



RELEASE - TRANSMISSION OF REVISED MATERIAL TO BE
INCORPORATED INTO THE FEDERAL (EEOICPA) PROCEDURE MANUAL:
CHAPTER 3-0500 COORDINATING STATE WORKERS' COMPENSATION
BENEFITS.

EEOICPA TRANSMITTAL NO.09-08

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EXPLANATION OF MATERIAL TRANSMITTED:

- This material is to be transmitted for placement in the new Unified Procedure Manual (PM) binder.
- This material incorporates updated information and guidance for handling claims in which the claimant had filed a state workers' compensation claim and its effect on Part E benefits.
- This material provides updated guidance on obtaining signed response (affidavit) regarding a state workers' compensation claim, lawsuit and fraud.
- This material clarifies when coordination is not required and includes a Do Not Coordinate Table for easy reference.
- This material incorporates updated procedures on tracking surplus due to coordination of benefits.

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FILING INSTRUCTIONS:

File this transmittal behind Part 2 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 describes procedures for coordinating Part E benefits with state workers' compensation (SWC) benefits. "Coordination of benefits" occurs when the compensation payable under Part E of the Act is reduced to reflect certain benefits previously received by the claimant under a SWC program for the same covered illness.

2. Authority. 42 U.S.C. § 7385s-11 requires the Office of Workers' Compensation Programs (OWCP) to coordinate the Part E award(s) with the amount of certain benefits received from a SWC program for the same covered illness, after deducting the reasonable costs incurred by the claimant in obtaining those benefits.

3. State Workers' Compensation Benefits. SWC programs are no fault systems designed to provide injured workers or survivors benefits for work-related injuries or illnesses without having to sue their employers. SWC benefits may include payments for medical services, vocational services, cash payments to the injured worker for wage loss or reduction in earning capacity, as well as death and funeral benefits to the worker's survivor(s).

The laws creating these systems differ by state, but the cash benefits (whether for temporary total disability, temporary partial disability, permanent total disability, permanent partial disability, or death of a worker) are typically a calculated percentage of the injured worker's weekly earnings for a set number of weeks. SWC benefits can be administered directly by a state commission (as in Ohio). Another method is to have a state board supervise or adjudicate disputed claims and enforce the required payments made by private parties such as employers or insurance companies. Payments can be issued in a lump-sum award or settlement, on an ongoing basis (weekly or monthly), or a combination of both.

4. When Coordination is Required. Coordination of Part E benefits (there is no coordination of Part B benefits) is required only if the EEOICPA beneficiary received benefits through a SWC program for the same covered illness for which that same EEOICPA beneficiary is eligible to receive benefits under Part E. This means the CE first determines the employee/survivor's eligibility to receive Part E benefits, then determines who the beneficiary of the SWC benefits was before determining whether coordination is required. For example, if

4. When Coordination is Required. (Continued)

the employee settles a SWC claim for asbestosis and the accepted covered illness for which the employee is entitled to Part E benefits is also asbestosis, coordination of the Part E award is required to reflect the amount of SWC benefits the employee has received.

Similarly, in cases where the employee had filed a Part E claim but died before payment could be issued, Part E medical benefits through the date of employee's death awarded to the survivor requires coordination if the employee had received SWC benefits for the same covered illness. Coordination of medical benefits is required in this case because the Part E medical benefits were based on the employee's entitlement to Part E benefits and the same employee received SWC benefits for the same covered illness.

However, if the employee or the deceased employee's estate (considered same as the employee) receives SWC benefits for asbestosis and the accepted covered illness for which the survivor is entitled to Part E benefits is also asbestosis, the CE will not consider this claim for coordination (unless that survivor also received some form of SWC benefits for asbestosis, such as death benefits).

5. Exceptions. The following are exceptions to the coordination requirement. Review Exhibit 1 for additional scenarios and determination as to whether coordination is required.

a. Multiple illness(s). If the claimant receives SWC benefits for a non-covered illness, or for both a covered and a non-covered illness arising out of and in the course of the same work-related exposure, the CE does not coordinate the Part E award.

