

Interim Changes 28-98 and 34-98 are incorporated in this change. Interim Change 28-98 also affects other chapters and will not be deleted from the interim changes cited in the web site.

CHAPTER 36

PAYMENTS ON BEHALF OF DECEASED MEMBERS

3601 DEATH GRATUITY

360101. Members for Whom Payable. Death gratuity will be paid, regardless of whether death occurred in the line of duty or was the result of member's misconduct, to eligible beneficiaries of the following (except a temporary member of the Coast Guard Reserve):

A. A member who dies while on active duty or while traveling to or from such duty.

B. A member, or former member who dies during the 120-day period beginning on the day following date of discharge or release, under honorable conditions, from active duty (including retirement for either disability or length of service). In this case, the Secretary of Veterans Affairs must determine that death resulted from disease or injury incurred or aggravated while the member was on active duty or while in authorized travel status to or from such duty.

C. Any person who dies while traveling to or from or while at a place for final acceptance, or for entry upon active duty (other than for training) in the Military Service, who has been ordered or directed to go to that place, and who has been:

1. Provisionally accepted for that duty; or
2. Selected, under the Military Selective Service Act (reference (bw)), for duty in that Military Service.

D. A member whose death is determined by administrative finding under the Missing Persons Act (reference (aa)).

★E. A Reserve member who dies while traveling directly to or from active duty for training or inactive training.

F. Any member of a Reserve Officers' Training Corps who dies while performing annual training duty under orders for a period of more than 13 days or while performing authorized travel to or from that annual training duty; or any applicant for membership in a Reserve Officers' Training Corps who dies while attending field training or a practice cruise or while performing authorized travel to or from the place where the training or cruise is conducted.

360102. Definitions

A. Active Duty. Active duty is full-time duty in the active service of a Uniformed Service, including active duty training (full-time training duty, annual training duty, and attendance, while in the active service, at a school designated as a Military Service school by law or by the Secretary concerned). (The exception to this definition is noted in the pertinent paragraph of 360101, above.)

B. Member. A member of the Military Service is a person appointed, enlisted, or inducted into a branch of the Military Services, including Reserve Components, and cadets or midshipmen of the Military Service academies.

C. Reserve Components. The Reserve Components are the following: the Army National Guard of the United States, Army Reserve, Naval Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, Coast Guard Reserve, and the Reserve Corps of the Public Health Service.

360103. Eligible Beneficiaries. See Table 36-1.

360104. Determining Eligible Beneficiaries. When officially notified that a member of his or her command has died, the commanding officer maintaining the member's personnel or service records determines if an eligible death gratuity beneficiary exists in the categories shown in Table 36-1. Legal assistance officers help in cases involving a question of law. Use the following evidence to establish whether an eligible beneficiary exists.

A. For a Lawful Spouse:

★1. Entitlement to basic allowance for housing (BAH) or evidence of assignment of government quarters to a member and spouse, or

★2. In the absence of BAH entitlement, as cited above, documentary evidence of marriage and proof of termination of any prior marriage of either the beneficiary or decedent.

B. For Children. If a decedent is survived by a child or children, but no spouse, obtain documentary evidence showing termination of any marriage, including a certified copy of the spouse's death certificate, divorce, or annulment decree.

★1. Entitlement to BAH for a child or children, or evidence of occupation of government quarters with the member before member's death, or

2. In the absence of BAH entitlement, as cited above, base eligibility of child or children upon documentary proof of relationship, including:

a. The original or certified copy of the original birth certificate, or

b. A certified court order of adoption in the case of a legally adopted child.

3. A certified copy of the appointment paper if a guardian of a minor child, or children, has been appointed by a court (as distinguished from being awarded physical custody).

4. If the death gratuity is in excess of \$1,000, payment for a minor child may be made to the parent, including an adoptive parent, as natural guardian when all of the following conditions exist:

a. A legal guardian has not been appointed,

b. The parent has custody of the minor child,

c. A statute of the state where the minor child and parent reside provides a means of obtaining a good acquittance and all statutory requirements have been met, and

d. The parent has submitted a notarized statement, indicating the state statute involved, the facts bringing payment to the parent, and the parent understands the requirements of the statute.

5. The relationship between a member and his or her stepchild survives the end of the marriage from which it arose if close family ties have continued in fact. If such a relationship was created by a marriage ended by death, the relationship continues in the absence of evidence to the contrary. If the marriage ended by divorce, as distinguished from death, the relationship ends unless clear and convincing evidence is furnished showing continuance of close family ties and intention to continue the prior relationship.

