



RELEASE - TRANSMISSION OF REVISED MATERIAL TO BE  
INCORPORATED INTO THE FEDERAL (EEOICPA) PROCEDURE MANUAL:  
2-1200 ESTABLISHING SURVIVORSHIP

EEOICPA TRANSMITTAL NO. 09-07

August, 2009

EXPLANATION OF MATERIAL TRANSMITTED:

PM Chapter 2-1200 has been revised to:

- Be placed in the new Unified Procedure Manual binder, replacing chapters 2-0200 and E-600.
- Merge both Parts B and E of the EEOICPA regarding survivorship into this chapter.
- Incorporate new policy into existing sections of this chapter. Of particular note, section 5(c) provides the definition of a "child" as it applies to both Parts B and E of the EEOICPA.
- Added section 10 (Survivor Compensation, Part E)
- Added section 11 (Maximum Aggregate Compensation, Part E)
- Added section 12 (Alternative to Filing a Survivor Claim, Part E)
- Revised Exhibit 1 to include Part E policy.

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FILING INSTRUCTIONS:

File this transmittal behind Part 1 in the front of the new Unified Federal (EEOICPA) Procedure Manual.

Distribution: List No. 3: All DEEOIC Employees  
List No. 6: Regional Directors, District Directors, Assistant District Directors, National Office Staff, and Resource Center Staff.

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1. Purpose and Scope. This chapter contains procedures for the development and review of survivor claims under Parts B and E of EEOICPA. It also describes the process followed when a non-covered spouse or child opts for the alternative to filing a Part E claim.

2. Policy. The Claims Examiner (CE) is responsible for processing survivor claims and ensuring that benefits are properly paid to eligible survivors under the provisions of 42 U.S.C. 7384s(e) and 7384u(e) for Part B and 42 U.S.C. 7385s-1(2), and 7385s-3 for Part E.

3. Eligible Survivors. If an employee eligible for EEOICPA benefits dies before his or her claim is accepted and/or before compensation is paid, one or more of the employee's survivors may file a claim for compensation under EEOICPA. Whenever a survivor files a claim, the CE is responsible for adjudicating the claim(s) and processing any compensation which may be payable in the order of eligibility.

a. Part B Claim. In Part B claims, compensation payable to eligible survivors may be made in the following order: spouse, children, parents, grandchildren, and grandparents of the deceased covered Part B employee.

b. Part E Claim. In Part E claims, claimants eligible for compensation benefits are: spouse and children of the deceased covered Part E employee who were under the age of 18 years at the time of the employee's death, or under the age of 23 years and a full-time student at the time of the employee's death, or any age and incapable of self-support at the time of the employee's death.

Unlike under Part B, the following claimants are not eligible for survivor's benefits under Part E: adult children (with the exception of those incapable of self-support at the time of the covered Part E employee's death), parents, grandchildren, and grandparents of the deceased covered Part E employee.

c. Conviction for Fraud. A person convicted of fraud in the application for or receipt of benefits under EEOICPA or any other federal or state workers' compensation law forfeits any entitlement to EEOICPA benefits for any

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3. Eligible Survivors. (Continued)

occupational illness or covered illness due to an exposure on or before the date of the conviction.

4. Filing a Claim for Survivor Benefits. A claim for survivor benefits must be in writing. Form EE-2 should be used for this purpose, but any written communication that requests survivor benefits under the Act will be considered a claim. The survivor will, however, need to submit a Form EE-2 for DEEOIC to fully develop the claim.

a. Acting on Survivor's Behalf. A person other than the survivor may file the survivor's claim with DEEOIC. In the case of a minor child, it is preferable that a parent or legal guardian complete the form on the child's behalf. A legal guardian is a person with the responsibility for providing care and management of a child and his or her affairs.

b. No New Part E Claim Needed. There is no need for a survivor to file a new claim for benefits under Part E when there is an existing accepted Part B claim, or when the survivor filed a Part D claim (Form 350.2) with DOE as long as the accepted condition under Part B was causally related to the employee's death.

c. Claiming for Conditions Where Offset Not Required. In filing for benefits, the survivor may choose to claim only for those occupational illnesses or covered illnesses for which a payment has not been received as a result of litigation seeking damages that would require an offset of EEOICPA benefits.

Also, under Part E only, the survivor may choose to claim only those covered illnesses for which a payment has not been received from a state workers' compensation program that would require coordination of EEOICPA benefits.

