

PART 4 - SPECIAL CASE PROCEDURES

(Issued 9/94; Trans. No. 94-39)

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4-0100 INTRODUCTION

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1. Purpose and Scope. This part of the FECA PM concerns some of the claims issues and functions which are the exclusive jurisdiction of the Cleveland District Office (09). The part provides information necessary for the development, adjudication, payment and monitoring of some of the so-called "Fringe Acts", as

well as claims for benefits under the Federal Employees' Compensation Act from foreign nationals.

2. Organization of Material in FECA PM Part 4.

a. Chapter 4-0200 discusses the provisions of 5 U.S.C. 8191 et seq., "Law Enforcement Officers Not Employed by the United States" (LEOs), and the processing of claims for benefits under that subchapter.

b. Chapter 4-0300 outlines the provisions of the War Hazards Compensation Act, 42 U.S.C. 1701 et seq., as well as the procedures to be used in the adjudication and payment of claims under said Act. Individuals who are eligible for coverage under the War Hazards Act include employees of contractors with the United States who sustain injury due to a war-risk hazard or who are detained by a hostile force or person.

c. Chapter 4-0400 concerns claims for benefits under the War Claims Act of 1948. Since the Office of Workers' Compensation Programs administers only certain portions of the War Claims Act, those sections are the focus of the chapter. The majority of claims handled by the Office involve American civilians who were interned by the Japanese Government at Midway, Guam, Wake Island, and the Philippine Islands during World War II.

d. Chapter 4-0500 deals with claims for benefits by volunteer members of the Civil Air Patrol, who were extended coverage under the Federal Employees' Compensation Act by Public Law 89-554, September 6, 1966. Section 8141 includes the provisions of Pub. Law 89-554, as well as Pub. Law 98-94, September 24, 1983, and Pub. Law 103-296, August 15, 1994.

e. Chapter 4-0600 covers claims for benefits by members of and applicants for membership in the Reserve Officers' Training Corps, as outlined in 5 U.S.C. 8140 (Pub. Laws 89-554, September 6, 1966; 100-456, September 29, 1988; and 105-261, October 17, 1998).

2. Organization of Material in FECA PM Part 4. (Continued)

f. Chapter 4-0700 concerns the Civilian Conservation Corps and other Federal relief workers.

g. Chapter 4-0801 outlines some the special concerns which must be addressed in the development, adjudication, and payment of claims for benefits by foreign nationals, with more explicit guidance on claims from Philippine and Korean nationals.

h. Chapter 4-0802 provides historical background on claims for benefits from employees of the Panama Canal Commission, as well as procedural guidance.

3. Jurisdiction. All of the claims discussed in this chapter are to be created and adjudicated by the Cleveland District Office (09).

Claims from foreign nationals may be transferred in the manner of any general jurisdiction case where compensation payments do not involve consideration of foreign law, and the claimant has relocated to the United States, except for cases involving employees of the Panama Canal Commission.

See PM 1-0200.3 for a discussion of geographical jurisdiction.

4-0200 NON-FEDERAL LAW ENFORCEMENT OFFICERS

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1. Purpose and Scope. This chapter outlines the procedures for developing, adjudicating, paying, and monitoring claims from non-Federal law enforcement officers.

2. Statutory Authority. Public Law 90-291, enacted April 19, 1968, added sections 8191 et seq. to the Federal Employees' Compensation Act, and provides compensation coverage for non-Federal law enforcement officers who sustain an injury or disease under circumstances involving a crime against the United States. Coverage is also extended to eligible survivors of officers whose deaths occur under such circumstances. The law was intended to recognize the assistance given to the Federal government by state and local law enforcement officers (LEOs).

3. Regulatory Authority. Regulations governing LEO cases are found in 20 C.F.R., Parts 10.610 through 10.619. Prior to June 1, 1987, no regulations for LEO cases existed.

4. Jurisdiction. All claims from non-Federal law enforcement officers are to be handled in

the National Operations Office (District 25), and should be forwarded there without jacketing.

5. Claim Forms and Information.

- a. Form CA-721 and Form CA-722 are used for disability and death cases, respectively. No Form CA-7 or Form CA-5 is needed to claim compensation.
- b. Form CA-723 is a poster explaining benefits intended for use by law enforcement agencies.
- c. Form CA-724 is an informational letter designed to be released to agencies, and may be used when information is requested.
- d. Form CA-725 is a more detailed general information letter designed for agencies.
- e. Pamphlet CA-688, "Benefits for Law Enforcement Officers," provides an explanation of conditions of coverage, benefits available, and how to file for benefits.
- f. Requests from city police departments and other law enforcement organizations for multiple copies of forms should be referred to the National Office. A small supply of Forms CA-721 and CA-722 should be maintained by each district office. The supply should be used solely to fill requests for one or two copies of the form in instances where a specific injury, occupational disease, or death has occurred.

6. Conditions of Coverage.

- a. Time. An application for benefits must be made on the appropriate form within five years of the injury or death. Because the claimant's official superior will most likely not be a Federal employee, and because of the wording of the statute, written notice must be received by the Department of Labor within five years, and neither written nor verbal notice to the official superior will suffice. There is no provision for waiver or an exception for medical benefits only.
- b. Civil Employee. Coverage is extended to all non-Federal law enforcement officers who sustain injury or occupational disease while participating in the activities outlined in 5 U.S.C. 8191 (see paragraph 7 below), and to their survivors if the injury results in death. A law enforcement officer is defined in 20 C.F.R., Part 10.610 as an employee of a State or local government, including the governments of U.S. possessions

and territories, or an employee of the United States pensioned or pensionable under Sections 521-535 of Title 4, District of Columbia Code, whose functions include one or more of the following:

- (1) The apprehension of persons sought for the commission of crimes, including those sought by a law enforcement agency for such commission, as well as material witnesses sought in connection with criminal cases; or
- (2) The protection or guarding of persons held for the commission of crimes or as such material witnesses; or
- (3) The prevention of the commission of crimes.

Most law enforcement officers who are also Federal employees (for instance, Drug Enforcement Administration agents) must seek compensation for work-related injuries under 5 U.S.C. 8101, not 5 U.S.C. 8191, because they are covered under the Civil Service Retirement System. Law enforcement officers who are members of the Uniformed Divisions of the U.S. Secret Service and the U.S. Park Police and are covered under the D.C. Policemen and Firemen's Retirement and Disability Act (D.C. Retirement Act) are covered under Section 8191 (see paragraph 9 below), rather than 8101, and must meet the definition of a law enforcement officers.

However, 20 C.F.R., Part 10.610 also states, in part:

... members of the Non-Uniformed Division of the United States Secret Service who are covered under the District of Columbia Policemen and Firemen's Disability Act are considered to be engaged in the types of activities specified in 5 U.S.C. 8191 (1)-(3), and are covered by the provisions of 5 U.S.C. 8191-8193 during the performance of all official duties.

Therefore, all employees of the Non-Uniformed Division of the U.S. Secret Service who are covered under the D.C. Retirement Act are covered under 5 U.S.C. 8191-8193, whether they meet the above three criteria for law enforcement officer or not.

In John M. Dolce, 31 ECAB 1787, the Board found that the claimant, a Commissioner for Public Safety, was not a "law enforcement officer" within the meaning of 5 U.S.C. 8191 where he was not considered to be a "Peace Officer" under state law, and where his duties were administrative in nature.

- c. Fact of Injury. This element should be considered as in regular FECA claims.
- d. Performance of Duty. The same rules concerning performance of duty which apply to regular FECA claims will also apply to LEO claims. Many law enforcement

officers are considered to be "on duty" even during off-duty hours, or while "moonlighting" as security guards, so it is important to obtain sufficient information from the claimant and official superior concerning the performance of duty aspects of the particular situation.

e. Causal Relationship. This element should be considered as in regular FECA claims.

7. Criteria to Consider Under Section 8191. A non-Federal law enforcement officer must meet at least one of five criteria outlined in 5 U.S.C. 8191 in order to be eligible for benefits under the FECA. The first three criteria are generally considered together, since they are found in the same subsection of 5 U.S.C. 8191, and all deal with apprehension or attempted apprehension. The criteria are as follows:

a. The officer was engaged on that occasion in the apprehension or attempted apprehension of any person -

(1) for the commission of a crime against the United States, or

(2) who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States, or

(3) who at that time was sought as a material witness in a criminal proceeding instituted by the United States.

Apprehension must be in progress, which means that the officer is trying to take someone into custody, or make an arrest.

In Rocco A. Ranaudo, 35 ECAB 689, the claimant was investigating a car sitting idling with the driver apparently asleep at the wheel. When he reached through the window to turn off the ignition, he was grabbed by the driver, who proceeded to accelerate the car, dragging the officer along, and causing him to sustain injury. The claimant was determined not to have been engaged in the "apprehension or attempted apprehension" of an individual under these circumstances.

In Michael McKeon, 28 ECAB 8, where an officer was injured when he picked up a tear gas pen which had been converted to a gun, the Board ruled that his actions did not constitute apprehension.

An officer who is injured when he trips over a tire while conducting an on-site criminal

investigation involving Federal offenses is not covered under section 8191 (1) because there is no apprehension (see paragraph 7(c) for a description of the exceptions).

The stimulus for the apprehension or attempted apprehension must be a Federal crime or an integral part of a Federal crime.

In Edward L. Jackson, 31 ECAB 550, the Board found that the officer, who was injured while making an arrest for a local offense, was not brought under coverage simply because he later found that a Federal offense had also been committed. The stimulus for his apprehension was the local matter; his injury occurred prior to the discovery of the Federal offense.

Thus latent discovery of a Federal crime does not bring an officer into the scope of coverage.

After being dragged down the street and injured, the officer in Ranaudo, cited above, arrested the driver for driving while intoxicated and reckless endangerment. The claimant later discovered that the driver was an illegal alien, a violation of Federal law. Since there was no evidence that the apprehension bore any relationship to the Federal violation, coverage was not extended. Later discovery of a Federal crime or potential Federal crime arising out of local activity during which a police officer was injured does not in itself bring the injury within the scope of section 8191.

The latent discovery principle should not be confused with the awareness doctrine, which states that the officer does not need to know at the time of apprehension or attempted apprehension that the violation for which the individual is being arrested is a Federal offense. Thus, the officer who is injured while attempting to apprehend an armed robber will be covered under section 8191 if possession of that particular weapon is a Federal violation, even if the officer didn't know it at the time of the attempted apprehension. The weapon was an integral part of the stimulus to which the officer was responding.

An officer injured while responding to an alarm of a robbery at a Federally insured bank would be entitled to benefits under section 8191, unless the alarm was false and he was injured after discovering that no crime had been committed. In this situation no Federal crime would have been involved. In most instances, then, there must be an actual Federal crime for there to be coverage (see paragraph 7(c) below for a description of the exceptions).

"Sought by a law enforcement officer of the United States..." means that a Federal warrant must be outstanding, and that the warrant must be at least a part of the reason for the apprehension or attempted apprehension at the time of the encounter. Officers are frequently alerted to the existence of a Federal warrant via police radio.

b. The officer was engaged on that occasion in protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such a crime. This condition of coverage is very rarely encountered.

c. The officer was engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States.

The prevention must be an active engagement on the part of the officer. It is not sufficient to argue that all law enforcement officers are engaged in crime prevention while on active duty. The crime being prevented must be specific, and the threat of the crime must be actual and imminent.

In Charles E. Craven, 40 ECAB 447, the Board found that the claimant was engaged in the "lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States" when he was accidentally shot by a fellow law enforcement officer. He was at the scene with several officers to secure a residence where illegal drug sales were known to be occurring, while a search warrant was being obtained. Because a drug sale had taken place immediately prior, there was every indication that the sale of drugs was about to continue.

In Rocco J. Pascarella, ECAB Docket No. 87-1106, a police officer was injured when he went to investigate a suspicious bag which was sitting outside the entrance to Police Headquarters. He was not extended coverage under Section 8191 even though manufacture of the bomb was a violation of 18 U.S.C. 842(a) because at the time of injury, the crime had already been committed, and he was therefore not in the process of preventing a crime.

In Fred A. Olsen, 40 ECAB 767, the claimant was found to have been engaged in attempting to apprehend a suspect in a Federal crime or prevent the commission of a Federal crime, even though it was later determined that no Federal crime had been committed. The claimant was a local law enforcement officer who responded to a call from the U.S. Coast Guard to assist in apprehending possible drug smugglers. Coverage was extended because the situation presented objective evidence of a potential Federal crime in progress, the claimant had knowledge of this evidence, he had been requested by a Federal agency to assist in apprehending a suspect in a Federal crime or preventing the commission of such a crime, and he had in fact joined in the pursuit.

Generally, coverage under section 8191 may be extended whenever a local law enforcement officer is requested to provide assistance to a Federal agency in the apprehension of a suspect for, or the prevention of, the commission of a crime against the

United States. Officers who are assigned to assist in the protection of the President of the United States are said to be preventing or attempting to prevent a crime against the United States because they are performing Federal law enforcement activities.

In Rodney Aurello, 41 ECAB 450, the Board affirmed the Office's decision to extend coverage to a law enforcement officer who was injured in a helicopter crash while acting as a spotter in a joint Federal-state effort to eradicate illicit cannabis fields. He was found to have been actively engaged in the prevention of a Federal crime, growing of a controlled substance, at the time of his injury.

8. Determinations Under Section 8191.

a. Some of the more common violations of Federal law found in LEO cases include:

- (1) Armed robbery of a Federally insured bank;
- (2) Robbery of a postal worker, vehicle, or office;
- (3) Removal of a serial number from a firearm [26 U.S.C. 5861(g)];
- (4) Possession of a firearm which has crossed state lines [18 U.S.C. 922(h)] by a person convicted or indicted for a crime punishable by imprisonment for a term exceeding one year;
- (5) A stolen firearm has crossed state lines [18 U.S.C. 922(i)];
- (6) A stolen vehicle has crossed state lines;
- (7) Possession or sale of a controlled substance; and
- (8) Manufacture of alcoholic beverages.

Any crime committed in the District of Columbia is considered to be a "crime against the United States" as described in section 8191.

b. Advisory opinions on whether or not a Federal crime is involved in a particular situation may be obtained from the U.S. Department of Justice by forwarding a memorandum outlining the particulars of the situation to the Director for Federal Employees' Compensation.

c. When none of the five criteria are met and a claim must be disallowed, the memorandum must address each of these five factors. It is not sufficient to consider just the one or two factors the claimant is alleging bring him or her into coverage. Signature level for both the approval and denial of LEO claims is the Senior Claims Examiner. For approvals, only a memorandum outlining the reasons for acceptance and a letter to the claimant(s) explaining the acceptance and asking for information on comparable benefits will be needed.

