

U.S. Department of Labor

Office of Workers' Compensation Programs
Division of Energy Employees Occupational
Illness Compensation
Washington, DC 20210



RELEASE - TRANSMISSION OF REVISED MATERIAL TO BE
INCORPORATED INTO THE FEDERAL (EEOICPA) PROCEDURE MANUAL:
CHAPTER 2-0400 REPRESENTATIVE SERVICES.

EEOICPA TRANSMITTAL NO. 16-10

August 2016

EXPLANATION OF MATERIAL TRANSMITTED:

This material is issued as procedural guidance to update
Procedure Manual Chapter 2-0400, REPRESENTATIVE SERVICES.

- Added guidance, in section 2c under Authority, requiring CE's or FAB staff to enter approved representative contact information into ECS.
- Updated information regarding the removal of an authorized representative under section 2c(1).
- Length of Appointment removed from section 2d as a sub-section under Authority.
- Length of Appointment added as section 3 and the information regarding the length of an appointment of an authorized representative is updated.
- Added guidance on handling Authorized Representative upon the death of claimant in section 3a.
- Section titled Authorized Representative's Role changed from section 3 to section 4 and guidance expanded.
- Section 4, titled Powers of Attorney, changed to section 5 under the new title of "Authority of an attorney-in-fact or legal conservator/guardian," with new guidance added regarding Powers of Attorney's ability to name authorized representative.

- Interaction with Representatives changed from section 5 to section 6. In unison with this change, is the addition of guidance regarding written and verbal communication with authorized representatives.
- Added Authorized Representative Conflict of Interest Guidance from Bulletin 14-04 as section 7.
- Representative Fees changed from section 6 to section 8.
- Updated the penalty for authorized representatives who violate the authorized fee schedule, under section 8 sub-section b. Limitations. Also added additional guidance under section 8, sub-section c. Limitations, regarding the referral of complaints of violators of fee limits to the National Office Policy Branch.
- Privacy Act Waivers changed from section 7 to section 9.
- Added new guidance for Power Of Attorney referrals to the Solicitor of Labor via the Office of Workers Compensation Imaging System in sub-section 5a under Form EN-20.

The following Exhibits have been added for this chapter:

- Exhibit 2, Power of Attorney Memo to SOL
- Previous Exhibit 2 is now Exhibit 3. This Exhibit is updated to include the Conflict of Interest Policy.
- Exhibit 4, Conflict of Interest letter to Authorized Representative



Rachel P. Leiton
Director, Division of
Energy Employees Occupational Illness Compensation

FILING INSTRUCTIONS:

Remove

PM Ch. 2-0400

Insert

PM Ch. 2-0400

File this Transmittal behind Part 2 in the front of the Unified Federal (EEOICPA) Procedure Manual.

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

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Part 2 - Claims

Representative Services

1. Purpose and Scope. This chapter contains a discussion regarding persons who represent the interests of claimants before the Division of Energy Employees Occupational Illness Compensation (DEEOIC). It provides guidance to district office and FAB staff on the designation of a representative, the role and functions of a representative, and fees charged by representatives for their services.

2. Authority. Under 20 C.F.R. §§ 30.600 and 30.601, a claimant may authorize any person, not otherwise prohibited by law, to represent him or her. The authorization includes allowances for communicating with claims staff, accessing case file documentation, receiving copies of decisions, submitting objection(s), filing appeals, and seeking medical authorizations.

a. No Requirement for Representation: A claimant is not required to designate a representative to file a claim or receive any benefit available under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

b. Exclusive Representation. If a claimant chooses to have an authorized representative, he or she may appoint only one representative at a time. The claimant has the ultimate decision-making authority to designate or remove his or her representative from acting on his or her behalf with regard to his or her claim. He or she can exercise this authority at any time and for any reason. In situations where a Power of Attorney (POA) or court-issued instrument exists that grants someone legal decision-making authority regarding the interest of the claimant, that person has authority to appoint or remove a DEEOIC representative.

c. Authorization in Writing. Any representative appointment must be in writing. The information that is necessary for a claimant to appoint a representative is the representative's name, mailing address, and telephone number. The claimant is to date and sign the request. The claimant may appoint a representative by filling out the "Authorization for Representation/Privacy Act Waiver" (Exhibit 1), but use of this is not required. If the appointing document does not contain the representative's full name, telephone number and address, the Claims Examiner (CE) obtains that information. Upon receipt of an authorized representative notification, the CE or Final Adjudication Branch (FAB) staffperson must enter the

authorized representative's information into the Energy Compensation System (ECS).

