

VOLUME 7B, CHAPTER 30: “DEATH OF RETIREE”**SUMMARY OF MAJOR CHANGES**

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

Substantive revisions are denoted by an * 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 July 2008 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
ALL	Updated to eliminate information about transition of claims settlement authority, and to identify the delegated authority of the Defense Office of Hearings and Appeals to waive the 6-year statute of limitation. .	Update
300108	Updated subparagraph according to statute.	Update
300205.B	Integrated information from old paragraph 300207.	Update
300205.C	Integrated information from old paragraph 300206.	Update
300206 300207	Deleted old paragraph and renumbered paragraphs accordingly.	Delete
Bibliography	Updated citations.	Update

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CHAPTER 30

DEATH OF RETIREE

3001 ARREARS OF PAY

300101. General

Entitlement to retired pay terminates on the date of the retiree's death. Arrears of pay (AOP) is the retiree's final prorated retired pay check to include all unencumbered amounts due to the deceased member. Arrears are not due if the retiree waived retired pay in favor of a civil-service annuity. Department of Veterans Affairs (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 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.

300102. 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.

300103. Responsibilities

When the Military Department concerned receives notification of the death of a retiree, they will notify DFAS-Cleveland. The DFAS-Cleveland site shall:

- A. Terminate payment of retired pay;
- B. Recoup outstanding retired pay checks or direct deposit payment;

- C. Discontinue and collect overpayments of allotments;
- D. Pay death gratuity if applicable;
- E. Collect debts;
- F. Provide claim forms to prospective beneficiaries; and
- G. Prepare vouchers and tax statements for final account settlement.

300104. Eligible Beneficiaries

Each Military Service periodically advises retirees of their right to designate a beneficiary or beneficiaries to receive the **AOP** amounts 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 member, may be designated.

A. Pursuant to Title 10, United States Code, section 2771 (**10 U.S.C. 2771**), arrears of retired pay are paid to the person living on the date of the retiree's death in the following 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. **Legitimate 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 the deceased retiree's child is adopted by others, then the child is a beneficiary only in those states where an adopted child inherits from its natural **parent**.
 - c. **Illegitimate Child**. An illegitimate child may not be paid unpaid pay and allowances of a deceased retiree unless that child is recognized for inheritance purposes under the laws of the jurisdiction involved.
 - d. **Stepchild**. A stepchild is not an eligible beneficiary unless adopted by the deceased retiree.
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 retiree.

B. The retiree may change a beneficiary previously designated if the change is in writing and is received by the Military Department concerned before the retiree's death.

C. Where payment is to be made to the person entitled under the law of the domicile of the deceased individual under subparagraph 300104.A.6, the person due the arrears under state law, in **some** cases, **may** be the person who paid the funeral expenses of the decedent. **The Military Department concerned shall** obtain a claim from that person, together with a receipt showing that funeral expenses have been paid, a copy of the cancelled check to the funeral home, or other documentation establishing that the bill has been paid.

D. If the retiree was killed by the beneficiary, then 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, then the arrears are paid to the beneficiary's estate. If doubt exists as to entitlement, then the Department of Defense (DoD) will settle the claim.

300105. Substantiating Documents and Collection of Overpayments

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

1. Completed **Standard Form (SF) 1174** (Claim for Unpaid Compensation of Deceased Member of the Uniformed Services) from the beneficiary.

2. 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 where the recipient of the erroneous payments is also the beneficiary for AOP, the amount of arrears due the individual **shall** be offset administratively by the erroneous payments received by the individual. Where there has been an erroneous payment **made** to an individual not entitled to **retiree's AOP**, and another individual is entitled to the retiree's AOP, then payment of the amount due as arrears **shall** be made to the appropriate payee, regardless of whether collection has been made from the recipient of the erroneous pay.

300106. 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, then](#) use the date of death determined by the coroner. If two dates are shown, such as member dies between 11:00 p.m. June 10, 1976, and 4:00 a.m. June 11, 1976, then use the earlier date since that was the last date member was known to be alive. If neither is available, then 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 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 retiree died on a particular date several years before the date of presumptive death declared by a state court, then arrears of pay are 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 and a determination by the Secretary of the Military Department concerned (or designee) is made that presumes the member to be deceased (see paragraph 420212).

300107. Doubtful Claims

[In accordance with Title 32, Part 282.5 of the Code of Federal Regulations \(32 C.F.R. 282.5\)](#), cases involving questions of fact or law may be 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.

B. Doubt exists as to the person or persons properly entitled to the payment.

[If a doubtful claim is received, then](#) notify claimant that [the](#) claim has been forwarded to DOHA for approval of settlement.

*300108. Six-Year Statute of Limitations

Title 31, U.S.C., section 3701, *Authority to Settle Claims*, provides general authority for settling claims against the United States. Section 3702 provides that any claim against the United States shall be barred forever unless such claim, bearing the signature and address of the claimant or an 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, Defense Office of Hearing and Appeals, may waive the time limitation for late claims involving the pay, retired pay, and survivor benefits of military personnel. This waiver authority does not apply to claims in excess of \$25,000.