9. Federal Law Enforcement Officers Covered Under Section 8191. Members of the Non-Uniformed Division of the Secret Service are covered under section 8191 if they are covered under the D.C. Policemen and Firemen's Disability Act as of the date of injury. Law enforcement officers who are members of the Uniformed Division (formerly called the Executive Protective Service) of the U.S. D.C. Policemen and Firemen's Disability Act are also covered under section 8191. These individuals are not considered employees under section 8101. An individual's retirement plan as of the date of injury determines whether FECA coverage will be under section 8191 or 8101. The Non-Uniformed Division of the Secret Service should provide a statement as to the employee's retirement system as of the date of injury. If a member of the Non-Uniformed Division of the Secret Service sustains a work injury while under the Civil Service Retirement System, but later converts to the D.C. Retirement System and then claims a recurrence of the earlier injury, coverage will be under section 8101. If such an individual applies for and receives D.C. Retirement benefits, and is eligible for FECA benefits under section 8101 for the same period of time, an election of benefits is required under 5 U.S.C. 8116(a). An election between a schedule award of compensation under section 8106 and D.C. Retirement benefits is not required under the FECA. However, section 4-633 of the D.C. Retirement Act prohibits concurrent receipt of FECA benefits under 8101 and D.C. Retirement Benefits for the same injury or death.

a. Members of the Non-Uniformed Division of the Secret Service are covered under section 8191 during the performance of all official duties, and are considered to be engaged in the types of activities specified in section 8191 (1), (2), and (3) during all on-duty time.

b. Law enforcement officers of the Uniformed Division of the Secret Service and U.S. Park Police who are covered under the D.C. Retirement Act must be engaged in specific activities involving crimes against the United States as described in paragraphs 7a through 7c above to qualify for coverage under section 8191.

c. Eligibility for FECA medical benefits for U.S. Park Police and Secret Service employees are as follows:

(1) U. S. Park Police

Pre-retirement: Must use D.C. Clinic if in Washington Metro area. Must use agency-contracted clinics in New York City or California if in those areas. Full FECA if outside D.C., NYC, or CA.

Post-retirement: Full FECA.

(2) Secret Service Uniformed Division

Pre-retirement: D. C. Clinic if in Washington Metro area. Full FECA if outside D. C.

Post-retirement: D. C. Clinic or FECA

(3) Secret Service Non-Uniformed Division

Pre-retirement: Full FECA

Post-retirement: Full FECA

d. Schedule Awards and Leave Buy-Backs are payable. No comparable benefits are deducted during the period of a schedule award (see paragraph 11.b(3) below regarding schedule awards and comparable benefits).

e. Continuation of pay is not payable, even though co-workers who come under the Civil Service Retirement System and who are therefore covered under section 8101 are so entitled.

f. Retirement benefits under the D. C. Retirement System are generally not paid until two days after the hearing with the D. C. Retirement Board has been held, and are not retroactive. Thus full FECA benefits may be paid up through the day after the hearing, after which comparable benefits must be deducted. During the pre-hearing period, deductions for health benefits and optional life insurance must be made, although the enrollment should not be transferred into the office.

10. Details Under the Intergovernmental Personnel Act. Non-Federal law enforcement officers are sometimes detailed to Federal law enforcement agencies (such as the Drug Enforcement Agency) on a long-term basis to assist with the enforcement of Federal laws. These assignments are often made under the provisions of the Intergovernmental Personnel Act

(IPA) of 1970, P.L. 91-648, 5 U.S.C. 3371 et seq., issued January 5, 1971. The IPA is not, however, always cited in the agreement between the local law enforcement agency and the Federal agency.

- a. To determine whether the claimant may be considered a civil employee of the United States, and thus entitled to coverage under section 8101 instead of 8191, the CE should obtain a copy of the agreement between the local and Federal agencies. The following questions must be considered to determine the civil employee status:
 - (1) How long has the claimant been assigned to the Federal agency?
 - (2) How much of the claimant's time is spent working with the Federal agency, as opposed to the local agency?
 - (3) Who pays the claimant's salary? If paid by the local agency, are they reimbursed by the Federal agency?
 - (4) Was the claimant issued a Federal agency identification card?
 - (5) Who is the claimant's immediate superior, and is this individual a Federal employee?
- b. Determination of Coverage.
 - (1) If not found to be an employee under section 8101, the claimant may be instructed to file a claim under section 8191, if appropriate.
 - (2) If found to be an employee under section 8101, the claimant should be instructed to use Forms CA-1, CA-2, or CA-5 to claim benefits, and the case should be handled in the office with geographical jurisdiction.
 - (3) If the claimant is entitled to benefits for the same injury or death under both section 8101 of the FECA and a state or local government, sections 3373(d)(1) and 3374(d) of the IPA require that an election of benefits be made within one year after the injury or death. This election is irrevocable.

11. Compensation Benefits. Title 5 U.S.C. 8192 provides that compensation benefits under section 8191 are to be computed as if the officers were employees under section 8101(1). Therefore, the pay rates are determined in accordance with section 8114, and the benefit levels are the same as in other FECA cases. Section 8192 also provides, however, that those benefits

may be reduced or adjusted to reflect comparable benefits received by the officer (or survivors) by virtue of his or her employment on the occasion of the injury or death.

a. Comparable Benefits. Any money paid to an officer or survivors by a state or local organization on account of an injury or death which is also covered under 5 U.S.C. 8191 *et seq.* is considered a comparable benefit. The benefit is considered comparable only to the extent that it represents public or state funds. Thus, a benefit which is comprised of both public funds and employee contributions will be only partially comparable.

After a case has been accepted as compensable under section 8191, a letter requesting detailed information on comparable benefits should be released, prior to the payment of compensation benefits. Exhibit 1 shows one example of such a letter.

Types of comparable benefits include the following:

(1) Pension funds. In most cases, the officer has made contributions to the fund, and the formula shown in paragraph 11b must be used to determine the comparable portion. In some death cases, the officer's contribution is repaid to the survivors as a lump sum, and a pension is paid thereafter. The lump sum would not be considered comparable, but the pension paid subsequently would be 100% comparable.

(2) State workers' compensation payments. In almost all cases, state compensation is paid entirely from state funds, and is 100% comparable.

(3) Public Safety Officer Benefit Act (PSOB). The Public Safety Officer Benefit Act, 42 U.S.C. 3796, provides for a \$50,000 lump sum payment to designated survivors of law enforcement officers killed in the line of duty on or after September 29, 1976. The PSOB benefit is 100% comparable, and it must be completely offset along with any other comparable benefits before FECA compensation is payable.

Effective June 1, 1988, the PSOBA was amended to increase the payment to \$100,000 for eligible survivors, and to provide for cost-of-living increases, effective October 1 of each year. It is therefore necessary to verify the PSOBA amount in each case. Increases to date have been:

October 1, 1988	\$103,890
October 1, 1989	\$109,460
October 1, 1990	\$114,235
October 1, 1991	\$119,894
October 1, 1992	\$123,520

October 1, 1993 \$127,499

If there is more than one eligible survivor, including a widow or widower, 50% of the PSOB benefit is paid on behalf of the widow or widower, and 50% is shared by the remaining beneficiaries. The individual entitlements and comparability offsets must be computed separately.

In practice, because of the large PSOB benefit and the likelihood of other substantial comparable benefits, it may be many years before survivors become eligible for FECA benefits.

Effective November 29, 1990, benefits under the PSOBA of up to \$100,000 were extended to public safety officers who have become permanently and totally disabled as the direct result of a catastrophic personal injury sustained in the line of duty.

Inquiries concerning PSOB should be addressed to:

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Assistance
633 Indiana Avenue N.W.
Washington, D.C. 20531

(4) State and Local Lump Sums. Many states or localities provide for the payment of a lump sum made up wholly of public funds. As with the PSOBA benefit, these lump sums must be offset in their entirety before FECA compensation will be payable. In the past, lump sum payments were pro-rated over the projected period of widowhood, based on life expectancy tables. A few of these "pro-rated" cases may remain, and any such case should be left "as is" until the period of the deductions expires.4-0200-11 Compensation Benefits (cont.)

b. Computation of Comparable Benefits. The following formula is generally used to compute the comparable portion of a particular benefit:

a = employer's contribution (may be a monetary amount for the year prior to injury or death, or may be a percentage)

b = employee's contribution expressed in the same terms as "a"

$$\text{comparable benefits} = \frac{a}{a + b}$$

The comparable benefit derived by using this formula will be a decimal (percentage), which must then be multiplied by the total benefit to determine the comparable amount. See Exhibit 2 for an example of the actual calculations.

- (1) Percentages of entitlement (i.e., 45% or 50% for widow or widower, 15% for each child, unless there is no widow or widower, etc.) remain the same, even if one survivor is currently ineligible for compensation because of excessive comparable benefits. Prior to August 1, 1982, if one beneficiary was ineligible for compensation, other beneficiaries' entitlement would be computed as if that first beneficiary did not exist. For example, if a widow and one child were entitled to FECA benefits, and the widow's comparable benefits exceeded her entitlement, the child would be paid at 40% instead of 15%, and similarly, if the child's comparable benefits exceeded the FECA entitlement, the widow would be paid at 50%, instead of 45%.
- (2) CPI's are applied to the gross compensation benefit before any comparable benefit is deducted. Prior to December 31, 1981 for disability cases and January 1, 1982 for death cases, comparable benefits were first deducted from the gross compensation benefit, then the CPI's were applied. If a computation involves dates prior to December 31, 1981, or January 1, 1982, the method of computation in effect at that time should be used. As with other CPI calculations, disability benefits are rounded to the nearest \$.25 per week, and death benefits to the nearest \$1.00 per month.
- (3) During the period of a schedule award, comparable benefits are generally not deducted. One exception would be if an award was made by a state or local organization specifically for loss of or loss of use of the same member for which the FECA award is payable, in which instance, the non-FECA award is considered comparable with the schedule award, but not with any other award payable for loss of wage or loss of wage-earning capacity.
- (4) Periodic comparable benefits should be deducted from the FECA entitlement prior to offsetting a lump sum. If the periodic comparable benefits exceed FECA, there will be no lump sum offset.
- (5) If there are multiple beneficiaries in a death claim, they may become entitled to FECA benefits on different dates.

When setting up a payment or making a computation in a LEO case, an explanation/breakdown of the computations should usually be provided as an attachment to the CA-24 or CA-25. The attachment should be in sufficient detail that the source of the figures is clear, and it should be certified by the individual certifying the payment. In

death cases, each beneficiary's entitlement must be computed separately.

Exhibit 2 provides an example of the calculations which are to be made by the claims examiner in a LEO case.

c. Computing comparable benefits in cases involving employees of the Non-Uniformed Division of the Secret Service. Secret Service employees covered under the D.C. Retirement System contribute 7% of their salary to the retirement system. The Secret Service reimburses D.C. Retirement on a monthly basis to make up the difference between the employee contributions and benefits paid out by the system on behalf of their former employees. To compute the degree to which D.C. Retirement benefits should be offset, the following information should be obtained from the Secret service on a case-by-case basis:

- (1) Total Non-Uniformed Division employee contributions to the D.C. Retirement System during the year prior to the effective pay rate date;
- (2) The number of employees making those contributions;
- (3) The total Secret Service reimbursements to the D.C. Retirement System on behalf of their former (Non-Uniformed Division) employees during the year prior to the effective pay rate date;
- (4) The number of former employees on whose behalf those reimbursements were made;
- (5) The amount and effective dates of D.C. Retirement benefits, and the amounts and effective dates of any increases. If the case is a death case, each beneficiary's death benefit should be shown separately.

Once this information has been received, the offset amount should be computed as follows:

$$\frac{\text{item (3)}}{\text{item (4)}} = F$$
$$\frac{\text{item (3)+item (1)}}{\text{item (4) item (2)}}$$

F x item (5) = the amount of the D.C. Retirement benefits which must be deducted from the gross FECA benefit.

F will be a decimal, or percentage. If the case is a death case, each beneficiary's benefits must be computed separately. The same percentage will be applicable to each beneficiary. In addition, the D.C. Retirement allows for a \$50,000 lump sum payment to the surviving spouse. This lump sum should be offset at the same rate as the rest of the D.C. Retirement benefits. If a lump sum death payment is also made under the Public Safety Officer's Benefit Act (PSOB), this amount should be offset at 100%, as the employee makes no contribution.

d. Adjustments to comparable benefits. Many state and local benefits programs provide for periodic adjustments, or cost-of-living increases. In addition, they may set limits to the duration of payments, and the ages at which dependent children's benefits cease may be different than under FECA. Each time there is a change in the comparable benefits, it will be necessary to recompute the amount of FECA entitlement. It is thus essential to review cases in which benefits are being paid on a regular basis to ensure that adjustments are made as timely as possible when needed. Reviews at six-month intervals are preferable, and yearly reviews are required. The frequency of review will depend, to a large extent, on the frequency and timing of the changes in the comparable benefits. Exhibit 3 shows a standard status inquiry letter.

e. The student status of children over the age of 18 must be very closely monitored, with a CA-1615 being released at least 45 days prior to the 18th birthday, and a CA-1617 sent each spring to verify that school was attended the entire year and that the child will attend school the following year, and each fall to confirm actual enrollment.

f. An overpayment may occur even though a case is being closely monitored because comparable benefits can change unexpectedly or be made retroactively. All overpayments in LEO cases should be handled in accordance with the overpayment procedures found in Part 9 of this manual.

12. Medical Benefits. Individuals who are eligible for benefits under 5 U.S.C. 8191 et seq. are required to take advantage of any medical benefits which are available to them under other programs prior to seeking FECA medical benefits. In practice, very few LEO cases involve medical expense, because the officers have full coverage under their state or local benefit plans. A state or local government cannot deny medical benefits so that FECA will be responsible for medical bills, if other officers receive medical benefits under that state or local coverage.

13. Other Benefits. Individuals covered under Section 8191 are also entitled to vocational rehabilitation services, attendant allowances, and disfigurement awards. Rehabilitation services

may be provided only while the claimant is in actual receipt of compensation benefits, either for a schedule award or loss of wages. The continuation of pay provisions of Section 8118 do not apply to Section 8191 eligible individuals.

