

VOLUME 7B, CHAPTER 37: “RETIRED SERVICEMAN’S FAMILY PROTECTION PLAN - ANNUITIES”

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 2013 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted to comply with current administrative instructions.	Revision
370102	Added An Authoritative Guidance section.	Addition
370405	Clarified the definition of limitation.	Addition
370903	Provided clarifying information and new volume for collection of debts.	Revision
371902	Provided updated information on repeal of \$5,000 special exclusion from Reserve Serviceman’s Family Protection Plan – Annuity gross income.	Revision
3720	Updated current address for Internal Revenue Service Estate and Gift Tax Branch.	Revision
Bibliography	Updated paragraph number from 410301.B to 371901.B.	Revision

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CHAPTER 37

**RETIRED SERVICEMAN'S FAMILY PROTECTION
PLAN – ANNUITIES**

3701 GENERAL

370101. Purpose

An annuity payable under the Retired Serviceman's Family Protection Plan (RSFPP) is not assignable or subject to execution, levy, attachment, or garnishment, except for child support or alimony, or to collect a debt caused by an overpayment described in section 3709. A debt to the United States or its instrumentalities incurred by the annuitant may be offset from the annuity. The annuity may be paid to a trustee through bankruptcy court proceedings.

*370102. Authoritative Guidance

The bibliography at the end of this chapter lists the authoritative references.

370103. Income Exceptions

Annuities payable are in addition to any pension or other payment to which the beneficiaries may now or later be entitled by law, and may not be considered as income under any law administered by the Department of Veterans Affairs (VA), except when the annuitant is entitled to Dependency and Indemnity Compensation (DIC) as a parent of a veteran.

370104. Additional Annuity Information

For additional information affecting annuity payments, see Table 37-1.

370105. Additional Settlement Information

For additional information concerning the settlement of arrears of annuities, see Chapter 31.

3702 EFFECTIVE DATE OF ANNUITY

370201. Annuity Accrual

Each annuity payable normally accrues as of the first day of the month in which the member dies. If the Secretary concerned makes a determination that a participating member is presumed dead, the annuity accrues from the first day of the month in which retired or retainer pay was suspended on the basis of the member's missing status. When a member elects coverage for spouse and children (Option 3), an annuity is payable to eligible children on the first day of the month in which the widow or widower becomes an ineligible annuitant. For the

child who is at least age 18 and attending a recognized educational institution (see subparagraph 371501.C for more information), the annuity accrues:

A. As of the first day of the month in which the retired member dies, if the eligible child's 18th birthday occurs in the same or a preceding month; or

B. As of the first day of the month in which the child's 18th birthday occurs, if the retired member died in the preceding month; or

C. As of the first day of the month in which the child becomes or again becomes eligible, if that child's 18th birthday and the retired member's death occurred in a preceding month or months.

370202. Application

The first payment of the annuity cannot be made until a completed application is received. If a properly completed application is received, the first payment must be made not later than the 15th of the month after the month in which the retired member dies, nor later than the 15th of the month after the month in which the Secretary of the Military Department concerned (or designee) has made a determination that the member is presumed dead. Payments are made in equal monthly installments thereafter as long as entitlement exists.

370203. Annuitant Eligibility

No annuity accrues or is paid for the month in which all annuitants lose eligibility.

370204. Special Circumstance

If a member retires and dies during the same month, the annuity is payable for the full month.

3703 ANNUITY PAYMENTS

Upon official notification of death or Secretarial determination that a participating member is presumed dead, annuity accounts are established in accordance with the provisions of the election made by or on behalf of the member. A Department of Defense Form 2656-7, Verification for Survivor Annuity, [*Department of Defense Form 2656-7*](#), validates the annuity account. Payment of annuity is barred when the member is retired for disability before completing 19 years of service (18 years of service before October 1968) if beneficiaries are eligible for VA DIC. Payments for a representative payee of an RSFPP annuitant follow the same requirements as payment under the Survivor Benefit Plan. See Chapter 46, subparagraph 460103.B for more information.

3704 CLAIMS FOR ANNUITY

The claim for annuity payments must be properly completed and signed by the person or persons authorized to receive annuity.