5. Developing a Survivor Claim.

a. Any Survivor. The CE takes the following steps to determine whether the survivor is eligible for compensation.

5. Developing a Survivor Claim. (Continued)

(1) Verify the death of the employee. Verification must include a copy of the employee's death certificate.

(a) Some states have implemented electronic upload of death certificates. An electronic death certificate may be used to establish the death of the employee. To be acceptable, the electronic death certificate must list the certifying physician along with a license number. The license number will be considered to be the electronic signature.

(2) Establish that the person named as the employee had a compensable illness and covered employment under EEOICPA. Under Part E, the CE must also establish that the employee's covered illness aggravated, contributed to, or caused his or her death. This development may occur simultaneously with the development for survivor entitlement.

(3) Establish the relationship of the survivor to the covered employee. Along with a completed Form EE-2, the claimant must document his or her relationship to the covered employee. If documentation is not submitted with the claim, the CE writes to the claimant requesting the necessary evidence.

b. Surviving Spouse. Documentation consists of a copy of the marriage certificate issued or recognized by a State Authority or an Indian Tribe Authority. A "Certificate of Blessing of Marriage" from a church is not considered the equivalent of a marriage certificate.

To be an eligible surviving spouse, the spouse must have been married to the employee for one year immediately prior to the death of the employee. One year immediately prior to the employee's death includes the date of marriage through the day prior to the date of death.

For example, if an employee married on September 4, 2004 and died on September 3, 2005, the CE does not include September 3, 2005 when calculating the required 365-day

5. Developing a Survivor Claim. (Continued)

term. The CE counts each calendar day from September 4, 2004 up through and including September 2, 2005.

(1) A marriage license should not be used to validate a marriage. The case file must contain sufficient evidence of a legal marriage (e.g., marriage certificate), under the applicable state law.

(2) The surviving partner in a relationship where the couple lived together in a common-law marriage is considered a spouse of the deceased employee if the relationship meets the criteria for establishing a common-law marriage in the state of residence. As a general rule, the existence of a common-law marriage is determined by the local law of the state that has the most significant relationship to both spouses and to the alleged marriage. The CE must request documentation from the claimant providing proof of general reputation of marriage in the community, continuous cohabitation as husband and wife, and being so treated and reputed in the community as husband and wife. The CE must document in the case file the requirements used to establish a common-law marriage.

(a) Evidence which may be used to document a common-law marriage may consist of affidavits asserting that the couple lived together as husband and wife in a particular state and presented themselves in the community as husband and wife.

(b) Other probative evidence includes, but is not limited to joint tax returns, joint checking or savings accounts, joint mortgage statements, joint deeds and tax statements are also helpful.

(c) The CE sends the evidence obtained to the National Office, Policy Branch (for possible submission to the Solicitor's Office) for a decision on the status under the rules of the local law in the qualifying state.

5. Developing a Survivor Claim. (Continued)

c. Surviving Child. A "child" of an individual under Parts B and E of the EEOICPA can only be a biological child, a stepchild, or an adopted child of that individual.

A person who is or was only a "dependent" of an individual, but does not fit within the above definition of a "child" of that individual, is not a "child" for the purposes of the compensation program established by EEOICPA.

The term "biological child" is broad and encompasses all of the types of individuals about whom there is either an undisputed presumption or affirmative proof regarding their genetic link to an individual. A "biological child" of an individual is any of the following:

1. A legitimate (born of married parents) child born while the individual is still living.
2. A legitimate child conceived while the individual is still living, but born after he/she has died (these persons are commonly referred to as "posthumous" children).
3. An illegitimate (born of unmarried parents) child born while the individual is still living, whether or not the individual ever "recognized" the person as a child.
4. An illegitimate child conceived while the individual is still living, but born after he/she has died.

All of these children are biological children, but those described in 3 and 4 above may have to prove that status through DNA or other types of evidence. In addition, there may be disputes between alleged children where such evidence is submitted in an effort to refute the presumed genetic link of a person described in 1 and 2 above.

However, if there is uncertainty regarding the evidence submitted in support of a dispute regarding the genetic link between a deceased covered employee and a claimant alleging to be that individual's "child," the matter should be referred to the Policy Branch for guidance and possible referral to the Solicitor's Office.