C. For Designated Beneficiaries. If the decedent is not survived by a spouse or child and has officially designated a father, mother, brother, or sister to receive death gratuity, the beneficiary must furnish:

1. Documentary evidence that any marriage entered into by the decedent has been terminated (unless the appropriate office already has the necessary evidence), and

★2. A statement, witnessed by two individuals, that there are no living children of the member.

★3. In "in loco parentis" cases, a prior determination of entitlement to BAH on behalf of that parent is sufficient evidence for entitlement to the death gratuity, but if the relationship has not been previously established, the cognizant DFAS Center will make the "in loco parentis" determination based on criteria in Title 37, United States Code, section 401.

D. For Mentally Incompetent Beneficiary. If the beneficiary is mentally incompetent, a photostat or certified copy of the court order appointing a guardian, trustee, committee, or other such person is required.

E. Effect of a Will. A will does not constitute a legal designation for death gratuity, since such payment is not money or debt due the member and cannot become part of the member's estate.

360105. Determinations Affecting Entitlement

A. Death as Lawful Punishment. No death gratuity is payable in the case of a member whose death is the result of a lawful punishment for a crime or military offense, except when such death was inflicted by any hostile force with which the Armed Forces of the United States had engaged in armed conflict.

B. Member Killed by Beneficiary. No death gratuity is payable to a beneficiary or survivor who kills a member, unless there is evidence which clearly absolves such beneficiary or survivor of any felonious intent.

C. Unauthorized Absence or Desertion

1. Absence Without Leave (AWOL) or Absence Over Leave (AOL). A death gratuity is payable in the case of a member whose death occurs while he or she is in an unauthorized absence status, AWOL or AOL, including in custody of civil authorities, provided the date of death is prior to the normal expiration of contracted duty.

2. Desertion. No death gratuity is payable in the case of a member who is a declared deserter at the time of his or her death, unless it is later found that the declaration was in error.

360106. Amounts Payable

A. For deaths on or after August 2, 1990, the amount of death gratuity is \$6,000.

1. Pay the amount above on behalf of members specified in subparagraph 360101.C, above, who died on August 2, 1990 or later.

2. If a death gratuity payment was made on behalf of members described in subparagraph 360106.A.1, above, at the rate effective before August 2, 1990, adjust payment under this subparagraph by the amount of any previous death gratuity payment.

B. Exemption From Indebtedness. Do not use death gratuity payment to satisfy indebtedness (including overpayments).

- C. Taxability. See Table 44-1, Rule 14, and Note 11.

360107. Expediting Payments. Immediate payment of death gratuity (within 24 hours, if possible) will be made when the eligible beneficiary can be determined and there is no doubt as to propriety of payment.

360108. Responsibility for Payment of Death Gratuity

A. A death gratuity is payable on behalf of a member who dies while on extended active duty, or while traveling to or from such duty, as shown in Table 36-2 (Army), Table 36-3 (Marine Corps), Table 36-4 (Air Force), and Table 36-5 (Navy), or as specified in applicable cross-servicing regulations.

B. The cognizant DFAS Center makes death gratuity payments under circumstances described in subparagraphs 360101.B, C, and D, above.

360109. Erroneous Payment. An erroneous payment of death gratuity is one made to a person clearly not entitled to it because of administrative error, rather than because of statements of record made by the member.

A. Make a second payment to the rightful beneficiary when the error resulted from improper maintenance of records or administrative negligence. Do not delay this payment pending recovery of the erroneous payment from the ineligible recipient.

B. Do not make a second payment of death gratuity to a different person if the original payment was based on statements of record made by the member, and the government has no reason to doubt the beneficiary's status was as stated.

3602 SETTLING DECEASED MEMBERS' ACCOUNTS

360201. General. This section contains the authority for payment of any unpaid pay and allowances due on behalf of members who die while on extended active duty. "Unpaid pay and allowances" here includes:

A. Pay and allowances due and unpaid at death, including settlement of accrued leave (subject to limitation in paragraph 350101 of this volume, unless paragraph 341001 of this volume applies) when death occurs on or after August 28, 1965;

B. Amounts due for travel, per diem, transportation of dependents, and shipment of household goods;

C. Member's savings deposits and interest thereon;

D. Any remaining installments of an enlistment bonus or selective reenlistment bonus payable under paragraphs 090105 and 090205 of this volume; and

E. Proceeds of any checks for items subparagraphs 360201.A through D, above, unnegotiated by the member before death.

360202. Entitlement

A. Upon official notification of the death or finding of death, any amounts due the decedent are paid the person(s) determined to be the eligible beneficiary or beneficiaries.