4-0200 Exhibit 1: Sample Initial Inquiry Letter to an Agency Paying Comparable Benefits

Dear _____,

I am writing in reference to the compensation claim of _____, who was _____ on _____ under circumstances which have been found to be within the purview of the Federal Employees' Compensation Act (FECA). The FECA was extended by Public Law 90-291 to provide compensation for non-Federal law enforcement officers who are injured, sustain disease, or are killed under circumstances involving a crime against the United States. The FECA provides that where local or state compensation benefits for a deceased officer's beneficiaries are less than that payable under FECA, additional compensation may be paid by the Office of Workers' Compensation Programs. Your assistance in furnishing the following information will be appreciated: (1) Amount of any regular payments made to the widow and children and the effective dates of any change in payment. (2) What events will be legal cause to terminate any benefit? (3) What proportion of the award shown in item #1 is paid on behalf of each individual beneficiary? (4) What proportion of each award in item #1 represents the amount of state or local government benefits, as opposed to benefits which accrue by reason of the employee's contribution? (5) What percentage of pay, or by what other regular method of contribution, did the employee contribute to the benefit fund? (6) Did the employer contribute to that fund or any other fund on the employee's behalf? If so, how were the contributions made and how was the amount determined? (7) Does the fund have a provision for cost-of-living increases in the future? (8) Have there been any lump sum payments made? If yes, please give the amount of the payment, and on whose behalf it was paid. (9) If an award has been made in this case, please furnish a copy as well as any letters regarding entitlement. (10) To your knowledge, has there been an award made by the Public Safety Officer Benefit Program? Thank you for your assistance in this matter.

Sincerely, Claims Examiner

4-0200 Exhibit 2: Computation of Benefits

COMPUTATION OF BENEFITS

The example which follows was chosen specifically because it demonstrates certain principles. The calculations required in an actual case may be more or less complex. Generally speaking, the disability cases will be somewhat easier to compute, because they do not involve PSOB benefits or multiple beneficiaries. A law enforcement officer was killed on February 3, 1986 under circumstances which bring him under the coverage of section 8191. He is survived by a

widow and two children. The children's dates of birth are September 10, 1969, and May 6, 1977. The older child has been enrolled in a full-time course of study since turning 18, and student status has been verified satisfactorily. The officer's annual pay as of the date of death was \$35,000. A PSOB benefit of \$50,000 (date of death is prior to the June 1, 1988 PSOB amendments) was paid in a lump sum. In addition, State Worker's Compensation paid a \$10,000 lump sum to the widow, as well as \$2,500 lump sums for each child. The state is also making monthly payments equivalent to \$100.00 per week. These benefits commenced on February 4, 1986, and will continue at the same rate for a period of 10 years without any cost-of-living increases. The widow's share of the benefit is 50%, and each child's share is 25%. Benefits for the children cease when they reach age 18, with no consequent increase in benefits for the widow. The state benefit is 100% comparable. The survivors are also receiving benefits from the local (city) retirement plan of \$600.00 per month as of February 4, 1986. Of this benefit, 60% is paid on behalf of the widow and 20% on behalf of each child. This benefit has increased by 2% each April 1, beginning in 1987. Benefits for the children cease at age 20, regardless of student status, with no resulting increase in the widow's benefit. Because the employee made contributions to this retirement fund during his lifetime, the benefits are only partially comparable. During the year prior to his death, the officer contributed \$1023.50 to the fund, while his employer contributed \$2388.17. Using the comparability formula described in paragraph 11(b) above:

$$\frac{a}{a + b} = \frac{\$2388.17}{\$2388.17 + \$1023.50} = \frac{\$2388.17}{\$3411.67} = .70 \text{ or } 70\%$$

The local benefit is 70% comparable.

Today's date is April 10, 1990.

Monthly FECA pay rate is $\frac{\$35,000}{12} = \2916.67

Calculation of Widow's Benefits

<u>FECA:</u>	Widow @ 45% of \$2916.67 effective 2/4/86	\$1312.50
	.7% CPI effective 3/1/87	\$1322.00
	4.5% CPI effective 3/1/88	\$1381.00
	4.4% CPI effective 3/1/89	\$1442.00
	4.5% CPI effective 3/1/90	\$1507.00

<u>Lump sums:</u>	50% of \$50,000 PSOB payment	\$25,000
	state	\$10,000
	total	\$35,000

Local benefit: is 70% comparable; 60% of the benefit is the widow's share

	\$600.00 x 70% = \$420.00
widow's portion effective 2/4/86	\$420.00 x 60% = \$252.00
2% increase effective 4/1/87	\$612.00 x 70% = \$428.40
widow's portion	\$428.40 x 60% = \$257.04
2% increase effective 4/1/88	\$624.24 x 70% = \$436.97
widow's portion	\$436.97 x 60% = \$262.18
2% increase effective 4/1/89	\$636.72 x 70% = \$445.71
widow's portion	\$445.71 x 60% = \$267.42
2% increase effective 4/1/90	\$649.45 x 70% = \$454.62
widow's portion	\$454.62 x 60% = \$272.77

State benefit: \$100 per week = \$433.33 per month ($\$100 \times 52$)

12

widow's portion: \$433.33 x 50% = \$216.67

Net benefits (lump sums yet to be deducted):

2/4/86 - 2/28/87 (12 months and 25 days, or 12.89 months)

FECA	\$1312.50
less local	\$252.00
less state	<u>\$216.67</u>
net	\$843.83 x 12.89 = \$10876.97

3/1/87 - 3/31/87 (1 month)

FECA	\$1322.00 (.7% CPI)
less local	\$252.00
less state	<u>\$216.67</u>
net	\$853.33 x 1 = \$853.33

4/1/87 - 2/29/88 (11 months)

FECA	\$1322.00
less local	\$257.04 (2% increase)
less state	<u>\$216.67</u>
net	\$848.29 x 11 = \$9331.19

3/1/88 - 3/31/88 (1 month)

FECA	\$1381.00 (4.5% CPI)
less local	\$257.04
less state	<u>\$216.67</u>
net	\$907.29 x 1 = \$907.29

4/1/88 - 2/28/89 (11 months)

FECA	\$1381.00
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less local	\$262.18 (2% increase)
less state	<u>\$216.67</u>
net	\$902.15 x 11 = \$9923.65

3/1/89 - 3/31/89 (1 month)

FECA	\$1442.00 (4.4% CPI)
less local	\$262.18
less state	<u>\$216.67</u>
net	\$963.15 x 1 = \$963.15

4/1/89 - 2/28/90 (11 months)

FECA	\$1442.00
less local	\$267.42 (2% increase)
less state	<u>\$216.67</u>
net	\$957.91 x 11 = \$10,537.01

3/1/90 - 3/31/90 (1 month)

FECA	\$1507.00 (4.5% CPI)
less local	\$267.42
less state	<u>\$216.67</u>
net	\$1022.91 x 1 = \$1022.91

4/1/90 and continuing

FECA	\$1507.00
less local	\$272.77 (2% increase)
less state	<u>\$216.67</u>
net	\$1017.56

Total entitlement 2/4/86 through 3/31/90:

\$10,876.97 + \$853.33 + \$9331.19 + \$907.29 +	
\$9923.65 + \$963.15 + \$10,537.01 + \$1022.91 =	\$44,415.50
less lump sums	<u>\$35,000.00</u>
balance due widow	\$ 9,415.50

Calculation of Child #1's Benefits - Date of Birth 9/10/69

<u>FECA:</u>	Child at 15% of \$2916.67 effective 2/4/86	\$437.50
	.7% CPI effective 3/1/87	\$441.00
	4.5% CPI effective 3/1/88	\$461.00
	4.4% CPI effective 3/1/89	\$481.00
	4.5% CPI effective 3/1/90	\$503.00

<u>Lump sums:</u>	25% of PSOB payment	\$12,500.00
	state	<u>\$2,500.00</u>
	total	\$15,000.00

Local benefit: comparable amounts are taken from widow's calculations; the child's share is 20%

Child's portion effective	2/4/86	\$420.00 x 20% = \$84.00
effective	4/1/87	\$428.40 x 20% = \$85.68
effective	4/1/88	\$436.97 x 20% = \$87.39
effective	4/1/89	\$445.71 x 20% = \$89.14

Benefit stops on 9/9/89, as child turns 20 on 9/10/89.

State benefit: \$433.33 x 25% = \$108.33.

Benefit ceases on 9/9/87, as child turns 18 on 9/10/87

Net benefits: (lump sums are yet to be deducted)

2/4/86 - 2/28/87 (12.89 months)

FECA	\$437.50
less local	\$ 84.00
less state	<u>\$108.33</u>
net	\$245.17 x 12.89 = \$3160.24

3/1/87 - 3/31/87 (1 month)

FECA	\$441.00 (.7% CPI)
less local	\$ 84.00
less state	<u>\$108.33</u>
net	\$248.67 x 1 = \$248.67

4/1/87 - 9/9/87 (5 months, 9 days, or 5.3 months)

FECA	\$441.00
less local	\$ 85.68 (2% increase)
less state	<u>\$108.33</u>
net	\$246.99 x 5.3 = \$1309.05

9/10/87 - 2/29/88 (5.7 months)

FECA	\$441.00
less local	<u>\$ 85.68</u>
net	\$355.32 x 5.7 = \$2025.32

3/1/88 - 3/31/88 (1 month)

FECA	\$461.00 (4.5% CPI)
less local	<u>\$ 85.68</u>
net	\$375.32 x 1 = \$375.32

4/1/88 - 2/28/89 (11 months)

FECA	\$461.00
less local	<u>\$ 87.39</u> (2% increase)
net	\$373.61 x 11 = \$4109.71

3/1/89 - 3/31/89 (1 month)

FECA	\$481.00 (4.4% CPI)
less local	<u>\$ 87.39</u>
net	\$393.61 x 1 = \$393.61

4/1/89 - 9/9/89 (5.3 months)

FECA	\$481.00
less local	<u>\$ 89.14</u> (2% increase)
net	\$391.86 x 5.3 = \$2076.86

Local benefit ceases 9/9/89, as child is 20 on 9/10/89.

9/10/89 - 2/28/90 (5.7 months)

FECA	\$481.00 x 5.7 = \$2741.00
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3/1/90 and continuing: benefit is \$503.00 (4.5% CPI)

Total entitlement 2/4/86 through 3/31/90:

\$3160.24 + \$248.67 + \$1309.05 + \$2025.32 + \$375.32 +	
\$4109.71 + \$393.61 + \$2076.86 + \$2741.00 + \$503.00 =	\$16,942.78
less lump sums	<u>\$15,000.00</u>
balance to child (widow)	\$1,942.78

Calculation of Child #2's Benefits - Date of Birth 5/6/77

Basic entitlement is the same as child #1, except:

Local benefit:

Effective 4/1/90,	\$454.62 x 20% = \$90.92
2/4/86 - 2/28/87	\$3160.24
3/1/87 - 3/31/87	\$248.67
4/1/87 - 2/29/88 (11 months)	\$246.99 x 11 = \$2716.89

3/1/88 - 3/31/88 (1 month)	
FECA	\$461.00 (4.5% CPI)
less local	\$ 85.68
less state	<u>\$108.33</u>
net	\$266.99 x 1 = \$266.99

4/1/88 - 2/28/89 (11 months)	
FECA	\$461.00
less local	\$ 87.39
less state	<u>\$108.33</u>
net	\$265.28 x 11 = \$2918.08

3/1/89 - 3/31/89 (1 month)	
FECA	\$481.00 (4.4% CPI)
less local	\$ 87.39
less state	<u>\$108.33</u>
net	\$285.28 x 1 = \$285.28

4/1/89 - 2/28/90 (11 months)	
FECA	\$481.00
less local	\$ 89.14 (2% increase)
less state	<u>\$108.33</u>
net	\$283.53 x 11 = \$3118.83

3/1/90 - 3/31/90 (1 month)	
FECA	\$503.00 (4.5% increase)
less local	\$ 89.14
less state	<u>\$108.33</u>
net	\$305.53 x 1 = \$305.53

4/1/90 and continuing	
FECA	\$503.00
less local	\$ 90.92 (2% increase)
less state	<u>\$108.33</u>
net	\$303.75

Total entitlement 2/4/86 through 3/31/90:

\$3160.24 + \$248.67 + \$2716.89 + \$266.99 +
 \$2918.08 + \$285.28 + \$3118.83 + \$305.53 = \$13,020.51

	\$15,000.00	Lump sum payments
less	<u>\$13,020.51</u>	Total FECA entitlement 2/4/86 - 3/31/90
	\$1,979.49	Balance remaining for offset

At the current rate of payment, \$303.75 per month, the balance of the lump sums will be offset in \$1979.49/\$303.75, or 6.52 months, which will be October 15, 1990.

As of 4/1/90 the monthly benefit will be:

\$1,017.56 (widow's benefit)
+ \$ 503.00 (child #1's benefit)
\$1,520.56 (total monthly benefit)

\$1520.56 x 12 = \$350.90 (weekly benefit)
52

For 4/1/90 through 4/7/90 (exactly one week) the widow is due \$350.90.

Total payments due for the period 2/4/86 through 4/7/90 are:

\$9,415.50 (widow's balance due through 3/31/90)
\$1,942.78 (child #1 balance due through 3/31/90)
+ \$ 350.90 (combined amount due for 4/1 - 4/7/90)
\$ 11,709.18 (total payable to widow)

A narrative Form CA-24 should be prepared for the lump sum payment. A regular Form CA-24 should be prepared to place the widow and first child on the periodic roll as of 4/8/90. This form should be completed as it would be normally, except that:

1. Since the retroactive payment was computed manually, mark item 8 (Has retroactive payment been made from date of death?) "Y" for yes.
2. The current combined four-weekly comparable benefit should be shown in item 16 (Payee code AR). "Total amount due" will be 9999999. The periodic deduction is computed as follows:

\$272.77 (widow's local benefit as of 4/1/90)
+ \$216.67 (widow's state benefit as of 4/1/90)
\$489.44 (total monthly comparable benefit)

\$489.44 x 12 = \$451.79 (four-weekly comparable benefit)
13

Enter \$451.79 as the periodic deduction amount. Note that child #1's comparable benefits have terminated.

On October 15, 1990, the second child will become eligible for FECA benefits. A

call-up should be set for 10/15/90. In addition, the following dates should be considered intervention points:

- a) 9/9/92, when the first child's eligibility for student benefits under the FECA expires (the child reaches age 23 on 9/10/92; student eligibility may expire sooner if child completes four years of post-high school education prior to age 23);
- b) 3/20/95, when Form CA-1615 should be released to determine the second child's student status, since he/she will be 18 on 5/6/95;
- c) 5/5/95, when the second child's eligibility for state benefits expires at age 18, and when the CA-1615 should have been returned;
- d) 5/5/97, when the second child's local benefit will cease at age 20;
- e) 5/5/2000, when the second child's FECA student eligibility ceases at age 23; and
- f) in March or early April of each year, an adjustment for the local benefits increase will be needed.