To be a "covered" child under Part E only, the child must also have been, *as of the date of the employee's death,*

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5. Developing a Survivor Claim. (Continued)

either under the age of 18 years, or under the age of 23 years and a full-time student who was continuously enrolled in one or more educational institutions since attaining the age of 18 years, or any age and incapable of self-support regardless of their marital status.

Documentation to support a surviving child's claim includes a copy of the child's birth certificate or an adoption certificate. If a birth or adoption certificate is not available, the CE obtains any evidence possible to establish the parent-child relationship. The CE must exercise discretion in reviewing the documentation provided and base the adjudication on logical rationale.

(1) Where the claimant claims to be a child of the deceased employee and the birth certificate does not list the deceased employee as the father or mother of the claimant, the CE must further develop the issue.

Children who can provide evidence that they were living in a parent-child relationship with the employee are covered under the EEOICPA. Examples of supporting evidence include a paternity/maternity test, the death certificate listing the claimant as the child of the deceased employee, an obituary listing the claimant as the child of the deceased employee, affidavits from family members attesting to the child's paternity/maternity, life insurance policies listing the claimant as the deceased employee's child, employment or tax records listing the claimant as the deceased employee's child, and any other document in which the deceased employee recognized the claimant as his or her child.

In this instance, the CE must use his or her discretion in reviewing any evidence received to support paternity/maternity and weigh all evidence received in its totality.

(2) Additional eligibility may extend to a biological child of the deceased employee who is not a biological child or adopted child of the covered spouse. For a non-spousal child to be eligible under Part B only,

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5. Developing a Survivor Claim. (Continued)

the child must be a minor at the time of payment. For a non-spousal child to be eligible under Part E only, the child must be living at the time of payment and must meet the requirements for a "covered" child under Part E (i.e., be under the age of 18 at the time of the employee's death, between the ages of 18 and 23 and continuously enrolled as a full-time student since attaining the age of 18, at the time of the employee's death, or any age and incapable of self-support at the time of the employee's death).

d. Stepchildren. Survivor claims involving stepchildren will be adjudicated by the District Offices (DO) unless there is an issue that cannot be determined by the CE.

(1) Determinations as to whether a stepchild lived in a regular parent-child relationship will be made once the CE receives specific documentation from the stepchild supporting the relationship. The stepchild must have been living in a parent-child relationship with the employee at the time of the employee's death.

(2) Documentation supporting a regular parent-child relationship may include school records (e.g., report card) listing the employee as having a familial relationship to the step-child, tax returns showing that the covered employee claimed the stepchild as a dependent, photographs taken at family gatherings, newspaper articles, obituaries, insurance policies listing the stepchild as the son or daughter of the covered employee, wills, or any other documents that refer to the stepchild and the deceased employee in a familial way.

(3) Where a stepchild was an adult at the time of the deceased employee's marriage, supporting evidence may consist of documentation showing that the stepchild was the primary contact in medical dealings with the deceased employee, the stepchild provided financial support for the deceased employee, and/or provided housing for the deceased employee, etc.

5. Developing a Survivor Claim. (Continued)

In addition, evidence consisting of medical reports, letters from the physician, or receipts showing that the stepchild purchased medical equipment, supplies or medication for the employee may be helpful. Also, evidence such as copies of insurance policies, wills, photographs (e.g., attendance in the stepchild's wedding as the father or mother), and newspaper articles (e.g., obituary) may be considered. These items of evidence will be considered on a case-by-case basis and each should be weighed together to fully evaluate the eligibility of the survivorship claim.

(4) In claims involving a divorce between the biological parent and the stepparent, the dissolution of the marriage does not terminate the parent-child relationship for eligibility purposes.

(5) There is no minimum time requirement for a stepchild to have lived in the same household as the covered employee. To determine if the stepchild fulfills the requirement to have "lived with" the employee, the CE/FAB representative must consider the above information in conjunction with the following:

(a) Did the stepchild visit the employee during the holidays?

(b) Did the stepchild take care of the employee for days at a time?

(c) Is it logical that the stepchild and employee stayed at one another's home at any given time?

(6) The CE or FAB representative must consider the totality of the evidence when determining whether the stepchild qualifies, and explicitly discusses the findings in the Recommended and/or Final Decisions.

e. Student Status, Part E Only. To be considered a full-time student at the time of death, the child must have been continuously enrolled as a full-time student in one or more educational institutions since attaining the age of 18

5. Developing a Survivor Claim. (Continued)

years and must not have reached the age of 23 years, regardless of marital status or dependency on the employee for support.

