



**DEFENSE FINANCE AND ACCOUNTING SERVICE
ARLINGTON**

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JUL 17 2002

DFAS-DFM

**MEMORANDUM FOR DIRECTOR, MILITARY PAY OPERATIONS, DEFENSE
FINANCE AND ACCOUNTING SERVICE (DFAS-PM/CL)**

**SUBJECT: Interim Change to the Department of Defense Financial
Management Regulation (DoDFMR), Volume 7B, Regarding
Survivor Benefit Plan - Death of Member on Active Duty
(DFAS Item Number L-21)**

The attached Interim Change **R10-02** to Chapter 52 of the DoDFMR, Volume 7B is effective September 10, 2001. Public Law 107-107, Section 642, December 28, 2001, enhanced and allowed SBP benefits to beneficiaries of members on active duty who died in the line of duty and are not yet retirement eligible.

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

Jerry S. Hinton
for Jerry S. Hinton
Director for Finance

**Attachments:
As stated**

**cc: DASD (MMP) (Comp)
OUSD (C) (ODCFO) (FP)
ODGC (F)
DFAS-GAM/DE
DFAS-PD/CL
DFAS-PMJE/DE
Services Liaisons
USCG/NOAA/PHS Liaisons**

1. Renumber Chapter 52 as Chapter 61 and add the following as Chapter 52 in the TABLE OF CONTENTS to read:

52 SURVIVOR BENEFIT PLAN -- DEATH OF MEMBER ON ACTIVE DUTY.

2. Add the following to the Extended Table of Contents:

5201	General
5202	Active Duty Deaths
5203	Qualified Annuitants
5204	Annuity Amount
5205	Supplemental SBP
5206	Line-of-Duty Determination
5207	Responsibilities

3. Add the following to Chapter 52 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. 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

5202. ACTIVE DUTY DEATHS

SBP benefits under this section may be payable as provided in section 4601 of this manual for a member who dies in the Line-of-Duty while on active duty. Limited benefits may be payable under this section when the death is not in Line-of-Duty in the case of a member who is eligible to receive retired pay prior to the time of death. The status of such member is the same as those who met criteria for SBP annuity prior to September 10, 2001. On or after September 10, 2001, the following provisions apply. □

520201. Death in Line-of-Duty. If the member was on active duty at the time of death and the death is in Line-of-Duty, then the death qualifies for SBP benefits under this section. See section 5204 for the annuity amount computation.

520202. Death is Not in Line-of-Duty. If the member is retirement eligible at the time of death while on active duty, then the SBP base amount is equal to the retired pay as if the member were retired for length of service under applicable law of the respective service of the deceased member. However, in the case of a death of a member who is not on active duty, or was on active duty but the death is determined to be not in the Line-of-Duty and the member is not eligible for retired pay, then the member's death does not qualify for SBP benefits. Also, see section 5204 on annuity amount computation.

5203. QUALIFIED ANNUITANTS

The annuity payment will be made based on the following priority.

520301. Former Spouse Based on the Court Order. The annuity is payable to a former spouse if the member is required by a court-order or spousal agreement or has made an election to provide such coverage. If there are multiple court-orders for former spouse elections, the court order with the earliest date will take precedence.

520302. Current Spouse. The annuity is payable to a surviving spouse unless the annuity is payable to a former spouse.

520303. Children. Children of the member when the former spouse is not eligible and either there is no surviving spouse or the surviving spouse later dies. The children are not qualified annuitants if there is a surviving spouse whose annuity is no longer payable as a result of remarriage under age 55. Also, see paragraph 440103 of this manual.

520304. Insurable Interest and Others. A person with insurable interest or any other persons are not qualified to receive benefits under these provisions.

5204. ANNUITY AMOUNT

The annuity is computed with a base amount equal to the amount of retired pay that would have been paid to the member had the member been retired on the date of death as follows:

520401. Qualified Death in the Line-of-Duty. The SBP base amount is equal to the retired pay as if the member retired with total (100 percent) disability or 75 percent of the appropriate retired pay base as prescribed in 10 U.S.C., 1201. However, for members who elected to receive the Career Status Bonus (see section 6601), the SBP base amount will be computed using the REDUX method with the reduced COLA as prescribed in 10 U.S.C., 1401a(b)(3). The annuity is normally 55 percent and reduced to 35 percent of the SBP base amount when the annuitant is age 62 or older.

520402. Qualified Death Not in the Line-of-Duty. The SBP base amount will be computed as if the member retired for length of service based on the final basic pay or high-36 average as applicable. However, for members who elected to receive the Career Status Bonus (see section 6601), the SBP base will be computed using the REDUX method with the reduced COLA as prescribed in 10 U.S.C., 1401a(b)(3). The annuity is 55 percent and reduced to 35 percent when the annuitant is age 62 or older.

5205. SUPPLEMENTAL SBP (SSBP)

No SSBP benefits will be paid under these provisions to a surviving spouse or the former spouse of a member who dies while serving on active duty.

5206. LINE OF DUTY DETERMINATION

520601. Purpose. For the purpose of determining eligibility for SBP benefits, a member's death will generally be considered to have occurred in Line-of-Duty unless:

- A. the death occurred while the member was not serving on active duty,
- B. the death was the result of the member's own intentional misconduct or willful negligence, or
- C. the death occurred during a period of unauthorized absence.

520602. Investigation to Determine the Cause of Death. The military services will conduct an investigation and make a written finding as to whether a member's death on or after September 10, 2001, was in the Line-of-Duty while the member was on active duty. The written finding must describe the circumstances under which the member died, and it must also address whether the death was caused by the member's own intentional misconduct or willful negligence, or whether the death occurred during a period of unauthorized absence.

5207 RESPONSIBILITIES

520701. Military Services. The military services must review the death of each member who died on active duty to ascertain whether the death was in the Line-of-Duty and whether there are any qualified survivors entitled to SBP annuity. The military services will inform the DFAS of their Line-of-Duty determinations using the DD Form 1300, Report of Casualty; Block 10 of the DD Form 261, Report of Investigation Line of Duty and Misconduct Status, or any other form authorized under individual Service regulations. However, all Line-of-Duty determinations must be supported by a written finding which describes the circumstances of death that support the Line-of-Duty determination.

520702. DFAS. DFAS does not require a copy of the written finding, only an official communication from the Service to indicate the Service's determination that the death is in the Line-of-Duty –YES or NO. Once DFAS receives the determination, DFAS will compute and pay SBP annuities to qualified survivors for qualified deaths.

4. Revise paragraph 440103 to add the last sentence to read:

Also, see section 5201 of this manual for active duty death.

5. Add bibliography as follows:

Paragraph

Citation

5201

Public Law 107-107, section 642, December 28, 2001
ASD (FMP)(MPP) Memorandum of May 1, 2002