



DEFENSE FINANCE AND ACCOUNTING SERVICE
ARLINGTON
1851 SOUTH BELL STREET
ARLINGTON, VA 22240-5291

DFAS-DFM

AUG 27 2004

MEMORANDUM FOR DIRECTOR, CONTINUING GOVERNMENT ACTIVITY, DEFENSE
FINANCE AND ACCOUNTING SERVICE (DFAS-PDO/CL)

SUBJECT: Interim Change to the Department of Defense Financial Management Regulation (DoDFMR), Volume 7B, Regarding Survivor Benefit Plan (SBP) Annuities when Member Dies on Active Duty (DFAS Item Number M-79)

The attached is Interim Change Number R07-04 to the DoDFMR, Volume 7B. Public Law 108-136, Sections 645(a), November 24, 2003, allows dependent children of a member who dies on active duty in the line-of-duty to receive SBP benefits, when the surviving spouse or former spouse subsequently dies or becomes otherwise ineligible for an SBP annuity. The law also allows the annuity to be paid to a natural person with an insurable interest if no other eligible beneficiaries are available to receive the annuity and that person is a dependent of the member, as defined in 10 U.S.C. 1072(2). This change is effective November 24, 2003.

We have evaluated your comments on the proposed change and included your comments where appropriate. Assignment of the interim change is your authority to initiate a procedural modification to implement this change. Use the attached to initiate the formal change to the DoDFMR, Volume 7B.


Jerry S. Hinton
Director for Finance

Attachments:
As stated

cc: ODUSD (MPP)(Comp)
ODUSD (C)(ODCFO)(FP)
ODGC (F)
DFAS-GA/CL
DFAS-PMJE/DE
Services Liaisons
USCG/NOAA/PHS Liaisons

1. Revise subparagraph 440102.C to read:

C. A child of a member who died on active duty, provided that the member died on active duty after the same requirements were met as in chapter 52 of this volume (IC R10-02), there is no eligible surviving spouse, and the member did not elect former spouse coverage or was not required by a court order or spousal agreement to provide former spouse coverage. For an active duty death occurring on or after November 24, 2003, child-only coverage may be elected by the surviving spouse, in consultation with the Secretary concerned, pursuant to Section 1448(d)(2) of Title 10, United States Code. See paragraph 520303, below.

2. Revise paragraph 440103, last sentence to read:

“Exception: If the annuity is payable because the member dies on active duty (see section 1448(d), Title 10 United States Code), reference (c)), the annuity coverage passes to the eligible children if the spouse remarries before age 55, but only for annuity amounts payable on or after November 24, 2003. If the member is eligible to provide RCSBP but dies before notification of eligibility, during the 90-day period after notification, or from injuries or illness incurred or aggravated while performing inactive duty training on or after September 10, 2001 (See 10 U.S.C. section 1448(f)(reference (c)), eligibility does not pass to the child(ren) when a spouse remarries. Also, see Chapter 52 of this manual.

3. Revise Section 5201 to read:

5201 General

Public Law 107-107, Section 642, December 28, 2001, provided expanded and improved benefits under the SBP program for qualified survivors of members whose death occurs in the Line-of-Duty while on active duty. Public Law 108-136, Sections 645(a) and 645(c) further expanded benefits for active duty deaths. Active duty is defined in 10 U.S.C., 101(d)(1). This includes members on active duty for annual training. Reserve members on active duty are included whether or not their orders specify a period of more than 30 days.

4. Revise paragraph 520303 to read (Refer to IC # R10-02):

520303. Children.

A. Annuity When No Eligible Surviving Spouse. Without regard to the member's date of death, an annuity is payable to the member's dependent children, if the eligible surviving spouse or former spouse is dead, dies, or otherwise becomes ineligible for the annuity (i.e., remarriage before age 55 or feloniously causing the member's death); in accordance with section 1450(a)(2) of title 10, United States Code. In the case of dependent children who become eligible for an annuity based upon the surviving spouse or former spouse becoming otherwise ineligible, the effective date for the annuity is November 24, 2003, or the date the surviving spouse or former spouse became ineligible, whichever is later.

B. Optional Annuity When There is an Eligible Surviving Spouse. In the case of a member whose death occurred on or after November 24, 2003, the Secretary concerned may pay the annuity to the member's eligible dependent child(ren), instead of paying an annuity to the surviving spouse under this section, if the Secretary concerned, in consultation with the surviving spouse, determines it is appropriate to provide an annuity for the dependent children under this section instead of the surviving spouse.

5. Revise paragraph 520304 to read:

520304. Insurable Interest and Others.

A. For members who die prior to November 24, 2003, a person with an insurable interest in the member is not qualified to receive benefits under these provisions.

B. Effective November 24, 2003, under circumstances described in section 5201, above, the Secretary concerned may pay an annuity to a natural person who has an insurable interest in the member, if no other annuity is payable on behalf of the member, and the person qualifies as a dependent under section 1072(2) of title 10, United States Code. The individual who is seeking the annuity must demonstrate that dependency status existed prior to the member's death in cases where a determination of dependency status had not been submitted to the member's Service prior to the member's death.

C. An annuity payable under subparagraph B above, shall be reduced to cover the cost of insurable interest coverage, as provided in section 1451(b) of title 10, United States Code.

6. Add bibliography as follows:

<u>Paragraph</u>	<u>Citation</u>
520303	Public Law 108-136, section 645(a), November 24, 2003 DUSD (P&R) Memo, April 27, 2004
520304.B & C	Public Law 108-136, section 645(c) November 24, 2003 DUSD(P&R) Memo, April 27, 2004