(1) Enrollment as a full-time student generally consists of a 12-month period, with a break of no more than four months, during each year of post high school education.

(2) If the child's status as a full-time student is uncertain, the CE consults the academic institution to determine what it considers to be the minimum number of hours required to qualify as "full-time" (versus part-time), as this may differ among institutions.

(3) With certain programs such as co-op, intern, or graduate school programs, while the student might not actually be enrolled in any courses for a particular term, he or she could still be "registered" as a full-time student while fulfilling other requirements of the program.

(4) If a student is prevented by reasons beyond his or her control, such as a brief but incapacitating illness, from continuing in school for a period of reasonable duration, the CE has discretion to determine whether the student's status as a continuously enrolled full-time student should be preserved. A suspension from school for a limited period should not affect the child's status as a continuously enrolled full-time student.

(5) However, leaving school to care for a sick parent/employee, or because of a lack of funds to pay for school as a result of a parent/employee's illness, is not a sufficient basis to maintain the child's status as a continuously enrolled full-time student.

(6) Documentation to support eligibility includes transcripts from the accredited educational institution(s), school records, and affidavits.

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5. Developing a Survivor Claim. (Continued)

f. Incapable of Self-Support, Part E Only. In order to be deemed eligible for Part E benefits as a covered child who was medically incapable of self-support at the time of death, the child must have been physically or mentally incapable of self-support, regardless of marital status or dependency on the employee for support, or the temporary or permanent nature of the incapacity.

(1) A child is incapable of self-support if his or her physical or mental condition is such that he or she is unable to obtain and retain a job, or engage in self-employment that provides a sustained living wage.

(2) This determination must be based on:

(a) Medical evidence documenting that the child has been diagnosed with a medical condition;

(b) Medical evidence that he or she is physically/emotionally incapable of self-support (i.e., not self-sustaining); and

(c) Other evidence establishing that he or she has been unable to obtain and retain a job.

(3) When medical evidence demonstrates incapacity for self-support, this determination will stand unless refuted by sustained work performance. A child is not incapable of self-support merely because of an inability to obtain employment due to economic conditions, lack of job skills, etc.

(4) Documentation to support the incapability of self-support includes medical records, social security disability records, tax returns showing that the covered child was claimed as a dependent, state guardianship documents, and affidavits.

SSA/state disability records indicating lack of self-support alone cannot be used to establish that the child is incapable of self-support. Various jurisdictions have different interpretations of lack of self-support and the CE must consider the evidence

5. Developing a Survivor Claim. (Continued)

as a whole to determine if it demonstrates incapability of self-support for purposes of EEOICPA.

g. Identifying Potential Survivors. When an additional potential survivor is identified on Form EE-2 or through another development action, the CE contacts the individual by letter to explain his or her right to file a survivor claim (Exhibit 1).

(1) The letter does not indicate whether the individual is qualified to receive benefits, as this is a function of the claims process after a Form EE-2 has been filed. Rather, the letter outlines the general requirements for survivor eligibility.

(2) The CE explains that filing a claim does not guarantee that benefits will be payable. Both statutory and regulatory requirements must still be met before compensation can be awarded.

(3) A blank Form EE-2 is enclosed with the correspondence. The named survivor is asked to complete and submit the form within 30 days. If the claim is not submitted within the 30 day time period, the CE can proceed to adjudicate the case on the assumption that a claim is not forthcoming, unless communication is received from the claimant indicating that an EE-2 is forthcoming.

h. Additional Documentation. To ensure that compensation is paid to eligible survivors of the deceased employee, the CE may require a claimed survivor to provide any documents, affidavits, or records that are necessary to convince the adjudicator of the accuracy of the claim.

6. Simultaneous Development. The CE sends development letters to all survivors claiming benefits requesting medical and employment evidence. The CE may proceed to develop employment and medical requirements in the case of multiple survivors when there is documentation sufficient to proceed with this development (e.g., Form EE-3 or supporting medical report is received from one or more of the survivors).

6. Simultaneous Development. (Continued)

A request for documentation required to support the eligibility of a specific claimant is only to be sent to that claimant.

7. Issuing Recommended Decisions. A Recommended Decision (RD) may be issued under Part B and/or under Part E, concluding that one or more survivors are not entitled to survivor benefits but reserving for further development the claims of other potential survivors. A RD under Part B and/or under Part E that recommends payment of survivor's benefits must consolidate the claims of all eligible survivors under the employee's Social Security Number.

