

NOTICE TO REVIEWER

Date: September 9, 2016

Request Type: Non-material change

Employing Agency: Office of Workers' Compensation Programs/Division of Federal Employees' Compensation

Form Number/Name: CA-1108 Long Form statement of Recovery

OMB/Expiration Date: 1240-0001, November 30, 2018

DFEC is requesting a nonmaterial change to the CA-1108, Instructions. The edits are as follows:

Line 4 - LOSS OF CONSORTIUM – OWCP or SOL (or whoever else has been delegated the authority) will determine a reasonable allocation of the judgment or settlement for loss of consortium, unless the judgment is from a contested verdict, then those allocations will be used. The amount allocated for loss of consortium must be a percentage of the amount on Line 3, and must be approved by OWCP or SOL (or other delegated authority). In a non-death case or a death case where no cause of action for wrongful death is asserted, a reasonable allocation for a spouse's loss of consortium will be up to 25% of Line 3; a reasonable allocation for ~~and for~~ a child or children's loss of consortium, where no cause of action for wrongful death is asserted, will be up to 5% of Line 3 per child, to a maximum for all children of 15% of Line 3 for all children of Line 3 (total combined 40%). In a death case alleging wrongful death, a reasonable allocation for a spouse's loss of consortium will be up to 15% of Line 3 and for a child or children's loss of consortium up to 5% per child, to a maximum of 10% for all children ~~for a child or children's loss of consortium~~ (total combined 25%). In cases where loss of consortium has been asserted for both a spouse and a child or children, multiply the ~~combined total allowable percentages total~~ by Line 3. The beneficiary must establish that loss of consortium was asserted in the suit or claim; and that loss of consortium claims are permitted under the state law where the action was brought. FECA beneficiaries may accept the determination of the percentage allocated or demonstrate good cause in writing for a different percentage to be allocated for loss of consortium. In any case where a percentage of the gross recovery has been allocated to a loss of consortium claim, the attorney's fees and court costs will automatically be reduced by the same percentage. These calculations must be done in consecutive order, line-by-line, to correctly calculate the reductions and the refund due correctly. See instructions below for attorney's fees and court costs.

Lines 6 & 7 - WRONGFUL DEATH OR SURVIVAL – Amounts received where both wrongful death and survival actions have been asserted must be allocated between the two actions, and separate CA-1108s must be filed for each cause of action. OWCP or SOL will determine a reasonable allocation of the judgment or settlement for the wrongful death action and the survival action, unless the judgment is from a contested verdict, then those percentages will be used. The amount allocated for wrongful death and survival must be a percentage of the amount on Line 5 and must be approved by OWCP or SOL. For a wrongful death action, a reasonable allocation is 65% of the amount on Line 5. For a survival action, a reasonable allocation is 35% of the amount on Line 5. FECA beneficiaries may accept the determination of the percentage allocated or demonstrate good cause in writing for different percentages to be allocated for wrongful death and survival. In any case where a percentage of the gross recovery has been allocated to a loss of consortium claim, wrongful death claim, and/or survival claim, the attorney's fees and court costs will automatically be reduced by the same percentage(s). These calculations must be done in consecutive order, line-by-line, to correctly calculate the reductions and the refund due correctly. See instructions below for attorney's fees and court costs.

Line 9 - ATTORNEY'S FEES – Reasonable attorney's fees actually paid, up to a maximum of 40% of the gross recovery, may be deducted from Subtotal C. OWCP or SOL (or whoever else has been delegated the authority) determines whether a fee is reasonable. The fee will be calculated automatically when the attorney's fee percentage is entered in the designated space on Line 9. If a percentage is not entered but the amount of the fees paid is entered, the percentage will be calculated automatically by dividing the amount of the total fee charged by the amount of the gross recovery on Line 1 (total fee divided by gross recovery). The amount automatically entered on Line 9 will be calculated by multiplying Line 8 (Subtotal C) by the attorney's fees percentage.-

Attorney's fees will be reduced by the percentage(s) entered on this form for loss of consortium, wrongful death, and/or survival. If loss of consortium is claimed, the total attorney's fees will be multiplied by the percentage entered on Line 4, and the result will be subtracted from the total attorney's fees. Then, the remaining amount will be entered automatically on Line 9. For example, if the total attorney's fees are \$48,000 and the allocation for loss of consortium is 25%, the calculation would be $\$48,000 - (\$48,000 \times 25\%) = \$36,000$. Thus, \$36,000.00 will be entered automatically on Line 9.