(1) Removal of Representative. A claimant may elect to either remove or change a representative at any time and for any reason. When removing a representative, the claimant is to submit a signed and dated written request that identifies clearly the person removed as representative. When replacing a representative, the claimant must state in writing that he or she is removing the previous representative and replacing that person with another person. The claimant must name the previous representative and name the new representative, along with the new representative's mailing address and telephone number. Once the claimant removes a person from serving as his or her representative, the assigned CE or FAB staff person is no longer to interact with that individual in relation to the claimant's case file. A representative may also resign his or her appointment with a signed statement of such. The CE or FAB staff person will update ECS regarding removal and/or change of representative.

3. Length of Appointment. DEEOIC recognizes the authority of a properly appointed authorized representative throughout the entire claims process (including any hearing), unless or until the claimant removes the appointment, the representative withdraws, or the claimant dies.

a. Death of the claimant. In the case of a claimant's death, his or her DEEOIC representative appointment ceases. In addition, any appointment such as an attorney-in-fact under a POA or a conservator under a conservatorship ends.

4. Authorized Representative's Role. The authorized representative's role in the claims process depends on the scope of the authority that the claimant grants him or her. Unless the claimant's authorization specifies otherwise, a properly appointed authorized representative has the authority, to the same extent as the claimant, to present or seek evidence, make factual or legal arguments, file claims or seek medical authorization, interact with DEEOIC staff, and obtain information from the case file. Any notice or other communication from the DEEOIC that relays a requirement for claim adjudication is considered satisfied, if the DEEOIC sends it to a properly designated authorized representative. The

DEEOIC considers any communication sent to an authorized representative the same as communication to the claimant. In most situations, the CE or FAB staff person is to relay information or other communications directly to the authorized representative, with a copy going to the claimant. Where claimant contact information is unavailable, the CE or FAB staff person communicates solely with the authorized representative. However, the CE or FAB staff person may choose to contact the claimant directly, if an authorized representative is unresponsive, provides unclear guidance or direction, or a contradiction exists between information received from an authorized representative versus the claimant. In any situation, the claimant is the final arbiter of any matter involving his or her claim. An appointed authorized representative for a DEEOIC claim, who does not possess legal authority through a POA or court document to act on behalf of a claimant, does not have the authority to sign an EN-20 Payment Form for the claimant.

5. Authority of an attorney-in-fact or legal conservator/guardian. A person with power of attorney to act in the name of the claimant is an "attorney-in-fact." There are also other types of legal designations that may exist such as a conservator or guardian. In any of these situations, a written instrument has to exist that grants legal authority for someone to act on behalf of another. The written instrument will include language that describes the specific authorities granted for one person to act on behalf of another, and can be different from one situation to another. A general power of attorney authorizes one person to have complete authority to act on someone's behalf on all matters, including signing documents and forms. In a special or limited POA, the authority to act may be limited to particular topics. Therefore, if an individual claims to have power of attorney or some other legal authority to act on behalf of a claimant, the CE or FAB staff person must obtain a copy of the document conferring such authority. He or she must carefully examine the document to determine the scope of the legal authority granted. The CE or FAB staff person is to recognize any POA or other legal appointment, if the document upon which that appointment is made, conveys broad powers for the appointee to act on behalf of the claimant. Once the CE or FAB staff person receives documentation supporting the claimant has a POA, they will then update ECS with the new POA information. In those situations where the CE or FAB staff person determines that the legal authority of a person to act on behalf of a claimant is limited to a particular function that does not allow for engagement on the DEEOIC claim, he or she sends a letter to the claimant. The letter is to communicate

what the concern(s) are regarding the appointment and is to specify what communication between the DEEOIC and the attorney-in-fact (or court-appointed representative) will and/or will not occur. In those situations where the CE or FAB staff person is unsure of the authority granted to a person to serve on behalf of a claimant or of the legal sufficiency of a document, he or she may consult with the Policy Branch for guidance.

a. Form EN-20. In any situation where a person other than the specified payee is signing Form EN-20, the CE must submit the documents purporting to grant such power for review by the Office of the Solicitor of Labor (SOL) to ensure that they are valid under the applicable state law. When preparing documents for review by the SOL, the referring CE or staff person is to include as part of the referral package, a routine or terminal memo for review by the Office of the Solicitor (Exhibit 2). The referring CE or staff person uploads memo to OIS and also sends a notification via OIS to the designated National Office staff person. Upon receiving the notification in OIS, the National Office staff person verifies the information and refers a printed copy of the POA package to SOL. Once SOL processes the POA and returns the copy to the National Office staff person, the National Office staff person bronzes the Solicitor's response into OIS, indexing the document(s) as Category "Adjudication Documents." The Subject is "SOL opinion." The Description is "POA review memo from SOL for (payee name)." The document is to be left in an Unreviewed status in OIS for identification by the assigned CE.

