

Subpart F—Survivors; Payments and Offsets; Overpayments

SURVIVORS

§ 30.500 What special statutory definitions apply to survivors under EEOICPA?

(a) For the purposes of paying compensation to survivors under both Parts B and E of EEOICPA, OWCP will use the following definitions:

(1) *Surviving spouse* means the wife or husband of a deceased covered Part B employee or deceased covered Part E employee who was married to that individual for the 365 consecutive days immediately prior to the death of that individual.

(2) *Child* or *children* includes a recognized natural child of a deceased covered Part B employee or deceased covered Part E employee, a stepchild who lived with that individual in a regular parent-child relationship, and an adopted child of that individual. However, to be a “covered” child under Part E only, such child must have been, as of the date of the deceased covered Part E employee’s death, 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.

(b) For the purposes of paying compensation to survivors only under Part B of EEOICPA, OWCP will use the following additional definitions:

(1) *Parent* includes fathers and mothers of a deceased covered Part B employee through adoption.

(2) *Grandchild* means a child of a child of a deceased covered Part B employee.

(3) *Grandparent* means a parent of a parent of a deceased covered Part B employee.

§ 30.501 What order of precedence will OWCP use to determine which survivors are entitled to receive compensation under EEOICPA?

(a) Under Part B of the Act, if OWCP determines that a survivor or survivors are entitled to receive compensation under EEOICPA because a covered Part B employee who would otherwise have

been entitled to benefits is deceased, that compensation will be disbursed as follows, subject to the qualifications set forth in § 30.5(gg)(3) of these regulations:

(1) If there is a surviving spouse, the compensation shall be paid to that individual.

(2) If there is no surviving spouse, the compensation shall be paid in equal shares to all children of the deceased covered Part B employee.

(3) If there is no surviving spouse and no children, the compensation shall be paid in equal shares to the parents of the deceased covered Part B employee.

(4) If there is no surviving spouse, no children and no parents, the compensation shall be paid in equal shares to all grandchildren of the deceased covered Part B employee.

(5) If there is no surviving spouse, no children, no parents and no grandchildren, the compensation shall be paid in equal shares to the grandparents of the deceased covered Part B employee.

(6) Notwithstanding paragraphs (a)(1) through (a)(5) of this section, if there is a surviving spouse and at least one child of the deceased covered Part B employee who is a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, half of the compensation shall be paid to the surviving spouse, and the other half of the compensation shall be paid in equal shares to each child of the deceased covered Part B employee who is a minor at the time of payment.

(b) Under Part E of the Act, if OWCP determines that a survivor or survivors are entitled to receive compensation under EEOICPA because a covered Part E employee who would otherwise have been entitled to benefits is deceased, that compensation will be disbursed as follows, subject to the qualifications set forth in § 30.5(gg)(3) of these regulations:

(1) If there is a surviving spouse, the compensation shall be paid to that individual.

(2) If there is no surviving spouse, the compensation shall be paid in equal shares to all “covered” children of the deceased covered Part E employee.

(3) Notwithstanding paragraphs (b)(1) and (b)(2) of this section, if there is a surviving spouse and at least one "covered" child of the deceased covered Part E employee who is living at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each "covered" child of the employee who is living at the time of payment.

§ 30.502 When is entitlement for survivors determined for purposes of EEOICPA?

Entitlement to any lump-sum payment for survivors under EEOICPA, other than for "covered" children under Part E, will be determined as of the time OWCP makes such a payment. As noted in § 30.500(a)(2) of these regulations, a child of a deceased Part E employee will only qualify as a "covered" child of that individual if he or she satisfied one of the additional statutory criteria for a "covered" child as of the date of the deceased Part E employee's death.

PAYMENT OF CLAIMS AND OFFSET FOR CERTAIN PAYMENTS

§ 30.505 What procedures will OWCP follow before it pays any compensation?

(a) In cases involving the approval of a claim, whether in whole or in part, OWCP shall take all necessary steps to determine the amount of any offset or coordination of EEOICPA benefits before paying any benefits, and to verify the identity of the covered Part B employee, the covered Part E employee, or the eligible surviving beneficiary or beneficiaries. To perform these tasks, OWCP may conduct any investigation, require any claimant to provide or execute any affidavit, record or document, or authorize the release of any information as OWCP deems necessary to ensure that the compensation payment is made in the correct amount and to the correct person or persons. OWCP shall also require every claimant under Part B of the Act to execute and provide any necessary affidavit described in § 30.620 of these regulations. Should a

claimant fail or refuse to execute an affidavit or release of information, or fail or refuse to provide a requested document or record or to provide access to information, such failure or refusal may be deemed to be a rejection of the payment, unless the claimant does not have and cannot obtain the legal authority to provide, release, or authorize access to the required information, records, or documents.

(b) To determine the amount of any offset, OWCP shall require the covered Part B employee, covered Part E employee or each eligible surviving beneficiary filing a claim under this part to execute and provide an affidavit (or declaration made under oath on Form EE-1 or EE-2) reporting the amount of any payment made pursuant to a final judgment or settlement in litigation seeking damages. Even if someone other than the covered Part B employee or the covered Part E employee receives a payment pursuant to a final judgment or settlement in litigation seeking damages (*e.g.*, the surviving spouse of a deceased covered Part B employee or a deceased covered Part E employee), the receipt of any such payment must be reported.

(1) For the purposes of this paragraph (b) only, "litigation seeking damages" refers to any request or demand for money (other than for workers' compensation) by the covered Part B employee or the covered Part E employee, or by another individual if the covered Part B employee or the covered Part E employee is deceased, made or sought in a civil action or in anticipation of the filing of a civil action, for injuries incurred on account of an exposure for which compensation is payable under EEOICPA. This term does not also include any request or demand for money made or sought pursuant to a life insurance or health insurance contract, or any request or demand for money made or sought by an individual other than the covered Part B employee or the covered Part E employee in that individual's own right (*e.g.*, a spouse's claim for loss of consortium), or any request or demand for money made or sought by the covered Part B employee or the covered Part E employee (or the