4-0200 Exhibit 3: Sample Status Inquiry Letter to an Agency Paying Comparable Benefits

Dear _____,

I am writing in reference to the compensation claim of _____, a former member of the _____ Police Department, who was _____ on _____, under circumstances which have been found to be within the purview of the Federal Employees' Compensation Act. This Office is currently paying benefits to _____. Periodically, we are required to check on the amount of and changes to comparable benefits (5 USC 8192). The most recent information on file, dated _____, indicates that your agency was paying _____ per month. Please advise if this amount is still correct. If not, please advise the correct amounts, the effective dates of any changes since that time, and the reasons for the changes. If a change is expected in the near future, please advise the expected date and the amount of the prospective increase or decrease. You may use the bottom or reverse of this letter for your response. The individual furnishing the information should provide his or her name and title. Thank you for your continued assistance.

Sincerely,

CLAIMS EXAMINER

4-0300 WAR HAZARDS

<u>Paragraph</u>	<u>Subject</u>	<u>Date</u>	<u>Trans. No.</u>
	Table of Contents	11/00	01-01
1	Purpose and Scope	09/94	94-39
2	Statutory Authority	09/94	94-39
3	Regulations	09/94	94-39
4	Jurisdiction	09/94	94-39
5	Claim Forms	09/94	94-39
6	Purpose of the WHCA and Relationship to Other Statutes	09/94	94-39
7	Conditions of Coverage	09/94	94-39
8	Terrorist Attacks	09/94	94-39
9	Processing Claims Filed under Section 104 of the WHCA	09/94	94-39
10	Processing Claims Filed under Section 101 of the WHCA	09/94	94-39
11	Reimbursement of Insurance Carriers and Self-Insured Employers under Section 104	09/94	94-39
12	Assuming Direct Payment of Benefits under Section 104	09/94	94-39
13	Payment of Compensation for Claims Filed under Section 101	09/94	94-39
14	Annual Adjustment of Benefits	09/94	94-39
15	Monitoring Cases on the Periodic Roll	09/94	94-39
16	Changes in Benefit Levels	09/94	94-39
17	Detention Benefits	09/94	94-39
18	Fees for Legal Services	09/94	94-39
19	Common Medical Conditions Related to Internment	09/94	94-39

Exhibits

1	Form CA-278 (Link to Image) Page 1-2	09/94	94-39
2	Form SF-1034 (Link to Image) Page 1-2	09/94	94-39
3	Yearly Increases Under the LHWCA	11/00	01-01
4	Sample Periodic Status Inquiry Letter	09/94	94-39

1. Purpose and Scope. This chapter outlines the procedures to be followed in claims under the War Hazards Compensation Act, which are prefixed with WH- or EA-. The EA- prefix was assigned to cases dating from World War II which involved contractors to Pacific Naval Air Bases who were captured by the Japanese. The WH- prefix is assigned to the remaining cases.

2. Statutory Authority. War Hazards Compensation Act (WHCA), 42 U.S.C. 1701 et seq., issued December 2, 1942, and amended in 1943, 1946, 1953, 1958, 1959 and 1961.

3. Regulations. WHCA cases are addressed in 20 C.F.R. Parts 61 and 62, published on February 8, 1988.

4. Jurisdiction. All claims for benefits under the WHCA are to be jacketed, adjudicated, and maintained in the National Operations Office, District Office 25.

5. Claim Forms. Either regular Federal Employees' Compensation Act or Longshore and Harbor Workers' Compensation Act forms may be used to claim benefits under the WHCA.

6. Purpose of the WHCA and Relationship to Other Statutes.

a. The WHCA supplements the Defense Base Act (42 U.S.C. 1651), which is an extension of the Longshore and Harbor Workers' Compensation Act (LHWCA, 33 U.S.C. 901 et seq.) The WHCA completes the protection provided to Federal contractors' employees and certain other selected employees performing work outside the United States. All liability for injury, death and detention benefits under the WHCA is assumed by the Federal Government, and is paid from the Employees' Compensation Fund established by 5 U.S.C. 8147.

b. Under Section 104 of the WHCA, an insurance carrier, self-insured employer, or compensation fund may claim reimbursement from the Employees' Compensation Fund for benefits paid on cases approved under the Defense Base Act (DBA), if it can be shown that the injury or death was due to a war-risk hazard. Where there is no compensation payable under the DBA, an employee or his or her survivors may file a claim directly under Section 101 of the WHCA. Section 101 of the WHCA also authorizes the payment of detention benefits for contractors' employees who are captured or detained by a hostile force.

c. The administrative procedures of the Federal Employees' Compensation Act (FECA) are generally applicable to claims filed under Section 101 of the WHCA, with the exception that computation of disability and death benefits, and determination of pay rate and beneficiaries, are made in accordance with the provisions of the LHWCA. The minimum provisions of the LHWCA for computing disability compensation (Section 6b) and death benefits (Section 9e) do not apply to these claims or to cases paid under the Defense Base Act. Medical treatment and care are furnished under the applicable sections of the FECA.

7. Conditions of Coverage.

a. Time limitations for filing a claim under the WHCA are as outlined in the FECA, except that timely filing requirements may be waived altogether if circumstances beyond the employee's control prevented the timely filing of a claim.

b. Coverage under the WHCA is extended to any person employed outside of the continental United States who is:

- (1) Covered under the DBA;

- (2) Engaged by the United States under a personal service contract (note that personal service contractors with the Agency for International Development are covered under the FECA);
- (3) Covered under the Nonappropriated Fund Instrumentalities Act;
- (4) Engaged for personal services by the United States under the Mutual Security Act; or
- (5) Engaged by an American employer to provide welfare or similar services to the Armed Forces for injury or death which is causally related to a war-risk hazard.

Detention benefits may also be paid to an employee as described above who is missing from his or her employment under conditions which would lead one to believe that the absence is due to action of a hostile force, who is known to have been taken prisoner by a hostile force, or who is not returned to his or her home due to the failure of the United States or the contractor to furnish transportation.

c. A "war-risk hazard" is a hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring within any country in which a covered individual is serving. The hazard may be from:

- (1) The discharge of a missile, including liquids and gas, or the use of any weapon, explosive or other noxious thing by a hostile force or person or in combatting an attack or a perceived attack by a hostile force or person;
- (2) Action of a hostile force or person, including rebellion or insurrection against the United States or any of its allies;
- (3) The discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or person;
- (4) The collision of vessels in convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or
- (5) The operation of vessels or aircraft in a zone of hostilities or engaged in war activities.

d. "Hostile force or individual" is defined as a nation, a subject of a foreign nation, or any other person serving a foreign nation engaged in:

- (1) A war against the United States or any of its allies;
- (2) Armed conflict, whether or not war has been declared, against the United States or any of its allies; or
- (3) A war or armed conflict between military forces of any origin in any country in which a person covered by the WHCA is serving.

e. The usual "performance of duty" considerations do not apply in WHCA cases, in that eligible individuals are covered at all times, except for people who reside at or near the place of employment and do not live there solely by virtue of the exigencies of the employment. These individuals will be covered while in the performance of duty only.

f. Coverage is not extended to a prisoner of war detained or utilized by the United States. An individual who:

- (1) Recovers or receives workers' compensation benefits from any other source;
- (2) Is a foreign national and is entitled to benefits from that or any other country; or
- (3) Has been convicted of a subversive act against the United States is not entitled to benefits under the WHCA.

g. The DBA provides for waivers of coverage by the head of any department or other agency of the United States or the Secretary of Labor. The waiver may apply with respect to any contract, subcontract, or subordinate contract, work location under such contracts, or classification of employees. The waiver would have to have been made prior to the injury or detention. If coverage under the DBA is waived, and a condition of the waiver is that the contractor obtain other war hazard coverage, there is no coverage under Section 101 of the WHCA. Section 104 claims may be allowed in spite of waiver.

The Longshore Division will alert DFEC of the existence of a waiver, or may be consulted if the existence of a waiver is an issue.

8. Terrorist Attacks. The statutory definition of a war-risk hazard does not specifically

address terrorist attacks. Determining coverage under the WHCA for such attacks may be complicated, as it is not always possible to identify the person or group responsible for a terrorist act, or to determine the intended target of the action. Coverage may be extended to some victims of terrorist acts. Each case must be considered on an individual basis in conjunction with the definitions of "war-risk hazard" and "hostile force or individual" found in paragraphs 7c and 7d. The following examples are intended to give some guidance on this matter.

Example 1: An employee covered by the DBA is injured when members of a known terrorist organization drive a vehicle into a U.S. Embassy and explode it. No war is in progress in the country, but the attack itself constitutes an "armed conflict" directed against the United States, or its official representative in the country, the U.S. Embassy. The United States is by the very nature of the situation "engaged" in the conflict, even if it has had no chance to respond. The terrorists are related to an identifiable organization which uses violence to achieve political goals, and are therefore a "hostile force or person engaged in armed conflict". A "war-risk hazard" is present in this instance.

Example 2: Off-duty employees of a contractor are injured or killed by a terrorist attack while sitting in a public place. The United States is not engaged in a war or an armed conflict. The remaining consideration, then, is whether the incident occurred as the result of a war or armed conflict between military forces of any origin within the country in which the contractor's personnel are serving. If the claimants are able to establish with reasonable certainty that the attackers were members of or acting on behalf of an identifiable military group, one that pursues its political goals through the use of violence, that has taken up arms against the United States or against the government where the incident arose, coverage would be extended.

Example 3: An American airliner on which employees of a contractor are travelling is hijacked in a foreign country, with the intent to take the airplane to a destination where political prisoners are held to exchange the airplane and its passengers for the release of those prisoners. The incident did not arise out of an armed conflict in which the United States is engaged, nor is the United States the obvious object of the attack. Coverage for injury or death may be extended, however, if the claimant(s) can establish that a state of war or armed conflict between identifiable organized military groups existed in the foreign country at the time of the hijacking, and injury or death was due to one of the factors outlined in paragraph 7c. Detention benefits may be paid if the hijackers meet the definition of "hostile force or individual" found in paragraph 7d.

Example 4: Employees of a contractor to the Department of Defense are killed when the U.S. military bus on which they are riding is attacked by native insurgents. The attackers are members of a military/political group which seeks to overthrow the local government through the use of violence. The local government has actively attempted to subdue the group by military means. This situation would qualify for WHCA coverage as "an armed conflict in which the United States is engaged" (the bus, an identifiable symbol of the United States, was

attacked by a known terrorist group), and as an "armed conflict between military forces of any origin in any country in which a person...is serving."

Example 5: An individual with no connection to an identifiable group seeks revenge against the United States for its role in the Middle East by planting a bomb in a non-American airliner. Because the perpetrator cannot be connected with an identifiable group which pursues its political goals through the use of violence, no WHCA coverage can be extended.

9. Processing Claims Filed Under Section 104 of the WHCA.

a. Form CA-278, "Claim for Reimbursement of Benefit Payments and Claims Expense," is used by an insurance carrier or a self-insured employer to file a claim for reimbursement under Section 104 of the WHCA (see [Exhibit 1](#)). Most of the claims filed under the WHCA will originate in this manner. The claim must be supported by copies of the forms, statements, and medical reports submitted by the employee (or his or her survivors) and the employer to establish a claim under the DBA, the compensation order awarding benefits under the DBA, and the insurance policy (or relevant portion thereof) under which the employee was covered.

If there is not sufficient information to determine that the injury or death occurred as the result of a war-risk hazard, it is the responsibility of the Claims Examiner (CE) to request additional evidence or clarification from the insurance carrier. The claim for reimbursement must also be accompanied by documentation of the payments for which reimbursement is being claimed. Documentation of payment may take the form of receipts and copies of payment drafts, or a certified listing of payments which includes payee name, services rendered, amount paid, date paid, check or draft number, and signature of the certifier.

b. A claim for reimbursement filed by an insurance carrier or self-insured employer must be denied if it is found that the benefits paid or payable were on account of injury, detention or death which arose from a war-risk hazard for which a premium (which included an additional charge or loading for such hazard) was charged; or where the insurance carrier or self-insured employer has been reimbursed, paid, or compensated for the loss for which reimbursement is claimed.

c. The only appeal procedure available to insurance carriers and self-insured employers filing for reimbursement under Section 104 of the WHCA is reconsideration, which must be requested within 60 days by carriers within the United States and within six months by carriers outside of the United States. Requests for reconsideration should be sent to the Director for Federal Employees' Compensation. The Office may grant

reconsideration after these periods have elapsed if reasonable cause for the delay is shown.

10. Processing Claims Filed Under Section 101 of the WHCA.

a. An employee or survivor should file a claim directly with the Division of Federal Employees' Compensation under Section 101 of the WHCA only after a Longshore District Director has determined that no compensation is payable under the Defense Base Act. The CE will undertake any necessary development of the factual and medical evidence. As in regular FECA claims, the claimant has the burden of establishing entitlement.

b. An employee or survivor filing for benefits under Section 101 should be asked whether he or she has claimed, recovered, or received workers' compensation benefits from any other source on account of the same injury or death for which benefits are being sought under the WHCA.

c. After the necessary development of the evidence, the CE will prepare a memorandum on the issue of whether the injury, disease, or death was the result of a war-risk hazard. Recommendations for acceptance of a claim must be approved by the Supervisory Claims Examiner. Denial of a claim will be made by compensation order, with a full explanation of the reasons for the action taken, and signed by the Supervisory Claims Examiner. d. Individuals who file a claim under Section 101 of the WHCA receive the same appeal rights granted in regular FECA cases.

11. Reimbursement of Insurance Carriers and Self-Insured Employers under Section 104.

a. After a claim has been accepted for reimbursement, the CE will review the documentation submitted in support of the payments made by the insurance carrier or self-insured employer. The CE must determine whether compensation was paid in the correct amount and whether the medical expenses were for treatment of the condition(s) accepted as related to the war-risk hazard. If the case contains a compensation order issued by the Longshore Division under the Defense Base Act, compensation rates and accepted conditions will be stated in the compensation order. Reimbursement may not be made for compensation paid in excess of the amounts provided under the Longshore and Harbor Workers' Compensation Act or for medical bills unrelated to the accepted condition(s).

b. In addition to payments made for compensation and medical bills, insurance carriers and self-insured employers are entitled to reimbursement for reasonable and necessary claims expense incurred in determining liability, including expenses for attorneys' fees, court and litigation costs, witnesses and expert testimony, examinations, and autopsies. These types of costs are known as "allocated claims expenses," and the specific expenses must be itemized and documented. An insurance carrier may also claim "unallocated claims expenses" in an amount of up to 15% of the sum of the reimbursable medical, compensation, and burial payments. Unallocated claims expenses represent the cost incurred by the company handling the claim in its regular course of operations. These expenses cannot be specifically itemized or documented.

c. After the amount to be reimbursed has been calculated and certified, the CE will prepare Standard Form 1034 ([Exhibit 2](#)). SF-1034 should show the amount of reimbursement for each category of payment (benefit payments, legal fees, claims expense, etc.) as well as the total amount to be reimbursed. The employee's name, War Hazards file number, and insurance carrier's file number should also be included on the form. Three copies of the SF-1034 will be sent to the insurance carrier or self-insured employer with a cover letter requesting signature under "Certificate of Payee" on each form. The cover letter should advise the insurance carrier or self-insured employer of the reimbursable amount for each category of payment.