6. Interaction with Representatives. After a claimant properly appoints a representative to handle his or her DEEOIC claim, the CE or FAB staff person contacts the representative by letter (Exhibit 3). In the letter, the CE acknowledges the appointment and describes the extent to which the representative has an active role in the claims process. From that point forward, or until the claimant removes or changes the representative, the CE or FAB staff person will communicate with the designated representative and copy them on all written interactions intended for the claimant.

7. Representative Conflict of Interest Guidance. The DEEOIC prohibits an authorized representative of a claimant from having private, non-representational financial interests relating to a claim, other than the fee for serving as a representative. This ensures that authorized representatives serve the interests of

Part 2 - Claims

Representative Services

his or her client in a fair and unbiased manner. The DEEOIC will consider an authorized representative to have a "conflict of interest" if the authorized representative could directly benefit financially from an EEOICPA claim due to something other than the statutorily set fee for representing a client in connection with his or her EEOICPA claim. For example, an authorized representative will be considered to have a conflict of interest if, in addition to being the client's authorized representative, she or he is also being paid by DEEOIC, directly or indirectly, as a provider of authorized medical services to the client.

a. Upon receipt of a signed notice of the appointment of an authorized representative, the CE or FAB staff person sends an acknowledgment letter accompanied by the DEEOIC Conflict of Interest Policy (Exhibit 3).

b. If during any interaction with an authorized representative or in review of case evidence, the CE or FAB staff person ascertains that the authorized representative may have a conflict of interest, the CE should take immediate action to address the matter. A conflict of interest may exist if there is evidence that the authorized representative is receiving financial benefits associated with the claim aside from the authorized fee permitted under the law. An incidence of conflict of interest includes evidence showing the authorized representative works for or is contracted by an individual, organization or entity that concurrently receives monetary payment from DEEOIC for services, supplies or other resources affiliated with the claim. This includes a representative who is a family member or other relative of the claimant receiving a wage, contractual payment, or fee from a medical service provider that the DEEOIC has granted authorization to provide in-home health services for that claimant. In any instance where a CE or FAB staff person is unclear as to the existence of a conflict of interest, he or she may refer the matter via a policy referral to the National Office Policy Branch. Upon receipt, the Policy Branch will work with the Solicitor of Labor to provide a written response.

(1) Upon receipt of credible evidence that a conflict of interest may exist, the CE or FAB staff person must prepare a notice to the designated authorized representative, with a copy to the claimant (Exhibit 4). The notice is to include a descriptive

explanation of the evidence that suggests that a conflict of interest may exist. The CE or FAB staff person is to request that the authorized representative prepare a signed statement explaining his or her response to the evidence of a conflict of interest. Moreover, the CE is to state that if a conflict of interest does exist, the DEEOIC will no longer recognize the designation of the authorized representative unless the conflict is eliminated. The letter is to include a statement allowing the authorized representative 30 days to respond to the notice.

(2) When in receipt of the authorized representative's response, the CE or FAB staff person must carefully evaluate the information provided, along with a review of the evidence of record, to determine whether a substantiated conflict of interest exists. If the authorized representative acknowledges that a conflict of interest exists, he or she may resolve the conflict by either submitting a signed resignation as the authorized representative, or submitting evidence of the relinquishment of whatever charges, position, job or duty creates a conflict with the role of authorized representative. The claimant can also withdraw the authorization for that representative, in writing, and designate a new authorized representative. Consent of the claimant will not remove a conflict of interest.