For example, assume that three children of a covered employee filed a claim under Part B and all were determined to be eligible survivors under Part B. However, only one of the children filed a Part E claim. The CE develops Part E claims for the other two children, and all three children are addressed in the RD under Part E regardless of whether they filed a Part E claim.

a. Findings for Each Survivor. An RD that recommends payment of survivor's benefits must include a finding in regard to entitlement to compensation for each survivor. Specifically, the CE references the names of the survivors, whether they are entitled to receive compensation, the amount of compensation payable to eligible survivors, and the basis for the conclusions reached. Multiple survivor RDs are not issued piece meal, but rather the CE develops each claim concurrently and issues one comprehensive RD addressing the claims of each interested party.

b. Individual Addresses. The RD does not include the addresses of all survivors. Each address must be listed on a separate certificate of service in the FD. A cover letter is addressed to each individual survivor along with a copy of the RD unless a survivor was previously denied for being an ineligible survivor and the new RD would have no affect of the previously denied claimant.

c. Lack of Form EE-2. The CE may be able to affirm the existence of an eligible survivor but be unable to contact the survivor or to have the survivor file a Form EE-2. In this situation, the CE proceeds to issue an RD.

7. Issuing Recommended Decisions. (Continued)

(1) The RD includes a finding of potential entitlement for the eligible survivor even though he or she has not filed a Form EE-2 (non-filing survivor).

(2) The compensation for the non-filing eligible survivor may not be distributed among the other survivors who have filed claims, and must be retained in the Fund (held in abeyance) until he or she comes forward to file a claim.

For example, a Form EE-2 completed by the child of a deceased employee identifies another eligible child. The claiming child produces a birth certificate and evidence of the other child's current address. The CE contacts the child, who fails to file a Form EE-2. If the evidence is sufficient to conclude that the child is eligible under the Act, the CE includes the child in the RD.

(a) However, the Division of Energy Employees Occupational Illness Compensation Program (DEEOICP) does not pay compensation to the non-filing survivor unless that survivor submits Form EE-2 and EN-20 in response to the FD. The program pays the filing survivor and reserves the money in the Fund until such time as the non-filing survivor comes forward.

(b) If at a later date, the child contacts the DO indicating his or her intent to pursue a survivor claim, he or she must file a Form EE-2. This will allow the DO to pay any compensation that may be due.

8. Survivor Issues During the Payment Process.

a. Minor Child. Under Part B, a minor child may be advised in the FD that he or she is eligible for compensation. However, at the time of payment, that child may no longer meet the definition of a minor according to state law. In such a situation, the case file is forwarded to the National Office (NO).

8. Survivor Issues During the Payment Process. (Continued)

b. Death Before Payment. Under Parts B and E, if the employee is alive when the FD is issued, but dies before receiving payment, the employee's claim in ECMS must be closed administratively.

(1) If a paper check has been mailed to the employee, the payment must be cancelled. If the payment is made via electronic fund transfer (EFT), the payment should not be cancelled. The employee's case is then administratively reopened for issuance of RDs to any survivors.

(2) The claim must then be developed for possible survivors. If survivors are identified and eligible, the DO must issue a new RD which encompasses all eligible survivors. The survivor claim is essentially treated as a separate and new claim.

c. Death Due to Non-Covered Illness, Part E. If a covered Part E employee dies after filing a claim but before compensation is paid, and his or her death was solely caused by a non-covered illness or illnesses, then the survivor may choose the compensation that would otherwise have been payable to the covered Part E employee if he or she had not died prior to receiving payment.

(1) The survivor is not entitled to the \$125,000 lump sum payment because death was not caused by the covered illness(es).

(2) The survivor could potentially receive the impairment award that the employee would have received only if the medical evidence meets all the criteria in the AMA's Guides to the Evaluation of Permanent Impairment and the regulations for medical evidence used to support an award for impairment.

d. Dividing Payment to Surviving Spouse. If a covered spouse is alive at the time of payment, the compensation payment is usually made in full to the covered spouse.

(1) Under Part B only, if there is at least one child of the employee who is a minor at the time of payment

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8. Survivor Issues During the Payment Process. (Continued)

and not a biological child or adopted child of the spouse, then half of the payment is made to the covered spouse and the other half of the payment is made in equal shares to each child of the employee who is a minor at the time of payment, without regard to whether the child is a spousal child or non-spousal child. Otherwise, the entire payment is awarded to the spouse. The RD and FD must fully explain the distribution of compensation to the spouse and the remaining eligible children.

