA Employees shall assist claimants in filling out the disability claim form and report, securing the claimant's medical record, and referring the record to the disability examiner for assessment, finding and recommendation

(5) The following chart is based on the date of disability, (not the application date), and shows the minimum requirements in addition to a finding of disability needed to qualify for disability benefits.

Prior to January 1, 2007

1 quarter of coverage for each year from when the applicant turns 21 to the date of disability, with a minimum of at least 12 quarters required, up to a maximum of 38 quarters. The applicant needs to be fully insured only.

January 1, 2007 to December 31, 2009

1 quarter of coverage for each year from when the applicant turns 21 to the date of disability, with a minimum of at least 12 quarters required, plus payment of a minimum contribution of \$1,500.00. The applicant needs to be fully insured only.

On or after January 1, 2010

At least 45 quarters of coverage to be fully insured, and 20 of the last 25 quarters of coverage prior to the date of disability to be currently insured, plus payment of a minimum contribution of \$1,500.00. The applicant must be fully and currently insured.

(6) A child who is receiving benefits per section 803, shall continue to receive such children's benefits if he or she becomes disabled prior to turning age 22, for the duration of such disability. Disability is defined herein the same as in 603(6)

§100.45 Process

1. Filing of a disability claim at Branch Offices
 - a. Disability Application
 - b. Disability Report
 - c. Birth documents – at least two (2) documents to support date of birth which were executed at least five (5) years prior to disability. This may include a passport, medical record, municipal village record, baptismal record, marriage record, child's birth certificate, driver's license, employment record, etc.
 - d. Employment Termination document

- e. Medical Records Request
- f. Medical Records Release
- 2. Review of a disability claim at FSMSSA headquarters
- 3. Submission to a designated Certified Disability Examiner who will:
 - a. Review the application, subjective medical evidence(s) and justifications;
 - b. Provide his/her recommendation for further action;
- 4. Final Processing at FSMSSA Headquarters:
 - a. For positive Recommendation - payment will be processed immediately and issued at the end of the month.
 - b. For Negative Recommendation – the claimant will be notified of the decision and reasons.
 - c. Retroactive disability benefits will be paid for a maximum period of 24 months prior to the filing of an application for benefits, and dependent on the determination of the date of disability.

§100.46 Disability Examiner (located abroad due to the fact that no qualified examiners were found in the FSM)

- a. In examining disability claim packages, due to the lack of FSMSS listing of impairments and vocational rules thereof, the Disability examiner must utilize the latest versions of:
 - i. the United States Social Security Administration’s Listing of Impairments, 20 CFR 404 and
 - ii. the United States Social Security Administration’s Medical Vocational Rules

§100.47 Deadline for Notification of Decision

The Administrator shall, within 90 days from the submission of a disability benefit application, or within 60 days of the submission of all other applications for benefits give the applicant notice of either approval, denial, or request the submission of additional evidence. This notice will be in writing, and mailed to the applicant’s provided mailing address. If the applicant does not have a post office box, he/she must provide the Administrator with a mailing address, or waive the time limits and requirements provided in this section.

A written decision will be mailed to the address of record of the applicant, or if there is no address of record, will be available at the local office of the FSM Social Security Administration, with notice going out over the radio no less than four times in a one month period starting from the date of the decision, that the applicant, must come to his Social Security Office to pick up a copy of the order.

Note: Claim packages must be complete upon submission. In the event that there is the need for additional evidences, the deadline for notification may be waived depending upon the procurement of such evidences.

§100.48 Discontinuation of disability benefits.

Discontinuation of disability insurance benefits may be instituted by the Administrator when claimants failed to uphold the requirements to maintain a disability status, when re-examinations disclose a recovery from the disability, or the claimant evidences an ability to engage in gainful employment. Written notice of such discontinuation will be issued by the Administrator.

A written notice will be mailed to the address of record of the applicant, or if there is no address of record, will be available at the local office of the FSM Social Security Administration, with notice going out over the radio no less than four times in a one month period starting from the date of the decision, that the applicant, must come to his Social Security Office to pick up a copy of the notice.

The right of appeal of this decision is the same as described in §100.50, and a failure to appeal within the relevant time frames, renders the decision of the Administrator final.

§100.49 Payment of benefits to foreign citizens outside Federated States of Micronesia.

Non-FSM citizens who have paid into the FSM Social Security Administration system, shall receive benefits in the following manner, once they leave the FSM per 53 FSMC 809.

- a. If the applicant is a citizen of the United States of America, Republic of Palau, or the Republic of the Marshall Islands, the applicant will receive benefits the same as a citizen of the FSM, as long as the applicant's country provides nationals and citizens of the FSM benefits in the same manner. If there is no reciprocity, such citizens would then be treated as other citizens as shown in b. and c. below.