For example, if the claimant settles a SWC claim for asbestosis and silicosis arising out of the same exposure and the amounts are not apportioned between the two illnesses, and the accepted covered illness for which the claimant is entitled to Part E benefits is only asbestosis, coordination of the Part E benefits is not required.

5. Exceptions. (Continued)

b. Covered illness. Because a "covered illness" is an illness resulting from exposure to a toxic substance, the same medical condition accepted by DEEOIC and a SWC program may not require coordination. For example, if the claimant settles a SWC claim for asbestosis in a **non-DOE** facility and is entitled to Part E benefits for asbestosis based on a separate and distinct exposure to asbestos at a DOE facility, coordination of the Part E benefits is not required because it is not the same covered illness (not resulting from the same toxic exposure).

c. Waivers. DEEOIC may waive the requirement to coordinate Part E benefits with benefits paid under a SWC program, if it is determined that the administrative costs and burdens of coordinating Part E benefits in a particular case or class of cases justifies the waiver. A waiver is automatically granted if the total amount of SWC benefits the claimant received is under \$200.

If a waiver is to be granted, the CE prepares a memo to the file, approved by the District Director, explaining that the requirement to coordinate the benefits is waived due to the dollar amount of the SWC benefits the claimant received.

d. Medical or Vocational Benefits Only Claims. Medical or vocational benefits paid by a SWC program do not require any coordination of benefits.

6. Signed Response Regarding SWC Claim, Lawsuit and Fraud.

Before a Part E claim can be accepted under the Act, the claimant must provide a signed response (affidavit) reporting whether a SWC claim had been filed for the same covered medical condition(s), or whether a lawsuit had been filed for the same toxic exposure, or if the claimant has ever pled guilty to or been convicted of fraud in connection with an application for or receipt of any federal or state workers' compensation. This signed response must be obtained regardless of the information on the forms EE-1 or EE-2 as related to these three questions.

6. Signed Response Regarding SWC Claim, Lawsuit and Fraud.
(Continued)

a. The CE may call the claimant to get an initial verbal response to the three questions. If the claimant confirms verbally or submits a written response that he/she has not filed a SWC claim, lawsuit, or pled guilty to or been convicted of fraud, the CE may proceed with issuance of the Recommended Decision (RD).

Since a signed response from the claimant must be included in the case file before issuance of the Final Decision (FD), the CE must follow up with a development letter requesting the signed written response from each claimant before transferring the case to the FAB. The development letter must be claim specific and clearly note that by signing the written response, the claimant agrees to report any changes to the information provided in the response, immediately, to DEEOIC. The CE must also advise the claimant that failure to submit a signed response will result in administrative closure of the claim.

b. If the CE is unable to obtain a verbal response from the claimant or the claimant responds affirmatively to any one of the questions, the CE cannot issue a RD without further development and clarification. The CE may consider administrative closure of the claim if the claimant is not responsive to the development request for clarification. This action is taken only as a last resort, and after at least two development letters.

c. It is the responsibility of the FAB to obtain this signed response if a RD is issued without receipt of the signed response (i.e. the CE only received verbal confirmation). Every effort should be taken by the FAB to obtain this signed response including calling the claimant and sending a follow up development letter. However, if the FAB is unable to obtain the signed response after 30 days from the FAB's follow up development letter, the FAB remands the case to the district office for administrative closure of the claim.

6. Signed Response Regarding SWC Claim, Lawsuit and Fraud.
(Continued)

d. If the case is with the FAB, and there is evidence in the case file of a SWC claim, lawsuit, or fraud in connection with an application for or receipt of workers' compensation that may impact the claimant's EEOICPA benefits, further development must be undertaken. If the matter could be clarified by a telephone call, the FAB should take this action. If the matter requires extensive development, the case is to be remanded to the district office for further development.

e. By signing the written response, the claimant agrees to notify DEEOIC of any changes in the information provided in regards to the SWC/lawsuit/fraud statement. It is not necessary to request this information again unless there is a new exposure or illness (including consequential) being accepted under EEOICPA. For instance, if the claimant has submitted a written response for lung cancer and is now filing a claim for a consequential condition of bone cancer, a new signed response regarding the bone cancer is required before this consequential condition is accepted under the Act.