300109. 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, then 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 retiree's death. See section 1202 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.

3002 DEATH GRATUITY

300201. General

A. Death gratuity may be payable when the retiree's death occurs on or after January 1, 1957, during 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 Veterans Affairs 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 performed; and 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.](#)

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.

300202. Definitions

A. Basic Pay. 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. Additional pays are special and incentive pays to include proficiency and hostile-fire pay.

300203. Amount Payable

A. Deaths Between August 2, 1990 and September 10, 2001. For deaths that occurred between August 2, 1990 and September 10, 2001, the amount of death gratuity is \$6,000.

B. Deaths Between September 11, 2001 and October 6, 2001. For deaths that occurred between September 11, 2001 and October 6, 2001, the amount of death gratuity is \$12,000.

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

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

300204. Eligible Beneficiaries prior to July 1, 2008

Before May 25, 2007, payment of a death gratuity is made to or on behalf of the deceased retiree's living survivors in the order described in subparagraphs 300204.A. through 300204.E. Beginning on May 25, 2007 and ending on June 30, 2008, a qualified member may 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 described in subparagraphs 300204.A through 300204.E. The designated amount must be specified in increments of 10 percent.

A. Spouse. A man or woman is considered to be the spouse if legally married to the retiree on the date of the retiree's 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 decedent's household at the time of decedent's death.
4. Illegitimate child (see subparagraph 300209.A.4.).

C. Designated Relatives. The retiree must have designated the relatives in writing before death. Authorized designations 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.

F. 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, then death gratuity is not payable to any other person.

300205. 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 a qualified person does not make a designation or designates only a portion of the amount payable, **then** the amount of the death gratuity not covered by a designation shall be paid as follows:

A. To the surviving spouse of the person, if any.

* B. If there is no surviving spouse, **then** to 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:**

1. Legitimate children;
2. Adopted children;
3. Stepchildren who were a part of the decedent's household at the time of his death;
4. Illegitimate children of the decedent who:
 - a. Have been acknowledged in writing signed by the decedent.
 - b. Have been judicially determined, before the decedent's death, to be **the decedent's** children.
 - c. Have been otherwise proved, by evidence satisfactory to the Secretary of Veterans Affairs, to be children of the decedent; or
 - d. To whose support the decedent had been judicially ordered to contribute.

* C. If there **is no surviving spouse or children, then** to the decedent's surviving parents **in equal shares** or the survivor of them. Surviving parents as prescribed by **the following:**

1. Parents include fathers and mothers through adoption.
2. Only one father and one mother may be recognized in any case.
3. Preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered the status, as described in **subparagraph 300201.A.**

D. If there is no surviving spouse, children, or parents of the decedent, then to the duly appointed executor or administrator of the estate of the decedent.

E. If there are no survivors as prescribed in subparagraphs 300205.A through D, then to other next of kin of the person entitled under the laws of domicile of the person at the time of the person's death.

300206. Effect of Death Before Receipt of Death Gratuity

If a person entitled to all or a portion of a death gratuity under paragraphs 300204 or 300205 dies before the person receives the death gratuity, then it shall be paid to the living survivor next in the order prescribed in paragraphs 300204 or 300205.

300207. Determinations Affecting Entitlement

A. Death as Lawful Punishment. No death gratuity is payable in the case of a retiree 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. Member Killed by Beneficiary. No death gratuity is payable to a beneficiary or survivor who kills a retiree, unless there is evidence that clearly absolves the beneficiary or survivor of any felonious intent.

300208. 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 reliance on statements of record made by the retiree about matter such as marital status and dependency status.

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. When erroneous payment is made, the respective DFAS site will follow the prescribed collection procedures in an attempt to recover such payment.

B. If the original payment of death gratuity was paid based on statements of record made by the retiree and the government had no reason to doubt the beneficiary's status was as stated, then the payment is not erroneous.

300209. 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 retiree.

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 retiree was the parent of the child, or a copy of the court order which ordered the parent to contribute to the child's support.
 5. Designated Relative
 - a. Documentary evidence that any marriage entered into by the deceased retiree 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. Payments for minor children must be supported by custodianship documents or court orders of guardianship appointment.

3003 TAXABLE INCOME

300301. 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. The tax liability is computed in accordance with the Internal Revenue Code of 1986, as amended. The arrears of retired pay are not subject to Federal income tax withholding.

300302. Taxability of Death Gratuity

A. Death Occurred Between August 20, 1990 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, then the \$3,000 exclusion should be applied proportionately. Report all death gratuity payments separately, using TD Form 1099R (Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts). Enter the total amount of the distribution in Box 1. Enter the appropriate taxable amount 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.

300303. Issuance of TD Form 1099-R

If no arrears of retired pay are paid, then the retired pay activity issues one TD Form 1099-R in the decedent's name. If arrears of retired pay are paid, then an additional TD Form 1099-R is issued to each beneficiary to whom the arrears were paid [using the tax identification number of the beneficiary](#).

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