

**PART SEVEN
DEATH BENEFITS**

**CHAPTER 1
DEATH OF RETIREE**

SECTION A—ARREARS OF PAY

70101. General

Entitlement to retired pay terminates on date of the retiree's death. Arrears of pay include all unencumbered amounts due to deceased member. Arrears are not due if the member waived pay in favor of a civil service annuity. VA benefits terminate on the last day of the month before death. For members who waive retired pay for VA benefits, only retired pay is due on behalf of the member for the month of death. A retiree's account is placed in a suspended status upon receipt of a notification of death from any source until the date of death can be verified. The retiree's account is terminated upon receipt of a death certificate or DD Form 1300, Report of Casualty.

70102. Related Inquiries

The Military Department concerned advises the surviving spouse to contact the Department of Veterans Affairs or Social Security Administration on matters relating to entitlements to benefits payable by those agencies.

70103. Responsibilities

DFAS - Cleveland Center, when notification of member's death is received, terminates payment of retired pay; recoups outstanding retired pay checks or direct deposit payment; discontinues and collects overpayments of allotments; pays death gratuity if applicable; collects debts; furnishes claim forms to prospective beneficiaries; and prepares vouchers and tax statements upon final account settlement.

70104. Eligible Beneficiaries

Each Military Service periodically advises retirees of their right to designate a beneficiary or beneficiaries to receive the amounts due, and disposition to be made of unpaid amounts where no beneficiary or beneficiaries have been designated. Any person or persons including a legal entity or the estate of the member may be designated.

- a. Arrears of retired pay are paid to the

person living on the date of member's death in this order of precedence:

(1) Beneficiary designated by the member in writing, if the designation is received by the military department concerned before the member's death.

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(a) Adopted Child. An adopted child is a legal heir in every state and therefore, is 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.

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

(c) 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.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

b. The member may change a beneficiary previously designated if the change is in writing and is received by the military department concerned before the member's death.

c. If there is no person listed in the order of precedence in this section, obtain claim from the person paying the funeral expenses, and send to General Accounting Office (GAO) for approval before payment.

d. If the member was killed by the beneficiary the arrears are not paid to that person unless evidence is received which clearly absolves the beneficiary of any felonious intent. This does not preclude the person from receiving the arrears in the capacity of custodian or guardian of minor children.

e. If the beneficiary dies after the retiree but before receiving final settlement, the arrears are

paid to the beneficiary's estate. If doubt as to entitlement exists, forward claim to the United States General Accounting office, Claims Group, Room 5451, FGMS, Washington, DC 20548, for approval before payment.

***70105. Substantiating Documents and Collection of Overpayments**

a. To effect settlement, these documents must be a matter of record:

(1) Completed SF 1174, Claim for Unpaid Compensation of Deceased Member of the Uniformed Service from the beneficiary.

(2) Proof of death. DD Form 1300 or a copy of the death certificate.

(3) Retirement orders.

(4) Adoption papers, court orders of appointment, or custodianship papers, if required.

b. Every attempt should be made to recover all outstanding checks or direct deposits (not negotiated before the retiree's death or forwarded past the date of entitlement) or the proceeds thereof. Unrecovered funds are treated as erroneous payments with the indebtedness subject to the debt collection authority. In situations when the recipient of the erroneous payments is also the arrears of pay (AOP) beneficiary, the amount of AOP due the individual should be administratively offset by the erroneous payments received by the individual. In situations when there has been an erroneous payment to an individual who is not entitled to it, and another individual is entitled to the member's AOP, payment of the amount due as AOP should be made to the appropriate payee, regardless of whether the collection has been made from the recipient of the erroneous pay.

***70106. Questionable Date of Death**

a. When the date of death is shown as a "found date," the Military department concerned verifies whether an autopsy was performed. If so, use the date of death determined by the coroner. If two dates are shown, such as member dies between 2300, 10 June 1976 and 0400, 11 June 1976, use the earlier date since that was the last date member was known to be alive. If neither is available, obtain a statement from one or more disinterested persons attesting to the last known date that the member was alive. When this statement is received, settle the arrears through submission to the GAO.

b. In claims involving missing persons, provided there is no evidence to the contrary,

assume the date of death to be the presumed date established by state court decree.

c. If evidence exists that a member died on a particular date several years before the date of presumptive death declared by a state court, arrears of pay are payable only through the earlier date of suspected death.

d. A judicial decree is not necessary to establish RSFPP or SBP annuity payments if a person has been missing for more than 30 days and a Secretarial determination is made which presumes the member to be deceased (see paragraph 80102f and 901021).

70107. Doubtful Claims.

Cases involving questions of fact or law cannot be paid without approval of the United States General Accounting Office, Claims Group, Room 5451, FGMS, Washington, DC 20548.

a. These include cases when:

(1) Doubt exists as to the amount or validity of the claim.

(2) Doubt exists as to the person or persons properly entitled to the payment.

b. Notify claimant that claim has been forwarded to GAO for approval of settlement.

70108. Six-Year Statute of Limitations

a. Section 1 of the Act of 9 Oct 1940, 54 Stat 1061, as amended, 31 U.S.C. 3702(b), limits the time for filing of claims against the United States to 6 years, effective 2 July 1975. A claim which accrued before 2 July 1969, is barred if it was not received by the GAO before 2 July 1975. Claims which accrued on or after 1 July 1965, were not barred if they were received in GAO before 2 July 1975.

b. Effective 15 June 1989, GAO ruled that claims may be filed with either the individual Federal agency or with GAO within 6 years after the time the claim accrued or it is forever barred.