7. Verifying State Workers' Compensation Claims. If the claimant reports, or the evidence indicates a SWC was filed, the CE verifies the illness and SWC benefits received, but only after the CE determines Part E eligibility.

Once the CE determines that there is qualifying employment, covered illness, and a SWC claim for the same illness, the CE sends the claimant a development letter. The development letter states that a decision under the EEOICPA cannot be rendered until the claimant provides evidence from the state commission, board, payment-issuing agency, or from an attorney who settled his or her SWC claim verifying the total amount and type of SWC benefits paid to date.

a. Benefit Categories. The evidence from the state commission, board, payment-issuing agency or attorney must specify the total amount in benefits the claimant received as of the date of the reply, and an itemized account of the total benefits paid for each benefit category, such as: medical benefits; disability benefits; death benefits;

7. Verifying State Workers' Compensation Claims. (Continued)

burial/funeral benefits; settlement amount; attorney fees; vocational rehabilitation; and the amount of any disability payment issued during vocational rehabilitation training.

b. No Response or Insufficient Response. If the claimant does not respond to the request or the material submitted is not sufficient to coordinate benefits, the claim is administratively closed and the claimant is advised that no additional action will be taken until the required documentation is provided.

In some limited cases, the claimant, the SWC board, commission, payment-issuing agency or attorney may no longer have the SWC records. If the CE independently confirms with the SWC board, commission, payment-issuing agency or attorney that the SWC record is no longer available, the CE may accept a signed affidavit from the claimant attesting to the amount of the SWC benefit. As a last resort, this affidavit can be used to determine the amount of coordination.

8. Pending SWC Payment. Coordination of benefits is tied to the dollar value of the SWC benefits the claimant received for the same covered illness. Therefore, the requirement to coordinate benefits does not apply if the claimant has not received SWC benefits as of the time of the Part E payment.

If payment of SWC benefits for the same covered illness is pending at the time of the Part E payment, the CE does not defer issuing the RD or the FD. The RD or the FD is issued without coordination since the claimant has not actually received SWC benefits yet.

However, if the claimant receives payment on the pending SWC claim at any time after issuing the RD or FD, but before the issuance of the Part E payment, the Part E payment cannot be issued until the following actions are taken.

a. SWC Payment Pending, Prior to RD. If the claimant filed a SWC claim for the same covered illness, but SWC payment is pending at the time of the RD, the CE issues the RD without any coordination. However, the CE states in the RD's cover letter that if the claimant receives SWC payment

8. Pending SWC Payment. (Continued)

after the issuance of the RD, but before issuance of the FD, the claim will be remanded by the FAB for coordination of benefits and a new RD.

b. SWC Payment Pending While the Case is at the FAB. If the SWC payment is pending while the case is in posture for the FD, the FAB Hearing Representative (HR) issues the FD without coordination. However, the HR states in the FD's cover letter that if the claimant receives SWC payment after the issuance of the FD, but before issuance of the Part E payment, the FD authorizing the payment will be vacated.

c. SWC Payment Pending at the Time of EEOICPA Payment. Before issuing the Part E payment, the CE calls the claimant to verify that payment of the SWC benefits is still pending. If the claimant receives SWC payment after issuance of the FD, but before issuance of the Part E payment, the DO forwards the claim to the National Office for a reopening.

9. Calculate Amount to Coordinate. Once the CE receives the documentation which verifies the amount of SWC benefits the claimant received for the same covered illness, the CE completes the "EEOICPA/SWC Coordination of Benefits Worksheet" (Exhibit 2). This Worksheet (and its detailed instructions) is to be used by the CE to make the calculations necessary to determine how much to coordinate a claimant's EEOICPA Part E benefits to reflect benefits received from a SWC program for a covered illness compensable under Part E. After completing the Worksheet, the CE staples it to the inside of the case file jacket.

a. Maximum Aggregate Compensation. The amount of monetary compensation provided under Part E (impairment and wage-loss compensation), excluding medical benefits, cannot exceed \$250,000. In determining the aggregate compensation, reduction of compensation based on state workers' compensation coordination or tort offset is not taken into consideration. For example, if the employee is awarded benefits for impairment in the amount of \$100,000 but his compensation is reduced because of coordination of SWC