Any payments for which reimbursement is claimed but cannot be authorized must be noted in the letter, along with the reason for denial. Carriers or employers may submit additional information in support of the disallowed items or file objections to the disallowance. The time requirements for submitting evidence or objections are 60 days for carriers within the United States and six months for carriers abroad, although these limitations may be waived if warranted by unusual circumstances. If items are being excluded from the reimbursable amount, the carrier or employer should be advised in the cover letter accompanying the Forms SF-1034 that signature on the form will not be considered as an agreement to the exclusions and will not compromise any future claim for the excluded expenses.

d. When the signed copies of Form SF-1034 are returned, the District Director will sign the forms on the front and back as Authorized Certifying Officer. The case file and forms will then be sent to the fiscal section for payment. The amount reimbursed and the inclusive dates of the period covered should be posted on the case summary, Form CA-800.

12. Assuming Direct Payment of Benefits Under Section 104.

a. In cases where an ongoing entitlement to compensation has been established, the OWCP may assume direct payment of benefits rather than continue to reimburse the insurance carrier or employer. As a rule, a case should be accepted for direct payment only when the rate of compensation and the period of compensation have become relatively fixed. Cases in which the nature and extent of entitlement to compensation either have not been determined or are in dispute should remain under the control of the insurance carrier until the issues have been resolved.

b. When direct payment of benefits has been deemed appropriate, the CE will arrange with the insurance carrier or employer to assume payment as of a specified date. For cases to be placed on the periodic roll, this date should coincide with the beginning of a periodic roll period. The person who will begin to receive payment directly from OWCP should be advised of the change and given instructions for submitting bills, changes of address, and other communications. If death benefits are being paid, the claimant should be advised to report any changes in marital status for the widow or widower and changes in marital or student status for dependent children.

c. Medical care in disability cases for which the Office has assumed direct payment will be furnished in a manner consistent with the regulations and procedures governing the furnishing of medical treatment under the FECA.

13. Payment of Compensation for Claims Filed Under Section 101.

a. Monetary compensation for disability, death, and burial expenses paid in cases accepted under Section 101 of the WHCA is computed in accordance with the benefit structure of the Longshore and Harbor Workers' Compensation Act, with the exception that the minimum limits of the LHWCA do not apply. Information necessary to compute compensation can be found in the Longshore Act in Sections 6, "Maximum and Minimum Compensation"; 8, "Compensation for Disability"; 9, "Compensation for Death"; and 10, "Determination of Pay". Assistance may be sought from the Division of Longshore and Harbor Workers' Compensation whenever questions arise about the computation of benefits.

b. Compensation for total disability is paid at 66 2/3% of the average weekly wage as determined under Section 10 of the LHWCA. The LHWCA also makes provision for payment of compensation as the result of permanent partial disability and loss of wage-earning capacity. There is no augmented rate for employees with dependents.

c. The sum of the percentages paid to the beneficiaries in a death case may not exceed 66 2/3% of the average weekly wage. The widow or widower is entitled to 50%,

plus 16 2/3% for each child, with a total not to exceed 66 2/3%. If there is no widow or widower, compensation is paid at the rate of 50% for one child, increased by 16 2/3% for each additional child, share and share alike, up to a maximum total of 66 2/3%.

If there is no surviving spouse or child, or if the aggregate amount payable to the spouse and child(ren) is less than 66 2/3% of the pay rate, compensation may be paid at a rate of up to 20% for a dependent brother, sister, or grandchild, and up to 25% for a dependent parent or grandparent. The aggregate amount payable to dependent brothers, sisters, grandchildren, parents and grandparents may not exceed the difference between 66 2/3% and the amount payable to the spouse and children.

d. Prior to November 26, 1972, the weekly maximum for death benefits was \$70.00. For death occurring between November 26, 1972 (effective date of the 1972 LHWCA amendments), and September 28, 1984, there is no maximum limit on the average weekly wage on which death benefits are computed. For deaths on and after September 29, 1984 (effective date of the 1984 LHWCA amendments), the total weekly death benefits may not exceed the lesser of the average weekly wages of the deceased or the benefit the deceased would have been eligible to receive under Section 6(b)(1).

e. Survivors of employees who were receiving compensation for permanent and total disability and died between November 26, 1972, and September 28, 1984 are entitled to receive death benefits, even if the cause of death was unrelated to the accepted war-risk injury. The 1984 amendments to the LHWCA eliminated death benefits in cases of unrelated death, when death occurs on or after September 29, 1984. The survivors of an employee whose death is related to the accepted condition(s) continue to be entitled to death benefits.

f. Dependents who are not citizens of the United States and who are not residents of the United States or Canada are limited to the surviving spouse and children, or if there is no surviving spouse or children, to a surviving parent receiving full or partial support from the employee for the one year immediately preceding the date of death. In cases of permanent total or permanent partial disability or death, the future liability of the United States for payment to persons who are noncitizens or nonresidents may be discharged by a lump sum payment equal to one-half of the commuted value of the future installments of compensation. Requests for lump sum calculations should be forwarded to National Office, for referral to the Longshore Division.

14. Annual Adjustment of Benefits.

a. Section 10(f) of the LHWCA provides for an annual adjustment of benefits

effective each October 1. The October 1 adjustment is applicable to War Hazards cases in which compensation is being paid for permanent and total disability or death resulting from a war-risk hazard. The increase does not apply to compensation for death unrelated to the accepted injury condition, temporary total disability, partial disability or internment. Unlike CPI increases under the FECA, there is no waiting period that must be satisfied before a claimant is eligible for the Section 10(f) adjustment.

b. The rate of the yearly adjustment may be obtained from the Longshore Division. The increase is applied to the weekly compensation rate and rounded to the nearest dollar. Exhibit 3 shows the increases to date.

15. Monitoring Cases on the Periodic Roll.

a. In most of the War Hazards cases for which regular periodic payments are being made for disability, a Longshore District Director has made a finding of permanent disability. It is generally sufficient to request a medical report once every three years, unless more frequent reports are needed to monitor medical care and support the payment of medical bills. A yearly inquiry will be sent to the claimant to verify the current address, continuing receipt of benefits, and employment. Information about a disabled employee's marital status or dependents need not be requested, as the presence or absence of a spouse or dependent children has no effect on compensation rates for disability under the LHWCA.

b. Where death benefits are being paid to the spouse of a deceased employee, a yearly inquiry will be made to verify that there has been no change in the marital status of the widow or widower. See Exhibit 4 for an example of such a status inquiry. A widow or widower's entitlement to benefits ceases upon remarriage, at which time a lump sum representing two years' compensation is paid. If benefits are paid to a widow, widower or other individual on behalf of dependent children, the Claims Examiner (CE) should obtain yearly verification that the payee continues as guardian.

c. The CE must monitor the status of dependent children and adjust compensation accordingly. In cases where the employee died prior to October 26, 1972, no compensation is payable on behalf of a child once his or her 18th birthday occurs. For death on or after October 26, 1972, compensation may continue after a child's 18th birthday if he or she meets the definition of a student. The requirements for student status are the same as those under the FECA, and Forms CA-1615 and CA-1617 may be used to obtain the necessary documentation. It is important to maintain accurate data in the call-up system to serve as notification of a child's approaching 18th birthday or the need for verification of student status.

16. Changes in Benefit Levels.

a. In some of the older cases, there may be a question as to whether the claim was accepted under Section 101 or 104 of the WHCA. The presence of a compensation order from a Longshore Deputy Commissioner (now District Director) awarding benefits under the Defense Base Act is an indication of processing under Section 104. If there is no evidence of a Longshore compensation order or liable insurance carrier, it may be assumed that the case was handled under Section 101. Cases with EA prefixes may be presumed to be Section 101 cases, barring any evidence to the contrary.

b. When a change in the status of a beneficiary necessitates a change in the amount of compensation being paid, the adjustment will be processed as in any FECA death case and the payee advised accordingly. Most of these changes will result from changes in the status of dependent children.

c. If it appears that a change in benefits may be appropriate due to a change in the extent of injury-related disability or an incorrect computation of benefits, and the case was originally processed under Section 104 of the WHCA (i.e., the Defense Base Act claim was accepted), the case file and a memorandum summarizing the appropriate facts should be submitted to the Director for Federal Employees' Compensation who will forward the information to the Longshore Division. The Longshore Division will take appropriate formal or informal action and return the case through the Director for Federal Employees' Compensation for further handling. FECA appeal rights do not apply in these situations.

d. FECA overpayment procedures do not apply in cases handled under Section 104 of the WHCA. Section 104 cases in which overpayments occur should be forwarded to the Longshore Division through the Deputy Director for Federal Employees' Compensation, with appropriate documentation about the benefits paid and the claimant's financial situation, including a completed Form OWCP-20. The Longshore Division will determine whether an overpayment does in fact exist and how any recovery should be made.

e. Overpayments in cases processed under Section 101 of the WHCA are handled in accordance with the overpayment procedures described in FECA PM Part 6.

17. Detention Benefits.

- a. An employee as defined in Section 101 of the WHCA who is taken prisoner, hostage or otherwise detained by a hostile force or person is entitled to receive or have credited to his or her account compensation equal to 100% of the employee's average weekly wage, paid by OWCP from the Employees' Compensation Fund. The average weekly wage used to compute detention benefits may not exceed the average weekly wages paid to civilian employees of the United States in the same or most similar occupation in the area nearest to the place of employment. Seventy percent of the benefits may be disbursed to the employee's dependents during the period of detention, if such dependents reside in the United States or its territories or possessions.
- b. Compensation for disability under the WHCA may not be paid at the same time detention benefits are being paid, except that payment for schedule losses may be made at the same time the employee is in receipt of detention benefits. Concurrent receipt of detention benefits under the WHCA and other payment from the United States due to the same period of detention is prohibited. If a dual benefit situation occurs, the benefits due under the WHCA are reduced by the amount of the benefits paid under other statutes.
- c. When a detained employee is released, OWCP will pay the cost of transportation from the point of release to the employee's home. In case of death, the cost will be paid of transporting the body to the home of the deceased.
- d. If an employee is detained or missing for a prolonged period of time, the CE should send a yearly inquiry to any dependents receiving a portion of the detention benefits. This letter may be used to verify the current address of the payee and inquire about new information concerning the employee's status. Care should be taken that the annual Section 10(f) adjustment is not applied to detention benefits.
- e. In certain cases where the employee's disappearance continues for a prolonged period of time, it may be appropriate to make a finding that death has occurred. Section 206 of the WHCA gives OWCP the authority to make a presumptive finding of death on the basis of evidence that the employee disappeared under circumstances that make the death appear probable. A presumptive finding of death should be undertaken only after careful consideration of the circumstances surrounding the disappearance and the wishes of the employee's survivors.

To make a finding of presumed death, the SrCE must prepare a memorandum to the Director and a compensation order for the signature of the Deputy Director for Federal Employees' Compensation. The copy of the compensation order sent to the employee's survivors should be accompanied by a cover letter advising the survivors of the procedure for filing a claim for death benefits. The amount of the death benefit may be more or less than the portion of the detention benefit the survivors had been receiving, depending on the date of death and the amount of time elapsed between the date of

detention and the date of death.

18. Fees for Legal Services.

a. Section 204 of the WHCA provides that:

- (1) A claim for legal or other services rendered in respect to a claim under the WHCA is not valid unless approved by the Secretary;
- (2) An approved claim for legal or other services will be paid out of compensation payable to the claimant; and
- (3) Receipt of a fee without such approval, or solicitation of employment for oneself or another person in respect to a claim under the WHCA is a misdemeanor, punishable by a fine not to exceed \$1000.00, one year imprisonment, or both.

b. In addition, Section 61.403 of 20 C.F.R. provides that:

- (1) Stipulated or contingent fees will not be recognized;
- (2) Fee applications must be supported by a statement of the extent and character of the necessary work done on behalf of the claimant; and
- (3) The fee approved will reflect the actual necessary work performed by the representative, considering the capacity in which the representative appeared, the amount of compensation involved, and the circumstances of the claimant.

c. The procedures outlined in FECA PM Chapter 2-1200 may generally be used to process applications for fees under the WHCA, with the following exceptions:

- (1) Informational letters and awards should not reference the FECA or FECA regulations;
- (2) The fee should be paid by the OWCP out of compensation due the claimant, taking into consideration the existence of an outstanding large payment and the claimant's financial circumstances.

19. Common Medical Conditions Related to Internment.

a. A large number of cases accepted under Section 101 of the WHCA involve employees of U.S. Government contractors who sustained injury or disease as the result of detention in the Pacific theater during World War II. In these cases, known as "Enemy Action" (EA) cases, questions often arise about the relationship of current medical conditions to the internment. In May of 1980, the Veterans Administration published Study of Former Prisoners of War, in which common internment-related medical and emotional conditions were described. Although each case must be decided on its own merits, the following description of conditions identified in POW (Prisoner of War) studies as internment-related may be of assistance in the management of EA cases.

b. POWs were interned in the World War II Pacific theater under particularly harsh conditions exacerbated by a sparse and unfamiliar diet, tropical diseases, and primitive medical care. Thirty-seven percent of the American POWs interned in the Pacific theater died during internment, compared to a mortality rate of 1% for Americans in European prison camps. At the time of repatriation, many Pacific theater POWs were found to be suffering from malnutrition, gastrointestinal problems, and residuals of tropical and parasitic diseases. Most of the EA cases were accepted for at least one of these conditions.

Among ex-POWs in the World War II Pacific theater, the Veterans Administration has found that the most common current medical conditions related to the internment are malnutrition and systemic diseases (malaria, avitaminosis, beriberi, pellagra), amebiasis and other gastrointestinal disorders, and anxiety neurosis. Evidence in other studies of ex-POWs has shown an increased incidence of musculoskeletal problems, eye diseases, respiratory problems, cardiovascular symptoms, skin diseases, and neurological disorders.