B. Any payments made under this section bar recovery of those payments by any other person.

C. When a minor child, otherwise eligible, is a designated or nondesignated beneficiary and a guardian has been appointed by a court (as distinguished from being awarded physical custody), a certified copy of this appointment paper is required.

360203. Designated Beneficiary. Current laws allow a member to designate anyone, related or not, to receive member's unpaid pay and allowances upon death. Designation of a beneficiary for unpaid pay and allowances must have been executed by the member and filed in accordance with regulations governing such designations. When more than one beneficiary has been named, the percentages specified by the member govern payment. If no percentages have been specified, payment will be divided equally among designated beneficiaries.

360204. Nondesignated Beneficiary

A. Order of Precedence. In cases of deceased members who have not designated a beneficiary, the following rules apply in determining the order of precedence:

1. The widow or widower of a member;
2. If there is no surviving spouse, to the child or children of the member and descendants of deceased children, by representation;
3. If none of the above, to the parents of the member, in equal shares, or to the surviving parent;
4. If none of the above, to the duly appointed legal representative of the member's estate; or
5. If none of the above, to the person(s) determined to be entitled under the laws of the state in which the member was domiciled.

B. Adopted Child. An adopted child is a legal heir in every state and is, therefore, entitled to payment of unpaid pay and allowances, if otherwise proper. If the deceased member's child is adopted by others, the child is a beneficiary only in those states where an adopted child inherits from its natural father.

C. Stepchild. A stepchild is not an eligible beneficiary, unless adopted by the deceased member.

D. Illegitimate Child. An illegitimate child may not be paid unpaid pay and allowances of a deceased member, unless such child is recognized for inheritance purposes under the laws of the jurisdiction involved.

360205. Responsibility for Settlement of Accounts. Accounts of deceased members are settled as prescribed in the procedural instructions of the Military Service concerned.

360206. Tax Abatement. See paragraph 440104 of this volume if the member's death was caused by terrorist or military action overseas.

★3603 BASIC ALLOWANCE FOR HOUSING TO SURVIVING DEPENDENTS

360301. Eligibility

★A. Effective January 1, 1998, Basic Allowance for Housing will be paid to dependents of members who die in the line of duty when one of the following conditions exists:

1. The dependents do not occupy government quarters on the date of death.

2. The dependents are occupying government quarters on a rental basis on the date of death.

3. The dependents vacate government quarters within 180 days of the member's death.

★4. The dependents cannot be claimed by another member for BAH.

B. The allowance terminates 180 days after the date of the member's death.

★C. When a member is killed by a dependent(s), BAH is not payable to that dependent, unless there is evidence which clearly absolves the dependent of any felonious intent.

★D. The surviving dependent of a Reserve member who dies while on inactive duty is not eligible for any BAH/OHA payment.

360302. Priority of Payment. Payments to the surviving dependents will be made in the following order:

★A. Current spouse (not including a military spouse eligible to receive basic allowance for housing allowance for the same dependents as the deceased member);

★B. If there is no current spouse, the housing allowance will be divided equally among the dependents on whose behalf the member was entitled to receive with-dependent BAH.

360303. Amount and Method of Payment

★A. The allowance shall be paid in the same amount and in the same manner as the deceased member would have been paid and may be paid in a lump sum as an advance payment. For amount of BAH payable, see Table 26-9. For payment of OHA, see Joint Federal Travel Regulations, volume 1 (reference (d)).

B. Examples follow:

★1. A member dies on January 5, 1998, and dependents vacate non-rental government quarters on February 12, 1998. Pay BAH to the dependents at the appropriate monthly rate for February 12 through July 4, 1998, which is the 180th calendar day after the date of death. Had the member died January 5 of a leap year, the termination date for BAH entitlement would be July 3 of the year.

★2. A member dies on March 16, 1998, and the member's dependents do not occupy government family-type quarters. Pay BAH to the dependents for the period from March 17 through September 12, 1998, a total of 180 calendar days. The dependents would receive 14 days in March, 30 days in the months of April, May, June, July, and August, and 12 days in September.

C. Payments under this section are not subject to collection of any debts owed by the deceased member to the United States.