9. Calculate Amount to Coordinate. (Continued)

benefits to \$60,000, the amount of compensation used to determine the maximum aggregate compensation is \$100,000.

b. Periodic SWC Benefits. Some claimants receive ongoing periodic SWC benefits, such as a worker's or widow's annuity that can make calculation of the proper amount of coordination difficult. For cases with such SWC payments, the FAB is to use the same cut-off date for determining the amount of SWC received that was used by the CE at the DO.

c. Part E Benefits Greater than SWC Benefits. If the amount of EEOICPA Part E benefits (which may consist of lump-sum payments and/or post-filing and ongoing medical benefits) to which the claimant is currently entitled is MORE than the amount of the SWC requiring coordination, the balance due the claimant (i.e., a positive amount) will be listed on Line 7 of the Worksheet. This is the amount of Part E benefits that must be referenced in the RD, together with an explanation of how this amount was calculated.

d. Part E Benefits Less than SWC Benefits: If the amount of Part E benefits is LESS than the amount of the SWC requiring coordination, the amount of the "surplus" (i.e., a negative amount) is listed on Line 7 of the Worksheet. Because a surplus can only be absorbed from EEOICPA Part E benefits due an employee currently or in the future, no further action is required for a survivor claim.

If there is a surplus to be absorbed in an employee's Part E claim, this must be noted in the RD, along with an explanation that OWCP will not pay medical benefits and will apply the amount it would otherwise pay (directly to a medical provider, or to reimburse an employee for ongoing medical treatment) to the remaining surplus until it is absorbed. In addition, the CE explains in the RD that OWCP will not pay any further lump-sum payments for wage-loss and/or impairment due in the future until the surplus is absorbed.

9. Calculate Amount to Coordinate. (Continued)

e. FAB Award Letter. In situations involving a surplus, the FAB issues an award letter to the claimant containing special language. The FAB award letter accompanies the final decision and advises the claimant of the exact amount of the surplus.

(1) The FAB explains in the award letter that the surplus will be absorbed out of medical benefits payable and further lump-sum payments due in the future (i.e. wage loss and impairment) under Part E of the EEOICPA.

(2) The award letter further instructs the claimant to submit proof of payment of medical bills to the DO until notice is received from the DO that the surplus has been absorbed.

(3) In addition, the award letter instructs the claimant to advise medical providers to submit proof of payment of medical bills to the DO during this time.

10. Actions to Absorb Surplus. Each District Director appoints a qualified individual to serve as the point of contact (POC) to monitor surplus situations for both tort settlements and SWC benefits. Tort settlement and SWC benefit surpluses are absorbed until the surplus is exhausted and EEOICPA benefit disbursement can commence. The POC tabulates the amounts of proofs of payment and further lump-sum awards for wage loss and impairment benefits using the DEEOIC Offset Tracking Database, which is accessible through the National Office Shared Drive, until they equal or exceed the surplus amount.

a. While the surplus is being absorbed, the POC temporarily places the affected case file in a red file jacket denoting that a surplus exists. All case file contents are maintained in the red file jacket throughout the process of surplus depletion.

10. Actions to Absorb Surplus. (Continued)

b. No further payments are made on any case contained in a red file jacket. Should an unpaid bill be submitted to the POC during the surplus period, it must be forwarded to the medical bill processing agent (BPA) so an explanation of benefits can be generated.

c. During the time in which the surplus is being monitored for depletion, the POC continually tracks the offset using the DEEOIC Offset Tracking Database until the surplus has been depleted. Proofs of payment amount and further lump-sum awards for wage loss and impairment benefits will be entered into the appropriate fields in the DEEOIC Offset Tracking Database, until they equal or exceed the surplus amount.

d. Once the surplus is completely absorbed and EEOICPA benefits may commence, the POC removes the temporary red file jacket and returns the case contents to the original file jacket. Removal of the red file jacket signifies that future benefits may be provided on the case. Cases are not to be deleted from the DEEOIC Offset Tracking Database

e. The POC sends a letter advising the claimant that the surplus is absorbed. The letter provides the claimant with the address of the BPA and instructs him or her to submit all future medical bills to that address to review for payment.

