

## FECA BULLETIN NO. 21-09      April 28, 2021

**Subject: Processing FECA Claims for COVID-19 under the American Rescue Plan Act of 2021**

**Background:** The Federal Employees' Compensation Act (FECA) covers injury in the performance of duty; injury includes a disease proximately caused by federal employment. The U.S. Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) Division of Federal Employees', Longshore and Harbor Workers' Compensation (DFELHWC) administers the FECA. The FECA provides to an employee injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers "likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation." See 5 U.S.C. 8103. The FECA pays compensation for the disability or death of an employee resulting from injury in the performance of duty.

On March 11, 2021, the American Rescue Plan Act of 2021 (ARPA) was signed into law. This new legislation streamlines the process for federal workers diagnosed with COVID-19 to establish coverage under the FECA. Specifically, Section 4016 of the ARPA provides that a "covered employee" as defined below shall, with respect to any claim made by or on behalf of the covered employee for benefits under the FECA, be deemed to have an injury proximately caused by exposure to COVID-19 arising out of the nature of the covered employee's employment.

Under Section 4016 of the ARPA, the term "covered employee" means an individual:

- Who is an employee under Section 8101(1) of title 5, United States Code, employed in the Federal service at any time during the period beginning on January 27, 2020, and ending on January 27, 2023;
- Who is diagnosed with COVID-19 during such period; and
- Who, during a covered exposure period prior to such diagnosis, carries out duties that—
  - require contact with patients, members of the public, or co-workers; or
  - include a risk of exposure to the novel coronavirus.

Previously, COVID-19 claims under the FECA were processed under the guidelines provided by FECA Bulletin No. 20-05 (released March 31, 2020) and FECA Bulletin No. 21-01 (released October 21, 2020). This Bulletin supersedes FECA Bulletins 20-05 and 21-01.

With respect to all COVID-19 cases processed under the ARPA, no benefits are payable after September 30, 2030. This statutory limitation on benefits does not apply to COVID-19 claims accepted prior to March 12, 2021.

**Purpose:** To provide guidance regarding the processing of COVID-19 FECA claims as set forth in the ARPA.

## Actions:

### **I. Cases Processed Prior to the American Rescue Plan Act of 2021.**

1. **Previously Accepted Cases.** Any COVID-19 claim filed under the FECA that was accepted for COVID-19 prior to March 12, 2021 is not impacted because coverage for benefits had already been extended. Any case accepted on or before March 11, 2021 (the date of enactment) is not an ARPA case; such cases are not subject to Section 4016's limitation that no benefits may be paid after September 30, 2030.
2. **Previously Denied Cases.** The FECA program will review all COVID-19 claims previously denied based on a lack of federal exposure or a lack of medical evidence establishing causal relationship to determine if the claim can now be accepted under the ARPA. This will occur without a request from the claimant. If the FECA program determines that the case can now be accepted under the ARPA, the case will be reopened under the Director's own motion under Section 8128(a) of the FECA, and the case will be accepted. If this occurs, the claimant and Employing agency will be notified. The case will be converted to a "19" prefix case and the C19 indicator will be added as addressed in paragraph III below.
3. **Previously Administratively Closed Cases.** No action will be taken based on the ARPA on COVID-19 cases already administratively closed. The claimant remains eligible for Continuation of Pay (COP) pursuant to 20 CFR 10.205 - 224, if Form CA-1 was timely filed, and medical bills for basic treatment incurred for COVID-19, to include any testing, are still payable up to \$1500. However, any future actions, if necessary, will be taken in accordance with the ARPA since the claim had not been formally accepted, so each of these cases has been converted to a "19" prefix case, and the C19 indicator will be added as addressed in paragraph III below.

### **II. Filing of Cases under the American Rescue Plan Act of 2021**

1. **Form Filing Process.** The Employees' Compensation and Management Portal (ECOMP) should be used to file new claims as the form filing process in ECOMP has been updated to assist claimants and employing agencies with filing claims for COVID-19 on a CA-1.
2. **Use of the CA-1.** The FECA program considers COVID-19 to be a traumatic injury since it is contracted during a single workday or shift (see 20 CFR 10.5(ee)), and considers the date of last exposure prior to the medical evidence establishing the COVID-19 diagnosis as the Date of Injury since the precise time of transmission may not always be known due to the nature of the virus.
3. **Update to the CA-1 in ECOMP.** To assist the FECA Program with collecting necessary information to make determinations under the ARPA, the claimant and agency are provided with specific instructions that are intended to supplement the routine claim filing questions. These instructions are documented in the attachment to this Bulletin.