4-0300 Exhibit 1: Form CA-278 (Link to Image)

4-0300 Exhibit 2: Form SF-1034 (Link to Image)

4-0300 Exhibit 3: Yearly Increases Under the LHWCA

YEARLY INCREASES UNDER THE LHWCA	
Date of Increase	Percentage of Increase

10/1/73	6.49%
10/1/74	6.26%
10/1/75	6.74%
10/1/76	7.59%
10/1/77	7.21%
10/1/78	8.05%
10/1/79	7.43%
10/1/80	7.03%
10/1/81	8.87%
10/1/82	5.64%
10/1/83	4.51%
10/1/84	5.00%
10/1/85	2.69%
10/1/86	1.69%
10/1/87	1.92%
10/1/88	3.13%
10/1/89	3.83%
10/1/90	3.26%
10/1/91	2.61%
10/1/92	3.03%
10/1/93	2.38%
10/1/94	3.06%
10/1/95	2.83%
10/1/96	2.38%
10/1/97	4.33%
10/1/98	4.31%
10/1/99	3.39%
10/1/00	3.61%

4-0300 Exhibit 4: Sample Periodic Status Inquiry Letter

SAMPLE PERIODIC STATUS INQUIRY LETTER

Dear NAME OF BENEFICIARY:

Reference is made to the benefits you are receiving under either the War Hazards Compensation Act or the Defense Base Act. Periodically we are required to verify the continuing entitlement of beneficiaries. Please provide responses to the following questions: 1. Has there has been a change in your marital status since your entitlement under this program began? If

yes, please provide the date of the change and specify the event which caused the change.2. Have any of your dependents for whom you claim compensation married since you began receiving benefits? If yes, please provide the date of the marriage and any change of name. To ensure continuation of benefits without interruption, please reply within thirty days of the date of this letter. Failure to respond may result in reduction or suspension of benefits. Your response, to include your case file number, may be sent to the address shown above.

Sincerely,

CLAIMS EXAMINER

4-0400 WAR CLAIMS

<u>Paragraph</u>	<u>Subject</u>	<u>Date</u>	<u>Trans. No.</u>
	Table of Contents	09/94	94-39
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6	Conditions of Coverage	09/94	94-39
7	Computation of Compensation	09/94	94-39

1. Purpose and Scope. This chapter outlines the procedures to be followed in adjudicating and monitoring claims for benefits under Section 5 of the War Claims Act.

2. Statutory Authority. Section 5 of the War Claims Act of July 3, 1948 provides compensation benefits for United States citizens who were captured by or in hiding from the Imperial Japanese Government on or after December 7, 1941, at Midway, Guam, Wake Island, the Philippine Islands, or any territory or possession of the United States attacked or invaded by such government. Benefits are provided for detention, injury, and death. The amendments of

August 21, 1954 extended coverage to civilian Americans captured in Korea during hostilities there on or after June 25, 1950. The amendments of June 24, 1970 gave detention coverage to civilian American citizens subsequent to February 27, 1961 for capture during the Vietnam conflict. The following groups are excluded from coverage:

- a. A person who at any time voluntarily gave aid to, collaborated with, or in any manner served the Japanese Imperial Government;
- b. Civilian employees covered under the Federal Employees' Compensation Act;
- c. Civilian employees covered under the War Hazards Act;
- d. A person within the purview of the Missing Persons Act of March 7, 1942; or
- e. A regularly appointed, enrolled, enlisted, or inducted member of any military or naval force.

3. Regulations. Regulations concerning "Compensation for Injury, Disability or Death of Civilian American Citizens Incurred while Detained by or Hiding from the Imperial Japanese Government" are found in 20 C.F.R., Chapter 1, Subchapter G, Part 71, and date from 1951.

4. Jurisdiction. All claims for benefits under the War Claims Act are to be handled in the National Operations Office (District Office 25), and should be forwarded there without jacketing. War Claims cases are assigned a WC prefix.

5. Claim Forms.

- a. WC-3, "Claim for Injury or Disability Benefits by Civilian American Citizen," is the form used to claim benefits for disability under the War Claims Act.
- b. WC-4, "Claim for Death Benefits by Survivors of Deceased Civilian American Citizens," is the form used to claim death benefits under the War Claims Act.
- c. Neither of these two forms is in print. Photocopies may be used by those individuals who currently wish to claim benefits.

6. Conditions of Coverage.

a. The time limitations for filing a claim under the War Claims Act are those in effect under the Federal Employees' Compensation Act (FECA) at the time of internment. In most instances, since internment took place during World War II, the 1940 version of the FECA is applicable.

b. An original claim for compensation must be filed within one year of injury or death. Waiver of the one-year requirements may be made if claim is filed within five years of injury or death, and failure to comply was due to circumstances beyond the control of the individual claiming benefits, or the individual claiming benefits could show sufficient cause for the failure to file within one year, and material prejudice to the interest of the United States did not result from such failure.

c. Medical treatment may be allowed even if the claim for compensation was not timely if notice of injury was given within one year of the injury, or if the immediate supervisor had actual knowledge of the injury within 48 hours. In War Claims cases, since their eligibility stems from their U.S. citizenship rather than their employment status, the U.S. Government as a whole stands in lieu of a particular employer. Thus, if a War Claims claimant is able to demonstrate that the U.S. Government had actual knowledge of his or her internment within 48 hours of its ending, the time requirement for the purpose of medical benefits is met. The presence of a claimant's name on a listing of interred civilians which falls within the specified time frames would be an indication of such actual knowledge.

d. In cases of latent disability, time does not begin to run until the potential beneficiary is aware of his or her condition and its possible relationship to internment.

e. By amendment, the time limitation for civilian World War II internees was extended to March 31, 1952.

f. In recent years, the Office has received an increased number of inquiries from individuals seeking benefits under the War Claims Act for conditions arising from internment during World War II. Many of these individuals have existing case files which have been retired and may be recalled, or which were retired so long ago that they have been destroyed. Some claimants filed for detention benefits with the War Claims Commission or the Foreign Claims Settlement Commission, but never filed for disability benefits, so OWCP never created a case. The Foreign Claims Settlement Commission may be a source of information (in addition to the claimant) and may be contacted by

writing to:

Foreign Claims Settlement Commission
Room 400
1111 20th Street, N.W.
Washington, D.C. 20579

or by telephoning David Bradley at 659-5883.

g. If the requirements for timely filing are met, the claimant must show that he or she is an American citizen interned under the circumstances outlined in the Act. For World War II internees in the Philippines, the National Operations Office has lists of U.S. citizens interned there.

h. Establishing causal relationship in latent disability cases can be somewhat difficult because of the general lack of knowledge on the part of physicians in this country on the long-term effects of malnutrition and tropical diseases. Therefore, if a claimant submits medical reports which give a modicum of support to the claim, even if unrationalized, the Office will make arrangements for examination of the claimant and/or the record by a second opinion physician who is knowledgeable in the appropriate medical area.

i. For dental conditions, if the claimant provides medical evidence which contains complete diagnostic information and supports causal relationship, even if unrationalized, a presumption will be made that the dental conditions are related to the internment.

7. Computation of Compensation.

a. The total aggregate compensation for disability is limited to \$7,500 in the case of injury, and \$7,500 in the case of death, exclusive of medical costs and funeral expenses.

b. Detention benefits of \$60.00 for each calendar month during which the individual interned was at least 18 years of age are payable. The detention benefit for individuals under the age of 18 years is \$25.00 per calendar month.

c. The weekly pay rate for compensation purposes (disability or death) is deemed to be \$37.50, regardless of employment status.

d. The compensation rates are as outlined in the War Hazards Compensation Act, which is based on Longshore compensation rates. Thus, the rate payable for total

disability is 66 2/3%, and the rates for death are:

Beneficiary Percentage

Widow/Widower 50%

Widow/Widower 50%

and Children plus 16 2/3% for each child, up to a total of 66 2/3%
maximum

Child (Rate applicable if
widow/widower is
dead or remarries) 50%

More than 1 child plus 16 2/3% for each additional child, up to a total
maximum of 66 2/3%

Dependent Parent or
Grandparent 25% to each

Dependent Grandchild,
Brother or Sister 20% to each

Total compensation paid on account of death may not exceed 66 2/3%.

- e. A funeral expense of up to \$3000.00 is payable in addition to death benefits.

4-0500 CIVIL AIR PATROL

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1. Purpose and Scope. This chapter outlines the procedures to be followed in cases involving Civil Air Patrol volunteers.

2. Statutory Authority. Public Law 84-955, approved on August 3, 1956, extended coverage under the Federal Employees' Compensation Act (FECA) to volunteer civilian members of the Civil Air Patrol (CAP). This Public Law is incorporated in the FECA in Section 8141.

3. Jurisdiction. All claims by CAP volunteers and their survivors are to be handled in the National Operations Office, District Office 25, and should be forwarded there without jacketing. These cases are assigned a CP prefix.

4. Claim Forms. The usual FECA claim forms may also be used by CAP volunteers.

5. Conditions of Coverage.
 - a. Civilian CAP volunteers, except for Cadets under the age of 18 years, are covered under the FECA for injury or death sustained while in active service, or while in travel to or from that service.

 - b. The service must be rendered in performance or support of operational missions of the CAP under direction of the Department of the Air Force and under written authorization by competent authority covering a specific assignment and prescribing a time limit for the assignment.

 - c. The CAP Wing Commanding Officer and the U.S. Air Force Liaison should submit affidavits confirming that the individual was a volunteer member of the CAP, and that he or she was rendering service in performance or support of the authorized operational mission at the time of injury or death.

d. A copy of the CAP Mission Authorization should be submitted, which will also reflect the prescribed time limit of the assignment or mission. If needed, the USAF Liaison Officer may be asked to verify the scope and time limitations of the assignment.

e. CAP Forms 78, "Notice of Occurrence Form", and 79, "Accident Insurance Form", will describe the circumstances surrounding the injury or death.

6. Eligibility for Benefits.

a. The pay rate for compensation purposes is deemed to be the rate of basic pay for a GS-9, step 1. Compensation for disability is paid as with regular FECA cases. There is no eligibility for Continuation of Pay.

b. The compensation rate in death cases depends on whether or not the deceased individual was fully or currently insured under Subchapter II of Chapter 7 of Title 42 (Social Security Act) at the time of death. Brothers, sisters, grandparents, and grandchildren have no entitlement. Otherwise, the compensation rates are as follows:

For CAP volunteers who are not fully or currently insured under the Social Security Act:

<u>Beneficiary</u>	<u>Percentage</u>
Widow/Widower	50%
Widow/Widower and Children	45% plus 15% for each child, up to a total of 75% maximum
Child	40%
More than 1 child	plus 15% for each additional child, up to a total maximum of 75%
Parents	
One wholly dependent	25%
Other not dependent	
Both wholly dependent	16% to each
One or both partly dependent	Proportionate amount

For CAP volunteers who are fully or currently insured under the Social Security Act:

Widow/Widower	50%
Widow/Widower and Children is eligible	45% No additional payments for children while widow/widower is eligible
Child More than 1 child	20% plus 10% for each additional child, 75% maximum
Parents	Same as above

Claims examiners should make an inquiry to the Social Security Administration in death cases, to ask whether the individual was fully or currently insured under Subchapter II of Chapter 7 of Title 42 at the time of death.

- c. Prior to September 24, 1983, the pay rate for CAP volunteers was \$300 per month. When the rate was changed to GS-9 as of September 24, 1983, adjustments were made in all of the cases on the rolls at that time to reflect the new rate.
- d. The \$800 funeral expense is payable, as are costs of transporting the body. The \$200 amount for the cost of terminating the volunteer's employee status is not payable.
- e. Full medical benefits for the accepted conditions are allowed, as are rehabilitation services and attendant allowance.

4-0600 RESERVE OFFICERS' TRAINING CORPS

<u>Paragraph</u>	<u>Subject</u>	<u>Date</u>	<u>Trans. No.</u>
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10	Army ROTC Regional Headquarters	05/96	96-19

1. Purpose and Scope. This chapter outlines the procedures to be followed in claims for benefits by members of and applicants for membership in the Reserve Officers' Training Corps (ROTC). These cases have the prefix of TC-.

2. Statutory Authority. Public Law 84-879, enacted August 1, 1956, extended coverage under the Federal Employees' Compensation Act (FECA) to members of or applicants for membership in the Reserve Officers' Training Corps of the Army, Navy or Air Force under certain conditions. Effective October 1, 1988, the National Defense Authorization Act, Public Law 100-456, made revisions to 5 U.S.C. 8140, which was the encoded portion of P.L. 84-879. These revisions expanded the circumstances under which individuals would be extended coverage under the Federal Employees' Compensation Act.

3. Jurisdiction. All claims for benefits by ROTC cadets or ROTC applicants are to be jacketed, adjudicated, and maintained in the National Operations Office, District Office 25, and should be forwarded to that office without jacketing.

4. Claim Forms. The usual FECA claim forms are used for ROTC cases.

5. Conditions of Coverage for Injuries Before October 1, 1988.

a. Time. The time limitations for filing notice of injury and claim for compensation

are the same for ROTC cases as for other claims under the FECA.

b. Civil Employee/Performance of Duty.

(1) As of August 1, 1956, FECA benefits were extended to members of the ROTC of the Army, Navy, and Air Force who suffered disability or death from an injury incurred in the line of duty while:

(a) engaged in flight instruction under Section 40(a) of the Act of June 3, 1916, Section 22(a) of the Act of March 4, 1925, or Section 3(a) of the Act of August 13, 1946;

(b) attending a training camp under Section 47(a) of the Act of June 3, 1916, a cruise under Section 22(a) of the Act of March 4, 1925, or a cruise or camp prescribed by the Secretary of the Navy under Section 6(a)(1) of the Act of August 13, 1946; or

(c) performing authorized travel to or from a camp or cruise as indicated in item (b) above.

(2) As of October 13, 1964, benefits were expanded to apply to any member of, or applicant for membership in, the ROTC of the Army, Navy, or Air Force who suffers disability or death from an injury incurred in line of duty while:

(a) engaged in a flight or flight instruction under chapter 103 of title 10, U.S.C.; or

(b) performing authorized travel to or from, or while attending, field training or a practice cruise under chapter 103 of title 10, U.S.C.

(3) Benefits for those engaged in flight or flight instruction include disability or death due to traumatic injury only; disability and death benefits for both traumatic injury and occupational disease are payable for those engaged in or traveling to or from field training, or a practice cruise.

(4) For members, and after October 13, 1964, applicants for membership, who were killed while participating in or traveling to or from annual training of more than 14 days' duration, the widow, children, or dependent parents are eligible for benefits with the Department of Veterans Affairs. For other dependents and for deaths in flight instruction situations, benefits are under FECA.