70109. Three-Year Rule

When the person entitled to arrears of pay has not submitted a claim and cannot be located within 3 years after the member's death, payment is made to the person or persons in the same class of entitlement, or in the absence of anyone in the same class, next in order of precedence.

70110. Death of Mentally Incompetent Retiree

If retired pay was waived in favor of VA compensation but compensation was withheld because the retiree's estate exceeded \$1,500, contact

the Department of Veterans Affairs to ascertain periods and reasons for non-payment of VA compensation and verify whether withdrawal of the waiver was made by guardian or trustee before the member's death. See part three, chapter 1, section A for withdrawal of waiver. Note: Non-payment of compensation could occur at any time from the effective date of VA waiver through month of death and is not limited to the month of death.

SECTION B—DEATH GRATUITY

70111. General

a. Death gratuity may be payable when the member's death occurs on or after 1 Jan 1957 and during the 120-day period which begins the day after release from active duty or active duty for training. The Department of Veterans Affairs must certify entitlement to death gratuity.

b. Death gratuity is not payable for members who retire for non-regular service (age and service) unless they were on active duty the day before retirement.

70112. Definitions

a. Basic pay is defined as the monthly rate of active duty pay to which the deceased retiree was entitled on the last day of active duty or active and inactive duty training.

b. Additional pays are defined as special and incentive pays (including proficiency and hostile fire pay).

70113. Amount Payable

a. Deaths before 2 Aug 1990.

(1) Amount payable is 6 months' active duty basic pay plus additional pays. Do not include allowances in the computation.

(2) Amount payable cannot be less than \$800 nor more than \$3,000.

(3) Include the 25-percent increase in basic pay in computing the amount of death gratuity. The increase in basic pay is authorized to personnel serving on a naval vessel in foreign waters who are retained beyond their active duty obligation because their services are essential to public interest.

b. Deaths on or after 2 Aug 1990. The amount payable is \$6,000.

c. Do not collect debts from death gratuity payments.

70114. Eligible Beneficiaries

Payment of death gratuity is made to or in behalf of the deceased retiree's living survivors in this order

a. **Spouse.** A man or woman is considered the spouse if legally married to member at "date of death. A waiver by a lawful spouse of the statutory right to death gratuity is without force or effect.

b. **Children in equal shares.** The term children includes (regardless of age or marital status):

(1) Legitimate child;

(2) Legally adopted child;

(3) Stepchild, if such child is a member of the deceased member's household.

(4) Illegitimate child. See paragraph 70117a(4).

c. **Designated relatives.** The member must have designated the relatives in writing before death. Authorized designation may be only one or both of the retiree's parents, brothers or sisters, or any combination thereof, including those of half-blood and those through adoption. In the absence of a written designation on file, or any evidence to the contrary, it is deemed that a designation has not been made.

d. **Parents or persons in loco parentis.** In equal shares.

e. **Brothers and sisters.** This includes those of half-blood and those through adoption in equal shares. Should a survivor die before receiving the amount to which entitled, the amount is paid to the then living survivor or survivors next in order of precedence. If there are no survivors, death gratuity is not payable to any other person.

70115. Determinations Affecting Entitlement

a. **Death as Lawful Punishment.** Death gratuity is not 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 were engaged in armed conflict.

b. **Member Killed by Beneficiary.** Death gratuity is not payable to a beneficiary or survivor who kills a member, unless there is evidence which clearly absolves such beneficiary of any felonious intent.

70116. 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 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 as stated.

70117. Documentary Evidence

a. In some cases the beneficiary must furnish proof of relationship:

(1) Lawful Spouse. Documentation may be required to substantiate the marriage or proof of termination of prior marriages entered into by the beneficiary or deceased member.

(2) Legally adopted child. A copy of adoption papers.

(3) Stepchild. Information to prove that child was a member of the deceased member's household.

(4) Illegitimate child. Documentation is required as proof that the retiree was the father of the child, or a copy of the court order which ordered him to contribute to the child's support.

(5) Designated Relative:

(a) Documentary evidence that any marriage entered into by the deceased member

has been terminated and a notarized statement that there are no living children.

(b) Persons in loco parentis must furnish satisfactory evidence of the relationship as deemed necessary by the military department.

b. Payments for minor children must be supported by custodianship documents or court orders of guardianship appointment.

SECTION C—TAXABLE INCOME

70121. Taxability of Arrears of Retired Pay

Arrears of retired pay due the deceased retiree at time of death are taxable to the beneficiary who receives payment if they were taxable to the retiree. See part five, chapter 1. The tax liability is computed in accordance with the United States Internal Revenue Code of 1954, as amended. The arrears of retired pay are not subject to Federal income tax withholding.

70122. Taxability of Death Gratuity

Death gratuity payments' are exempt from taxation.

70123. Issuance of TD Form W-2P

If no arrears of retired pay are paid, the retired pay activity issues one TD Form W-2P, Statement for Recipients of Annuities, Pensions, or Retired Pay, in the decedent's name. If arrears of retired pay are paid, an additional TD Form W-2P is issued to each beneficiary to whom the arrears were paid.