### **III. Creation of Cases under the American Rescue Plan Act of 2021**

1. **Creation and Administrative Closure of Cases.** Consistent with PM 1-0400.4, cases not expected to involve large medical expenses or extended disability may be administratively closed without formal adjudication by claims staff. COVID-19 cases filed under the ARPA will administratively close like other cases, and assignment of Triage Nurses will occur using the same criteria as other cases.

2. **Nature of Injury, Cause of Injury and Location of Injury Codes.** All cases filed after March 11, 2021 for COVID-19 will use the following codes:

Nature of Injury - COVID-19 (T9)

Cause of Injury - Exposure to COVID-19 (9C)

Location of Injury - COVID-19 (ZZ)

3. **Case Indicator.** For COVID-19 claims filed after March 11, 2021, a new internal special tracking indicator (C19 – COVID-19) will be assigned. This replaces the previous indicator (COR). Cases received on and prior to March 11, 2021 that were pending adjudication will have their case indicator changed from COR to C19.
4. **Case Prefix.** All cases filed after March 11, 2021 for COVID-19 will have a prefix “19” rather than the current prefix “55” used in other new FECA claims. Cases received on or prior to March 11, 2021, that were pending adjudication will have their case number changed such that the prefix is “19.”
5. **Case Number Conversion Notification.** In all instances where a case number is changed to a “19” prefix, regardless of the reason, a letter will be sent to the claimant and agency notifying them of the change.

#### **IV. Case Adjudication Procedures under the American Rescue Plan Act of 2021**

1. **Employee.** The claims examiner should make a determination as to whether the employee is an employee under 5 U.S.C. 8101(1) of the FECA and whether he or she was diagnosed with COVID-19 (in accordance with paragraph 2 below) between January 27, 2020, and January 27, 2023. If it is determined that the employee was an employee under Section 8101(1) but diagnosed with COVID-19 outside of the period of January 27, 2020, through January 27, 2023, routine FECA case handling procedures apply.

Individuals otherwise covered under FECA but not covered under Section 8101(1) of title 5, United States Code are not covered under the ARPA and routine FECA case handling procedures apply. Examples include state or local law enforcement officers not employed by the United States who are covered under 5 U.S.C. 8191-8193.

2. **Diagnosis of COVID-19.** In order to establish a diagnosis of COVID-19, an employee (or survivor) should submit:
  - a. A positive Polymerase Chain Reaction (PCR) COVID-19 test result; or
  - b. A positive Antibody or Antigen COVID-19 test result, together with contemporaneous medical evidence that the claimant had documented symptoms of and/or was treated for COVID-19 by a physician (a notice to quarantine is not sufficient if there was no evidence of illness); or
  - c. If no positive laboratory test is available, a COVID-19 diagnosis from a physician together with rationalized medical opinion supporting the diagnosis and an explanation as to why a positive test result is not available.

In certain rare instances, a physician may provide a rationalized opinion with supporting factual and medical background as to why the employee has a diagnosis of COVID-19 notwithstanding a negative or series of negative COVID-19 test results.

Medical reports from nurses or physician assistants are acceptable if a licensed physician cosigns the report.

3. **Covered Exposure.** The employee is deemed to have had exposure if, during the covered exposure period, he or she carries out (1) duties that require a physical interaction with at least one other person (a patient, a member of the public, or a co-worker) in the course of employment duties, or (2) duties that otherwise include a risk of exposure to COVID-19. The interaction does not have to be direct physical contact. Nor is there a specified time for such interaction, any duration qualifies. General office contact and interaction is sufficient. This includes but is not limited to interaction in shared workspaces such as lunchrooms, break areas and common restrooms.
4. **Covered Exposure Period.** The evidence should establish manifestation of COVID-19 symptoms (or positive test result) within 21 days of the covered exposure described in paragraph 3 above.

Existing medical literature suggests that the incubation period of COVID-19 is between two and 14 days; however, the use of 21 days acknowledges an employee's potential delay in seeking professional medical evaluation and treatment.