(5) The Military Department concerned is responsible for making a "line of duty" determination, subject to review by OWCP, and should provide the

appropriate statutory citation in support of that determination. "Line of duty" determinations made by the military should be accorded great weight. It should be noted that the term, "line of duty," should be interpreted in the military context, and is not synonymous with the term "performance of duty" as usually interpreted under the FECA. There are many circumstances in which a member of the military would be considered to be in the "line of duty," while a civilian federal employee would not be considered in the "performance of duty." One example of this difference would be in the instance of an ROTC cadet who was authorized to take leave from a training exercise for purposes of personal travel, and was injured when returning to the military base. The military would interpret this injury as having occurred in the "line of duty," since the travel was authorized, and took place while travelling to training. A civilian employee under similar circumstances would not be considered to be in the "performance of duty."

- c. Fact of Injury will be determined as in other claims.
- d. Causal Relationship will also be determined as in other FECA claims.

6. Conditions of Coverage for Injuries On and After October 1, 1988.

- a. Time, Fact of Injury, and Causal Relationship will be determined as in other FECA claims.
- b. Civil Employee/Performance of Duty.
 - (1) Coverage extends to members and applicants for membership who sustain injury, occupational disease, or death while participating in a training activity which is prescribed by the Secretary of the military department.
 - (2) Applicants for membership include students of authorized ROTC courses at education institutions.
 - (3) The Secretary of the military department (or his or her designee) determines whether or not an injury was incurred in the line of duty, subject to review by OWCP. (See paragraph 5.b.(5) above for further discussion.

7. Benefits.

a. Compensation.

(1) The pay rate for compensation purposes is set by statute at \$150.00 per month, or \$34.62 per week. In disability cases, the claimant will be entitled to 2/3 or 3/4 of this amount, and in death cases, the usual percentages are used. The compensation minimums do not apply, but CPIs do. The compensation payment activity code of "4" should be used, and such an instruction should be included in the payment set-up.

(2) In addition to compensation for total disability and death, compensation for loss of wage-earning capacity or a schedule award may be paid, and an attendant allowance may be authorized.

(3) Disability benefits may not be paid while an individual is on active duty with the armed forces.

b. Medical.

(1) Prior to October 1, 1988, full medical benefits in accordance with FECA were payable, and the military department could be reimbursed for expenses incurred in providing medical treatment, except for treatment received while the claimant was attending field training or a practice cruise.

(2) As of October 1, 1988, full FECA medical benefits are payable, and the military department can be reimbursed for expenses incurred in providing medical treatment, except for care provided by a military department in a facility of a military department.

c. Continuation of pay. ROTC applicants and members are not eligible for continuation of pay as provided by 5 U.S.C. 8118.

8. Benefits Payable by the Department of Veterans Affairs (DVA).

a. The DVA provides dependency and indemnity compensation for members (not applicants for membership) killed while participating in field training or a practice cruise of at least 14 days' duration under 38 U.S.C, or while traveling to or from such training or cruise. Persons eligible for this compensation are not entitled to FECA benefits for the same death.

b. The DVA also provides a death gratuity equal to six months' pay to survivors of

ROTC members and applicants for membership who die under the circumstances outlined above. There is no bar to receiving this gratuity payment and FECA benefits for the same death.

c. Public Law 97-306, effective October 1, 1982, extended DVA benefits to ROTC members (not applicants for membership) who are injured during ROTC field training or practice cruises. Public Law 98-233 extended that coverage to members injured prior to October 1, 1982, with benefits retroactive to October 1, 1983.

d. For there to be DVA coverage for disability, permanent disability must result from the injury, and the member must have been discharged from the ROTC due to the injury.

e. DVA medical benefits are prospective from the date of their acceptance of the claim, and compensation benefits for disability are retroactive for up to one year only.

f. If application for FECA benefits is made by an ROTC member, and the injury is one which appears to involve permanent disability which may have resulted or will result in discharge from the ROTC, the claims examiner should inquire as to the application for and receipt of DVA benefits.

g. FECA benefits may be paid up until the date DVA eligibility is established. If paying such benefits results in an overpayment of compensation, no overpayment will be declared if the DVA deducts the amount of FECA benefits paid from the amount of DVA compensation due.

9. Junior ROTC Members. Chapter 102 of Title 10 provides for a "Junior Reserve Officers' Training Corps." Members of and applicants for membership in the Junior ROTC, who are high school students, are not eligible for benefits under the FECA.

10. Army ROTC Regional Headquarters. The four Army Regional Headquarters for ROTC are located as follows:

Region 1 - Fort Bragg, North Carolina

Region 2 - Fort Knox, Kentucky

Region 3 - Fort Riley, Kansas

Region 4 - Fort Lewis, Washington

4-0700 FEDERAL RELIEF WORKERS

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1. Purpose and Scope. This chapter outlines the background and procedures to be used in monitoring claims for a variety of Federal Relief Workers, including Civilian Conservation Corps enrollees (prefix CC-), employees of the Federal Civil Works Administration (prefix CW-), employees of the Federal Emergency Relief Administration (prefix FE-), veterans of World War I and other persons attached to Veterans' Camps Numbers 1, 3, and 5, who were injured or killed as the result of the hurricane of September 2, 1935, at the Florida Keys (prefix FH-), and persons receiving payments for services rendered under the National Youth Administration (prefix NY-).

2. Statutory Authority. The United States Employees' Compensation Act of 1916, as amended, was extended to provide payment of limited compensation benefits under prescribed circumstances to the classes of employees listed above, by Acts of Congress dated February 15, 1934, June 19, 1934, April 8, 1935, June 22, 1936, June 29, 1936, June 29, 1937, and June 21, 1938.

3. Regulations for claims of these individuals may be found in 20 C.F.R. Parts 21 through 24, published in 1939.

4. Jurisdiction. All claims for benefits from these individuals are under the jurisdiction of the National Operations Office (District 25), where the currently active claims are maintained. All of the injuries took place prior to World War II, and thus the number of active claims will decrease over the years. Any inquiries received should be forwarded to the National Operations Office.

5. Claim Forms. The claim forms used were the same as for other FECA claims, except that the Civilian Conservation Corps enrollees used a Form CA-2C instead of a CA-1 and CA-2.

6. Conditions of Coverage.

a. Only injury due to accident causing damage or harm to the physical structure of the body is covered, and death resulting from such injury. Diseases are not covered, except as they may naturally result from an injury.

b. Time. A written notice of injury had to be given within one year of the injury. A death claim had to be made within six years of the injury, and within one year of cessation of disability, or if there was no disability, within one year of the injury.

c. Employee. Only the individuals outlined in paragraph 1 above were extended coverage.

d. Performance of Duty. The usual performance of duty rules applied. Injuries which took place while an individual was on authorized leave away from the work place were disallowed, unless the injury took place while riding to or from the work place in a vehicle furnished by the United States government.

e. Fact of Injury and Causal Relationship are considered as in other FECA claims. Because only traumatic injuries are covered, these two considerations are usually very clear-cut.

7. Benefits.

a. Disability Compensation.

- (1) Benefits may be paid for temporary total disability, permanent total disability, or permanent partial disability.
- (2) Permanent partial disability is paid in accordance with a schedule approved by the President, as found in 20 C.F.R. 25.11.
- (3) Total disability benefits are payable at $66 \frac{2}{3}$ of the employee's monthly wage, regardless of whether or not the employee has dependents. Initially, the maximum monthly compensation rate was \$25, raised to \$30 per month as of June 30, 1937, and was subject to an aggregate maximum of \$3500, not including medical expenses. As of July 1, 1938, the monthly maximum increased to \$50, and the aggregate maximum to \$4000. As of November 1, 1949, the monthly pay on the basis of which compensation was computed could be no less than \$75, and the maximum aggregate limit was removed in cases of permanent and total disability. On September 13, 1960, the monthly maximum payable was raised to \$150 and the minimum monthly pay on the basis of which compensation for disability or death was computed could be no less than \$150. On July 4, 1966, the pay rate increased to \$450.
- (4) No benefits are payable for loss of wage-earning capacity.

b. Death Compensation.

- (1) Widow or dependent widower only - 35% of the employee's monthly pay at the time of injury.
- (2) Widow or widower and children - 35% for the widow or widower, and an additional 10% for each child, up to a maximum of $66 \frac{2}{3}$ of the employee's pay.
- (3) To the children, if there is no widow or widower, 25% for one child, and 10% for each additional child, up to a maximum of $66 \frac{2}{3}$ %, share and share alike.
- (4) Benefits were also payable to parents, brothers, sisters, grandparents, and grandchildren for a period of up to eight years from the time of the death.
- (5) A funeral expense of \$200 was payable, less any part paid by another agency of the Federal government. In addition, the cost of embalming and transporting the body was payable.

4-0801 FOREIGN NATIONAL CLAIMS

<u>Paragraph</u>	<u>Subject</u>	<u>Date</u>	<u>Trans. No.</u>
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9	Computation of Compensation	09/94	94-39
10	Philippine Nationals	09/94	94-39
11	Korean Nationals	09/94	94-39
 <u>Exhibits</u>			
1	Form 204EK Korean Employee's Notice of Traumatic Injury and Claim for Pay/Compensation (Link to Image)	09/94	94-39
2	Form 203EK Request/Authorization for Examination and/or Treatment (Link to Image)	09/94	94-39
3	Form 205EK Claim for Compensation by Widow, Widower, and/or Children (Link to Image)	09/94	94-39
4	Form 206EK Official Supervisor's Report of Employee's Death (Link to Image)	09/94	94-39
5	Korean Disability Benefit Table Pages 1-2 (Link to Image)	09/94	94-39

[Pages 3-4 \(Link to Image\)](#)

[Pages 5-6 \(Link to Image\)](#)

[Pages 7-8 \(Link to Image\)](#)

[Pages 9-10 \(Link to Image\)](#)

1. Purpose and Scope. The purpose of this chapter is to provide procedures and general guidance for the adjudication, processing and payment of claims from foreign nationals, except for those individuals covered elsewhere in this part. Because of the great diversity in these claims, this chapter is intended to serve as guidance only, and is not intended to be totally comprehensive.

2. Statutory Authority. Sections 8136, 8137, and 8138 of the Federal Employees' Compensation Act deal specifically with claims from foreign nationals.

3. Regulations. Claims of foreign nationals are addressed in 20 C.F.R. 25.1 through 25.27, "Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States".

4. Definitions.

a. For the purposes of this chapter a foreign national is an employee of the United States who is neither a citizen nor resident of the United States, any territory, or Canada.

b. A third country national is a person who is neither a citizen nor resident of the United States who is hired by the United States in the person's country of citizenship or residence for employment in another foreign country, or in a possession or territory of the United States.

c. A fourth country national is a person who is neither a citizen nor resident of either the country of hire or the place of employment, but otherwise meets the definition of a

third country national.

5. Jurisdiction. All claims from foreign nationals will be jacketed, adjudicated, and paid in the National Operations Office (District 25). After the payment level has been established, if the claimant relocates to the United States, the case may be transferred as with any other general jurisdiction case.

6. Claim Forms. For the most part, the claim forms used in the claims of foreign nationals will be the same as other FECA cases, with the exception of cases from Korea. The Korean nationals use bilingual forms 204EK (similar to the CA-1), 203EK (similar to the CA-16), 205EK (similar to the CA-5) and 206EK (similar to the CA-6). Copies of these forms may be found in Exhibits 1 , 2 , 3 , and 4 . At times, because of the isolation of some of the reporting offices, the forms used may not be the most current versions.

7. Conditions of Coverage. Conditions of coverage which apply to foreign nationals will be the same as in most other FECA claims, and should be developed in a similar manner.

a. Timely filing - For injuries before September 7, 1974, the one-year filing requirement is usually waived if the claim is filed within 5 years because foreign nationals are not expected to know or understand American procedures for reporting injuries. For injuries on and after September 7, 1974, time is seldom an issue because of the actual knowledge provision.

b. Civil employee - Contract and non-appropriated fund employees may be found among foreign nationals, and are not civil employees for the purpose of the FECA. Personal services contractors with the Agency for International Development (AID) are considered to be employees under 5 U.S.C. 8101.

Many Department of Defense foreign national employees receive workers' compensation coverage under separate treaty. FECA Program Memos 2, 23, 120, and 126 address treaty coverage for Spanish, Turkish, British, and Australian nationals working for defense agencies. Most NATO countries and Japan also have separate treaty provisions. Individuals who are covered under such treaties are not entitled to benefits under FECA.

c. Fact of injury - Follow the usual procedures.

d. Performance of duty - Consider as with any other claim. Provisions of the local law do not apply to performance of duty issues. Thus, an employee who is injured on his way to work in a country whose law provides workers' compensation coverage for such an injury will not be covered under FECA under most circumstances.

e. Causal relationship - Consider as with any other FECA claim. Medical reports, especially those with rationalized opinions on causal relationship, may be very difficult to obtain, or may require translation.

8. Benefits.

a. With the exception of Canadians and Panamanians, foreign nationals are not entitled to continuation of pay.

b. Medical benefits.

(1) Foreign nationals are entitled to full medical benefits, including a choice of qualified physicians. Often, because of remote or undeveloped locations employees will be treated at a Federal medical facility or may be transported to another country for treatment. Some agencies, the Department of State in particular, expend funds for medical treatment and then apply for reimbursement by OWCP.

(2) Bills received in foreign cases may need to be translated before authorization for payment. Form HCFA-1500 is not required. Claims examiners must be careful to recognize bills as such and not file them down in the case file, but take appropriate action. Bills which have been approved for payment and in which payment is to be made to a foreign address must be forwarded to the National Office (District 50) for manual processing, and should not be processed through the automated system. The original bill with payment authorization and a copy of the CA-800 should be forwarded, and a copy of the bill retained in the file, along with a notation as to when the bill was forwarded for payment. When the bill is paid, a copy of the payment voucher will be returned to the office with an appropriate entry on the copy of the CA-800. A maintenance adjustment should be performed, an appropriate entry made on the original CA-800, and a notation made on the file copy of the bill.

c. Compensation benefits are paid in accordance with the benefit structure of the local workers' compensation laws, or by special schedule. For further discussion, see

paragraphs 9, 10, and 11 below.