f. While medical benefits are not being paid because of a surplus that is being absorbed, the CE may find it necessary to obtain a medical examination, second opinion examination, a referee examination, or a medical file review. If so, DEEOIC will pay the costs for these directed examinations or reviews and will reimburse any reasonable expenses incurred by the employee, including medical travel expenses, without adding to the surplus. Therefore, the coordination of benefits will not apply to any prior approval medical conditions in ECMS, coded with a medical condition type of "PA." In such situations, the CE enters a comment into ECMS case notes authorizing the BPA to pay all bills related to the directed medical examination or medical file review.

10. Actions to Absorb Surplus. (Continued)

In a case with a surplus, BPA creates a thread for all medical travel refund requests to the POC requesting authority to deny or proceed with payment. Medical travel expenses related to a directed medical examination must be approved for payment and are not subject to coordination.

11. ECMS Coding. The CE/HR must review the EEOICPA Procedure Manual for specific ECMS coding instructions for cases with SWC payment. Accurate and prompt ECMS coding is important because on surplus cases, the condition status field for the medical condition(s) must be updated to "O" (Offset) on the Employee Medical Condition screen to suspend medical bill payment until the surplus is absorbed and the "O" code is replaced by "A" (Accepted). During the time in which the "O" code remains in the medical condition status screen, the BPA denies medical bills related to the medical condition coded as "O" and generates explanations of benefits that the bills are not payable due to a surplus.

12. Contact with State Workers' Compensation Office. Due to privacy and disclosure regulations, the CE can not disclose any information regarding a claim filed by a claimant to a SWC office unless:

a. CE Requires Information from the SWC Office. If the CE requires information from a SWC office to process an EEOICPA claim, the CE can disclose to that SWC office that the claimant filed for benefits under the EEOICPA.

b. The SWC Office Requests Evidence. If a SWC office requests evidence to establish that the EEOICPA claimant should not receive benefits from a SWC claim, the request should be submitted to the National Office for review. The National Office will provide instructions for responding to the request after reviewing all information.

DO NOT COORDINATE TABLE

DO NOT COORDINATE
Multiple illnesses arising out of same incident accepted under SWC, only one of those accepted as covered illness under Part E of EEOICPA - <i>do not coordinate any Part E benefits</i>
SWC paid only medical benefits, no monetary benefits - <i>do not coordinate any Part E benefits</i>
SWC paid only vocational rehabilitation benefits, no monetary benefits - <i>do not coordinate any Part E benefits</i>
Illness accepted under Part B, accepting same illness under Part E for causation only (no monetary) for the condition accepted under Part B only - <i>do not coordinate Part E medical benefits (but coordinate impairment and wage-loss benefits).</i>

EEOICPA/SWC COORDINATION OF BENEFITS WORKSHEET

(For internal DEEOIC use only)

Covered Part E Employee:

Claimant:

Claim Number:

1. Gross dollar amount of SWC received for the covered illness or illnesses accepted by DEEOIC.....\$ _____

2. Does amount listed on Line 1 include medical and/or vocational rehabilitation benefits?.....YES/NO

a. If "YES", complete Step 3 of the Worksheet

b. If "NO", skip Step 3 and go directly to Step 4

3. Deductions from amount of SWC received:

a. SWC paid as medical benefits.....\$ _____

b. SWC paid as vocational rehabilitation.....\$ _____

c. Add Lines 3a and 3b.....\$ _____

d. Net SWC (Subtract Line 3c from Line 1)....\$ _____

4. Deductions for costs of suit and attorney fees:

a. Total costs of suit.....\$ _____

b. Determine costs percentage (Line 4a/Line 1).....%

c. Deductible costs of suit (Line 4b x either Line 1 or Line 3d).....\$ _____

d. Attorney fees paid.....\$ _____

e. Determine fees percentage (Line 4d/Line 1).....%

- f. Deductible attorney fees (Line 1 or Line 3d x the LESSER of Line 4e or 40%).....\$_____
- g. Allowable deductions (Line 4c + Line 4f)..\$_____
- 5. Amount of SWC requiring coordination (Subtract Line 4g from either Line 1 or Line 3d).....\$_____
- 6. Current Part E entitlement.....\$_____
- 7. Coordinate current Part E benefits (Subtract Line 5 from Line 6).....\$_____
- 8. Is the amount entered on Line 7 a positive amount?...YES/NO
 - a. If "YES", this is the amount of the Part E award.
 - b. If "NO", this is the amount of the Part E surplus that must be absorbed from future Part E benefits.