5. **Teleworking Employees.** An employee that is exclusively teleworking during a covered exposure period is not considered a "covered employee" under the ARPA. For such cases, routine FECA case handling procedures apply.
6. **Adjudication and Disposition of Claims.**
  - a. Claim Acceptances: If, following any appropriate development, the evidence establishes that the employee meets the definition of "covered employee" under Section 4016 of the ARPA, the employee's COVID-19 will be deemed proximately caused by Federal employment and the claim will be accepted for COVID-19.
  - b. Claim Denials: If, following appropriate development, the evidence fails to establish that the employee was diagnosed with COVID-19, the claim will generally be denied on that basis. If, following appropriate development, the evidence fails to establish any covered exposure during a covered exposure period as defined in paragraphs 1, 3, 4 and 5 above, the claim will generally be denied based upon the failure to establish exposure to COVID-19 occurred in the performance of Federal employment.
  - c. Withdrawal of Claim: Certain COVID-19 claims may have been filed preventatively for exposure only, due to quarantine, or otherwise filed prematurely. In such circumstances, an employee may decide not to pursue his or her claim. A claimant may withdraw his or her claim in writing (but not the notice of injury) at any time before OWCP determines eligibility for benefits. See 20 CFR 10.100 (b)(3). However, any COP granted to an employee after a claim is withdrawn must be charged to sick or annual leave, or considered an overpayment of pay consistent with 5 U.S.C. 5584, at the employee's option.
7. **Duplicate Claims.** Generally, a claim for COVID-19 will not be considered a new injury unless the date of injury is more than 1 year from the date of injury of any prior accepted COVID-19 claim

for the same employee. Rather it will be combined with the existing claim and developed as necessary as a consequential or recurrence claim.

8. **Claims for Disability.** The ARPA outlines the criteria to determine whether COVID-19 is deemed proximately caused by federal employment. However, acceptance of the claim for work-related COVID-19 does not alter the claimant's burden of proof for establishing disability, the need for ongoing medical treatment and any claim for a consequential condition. See PM 2-0901.5(a)(2).
9. **Death Claims.** The criteria to determine whether COVID-19 is deemed proximately caused by federal employment are the same for claims involving death. However, in death cases, the FECA program will also ask for evidence and records to support that the death was the result of COVID-19, or that COVID-19 was a contributing cause of death. This will typically include hospital records showing treatment, a hospital death discharge summary detailing the cause of death, and/or a death certificate but may also include other documentation depending on the circumstances of the case.

#### **V. Non-Chargeable Flag**

In accordance with Section 4016(d) of the American Rescue Plan Act of 2021, all cases flagged as an ARPA case with the "19" prefix will be flagged as non-chargeable in the FECA database, meaning it will not be included in annual chargeback billing.

**Disposition:** This Bulletin is to be retained until incorporated into the FECA Procedure Manual.

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Distribution: All DFELHWC – FECA Program Staff

Attachment: CA-1 ECOMP Prompts for COVID-19 Claims under the ARPA

## Attachment to FECA Bulletin 21-09

### CA-1 ECOMP Prompts for COVID-19 Claims under the ARPA

**A. Claimant Portion of the CA-1.** Upon selecting to file a new claim in ECOMP, the claimant is provided a new option to file a COVID specific CA-1. If they choose this option, the following prompts will supplement the routine process:

1. **Date and Time Injury Occurred.** The claimant is asked about the last date he or she was exposed to others in the work setting prior to the onset of COVID-19 symptoms or a positive COVID-19 test result.
2. **Cause of Injury.** The claimant is asked to explain what individuals he or she was exposed to in the workplace and the nature and extent of the interaction(s).
3. **Nature of Injury.** The claimant is asked to explain symptoms related to COVID-19, whether he or she has received a positive test result for COVID-19 and whether he or she has consulted with a medical professional.
4. **Upload Attachments Option.** The claimant is asked specifically to upload a copy of a COVID-19 positive test result and any documentation of interactions with a medical professional.

**B. Supervisor Portion of the CA-1.** In COVID-19 claims, agencies are provided with specific questions that deviate from the routine process as outlined below:

1. **Performance of Duty (POD).** The employing agency is advised to only indicate the employee is not in POD if the employee was not working or was teleworking on the date of injury, or if the supervisor disagrees substantively with the employee's description of injury.
2. **Third Party Liability.** The answer to this question will default to no third party liability for COVID-19 cases.
3. **Anatomical Location, Nature of Injury, Cause of Injury.** These responses will be automatically filled in accordance with the codes in section III, part 2 of this Bulletin.
4. **Agreement with the Employee.** The employing agency will be advised to only indicate "no" if the employee was not working or was teleworking on the date of injury, or if the supervisor disagrees substantively with the employee's description of injury.
5. **Controversion of COP.** The employing agency will be advised to only controvert COP if one of the specific nine regulatory reasons applies. That reason must be selected and explained.
6. **CA-16.** The employing agency is prompted to provide a CA-16 if they do not substantively dispute the employee's description of Cause and Nature of Injury, and if the claim was submitted within 1 week of the Date of Injury, or the date the employee had symptoms of COVID-19 or received a positive test result. Issuing the CA-16 will allow the claimant to obtain the necessary test to confirm COVID-19 and receive medical treatment, if indicated