ELIGIBLE BENEFICIARIES-DEATH GRATUITY		
R U L E	A	B
	Death gratuity is payable to, or for, the living survivor(s) of the decedent first listed below (notes 1 and 2)	which is defined as
1	lawful spouse	a man or woman legally married to a member at the time of death (note 3)
2	child, or children, without regard to age or marital status, in equal shares	a legitimate child
3		a legally adopted child
4		a stepchild if such child was a member of the decedent's household
5		an illegitimate child if the father acknowledged the child in writing signed by him; or, was judicially ordered to contribute to the child's support; or, was prior to his death judicially or otherwise shown by satisfactory evidence to be the father of the child; an illegitimate child of a female member as evidenced by birth certificate or other satisfactory evidence that member was mother of the child
6		a member's relatives consisting of parents, brothers, sisters, or any combination thereof as designated by the member (notes 4 and 5)
7		the natural father or mother
8		the father or mother through adoption
9		any person who stood "in loco parentis" for not less than one year at any time before the deceased member's entry into active service
10		natural brothers and sisters
		brothers and sisters of half blood and those through adoption
11	surviving parent(s) in equal shares	same as provided in rules 6, 7, and 8
12	surviving brothers and sisters in equal shares	same as provided in rules 9 and 10

NOTES:

1. If there are no survivors as listed in column A, death gratuity is not payable to any other person.
2. If an eligible beneficiary dies before receiving the amount to which entitled, such amount is paid to the then living survivor(s) first listed in column A.
3. A waiver by the lawful spouse is without effect and does not entitle another designee to the death gratuity payment.
4. Unless a specific percentage is shown, payment is divided equally among all designated beneficiaries.
5. Only one father or mother is recognized in any case. Give preference to the father or mother who exercised parental relationship immediately before the member's entry into active service.

Table 36-1. Eligible Beneficiaries-Death Gratuity

RESPONSIBILITY FOR PAYMENT OF DEATH GRATUITY-ARMY				
R U L E	A	B	C	D
	If the member is permanently assigned	and eligible beneficiary	and the beneficiary is located in	then death gratuity is settled by
1	to a station in CONUS	has been determined to be a lawful spouse or designated natural parent(s) and there is no doubt of propriety of payment	the CONUS	1. the finance officer who is responsible for maintaining the member's financial record is the first to receive it after the member's death, or 2. a Designated Survivor Assistance Officer
2			an overseas area	a Survivor Assistance Officer or DFAS-IN
3		is a child or children or a designated relative(s) other than natural parent, whether or not doubtful (note 1)	the CONUS or an overseas area	DFAS-IN
4		is non-designated relative(s), cannot be determined, or claim is of doubtful propriety (note 2)		
5	to an overseas station (including Alaska and Hawaii)	has been determined to be a lawful spouse or designated natural parent(s) and there is no doubt of propriety of payment	the CONUS	a designated Survivor Assistance Officer
6		is a child or children or a designated relative(s) other than natural parent, whether or not doubtful (note 1)		DFAS-IN
7		has been determined to be a lawful spouse or designated natural parent(s) and there is no doubt of propriety of payments	the same overseas area or country, or an overseas area or country which the finance officer expeditiously can serve	same as rule 1
8	is a child or children or a designated relative(s) other than natural parent, and there is no doubt of propriety of payment (note 1)	the finance officer designated by the major Army commander of the overseas area		
9	to an overseas station (including Alaska and Hawaii)	is non-designated relative(s), cannot be determined, or claim is of doubtful propriety (note 2)	the CONUS or overseas area	DFAS-IN

NOTES:

1. Relatives consist of a member's parents, brothers, and sisters, or any combination thereof.
2. Doubtful cases include:
 - a. All cases coming under subparagraphs 360105.A, B, C, or any questionable cases under subparagraph 360104.E.
 - b. Common law widow or widower.
 - c. A member's minor child, an adopted child without properly certified court adoption papers, and an illegitimate child.
 - ★d. Parents who stood "in loco parentis" to the member, unless this status has been determined for BAH purposes.