(3) If the authorized representative contends that the circumstances identified do not constitute a conflict of interest under DEEOIC's policy, or no response is forthcoming within 30 days of the initial notification, the CE or FAB staff must carefully weigh the evidence of record. Should the authorized representative provide sufficient rationale that absolves him or her of any conflict of interest, the CE or FAB staff person notifies the representative, in writing, with a copy to the claimant, that no further action is necessary. However, if it is determined that there is compelling evidence of a conflict of interest, the CE or FAB staff person should conclude that DEEOIC will no longer recognize the designated authorized representative as serving the interest of the claimant. Under this circumstance, the claimant is to be notified in writing that DEEOIC will no

longer interact with the designated authorized representative due to a conflict of interest.

b. Once a CE or FAB staff person has determined that a conflict of interest exists that disqualifies a designated authorized representative from representing the claimant and appropriate notification of such has been reported to the claimant, no further interaction with or disclosure of information to the authorized representative is permitted. The CE or FAB staff person is to remove the authorized representative's (AR) information from the Energy Compensation System (ECS).

c. When a CE or FAB staff person removes a representative due to a conflict of interest, he or she should refer the name of the representative to the National Office Policy Branch. Upon receipt, the National Office Policy Branch will coordinate a review to determine if an additional investigation is required to assess potential conflict of interest in cases where the same representative exists.

8. Representative Fees. A representative may charge a claimant a fee for services associated with representation before DEEOIC. Under 20 C.F.R. § 30.602, the Office of Workers' Compensation Program (OWCP) is not responsible for any fee charged by a representative of an EEOICPA claimant, nor will it reimburse the claimant for any fees paid to the representative. Other than issues relating to the allowable fee under the EEOICPA, disputes over payment of fees, the quality of services rendered, or collection of monies owed are a personal matter between the claimant and his or her authorized representative.

a. Fee Limits. Under 20 C.F.R. § 30.603, for services rendered in connection with a claim pending before DEEOIC, a representative may not receive more than the following percentages of a lump-sum payment made to a claimant:

(1) 2% for the filing of an initial claim with OWCP, provided that the representative was retained prior to the filing of the initial claim; plus

(2) 10% of the difference between the lump-sum payment made to the claimant and the amount proposed in the recommended decision with respect to objections to a recommended decision.

b. Limitations. These maximum fee limitations apply even if the claimant and representative have agreed to other amounts in a contract or otherwise. Any such representative who violates this section shall be fined up to but not more than \$5,000. Pub. L. 106-398, Title XXXVI, § 3648; Pub. L. 107-107, § 3151(a)(6)

c. A CE or FAB representative will refer any complaint of a violation of the fee schedule to the National Office Policy Branch who will work with the Solicitor of Labor to determine if a referral to the Department of Justice is appropriate.

9. Privacy Act Waivers. A Privacy Act waiver grants the DEEOIC permission to copy all documents from the case file and send them to a person of the claimant's choosing. This person may be anyone the claimant wishes to receive material from the case file. The designated person will have no authority to make requests for additional information or sign documents on behalf of the claimant, unless the claimant submits additional documentation showing that the designee has such authority.

Employee:

Case ID:

AUTHORIZATION FOR REPRESENTATION/PRIVACY ACT WAIVER

To provide that a duly authorized representative serves only the interest of the claimant, DEEOIC will not recognize the designation of an authorized representative whom DEEOIC finds is directly benefitting financially as a result of his or her affiliation with a claim, aside from the fee authorized by law.

I,

(Name of Claimant)

(Address of Claimant)

(City, State, Zip of Claimant)

do hereby authorize:

(Name of Representative/Person receiving records)

(Address of Representative/Person receiving records)

(City, State, Zip of Representative/ Person receiving records)

(Phone Number of Representative/Person receiving records)

to **(check all that apply)**:

_____ serve as my representative in all matters pertaining to the administrative adjudication of my claim under the Energy Employees Occupational Illness Compensation Program Act of 2000 by the Division of Energy Employees Occupational Illness Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor.

_____ receive copies of all factual and medical evidence contained in my claim filed under the Energy Employees Occupational Illness Compensation Program Act of 2000 from the Division of Energy Employees Occupational Illness Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor.

I declare that the foregoing is true and correct. This authorization is effective on the date it is signed, and is effective until specifically revoked by me in writing.

(Signature of Claimant)

(Date)

MEMORANDUM

DATE: *mm/dd/yyyy*

FOR *{Name of DEEOIC Counsel}*
Counsel for Energy Employees Compensation, Division of
Federal Employees and Energy Workers' Compensation

FROM: *{Name of requester or designee}*
{Phone Number}

SUBJECT: *{Routine/Terminal}*
Power of Attorney review for {Employee/Survivor}

CASE ID: *{Assigned Case ID Number}*

PAYEE NAME: *{John Doe}*

POA STATE: *{Jurisdictional state of origin of POA Example- Idaho}*

Attached for your review is a Power of Attorney (POA) that purports to grant *{Name of person granted POA}* to act on behalf of the above named payee. Review the POA to decide if it is a properly executed document. Please forward your response to *{designated national office staff person/s}*, who will upload it into OIS.

