

**VOLUME 7B, CHAPTER 30: “DEATH OF A RETIRED MEMBER”****SUMMARY OF MAJOR CHANGES**

All changes are denoted by **blue font**.

Substantive revisions are denoted by an asterisk (\*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by ***bold, italic, blue and underlined font***.

The previous version dated **June 2017** is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
All	Updated hyperlinks, statutes, and formatting in compliance with current administrative instructions.	Revision
All	Changed the chapter title from “Death of Retiree” to “Death of a Retired Member.”	Revision
Bibliography	Changed the name from “Bibliography” to “References” and updated where applicable to comply with new requirements.	Revision

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## CHAPTER 30

DEATH OF A RETIRED MEMBER

## 3001 GENERAL

## 300101. Purpose

This chapter provides policy on the death of a [retired member](#). This includes but is not limited to: required documentation, arrears of pay (AOP), death gratuity, and taxable income.

## 300102. Authoritative Guidance

[The authoritative references are listed at the end of this chapter.](#)

## 3002 ARREARS OF PAY

## 300201. Basic Information

Entitlement to retired pay terminates on the date of the [retired member's](#) death. The AOP is the [retired member's](#) final [month of retired pay](#) prorated [and other](#) unencumbered amounts [that may be](#) due to the deceased [retired member](#). [If the retired member waived retired pay in favor of a civil-service annuity, there is no AOP due. A retired member who waived retired pay in order to receive disability compensation from the Department of Veterans Affairs \(VA\) may be due retired pay for the month of death because VA disability compensation entitlement terminates on the last day of the month before death. Upon receipt of a notification of death, a retired member's account is placed in a suspended status until the date of death can be verified. The Defense Finance and Accounting Service \(DFAS\) must attempt to obtain proof of death before closing an account. Acceptable forms of proof of death documentation include:](#)

- A. Death certificate;
- B. [Department of Defense \(DD\) Form 1300](#), Report of Casualty;
- C. Funeral Director's Report;
- D. VA Cemetery Files;
- E. The Defense Enrollment Eligibility Reporting System;
- F. Social Security Reports; or
- G. Other forms of official notification of death.

## 300202. Related Inquiries

The Military Department concerned advises the surviving spouse to contact the VA or the Social Security Administration on matters relating to entitlement benefits payable by those agencies.

## 300203. Responsibilities

When the Military Department concerned receives notification of the death of a [retired member](#), they will notify DFAS-Cleveland. The DFAS-Cleveland site:

- A. Terminates payment of retired pay,
- B. [Reclaims](#) outstanding retired pay checks or direct deposit payments,
- C. Discontinues and collects overpayments of allotments,
- D. Pays death gratuity if applicable,
- E. Collects debts,
- F. Provides claim forms to prospective beneficiaries, and
- G. Prepares vouchers and tax statements for final account settlement.

## 300204. Eligible Beneficiaries

Each Military Service and DFAS periodically advises [retired members](#) of their right to designate a beneficiary or beneficiaries to receive any AOP amount [that may be](#) due, and disposition to be made of unpaid amounts where no beneficiary or beneficiaries have been designated. Any person or persons, or legal entity, including the estate or trust of the [retired member](#), may be designated. In order for the [retired member's](#) estate to be an eligible beneficiary, the estate must be established, pursuant to the laws of the [retired member's](#) domicile after the [retired member's](#) death. If the estate is not established, the designation to the estate will fail.

A. Pursuant to [Title 10, United States Code \(U.S.C.\), section 2771](#), pay arrears of retired pay to the person living on the date of the [retired member's](#) death in the following order of precedence:

- 1. Beneficiary designated by the [retired member](#) in writing, if received by the Military Department concerned before the [retired member's](#) death;
- 2. Surviving spouse;

3. Children and their descendants, by representation:
  - a. Natural Child;
  - b. 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 another person(s) adopts the deceased retired member's natural child, the child is a beneficiary only in those states where an adopted child may still inherit from a natural parent;
  - c. Stepchild. A stepchild is not an eligible beneficiary unless adopted by the deceased retired member;
4. Father and mother in equal parts or, if either is dead, the survivor;
5. Legal representative; or
6. Person entitled under the law of the domicile of the deceased retired member.

B. The retired member may change a designated beneficiary either in writing or electronically via myPay as long as the change is received by the Military Department concerned before the retired member's death.