* * * * *

Instructions for Completing the Worksheet

Determining the amount of SWC received. Enter the gross dollar amount of SWC the claimant received as of the date of the recommended decision on Line 1, less any amounts previously coordinated with prior Part E payments. SWC received by someone other than the claimant is not used to coordinate the claimant's Part E benefits and must not be included in the amount entered on Line 1. For example, SWC received by a worker who is now deceased is not used to coordinate Part E benefits payable to that worker's survivor(s). If the amount on Line 1 includes SWC that was received for a medical condition other than the covered illness(es) accepted by DEEOIC in the claim, DO NOT COMPLETE THE WORKSHEET.

If the amount entered on Line 1 does not include medical and/or vocational rehabilitation benefits, the CE circles "NO" at Step 2 and skips Step 3. However, if the amount on Line 1 does include medical and/or vocational rehabilitation benefits, the CE circles "YES" at Step 2 and performs the calculations listed at Step 3. On Line 3a, the CE enters the amount of medical benefits paid to both the employee and any providers. On Line

3b, the CE enters the total amount of vocational rehabilitation expenses paid to both the employee and any providers. These amounts are added at Line 3c, and this total is subtracted from the amount listed on Line 1, leaving the "net" SWC listed on Line 3d.

Costs of suit that may be listed on Line 4a of the Worksheet are reasonable out-of-pocket costs and expenses involved in bringing a SWC lawsuit, but do not include any fees paid to co-counsel or normal office expenses like secretarial or paralegal services or in-house record copying costs. To be deductible from the amount of SWC received by the claimant, the costs MUST be itemized so each individual cost may be evaluated by the CE to ensure that it is allowable and authentic. Costs that are routinely allowable are filing fees, travel expenses, record copy services, witness fees, postage, court reporter costs for transcripts of hearings and depositions, and long distance telephone calls. Once the costs percentage has been calculated (round this figure to the nearest HIGHER one-tenth percentage point) and entered on Line 4b, the CE multiplies that percentage by the amount listed on Line 1, or the amount listed on Line 3d if "YES" was circled at Step 2, and enters this amount on Line 4c. Attorney fees supported by bills or other appropriate documentation are entered on Line 4d of the Worksheet. In general, attorney fees that exceed 40% of the SWC amount entered on Line 1 will be considered unreasonable. If the fees percentage (round this figure to the nearest HIGHER one-tenth percentage point also) entered on Line 4e is greater than 40%, the CE must inform the claimant of this matter and provide him or her an opportunity to show (to the CE's satisfaction) that the attorney fees paid were reasonable. If the claimant is unable to do so, the CE uses 40% to calculate the amount entered on Line 4f.

To determine the amount of SWC requiring coordination, the CE subtracts the amount entered on Line 4g from the SWC entered on Line 1, or the "net" SWC entered on Line 3d if Step 3 of the Worksheet was used, and enters the result on Line 5. The amount entered on Line 5 is the amount of SWC to be used to coordinate the claimant's current Part E benefits.

Coordinating the Part E benefits. To perform the required coordination of Part E benefits, the CE enters the amount of Part E benefits that are currently payable to the claimant on Line 6 of the Worksheet, and subtracts the amount of SWC entered on Line 5 of the Worksheet from the amount entered on Line 6. The result of this coordination is entered on Line 7. If Line 5 is LESS than Line 6, the amount on Line 7 is the compensation payable to the claimant under Part E of EEOICPA, reduced to reflect the benefits previously received under a SWC program. This is also the amount of Part E compensation that must be referenced in the recommended decision. If Line 5 is MORE than Line 6, the amount on Line 7 will be a negative number that represents the amount of the "surplus" of SWC that must be absorbed from any future Part E benefits payable to the claimant.