(2) Under Part E only, if there is at least one child of the employee who is living at the time of payment and is a "covered child" (i.e., under the age of 18 at the time of the employee's death, between the ages of 18 and 23 and continuously enrolled as a full-time student since attaining the age of 18, at the time of the employee's death, or any age and incapable of self-support at the time of the employee's death), and not a biological or adopted child of the spouse, then half of the payment is made to the covered spouse and the other half of the payment is made in equal shares to each "covered child" of the employee who is living at the time of payment, without regard to whether the child is a spousal child or non-spousal child.

e. Survivor's Death. If one survivor in a multiple survivor claim dies before payment is issued, the compensation is reapportioned among the remaining survivors.

For example, three survivors of the deceased employee file survivor claims. One of the survivors dies before payment is made. The compensation must be divided between the two remaining living survivors of the deceased employee. The case file must be forwarded to the NO with a copy of the death certificate for a Director's Order if this occurs after the FD is issued. The DO must issue a new RD which encompasses all eligible survivors. Under no circumstances can compensation be paid to the survivors of a deceased survivor.

9. Multiple Payments, Part B.

a. Employee. Under Part B, no employee may receive more than one lump sum payment for any occupational illnesses that he or she has contracted.

b. Survivor. A survivor may receive one lump sum payment under Part B for each employee for whom he or she qualifies as an eligible survivor if the Part B lump sum payment has not previously been paid to the employee. If a survivor files a claim for benefits and a lump sum payment has previously been paid to the employee, the CE must deny the survivor's claim.

10. Survivor Compensation, Part E. If a covered Part E employee dies after filing a claim but before compensation is paid under Part E of the Act, and his or her death was solely caused by a non-covered illness or illnesses, then the survivor may choose the compensation that would otherwise have been payable to the covered Part E employee if he or she had not died prior to receiving payment. A survivor may receive more than the basic \$125,000 survivor entitlement due to the death of a covered Part E employee from a covered illness. This occurs when the CE determines that the deceased covered Part E employee experienced compensable wage-loss and/or impairment prior to his or her attainment of normal Social Security retirement age under the Social Security Act as a result of any accepted covered illness or illnesses, not just the covered illness that resulted in death.

a. Death Before Normal Social Security Retirement Age.

If a covered Part E employee died as a result of a covered condition prior to the attainment of normal Social Security retirement age, the CE presumes that the covered Part E employee experienced wage-loss for each calendar year subsequent to the calendar year of death, through and including the calendar year in which the employee would have reached normal Social Security retirement age (see EEOICPA PM Chapter 2-1400).

b. Additional Sums. A survivor may be entitled to up to \$175,000 under Part E, dependent upon the number of years for which an employee experienced wage-loss and the Part E survivor entitlement. See EEOICPA PM Chapter 2-1400 on wage loss entitlement.

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10. Survivor Compensation, Part E. (Continued)

c. Impairment. If the employee received compensation for impairment during his or her lifetime, this does not preclude payment of the \$125,000 survivor benefit to an otherwise entitled survivor up to the maximum aggregate Part E compensation amount. See EEOICPA PM Chapter 2-1300 on Impairment benefits.

11. Maximum Aggregate Compensation, Part E. Under Part E, the amount of compensation provided, excluding medical benefits, may not exceed the total amount of \$250,000 per accepted covered employee. The CE does not develop for additional medical conditions once the aggregate compensation amount is reached, unless the potential for covering medical expenses exists. If a survivor files a claim for benefits and the maximum aggregate compensation amount has been reached, the CE must deny the survivor's claim.

12. Alternative to Filing a Survivor Claim, Part E. A non-covered spouse or child of a deceased DOE contractor employee or RECA section 5 uranium worker may submit a written request for an informal evaluation of whether the employee contracted a covered illness as a result of employment at a covered facility. Once the alternative filing review is complete, the CE issues a determination letter to the claimant. No RD or FD is required.

a. Written Notice. An individual seeking a determination about the cause of an employee's illness must send a letter to DEEOIC requesting an alternative filing determination.

(1) Alternative filing requests may be submitted to the resource centers or the district offices.

(2) Only individuals listed in Subtitle E of the EEOICPA as potential survivors (i.e., spouses or children of an employee) may seek a determination letter regarding an employee.