C. Where payment is to be made to the person entitled under the law of the domicile of the deceased individual in subparagraph 300204.A.6, DFAS may require the claimant(s) to submit evidence of entitlement under state law. This includes, but is not limited to funeral expense receipts, small estate affidavit, trust documents, court orders granting summary administration and where necessary, the deceased person's will.

D. If the beneficiary killed the retired member, 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 retired member but before receiving final settlement, an AOP goes to the beneficiary's estate. If the beneficiary does not have an estate established and an AOP is \$3,000 or less, an AOP is payable to the deceased beneficiary's survivors in the order of precedence set out in subparagraph 300204.A.2 through 5. If an AOP is greater than \$3,000, DFAS pays an AOP in accordance with laws of the domicile of the deceased beneficiary. If doubt exists as to entitlement, the Department of Defense (DoD) will settle the claim.

## 300205. Substantiating Documents and Collection of Overpayments

A. Substantiating Documents. To effect settlement, the following documents must be a matter of record:

1. Completed Standard Form 1174, Claim for Unpaid Compensation of Deceased Member of the Uniformed Services, from the beneficiary;
2. DD 1300 or a copy of the death certificate;
3. Retirement orders; and
4. Miscellaneous documentation (e.g., adoption papers, court orders of appointment, custodianship papers, (Internal Revenue Service Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)) as required.

B. Collection of Overpayments. Every attempt should be made to recover all outstanding checks or direct deposits (not negotiated before the retired member's death or outstanding checks forwarded past the date of entitlement) or the proceeds thereof. Unrecovered funds are treated as erroneous payments to the retired member or the withdrawer of funds with the indebtedness subject to the debt collection authority.

1. If the funds are not recovered, there is no AOP due until the arrears due to the retired member exceed the erroneous payment. In situations where the recipient of the retired member's erroneous payment is also the beneficiary for an AOP, the amount of arrears due the individual is offset administratively by the erroneous payments received by the individual. The remaining erroneous payment, if any, is still subject to the debt collection authority.

2. If there has been an erroneous payment of an AOP made to an individual not entitled to the retired member's AOP, and another individual is entitled to the retired member's AOP, the payment of the amount due as arrears must be made to the appropriate payee, regardless of whether collection has been made from the recipient of the erroneous pay.

## 300206. 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 an autopsy was performed, the date of death determined by the coroner is used. If the results of the autopsy are reported on the death certificate, a copy of the autopsy report is not required. If an autopsy was not performed, but the state has certified the date of death on the death certificate, that date is used. If two dates are shown, such as [the retired](#) member died between 11:00 p.m. June 10, 2008, and 4:00 a.m. June 11, 2008, use the earlier date since that was the last date [retired](#) 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 [retired](#) member was alive. When this statement is received, an AOP is settled based on that date.

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 [retired member](#) died on a particular date several years before the date of presumptive death declared by a state court, an AOP is payable only through the earlier date of suspected death.

D. A judicial decree is not necessary to establish Retired Serviceman’s Family Protection Plan or Survivor Benefit Plan annuity payments if a person has been missing for more than 30 days under circumstances from which a reasonably prudent person would conclude that such person is dead [and](#) the Secretary of the Military Department concerned (or designee) [makes a determination](#) that presumes the [retired](#) member [is](#) deceased. See Chapters 37 and 42.

## 300207. Doubtful Claims

In accordance with [Title 32, Code of Federal Regulations \(CFR\), part 282.5](#), cases involving questions of fact or law are submitted to the Defense Office of Hearings and Appeals (DOHA) for resolution. These include cases when:

A. Doubt exists as to the amount or validity of the claim, or

B. Doubt exists as to the person or persons properly entitled to the payment. Upon receipt of a doubtful claim, notify the claimant that the claim has been forwarded to DOHA for approval of settlement.

## 300208. Six Year Statute of Limitations

A. Title [31 U.S.C. § 3702](#) provides general authority for settling claims against the United States. Section 3702 provides that any claim against the U.S. Government is barred forever unless such claim, bearing the signature and address of the claimant or authorized agent or attorney is received by the responsible agency within 6 years after the date such claim first accrued. Under authority delegated from the Secretary of Defense, the Director, DOHA, may waive the time limitation for late claims involving the pay, retired pay, and survivor benefits of military

personnel. Any claim that became payable as a result of waiver of time limitation is limited to \$25,000.

B. In any case where two or more beneficiaries are entitled to share an AOP equally, each claimant/beneficiary will become entitled to their own proportional share upon presentation of a timely claim. In the event that one (or more) of the claimant/beneficiaries fails to make a timely claim within 6 years, such claimant/beneficiary's claim will be barred under 31 U.S.C. § 3702 as untimely, however the time limitation may be waived by DOHA if appropriate. In no event will the share of the untimely claimant/beneficiary be paid to the claimant/beneficiary who submitted a timely claim.