Table 36-2. Responsibility for Payment of Death Gratuity-Army

RESPONSIBILITY FOR PAYMENT OF DEATH GRATUITY-MARINE CORPS					
R U L E	A	B	C	D	E
	When the Commanding Officer determines that the eligible beneficiary is	and eligibility of beneficiary or propriety of payment is	and	and	then death gratuity is paid by
1	a lawful spouse or a designated parent	not doubtful	the spouse or parent resides with the member at or near member's duty station or in the vicinity of the member's home port	the disbursing officer has access to member's pay and service records	a disbursing officer afloat or ashore (note 1)
2				payment is requested by the CO of an activity located in an outlying area	the disbursing officer servicing the activity
3				member's unit is deployed, and the CO of the deployed unit requests by message that payment be made	the disbursing officer at the home port of permanent duty station of the deployed unit
4	a lawful spouse, child or children, designated, or nondesignated relatives (note 2)	doubtful (notes 3, 4, 5, 6)	the relative did not reside with the member at or near member's duty station or home port		DFAS-KC upon CMC (MHP-10) authorization (note 7)
5		not doubtful			
6					

NOTES:

1. Disbursing officers afloat pay only when the ship is located in the immediate area in which the member's spouse or parent is residing.
2. Relatives consist of a member's parents, brothers or sisters, or any combination thereof.
3. Doubtful cases include "common law widow or widower."
4. All cases coming under paragraph 360105 and subparagraph 360104.E.
5. Doubtful cases include a member's minor child, an adopted child without properly certified court adoption papers, and an illegitimate child.
- ★6. Doubtful parent cases include "in loco parentis" relationships, if a determination for BAH purposes was not made.
7. CMC may request that payments be effected by other than a Marine Corps activity.

Table 36-3. Responsibility for Payment of Death Gratuity-Marine Corps

RESPONSIBILITY FOR PAYMENT OF DEATH GRATUITY-AIR FORCE				
R U L E	A	B	C	D
	When eligibility of beneficiary or propriety of payment is	and determination is made that eligible beneficiary is	and	then death gratuity is settled by
1	not doubtful	a lawful spouse (notes 1 and 2); or a child or children (notes 2 and 3); or a designated relative (notes 2, 4, and 5)	upon receipt of notification of death (note 6)	the Finance Officer located nearest the residence of the beneficiary (note 7).
2	doubtful			DFAS-DE
3	not doubtful or doubtful	non-designated relative (note 4)		

NOTES:

1. DFAS-DE settles death gratuity payment to "common law widow or widower."
2. DFAS-DE settles all cases coming under subparagraphs 360105.A, B, or C, and any questionable cases under subparagraph 360104.E.
3. DFAS-DE settles doubtful cases, including a member's minor child, an adopted child without properly certified court adoption papers, and an illegitimate child.
4. Relatives consist of a member's parents, brothers and sisters, or any combination thereof.
- ★5. Doubtful parent cases include "in loco parentis." If this status has not been determined for BAH purposes, DFAS-DE makes such payments.
6. If death occurs while a member is on a PCS move, the "losing" home installation notifies.
7. If pay data is needed to complete payment, make a partial payment in the amount of the member's 6 months' basic pay for the pay grade, but not more than \$3,000 or less than \$800. Contact personal finance records custodian for pay data to make supplemental payment, if necessary.

Table 36-4. Responsibility for Payment of Death Gratuity-Air Force

RESPONSIBILITY FOR PAYMENT OF DEATH GRATUITY-NAVY					
RULE	A	B	C	D	E
	When the CO determines that the eligible beneficiary is	and eligibility of beneficiary or propriety of payment is	and	and	then death gratuity is paid by
1	a lawful spouse or a designated beneficiary	not doubtful	the spouse or beneficiary resides with the member at or near member's duty station or in the vicinity of the member's home port	the disbursing officer has access to member's pay and service records	a disbursing officer afloat or ashore (note 1)
2				member's unit is deployed, and the CO of the deployed unit requests by message that payment be made	the disbursing officer at the home port or permanent duty station of the deployed unit
3	a lawful spouse, child or children, designated, or nondesignated relatives (note 2)	doubtful (notes 3, 4, 5, and 6)			DFAS-CL upon COMNAVMILPERS-COM authorization
4		not doubtful	the relative did not reside with the member at or near member's duty station or home port		
5				payment is requested by the CO of an activity located near residence of the designated beneficiary	

NOTES:

1. Disbursing officers afloat pay only when the ship is located in the immediate area in which the member's spouse or designated beneficiary is residing.
2. Relatives consist of a member's parents, brothers or sisters, or any combination thereof.
3. Doubtful cases include "common law widow or widower."
4. All cases coming under subparagraph 360104.E and paragraph 360105.
5. Doubtful cases include a member's minor child, an adopted child without properly certified court adoption papers, and an illegitimate child.
- ★6. Doubtful parent cases include "in loco parentis" relationships, if a determination for BAH purposes was not made.

Table 36-5. Responsibility for Payment of Death Gratuity-Navy