9. Computation of Compensation (general).

a. Except for Panamanian, Canadian, Philippine, and Australians nationals, non-resident aliens employed in the Territory of Guam, and direct-hire Japanese seamen employed by the Military Sealift Command in Japan, compensation benefits are paid in accordance with the relevant provisions of the local law, or FECA, whichever is less.

b. Benefits paid should never exceed those which would be payable under FECA. However, when making a comparison of FECA and benefits under the local law, total benefits payable are considered, not just individual portions of the benefits. For example, if in a death claim a local law makes provision for a \$2000 funeral expense (versus \$800 for FECA), but the total benefits payable under the local law are less than under FECA, the \$2000 funeral expense will be paid.

c. The use of a local or FECA benefit structure in a case should remain consistent throughout the case. If benefits are paid initially in accordance with one benefit structure, but it later appears that total benefits under the other benefit structure would be less, the total entitlement should be recomputed based on the lower total benefit structure.

d. Consumer Price Index increases apply only if the claimant is being paid under a FECA benefit structure.

e. There are four basic types of payments which are provided for under local workers' compensation laws:

(1) Lump sum awards for permanent disability or death. The disability awards may be in proportion to impairment of the whole man as medically determined. The AMA Guides to the Evaluation of Permanent Impairment should be used to determine the degree of whole man impairment, when needed.

(2) Pension-type payments. These payments may also be based on whole-man impairment in disability cases. In death cases, the benefit structure may be similar to FECA, although the percentages are usually different.

(3) Payments determined by the local court system or special tribunal. Unless a ruling can be obtained from the court, this type of law is difficult to use. Consideration should be given to making payment under a regular FECA benefit structure.

- (4) Laws which combine (1), (2), and (3) above. The portion of the law which fits the particular situation should be applied in any one instance.
- f. When adopting the benefit provisions of the local law, procedural provisions, designations of classes of beneficiaries, and limitations (except for those affecting amounts of payments) do not apply.
- g. If the local law is not well-defined or does not exist, the law of a nearby country may be used.
- h. Third and fourth country nationals are paid benefits applicable to local hires in the country of hire or the place of employment, whichever is greater. Fourth country nationals may be paid in accordance with the laws of their home country, where equitable considerations as determined by the Director so warrant.
- i. Non-citizen residents of United States possessions, territories, commonwealths or trust territories are paid full FECA benefits.
- j. The Special Schedule, as outlined in 20 C.F.R. 25.11 through 25.13, applies with modifications to local hires in the Philippines, Australia, and the Territory of Guam, and to Japanese seamen, but not to Korean locals. For Korean locals, the Korean Labor Standards Act is used (see paragraph 11 below).
- k. Foreign national employees and their survivors are not entitled to the minimum provisions of 5 U.S.C. 8112 and 8133.
- l. A CE should work through the employing agency to obtain a translation and when needed, an interpretation of the local law. If an interpretation is needed, this ideally should be secured from an official of the local workers' compensation agency.
- m. Some foreign nationals are covered under the Civil Service Retirement System (CSRS). If FECA benefits are being paid under the provisions of the local law, and local law provides for a lump sum payment, no election of benefits between FECA and CSRS is required. If local law provides for pension payments, then an election is required.
- n. Exchange rates in effect as of the date of injury, date disability began, or date of recurrence should be used to convert local currencies to United States dollars. The Department of the Treasury is a source for information on exchange rates. In addition, the Fiscal Officer in the National Operations Office keeps records of the exchange rates, and receives quarterly updates.
- o. After sufficient information on the local law has been obtained, the claims

examiner should prepare a memorandum of computation, comparing the local benefits and FECA, and a CA-24 or CA-25 for the lesser of the two. The computations should be certified by the senior claims examiner or higher authority.

p. If the local law provides benefits for an indefinite period of time, or benefits are being paid under a FECA rate structure, a lump sum settlement should be made.

10. Philippine Nationals.

a. Under an agreement between the United States and the Republic of the Philippines signed on March 10, 1982, the Philippine Medical Care Program and the Employees' Compensation Program were extended to all Philippine national direct-hire employees of the U.S. Military Forces, except for those employees who are not members of the Philippine Social Security System.

(1) Philippine nationals who sustain traumatic injury on or after March 10, 1982, and are eligible for benefits under the Philippine system are not entitled to FECA benefits.

(2) Philippine nationals who sustain occupational disease due to work exposure of which at least a portion occurred on or after September 10, 1982, and who are eligible for Philippine benefits, are not entitled to FECA benefits.

(3) Whenever a claim from a Philippine national who is covered under the local system is received for injury or occupational disease sustained outside of the time frames specified above, the claim should be denied with compensation order, and full appeal rights, on the basis that the claimant is not a civil employee of the United States for purposes of compensation coverage under the FECA.

(4) When a claim for benefits is so disallowed, a copy of the entire submission should be retained, along with the disallowance, and the original submission forwarded with a cover letter to the employing agency for submission to the Philippine Government.

(5) The referenced agreement does not apply to Philippine national employees of U.S. agencies other than the armed forces.

b. For Philippine national employees who are not excluded from FECA coverage by the March 10, 1982 agreement, a modified special schedule of compensation, as described in 20 C.F.R. 25.21 applies for injury or death occurring on or after July 1,

1968.

- (1) Temporary total disability benefits are payable at the rate of 66 2/3 percent of the monthly pay, for a maximum of 80 weeks.
- (2) Permanent total disability compensation is equal to 400 weeks at two-thirds of the weekly wage rate.
- (3) A death benefit equivalent to 400 weeks' compensation at two-thirds of the weekly wage rate is payable, to be shared equally by all eligible survivors in the same class, as follows:
 - (a) Widow, dependent widower, and unmarried children under 18, or over 18 and totally incapable of self-support;
 - (b) Dependent parents;
 - (c) Dependent grandparents;
 - (d) Dependent grandchildren, brothers, and sisters who are unmarried and under 18, or over 18 and totally incapable of self-support.
- (4) Burial allowance is 14 weeks' wages or \$400, whichever is less.
- (5) A schedule of awards payable for permanent partial disability, similar to that found in 5 U.S.C. 8107, is outlined in 20 C.F.R. 25.11(c). The durations of the awards are somewhat shorter than those found in section 8107. No provision is made for a disfigurement award. Where the schedule provides no award for a particular disability, the amount payable for permanent total disability may be multiplied by the percentage of the permanent impairment to arrive at an award.
- (6) Temporary partial disability payments may be made while the disability persists at a rate which equals two-thirds of the weekly loss of wage-earning capacity, for a maximum of 80 weeks.
- (7) Only benefits for temporary disability are paid periodically. All payments for permanent disability or death are paid in full at the time the extent of entitlement is established.
- (8) The maximum aggregate compensation payable in any one case for disability or death or both, is \$8000, exclusive of medical costs or burial allowance. The maximum weekly compensation for disability or death is \$35.

11. Korean Nationals.

a. Compensation benefits for Korean Nationals are paid in accordance with the Korean Labour Standards Act (KLSA) or full FECA, whichever is less. The claims examiner should perform a comparison of KLSA and FECA benefits to determine which structure should be used.

b. The basic provisions of the KLSA are as follows:

(1) While the employee is under active medical treatment, benefits are payable at the rate of 60% of the average wage during the period of medical treatment. This compensation is similar in nature to temporary total disability payments. If the active medical treatment continues for more than two years, a full and final payment of 1,340 days' wages is made.

(2) A 14-grade schedule is provided for disability of a permanent nature. Each grade provides an award for a specific number of days, ranging from 50 to 1340. The average daily wage is multiplied by the number of days to arrive at an award amount. A copy of the grading schedule is shown as Exhibit 5.

(3) The KLSA defines "average wage" as the amount derived by dividing the total of three calendar months wages paid by the number of calendar days during that three month period. Thus, the average daily wage amount is a calendar day amount rather than a work day amount.

(4) Death benefits are 1000 days' wages, plus 90 days' wages for funeral expenses.

c. The pay rates of Defense Department Korean Nationals include several supplemental amounts which should be included in the pay rate for compensation purposes, as follows:

(1) Bonuses - several bonuses are paid during the year, which add up to 6 times the monthly base pay, currently. The multiples of the monthly pay and the effective dates have been as follows: 1967 - 1969 -2.5 months' base pay 1970 - 1974 -3 months' base pay 1975 -3.5 months' base pay January 1 - October 31, 1976 -4 months' base pay November 1, 1976 - June 30, 1978 -4.5 months' base pay July 1, 1978 - August 24, 1988 - 5 months' base pay August 25, 1988 - present - 6 months' base pay

- (2) CAP (Consolidated Allowance Payment) - an amount added to the hourly base pay, which is analogous to a consolidation of a variety of allowances provided by companies in the private sector. The rates vary by grade level.
- (3) PIK (Allowance for Payments-in-Kind) - an allowance added to the hourly wage for all paid hours, exclusive of overtime.
- (4) BA (Benefits Allowance) - an allowance to compensate for various fringe benefits provided by Korean companies and government agencies, but not authorized or authorized at a lower level for U.S. Forces employees. The allowance is a percentage of the base pay, exclusive of overtime. The percentage is revised from time to time.
- (5) Occupational premium, remote area allowance, and night differential - these additional amounts are paid less often, but will be seen upon occasion, and should be included in the pay rate for compensation purposes.

The Department of the Army will generally provide the hourly amounts for the base pay, CAP, PIK, BA, and occupational premium (if any), and a prior three-month amount for remote area allowance and night differential if a claim for compensation is made. In addition, they will show the number of hours worked weekly by the employee. This information may be used along with the information on bonuses as shown in item (1) above to compute the daily or weekly rate of pay.

4-0801 Exhibit 5 KOREAN DISABILITY BENEFIT TABLE

Pages 1-2 (Link to Image)

Pages 3-4 (Link to Image)

Pages 5-6 (Link to Image)

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4-0802 PANAMA CANAL CASES

Paragraph Subject Date Trans. No.

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1. Purpose and Scope. The purpose of this chapter is to outline the procedures to be followed in adjudicating and maintaining cases from the Panama Canal Commission, and to provide a historical background for these cases.

2. Statutory Authority. Section 8146 of the Federal Employees' Compensation Act (FECA) addresses administration of the Panama Canal Commission.

3. Historical Background. Prior to October 1, 1979, all employees of the Panama Canal Company and the Canal Zone government had workers' compensation coverage under the FECA. The Canal Zone government was responsible for administering the Federal Employees' Compensation Act for Panama Canal Company and Canal Zone employees. The Panama Canal Act of 1979 became law as of October 1, 1979. At that time, the ownership and authority for operating the Panama Canal was placed in the hands of the Panamanian government. With the enactment of the Panama Canal Act, the Canal Zone government ceased to exist, as did the Panama Canal Company. These agencies were combined to form the Panama Canal Commission. Most of the Canal Zone and Panama Canal Company employees became Panama Canal Commission employees, although a few transferred to positions with the Department of Defense and the Smithsonian Institution. Employees of the Panama Canal Commission hired on and after October 1, 1979, except for U.S. citizens, receive workers' compensation coverage under the social security system of the Republic of Panama. Employees hired prior to that date and U.S. citizens continue to be covered under the FECA. By Executive Order 12652 of September 19, 1988, effective January 1, 1989, the responsibility for administering FECA benefits in Panama Canal Commission cases was returned to the Department of Labor. All active cases were sent to the then-existent Branch of Special Claims, and inactive cases were maintained in Panama or in the Commission's records center facility. The Panama Canal

Commission followed all FECA and OWCP procedures in handling the FECA cases. Hearings were held locally by an Injury Review Board, and cases in which a decision had been appealed were sent to the Employees' Compensation Appeals Board in Washington, D.C. for action. Because they operated on a basically manual system, a large amount of data entry was required to enter the cases into the FECA system. The file numbers on the existing cases were retained, and consisted of a "C" followed by four or five digits. Cases created on and after January 1, 1989, were assigned an "A50" prefix, along with other cases created in Special Claims. After the merger of Special Claims and District Office 25, new cases were assigned an "A25" prefix. When a case which was in existence prior to January 1, 1989, is needed for action, but has not been transferred to our data base, the Panama Canal Commission should be asked, either by telephone or in writing, to send the case to the National Operations Office (District 25). When the case is transferred in, the original "C" prefix file number should be used.

4. Jurisdiction. All Panama Canal Commission cases must be maintained in the National Operations Office (District Office 25), including those which begin with a "C" prefix.

5. Eligibility for Benefits. All Panama Canal Commission employees who are covered under FECA, including the foreign nationals, receive full FECA benefits, including Continuation of Pay. The benefit level provided under local law need not be taken into consideration. Minimums do not apply in Panama Canal Commission cases.

6. Special Considerations.

a. The system used by the Panama Canal Commission was primarily a manual system. A record of the compensation and bill payments is contained in the case record. A white card maintained in the file reflects all daily roll payments. A yellow voucher was completed for each bill payment. The Fiscal Unit in the National Operations Office has blue summary sheets for the periodic roll payments.

b. All correspondence and checks for both compensation and bill payments on Panama Canal Commission cases which are being sent to Panama should be sent in care of the Commission at the following address:

Panama Canal Commission
Workers' Compensation Office

The employees at the Workers' Compensation office will ensure that the letter or check is delivered to the right person.

- c. Some of the information in the cases will be in Spanish. The Commission has agreed to translate any materials which are sent through them prior to forwarding to OWCP. Translations may also be obtained in the usual manner by making a written request through the Office of the Director for OWCP, who will in turn obtain translation from the State Department.
- d. Common-law marriages are fairly widespread in Panama. As of 1972, a common-law relationship of five years' duration could receive full civil recognition upon application for a certificate. Prior to 1972, the time requirement was 10 years.
- e. Most of the medical bills from Panama are being paid on the bill payment system, rather than being forwarded to National Office for processing. This is possible because payments are being sent in care of the Commission, rather than directly to a Panama street address, and because the mode of exchange is the U.S. dollar.
- f. Many of the Commission employees work rotating shifts. To facilitate payment of compensation, the Commission will provide the year prior earnings exclusive of overtime in cases where compensation is claimed.
- g. Approximately 50% of the claimant population speaks English.
- h. Panama Canal Pilots receive completion assignment bonuses, which should be included in their pay rates for compensation purposes. Because the pilots' base pay is already relatively high, many are restricted to the maximum compensation rate in spite of the inclusion of the bonuses.
- i. Specialized medical evaluation and treatment can be somewhat difficult to obtain in Panama. The Commission has and will continue to provide assistance in identifying appropriate physicians for treatment and evaluation. However, it will be necessary at times to refer claimants to physicians in the United States for evaluation and treatment. The Commission will make travel arrangements after receiving authorization from the OWCP, pay for the cost of the travel, then seek reimbursement.
- j. Most medical bill payments made on Panama Canal cases prior to the transfer to the Department of Labor will be reflected in the case files. However, because the Meddac Cocosolo Army Clinic, Gorgas Army Hospital and Clinic, and Hospital Santa Fe billed the Commission en masse, their bills will not appear in the file. Thus, if payment information is needed for third party or other purposes, and the claimant was treated

during the period the case was under the control of the Commission by one of these facilities, the Commission should be contacted for payment information.

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