(3) The survivor seeking a determination letter must provide evidence of a familial relationship with the employee (see section 5, Developing a Survivor Claim, above).

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12. Alternative to Filing a Survivor Claim, Part E. (Continued)

b. Acknowledgement Letter. Each claimant should be sent a letter acknowledging their option to receive a determination letter after submission of their alternative filing (Exhibit 2). The acknowledgement letter serves to explain the process and offers the claimant the opportunity to pursue full adjudication and issuance of recommended and final decisions on the claim.

(1) The claimant is notified that the alternative filing will result in the issuance of a determination letter following development of the claim. The CE explains what will be contained in the determination letter, and discusses the steps necessary to reach a determination on an alternative filing.

(2) The acknowledgement letter gives the claimant the opportunity to opt out of the alternative filing process, and pursue full adjudication of the claim. Upon a claimant's decision to receive a recommended and final decision, the CE sends another letter informing the claimant that full development will be completed, and outlining the evidence necessary.

(3) The letter must explicitly instruct the claimant that the determination reached cannot be used in any claim for benefits under the EEOICPA. The CE instructs the claimant that the information presented in the forthcoming determination letter does not represent a final agency decision on the illness or causation.

c. Review of the Evidence. The CE undertakes full development of the alternative filing, in accordance with the instructions contained in Part 2 of this Procedure Manual. The CE will gather any evidence necessary to arrive at a decision on the claim, including sending the case file to a DMC or NO health specialist for resolution of a question of exposure, diagnosis, or causation.

d. Determination Letter. Upon completion of development on the alternative filing, the CE sends a determination letter to the claimant (Exhibit 3).

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12. Alternative to Filing a Survivor Claim, Part E. (Continued)

(1) The determination letter must be written in accessible and clear language and must state specific details. The letter does not take the format of a recommended decision, and no certificate of service is required.

(a) The determination letter must reach a conclusion about whether the employee contracted an illness as a result of exposure while employed at a covered facility.

(b) The letter must state that the claimant is not afforded any appeal or review rights as a result of the conclusion reached.

(c) The CE reiterates that the determination cannot be used in a claim for benefits under EEOICPA.

(d) The CE explains that the claimant may seek full adjudication on the claim, including issuance of a recommended and final decision, at any time.

(2) The determination is reviewed by a Senior CE or supervisor, and is prepared for the District Director's signature.

e. Receipt of Form EE-2. If the survivor files a Form EE-2 once development is complete, the CE renders an RD on entitlement, which is then reviewed by the FAB for issuance of an FD.

f. Full Development Requested. If the claimant requests a full development of the alternative filing after the initial alternative filing decision is issued but does not file a Form EE-2, the CE fully develops the claim and issues another alternative filing decision. Again, no FD or RD is issued in this instance. Full development requests are coded in ECMS the same as requests that do not stipulate full development.

Sample Letter to Potential Survivor Advising of  
Right to File Claim

Dear Claimant Name:

We have been advised that you may be an eligible survivor of the above-named employee under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

Enclosed is form EE-2, Claim for Survivor Benefits under EEOICPA. If you wish to be included in the claim for survivor benefits under our program, please complete the EE-2 form and return it to this office at the address noted above at your earliest convenience.

Once we receive your completed form EE-2, your claim will be added to the existing case file. We will use the file number referenced above, so please include this file number in any future correspondence or telephone inquiries concerning your claim.

If you have knowledge of other individuals who may also be entitled to claim survivor benefits, please include their contact information on the EE-2 form, including name, address, and telephone number. Please note that for claims under Part B of the EEOICPA, the definition of an "eligible survivor" and the order of payment are as follows:

1. If there is a living spouse (married to the employee for at least one year immediately before the death):
  - a. Spouse receives entire amount;
  - b. UNLESS there is at least one child of the employee (includes a biological child of the employee, a stepchild who lived with the Energy Employee in a regular parent-child relationship, and an adopted child of the employee) who is a minor at the time of payment and not a biological child or adopted child of the spouse - in which case half of the award goes to the spouse and the rest is split between all living minor children of the employee.

2. If there is no living spouse, the award will be given in the following order:

- a. Living children (includes stepchildren and adopted children) of the employee;
- b. If none of the above, to living parents of the employee;
- c. If none of the above, to living grandchildren of the employee;
- d. If none of the above, to living grandparents of the employee.