Part 2 - Claims

Representative Services

Date:

Case ID Number:

Employee Name:

Claimant Name:

Representative Name
Address
City, State, Zip Code

Dear [Representative]:

According to our records, you have been designated as the authorized representative in the above case. As the authorized representative, you have the ability to receive correspondence, submit additional evidence, argue factual or legal issues and exercise appeal rights pertaining to the above claim. The authorized representative does not have signature authority on behalf of the claimant on Form EN-20.

As the authorized representative of [claimant name], any correspondence from the Division of Energy Employees Occupational Illness Compensation (DEEOIC) will be directed to you in this capacity. If the correspondence indicates a response is warranted or additional information is required, it is expected that you will make the necessary arrangements with [claimant name].

Representative Fees. A representative may charge the claimant a fee for costs associated with his/her activities regarding the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). The claimant is solely responsible for paying any fee or other costs associated with the actions of a representative. The DEEOIC will not reimburse the claimant, nor is it liable for the amount of any fee and other costs relating to an agreement between a claimant and a representative.

Permissible Charges. Under the regulations implementing 42 U.S.C. § 7385g, a representative is permitted to charge an appropriate fee for services related to a claim before DEEOIC. The maximum allowable percentage of a payment of lump-sum compensation that can be collected as a fee is as follows:

(1) 2% for the filing of an initial claim with DEEOIC, provided that the representative was retained prior to the filing of the initial claim; plus

(2) 10% of the difference between the lump-sum payment made to the claimant and the amount proposed in the recommended decision with respect to objections to a recommended decision.

Conflict of Interest Policy. As an authorized representative of a claimant under the EEOICPA, you are prohibited from having private, non-representational direct financial interests, other than your fee for serving as a representative, in regard to your client's claim with DEEOIC. Because the "role" of an authorized representative is so important, DEEOIC will consider you to have a conflict of interest if you could directly benefit financially from your client's EEOICPA claim due to something **other than** your statutorily limited fee for representing your client in connection with his or her EEOICPA claim. For example, you will be considered to have a conflict of interest if, in addition to being your client's authorized representative, you are also being paid by DEEOIC, directly or indirectly, as a provider of authorized medical services to your client. Because there is an obvious conflict of interest that will arise in this sort of situation, DEEOIC will not recognize you as an authorized representative should this occur, and will inform the claimant of the need to designate another person as his or her authorized representative who does not have such a conflict. If you are in a position to directly benefit financially from your client's EEOICPA claim, you are required to notify DEEOIC and withdraw as representative.

Please feel free to contact the District Office or Final Adjudication Branch, if you have any questions or concerns. Our telephone number is 000-000-0000.

Sincerely,

Printed Name

Title

District Office/Final Adjudication Branch

cc: Claimant

Date:

Claimant Name:

Case ID Number:

Representative Name

Address

City, State, Zip Code

Dear [Representative]:

According to our records, you have been designated as the authorized representative in the above case. As the authorized representative of the above claimant, you are expected to put your client's interests before your own private, non-representational direct financial interests in all of your dealings with the Division of Energy Employees Occupational Illness Compensation (DEEOIC). DEEOIC will consider you to have a prohibited "conflict of interest" if you could directly benefit financially from your client's Energy Employees Occupational Illness Compensation Program Act (EEOICPA) claim due to something other than your statutorily limited fee for representing your client in connection with his or her EEOICPA claim.

DEEOIC has received information that suggests a conflict of interest exists in this case. ***{Describe the evidence that suggests a conflict of interest. Be sure to include names, dates of letters, and all pertinent information to describe the evidence.}***

In light of this evidence, DEEOIC requests that you prepare a signed statement explaining your response to the above detailed evidence of a conflict of interest. Please submit your statement within 30 days from the date of this letter. Upon review of your statement, in conjunction with the evidence of record, DEEOIC will determine whether a conflict of interest exists in the case. If it is determined that a conflict of interest does exist, DEEOIC will no longer recognize you as the

claimant's authorized representative unless the conflict of interest is eliminated. If you acknowledge that a conflict of interest does exist, you may resolve the conflict by either submitting a signed resignation as the claimant's authorized representative, or submitting evidence of the relinquishment of the charges, position, job, or duty creating the conflict.

Please contact the district office at XXX-XX-XXXX if you have any questions or concerns regarding this letter.

Sincerely,

Printed Name
Title
District Office

SUPERSEDED