If wrongful death is asserted but there is no claim for loss of consortium, the total attorney's fees will be multiplied by the percentage entered on Line 6, and the result will be entered automatically on Line 9. If a survival claim is asserted but there is no claim for loss of consortium, the total attorney's fees will be multiplied by the percentage entered on Line 7, and the result will be entered automatically on Line 9. For example, if attorney's fees are \$48,000 and 65% is entered on Line 6 of the wrongful death CA-1108, the calculation would be $\$48,000 \times 65\% = \$31,200$; then, \$31,200 would be entered automatically on Line 9. If attorney's fees are \$48,000 and 35% is entered on Line 7 of the survival CA-1108, the calculation would be $\$48,000 \times 35\% = \$16,800$; then \$16,800 would be entered automatically on Line 9.

If wrongful death or survival actions are asserted in addition to loss of consortium, first, the attorney's fees will be reduced for loss of consortium. Next, the result will be multiplied by the percentage entered on either Line 6 for the wrongful death CA-1108 or Line 7 for the survival CA-1108, and that result will be entered automatically on Line 9. For example, if the total attorney's fees are \$48,000, 25% is allocated for loss of consortium, and 65% for wrongful death, first, the total attorney's fees would be reduced by 25% for loss of consortium, and then 65% of that amount would be entered automatically on Line 9. The calculations performed automatically would be $\$48,000 - (\$48,000 \times 25\%) = \$36,000.00$; next $(\$36,000 \times 65\%) = \$23,400$; and \$23,400 would be entered automatically on Line 9 of the wrongful death CA-1108. If attorney's fees are \$48,000, 25% is allocated for loss of consortium and 35% for the survival action, the calculations performed automatically would be $\$48,000 - (\$48,000 \times 25\%) = \$36,000.00$; next $(\$36,000 \times 35\%) = \$12,600$; and \$12,600 would be entered automatically on Line 9 of the survival CA-1108.

Line 11 - COURT COSTS - These consist of items such as filing fees, witness fees, actual out-of-pocket costs of the suit or settlement or any payments for expert testimony. They do not include items such as payments for overhead or medical treatment. COSTS OF SUIT OR SETTLEMENT MUST BE ITEMIZED AND APPROVED BY OWCP OR SOL (OR WHOEVER ELSE HAS BEEN DELEGATED THE AUTHORITY). The form will automatically calculate costs. Costs will be reduced ~~based upon~~ by the percentage(s) entered on this form for loss of consortium, wrongful death, or survival. If loss of consortium is claimed, the total court costs will be multiplied by the percentage entered on Line ~~(4)~~, and the result will be subtracted from the total court costs. Then, the remaining amount will be entered automatically on Line ~~(11)~~. For example, if the total court costs are \$48,000 and the allocation for loss of consortium is 25%, the calculation would be $\$48,000 - (\$48,000 \times 25\%) = \$36,000$.

If wrongful death is asserted but there is no claim for loss of ~~consortium~~, the total court costs will be multiplied by the percentage entered on Line ~~(6)~~ and the result will be entered automatically on Line ~~(11)~~. If a survival claim is asserted but there is no claim for loss of consortium, the total court costs will be multiplied by the percentage entered on Line ~~(7)~~, and the result will be entered automatically on Line ~~(11)~~. For example, if court costs are \$48,000 and 65% is entered on Line ~~(6)~~ of the wrongful death CA-1108, the calculation would be $\$48,000 \times 65\% = \$31,200$; then, \$31,200 would be entered automatically on Line 11. If court costs are \$48,000 and 35% is entered on Line ~~(7)~~ of the survival CA-

1108, the calculation would be $\$48,000 \times 35\% = \$16,800$; then $\$16,800$ would be entered automatically on Line (11).

If wrongful death or survival actions are asserted in addition to loss of consortium, first, the costs will be reduced for loss of consortium. Next, the result will be multiplied by the percentage entered on either Line (6) for the wrongful death CA-1108 or Line (7) for the survival CA-1108, and that result will be entered automatically on Line (11). For example, if the total court costs are $\$48,000$, 25% is allocated for loss of consortium, and 65% for wrongful death, first, the total costs would be reduced by 25% for loss of consortium, and then 65% of that amount would be entered automatically on Line (11). The calculations performed automatically would be $\$48,000 - (\$48,000 \times 25\%) = \$36,000.00$; next $(\$36,000 \times 65\%) = \$23,400$; and $\$23,400$ would be entered automatically on Line (11) of the wrongful death CA-1108. If court costs are $\$48,000$, 25% is allocated for loss of consortium and 35% for the survival action, the calculations performed automatically would be $\$48,000 - (\$48,000 \times 25\%) = \$36,000.00$; next $(\$36,000 \times 35\%) = \$12,600$; and $\$12,600$ would be entered automatically on Line (11) of the survival CA-1108.