For claims under Part E of the EEOICPA, the definition of an "eligible survivor" and the order of payment are as follows:

1. If there is a living spouse (married to the employee for at least one year immediately before the death):
  - a. Spouse receives entire amount;
  - b. UNLESS there is at least one living child of the employee at the time of the payment who is also a "covered child" under Part E (i.e., under the age of 18 years at the time of the employee's death, or under the age of 23 years and continuously enrolled as a full-time student since attaining the age of 18 at the time of the employee's death, or any age and incapable of self-support at the time of the employee's death) and not a biological child or adopted child of the spouse - in which case half of the award goes to the spouse and the rest is split between all "covered children" of the employee living at the time of payment.
2. If there is no living spouse, the award will be split between all "covered children" of the employee who are living at the time of payment.

Although there is no time limit for the filing of a claim for benefits under the EEOICPA, we ask that you respond to this request within 30 days from the date of this letter in order to prevent any delay in the adjudication and awarding of benefits for this case.

Also, please note that filing a claim does not guarantee your eligibility for benefits under the EEOICPA. Additional investigation will be required to determine if all statutory and regulatory requirements have been met before compensation can be awarded.

If you have any questions, please feel free to call or write us at the above address.

Sincerely,

Claims Examiner

Enclosure:       EE-2, Claim for Survivor Benefits  
                      EE-7, Medical Requirements

**U.S. DEPARTMENT OF LABOR****Employment Standards Administration  
Office of Workers' Compensation Programs  
Division of Energy Employees Occupational  
Illness Compensation**

Date

Employee:

Claimant name  
Address  
City, ST ZipCode

Dear Mr./Mrs. Claimant:

I am writing concerning the alternative filing request you filed under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) to receive a determination regarding the potential for exposure and illness of your **[employee's relationship to the claimant]**.

Under the EEOICPA implementing regulations (20 CFR § 30.101(f)), a finding can be made by the program acknowledging the hazards faced by a deceased employee who worked in the Department of Energy atomic weapons program, even when there are no qualifying survivors eligible to receive benefits.

The Division of Energy Employees Occupational Illness Compensation (DEEOIC) will investigate the details of your **[relationship's]** employment history to determine if **he/she** contracted an illness as a result of occupational exposure to a toxic substance while working at a DOE facility. You will receive a determination letter outlining the results of this investigation.

You should be aware that the information gathered as a result of this investigation does not change your eligibility to receive compensation under the EEOICPA. Additionally, the results reported to you cannot be used as evidence that your **[relationship's]** illness was caused by **his/her** employment for the purposes of any law suit or workers' compensation program, including the EEOICPA.

Should you wish to have your case fully investigated and adjudicated, you can choose to file a claim at any time. If you file a claim, after gathering and assessing the necessary evidence, you would receive a recommended and final decision. You will need to complete and submit a form EE-2 (which can be found on DOL's website at <http://www.dol.gov/esa/owcp/energy/regs/compliance/EEOICPForms/ee-2.pdf>, the District Offices, or any Resource Center) to begin the adjudication process.

Sincerely,

Claims Examiner,  
(City) Office

**U.S. DEPARTMENT OF LABOR****Employment Standards Administration  
Office of Workers' Compensation Programs  
Division of Energy Employees Occupational  
Illness Compensation**

Date

Employee:

Claimant name  
Address  
City, ST ZipCode

Dear Mr./Mrs. Claimant:

I am writing concerning the alternative filing request you filed under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) to receive a determination regarding the potential for exposure and illness of your **[employee's relationship to the claimant]** while working at **[facility]**.

The following determination is intended to provide a measure of closure to you and your family, and should serve as recognition of your **[employee's relationship to the claimant]**'s extraordinary service and sacrifice on behalf of our country.

**[Description of the findings]**

Again, this assessment **DOES NOT** change your eligibility for benefits or establish causation under the Act, and is not subject to further agency or judicial review.

If you so desire, DOL will undertake a full development of the facts of this case. You will need to complete and submit a form EE-2 (which can be found on DOL's website at <http://www.dol.gov/esa/owcp/energy/regs/compliance/EEOICPForms/ee-2.pdf>, the District Offices, or any Resource Center) to begin the adjudication process. The outcome of a full investigation of the circumstances of the claim may not result in a change of your status as an ineligible survivor, and upon issuance of a final decision in your case, you still may not be entitled to EEOICPA benefits.

Sincerely,

District Director, (City) Office