#### 300209. Death of Mentally Incompetent Retired Member

If retired pay was waived in favor of VA compensation, but compensation was withheld because the [retired member's](#) estate exceeded \$1,500, contact the VA to ascertain periods and reasons for nonpayment of VA compensation and verify whether withdrawal of the waiver was made by guardian or trustee before the [retired member's](#) death. See Chapter 12 regarding withdrawal of waiver.

NOTE: Nonpayment of compensation could occur at any time from the effective date of VA waiver through the month of death and is not limited to the month of death.

### 3003 DEATH GRATUITY

#### 300301. Basic Information

A. Death gratuity is payable when the [military member's](#) death occurs within the 120-day period which begins on the day after release from active duty or active duty for training. The VA must certify entitlement to death gratuity. The Secretary of the VA must determine that the decedent was discharged or released under conditions other than dishonorable from the last period of the duty of training that he or she performed. [The Secretary of the VA must also determine](#) that death resulted from an injury or disease that was incurred or aggravated during the period of service of active duty, inactive-duty training or travel directly to or from such duty. See [10 U.S.C. § 1476](#).

B. Death gratuity is not payable for a member who retires for non-Regular service (age and service) unless the member was on active duty the day before retirement.

C. Submit the application for Death Gratuity on a [DD 397](#), Claim Certification and Voucher for Death Gratuity Payment.

NOTE: For detailed information on Death Gratuity, see Volume 7A, Chapter 36.

#### 300302. Eligible Beneficiaries

A. Eligible Beneficiaries Prior to July 1, 2008. Before May 25, 2007, payment of a death gratuity was made to or on behalf of the deceased **member's** living survivors as prescribed by the statute in effect at the time. Beginning on May 25, 2007, and ending on June 30, 2008, a qualified member was able to designate another person to receive not more than 50 percent of the death gratuity payable upon the death of the member with any remaining amount not designated paid in the order prescribed by statute. The designated amount of the death gratuity had to be specified in increments of 10 percent. Death gratuity payments were made to the deceased **member's** living survivors as prescribed by the statute at the time. (For order of precedence prior to July 1, 2008, please see the Archived Version of Chapter 30, paragraph 300204).

B. Eligible Beneficiaries On and After July 1, 2008. Effective July 1, 2008, a qualified member may designate up to 100 percent of their death gratuity entitlements, in 10 percent increments, to any person(s) of their choosing. If the qualified member has a spouse, but designates a person other than the spouse to receive all or a portion of the amount payable, the Secretary concerned must provide notice of the designation to the spouse. If a qualified person does not make a designation or designates only a portion of the amount payable, then pay the amount of the death gratuity not covered by a designation as follows:

1. To the surviving spouse of the person, if any;
2. If there is no surviving spouse, any surviving children of the person and the descendants of any deceased children by representation. Surviving children without regard to age or marital status include:
  - a. Legitimate children,
  - b. Adopted children,
  - c. Stepchildren who were a part of the decedent's household at the time of death, or
  - d. Illegitimate children of the decedent (see subparagraph 300303.A.4);
3. If there is no surviving spouse or children, the decedent's surviving parents in equal shares or the survivor of them. Surviving parents as prescribed by the following:
  - a. Parents include fathers and mothers through adoption,
  - b. Only one father and one mother may be recognized in any case,
  - c. Those who exercised a parental relationship on the date, or most nearly before the date of the **member's** death are given preference;

4. If there is no surviving spouse, child, or parent of the decedent, the duly appointed executor or administrator of the estate of the decedent; or

5. If there are no survivors as prescribed in subparagraphs 300302.B.1 through 300302.B.4, other next of kin of the person entitled under the laws of domicile of the person at the time of the person's death.

300303. 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 the child was a member of the deceased member's household;

4. Illegitimate Child. Documentation is required as proof that the member was the parent of the child and must include one of the following:

a. An acknowledgement in writing signed by the decedent;

b. A judicial determination made before the decedent's death that the claimant is a child of the decedent;

c. Evidence that the Secretary of VA has determined the claimant to be the child of the decedent; or

d. A copy of the court order that ordered the parent to contribute to the child's support; or

5. Designated Relative

a. Designated relative must provide 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 concerned.