- b. If the applicant is a citizen of any country besides the United States of America, Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia and the applicant filed an application for benefits on or after March 6, 2009, the applicant must be fully insured as of the date of application to apply for benefits. The applicant will then receive a lump sum benefit of all contributions made as an employee, but not the employer's contributions. This lump sum benefit will be paid the later of when the applicant turns age 60, is no longer employed in the FSM, or files an application for benefits. In the event the applicant dies, before either turning age 60 or is no longer employed in the FSM, the benefits shall be payable upon death, to the applicant's dependents. All benefit payouts may be made payable over six months from the date the benefits are first owed.

- c. If the applicant is a citizen of any country besides the United States of America, Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia and the applicant filed an application for benefits before March 6, 2009, the applicant will then receive a lump sum benefit of all contributions made as an employee, but not the employer's contributions, when the employee ceases to be a resident of the Federated States of Micronesia. A resident is considered someone who was in the FSM 180 days or more in the last 365, and has ties to the FSM such as a home, car, or other indicia of residence.

§100.50 Administration's denial of a claim or any other application:

Pursuant to 53 FSMC 703, all claimants whose applications for benefits are denied by the Administration, or the Administration takes action to reduce or stop previously authorized benefits, have the right to appeal such decision to the Board within 60 calendar days of the date of denial of the application, or the issuance of a notice that benefits will be stopped or reduced. All appeals must be in writing and filed at either the local FSMSSA Offices or the home office in Pohnpei, within 60-day time frame. A failure to appeal within this time frame renders the decision of the Administration final.

A written order will be mailed to the address of the record of the applicant, or if there is no address of record, will be available at the local office of the FSM Social Security Administration, with notice going out over the radio no less than four times in a one month period starting from the date of the decision, that the applicant, must come to his local Social Security Office to pick up a copy of the order.

The same appeal rights apply to any employer who is assessed additional taxes, penalties and/or interest, or is aggrieved by a finding, by FSMSSA in a final audit. An appeal by an employer, must be within 60 calendar days of the date of the final audit. A failure to appeal within this time frame renders the decision of the Administration final.

The final audit will be served on the employer by hand delivery or deposited in the FSM mail to the address on file at FSMSSA, within two working days of the certification of the audit.

§100.51 Audit of records – Power to subpoena – Administration of oaths

The Board and its authorized representatives shall have the power to audit employer records, issue subpoenas, and administer oaths appropriate to the administration of this subtitle. The audit power includes the right to conduct spot audits of any selected employer.

§100.52 Board Appeal Procedures

1. The claimant should have all witnesses and documentary evidence available for any hearing. Notice should be given for hearings with sufficient time for the claimants to have such witnesses and evidences available. The claimant could also apply to the Board to issue a subpoena, if they need to subpoena their own witnesses.
2. The claimant and his or her attorney should be present at the hearing to question any of the Administration's witnesses and to examine any documentary evidence presented.
3. Given the infrequent board meetings, care should be taken that a hearing can be held with these procedures during such meetings, and not be unduly delayed. In cases where factual determinations are complicated or must be continued for good cause, the Board should have the power to appoint a fact finding committee, which will hear the evidence, then prepare a report for the rest of the Board.
4. General Guidelines for hearings:
 - a. The formal rules of evidence do not apply.
(This means the Board can consider evidence that might not be accepted in court. Such evidence can be hearsay, documents that are not originals, and evidence that may be

considered that was not taken under oath. The Board is able to decide how much weight to give such evidence.)

- b. The Administration should go first, presenting the case file, along with witnesses and other documentary evidence, if any.
 - c. The claimant should have the opportunity to examine any witnesses for the Administration, and ask questions concerning any documentation.
 - d. At the conclusion of the Administration's presentation, the Administration needs to present its conclusion.
 - e. The claimant should be allowed to present evidence. This would include the claimant, plus any witnesses or additional documentary evidence. The claimant must also state what relief he or she is seeking.
 - f. The Board would be allowed to ask questions at any time.
 - g. At the conclusion of the presentation, the Board can review the evidence and arguments presented.
5. Board's decision on appeal
- a. To accept the Administration's position.
 - b. To accept the Claimant's position.
 - c. To determine its own position.
 - d. Continue the matter for further fact finding. If necessary, the Board could designate and subpoena any witnesses they would want to hear, or delegate fact finding to a subcommittee.
6. The board would have the power to also control the conduct of the hearing, to make determinations if evidence is relevant or to weigh the value of evidence.
7. A decision is then issued in writing and served on the claimant, outlining his or her right to appeal.

§100.53 Review of board determinations

Any person aggrieved by a final order of the Board may obtain a review of the order in the Trial Division of the Federated States of Micronesia Supreme Court by filing in Court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part under 53 FSMC 708.

Failure to take action required in this section within 60 days renders the final order of the Board to be adopted as final.

CERTIFICATION

I, Myrineda D. Mori, Executive Secretary for the FSM Social Security Administration hereby certify that these regulations are a true and correct copy of the regulations adopted for promulgation and implementation by the FSM Social Security Administration Board of Trustees, effective date of May 01, 2012.

Dated: _____

Myrineda D. Mori

Sworn and subscribed to this ____ day of May 2012.

Notary Public