B. Custodianship documents or court orders of guardianship appointments must support all payments made for minor children.

300304. Death of Eligible Survivor [Before Receipt of Death Gratuity](#)

If a person entitled to all or a portion of a death gratuity under subparagraph 300302.B dies before the person receives the death gratuity, it will be paid to the living survivor next in the order prescribed in subparagraph 300302.B.

## 300305. Determinations Affecting Entitlement

A. Death as Lawful Punishment. No death gratuity is payable in the case of a [military 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 was engaged in armed conflict.

B. Military Member Killed by Beneficiary. No death gratuity is payable to a beneficiary or survivor who kills a [military member](#), unless there is evidence that clearly absolves the beneficiary or survivor of any felonious intent.

## 300306. Amount Payable

A. Deaths On or After October 7, 2001. For deaths on or after October 7, 2001, the amount of death gratuity is \$100,000.

B. Debt Collection. Do not collect debts from death gratuity payments.

## 300307. Erroneous Payment

An erroneous payment of death gratuity is one made because of administrative error to a person clearly not entitled to that payment, rather than a payment made reliant on statements of record made by the [member](#) about matters such as marital status and dependency status. Make a second payment to the rightful beneficiary when the error resulted from improper maintenance of records or administrative negligence. This payment should not be delayed pending recovery of the erroneous payment from the ineligible recipient. The respective DFAS site will follow the prescribed collection procedures in an attempt to recover an erroneous payment.

## 3004 TAXABLE INCOME

## 300401. Taxability of AOP

A. An AOP due the deceased [retired member](#) at time of death is taxable to the beneficiary who receives payment if the AOP was taxable to the [retired member](#). The tax liability is in accordance with the Internal Revenue Code of 1986, as amended.

B. If an AOP is paid, a Treasury Department (TD) Form 1099-R is issued to each beneficiary using the tax identification number of the beneficiary. If no AOP is paid, the retired pay activity issues one TD Form 1099-R in the decedent's name.

## 300402. Taxability of Death Gratuity

A. Death Occurred Between August 20, 1996 and September 10, 2001. The amount of death gratuity payments made to survivors of military members who died after August 20, 1996, that is excludable from income may not exceed \$3,000, regardless of the number of beneficiaries. If there are multiple beneficiaries, apply proportionately the \$3,000 exclusion. All death gratuity payments are reported separately, using TD Form 1099-R. The total amount of the gross distribution is entered in Box 1. The appropriate taxable amount is entered in Box 2a. For members who died on or before August 20, 1996, the maximum exclusion amount is \$5,000.

B. Death Occurred On or After September 11, 2001. The total amount of death gratuity is excludable from gross income for tax purposes.

## \*REFERENCES

## CHAPTER 30 – DEATH OF RETIREE

## 3002 – ARREARS OF PAY

300204	10 U.S.C. § 2771
300204.A.4	Comp Gen B-113031, July 6, 1960 Comp Gen B-113240, October 5, 1961 Comp Gen B-59917, May 31, 1961 Comp Gen B-93772, December 2, 1963
300204.A.5	Comp Gen B-151337, October 7, 1963
300204.B	10 U.S.C. § 2771
300204.D	Comp Gen B-187743, July 7, 1977
300204.E	Comp Gen B-69787-O.M.
300205	31 U.S.C. § 3716 Comp Gen B-132407, 37 Comp Gen 131
300206.A	Comp Gen A-58284, 14 Comp Gen 411 Comp Gen A-80384, 16 Comp Gen 384 Comp Gen B-148485, 43 Comp Gen 503
300206.B	Comp Gen B-243829, December 13, 1991
300206.C	Comp Gen B-251968, July 22, 1993
300206.D	10 U.S.C. § 1437 10 U.S.C. § 1450
300207	32 CFR 282, Appendix C, Submitting a Claim
300208	31 U.S.C. § 3702(b) and (e)(3)
300209	32 CFR 282, Appendix D, Processing a Claim 31 U.S.C. § 3702(e)(2) 38 U.S.C. § 5306 Comp Gen B-156553, October 31, 1967

## 3003 – DEATH GRATUITY

300301.A	10 U.S.C. § 1476
300302.A	10 U.S.C. § 1477
300302.B	10 U.S.C. § 1477 Volume 7A, Chapter 36
300304	10 U.S.C. § 1477
300305.A	10 U.S.C. § 1480
300305.B	Comp Gen B-172014, August 25, 1971 Comp Gen B-187743, July 7, 1977
300306.A	10 U.S.C. § 1478