370401. Power of Attorney

An individual holding a valid power of attorney may complete (including the signature element) and file the annuity application form on behalf of an annuitant provided payments are to be made directly to the annuitant and, further, that the annuitant has not been determined to be incompetent of managing his or her own affairs by a state court, physician, or psychologist. (For additional information on annuity payments, see Chapter 46, paragraph 460103.) An annuitant whose application is signed with an "X" must be witnessed (by two disinterested persons) or notarized or countersigned by the person holding the power of attorney. A copy of the power of attorney and explanation why the annuitant required assistance must be submitted with the annuity application.

370402. Court Order

A claim signed by a legal representative must be accompanied by a copy of the court order of appointment.

370403. Custodianship

A claim signed by the custodian of a minor child or children must be accompanied by a document evidencing custodianship.

370404. Doubtful Claim

A doubtful claim must be submitted to the Defense Office of Hearings and Appeals for certification before payment.

*370405. Limitation

The Barring Act, found at 31 U.S.C. § 3702 bars payment of any claim not received within 6-years from the date it accrues. A claim not received within 6-years of the member's death must be denied as untimely. When denying a claim based on untimely receipt, the denial letter must cite the applicable statute (31 U.S.C. § 3702), explain the reasons for the finding of untimely receipt, provide the claimant with notice that states his claim was not received within the statutory time limit and therefore, may not be considered, unless that finding is reversed on appeal, explain how the claimant may appeal the finding and explain how the claimant may apply for a waiver.

3705 ANNUITY AMOUNTS

370501. Single Option

A. Retirements Before November 1, 1968. The monthly annuity payable, as elected by the retiree, is one-eighth, one-quarter, or one-half of the retiree's reduced retired pay as computed on the date of retirement or effective date of election, whichever is later.

B. Retirements From November 1, 1968 Through September 20, 1972. The monthly annuity payable as elected by the retiree is:

1. One-eighth, one-quarter, or one-half of the retiree's gross retired pay on date of retirement; or

2. A specific dollar amount of not more than 50 percent nor less than 12-1/2 percent of the retiree's gross retired pay on date of retirement, but in no case less than \$25.

370502. Multiple Options

A. Retirements Before November 1, 1968. The monthly annuity payable for each option, as elected by the retiree, is one-eighth or one-quarter of the retiree's total reduced retired pay as computed on the date of retirement or effective date of election, whichever is later. The combined amount of annuities cannot exceed 50 percent of the retiree's total reduced retired pay.

B. Retirements From November 1, 1968 Through September 20, 1972. The monthly annuity payable for each option, as elected by the retiree, is:

1. One-eighth or one-quarter of the retiree's gross retired pay on date of retirement; or

2. A specific dollar amount of not more than 25 percent nor less than 12-1/2 percent of the retiree's gross retired pay on date of retirement, but in no case less than \$25.

370503. Rounding

All monthly annuities to which a survivor becomes entitled on or after October 1, 1983, if not a multiple of \$1, is rounded to the next lower multiple of \$1. Annuities to which survivors were entitled on September 30, 1983 were not rounded until there was an adjustment made in accordance with [10 United States Code \(U.S.C.\) 1401a](#); then, and with each subsequent adjustment, the amount as adjusted, if not a multiple of \$1, is rounded to the next lower multiple of \$1. All subsequent adjustments are based on the rounded amount.

3706 PAYMENTS TO WIDOW OR WIDOWER

For unique conditions affecting entitlement of annuity payments to widow or widower, see Table 37-2 for decisions of the Comptroller General.

3707 PAYMENT TO CHILDREN

370701. Whom Payable

Annuities for a minor child or children are paid to the legal guardian or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child or children as the custodian, or to a representative payee of the child or children.

370702. Majority Age

Annuities may be paid directly to the child when the law governing the state of residence stipulates the child to be majority age. The child is considered an adult for annuity payment purposes, and a custodian or legal fiduciary is not required. See Appendix H for majority age.

370703. Equal Shares

The annuity is payable in equal shares to or on behalf of all eligible children. If there are no other eligible children, the annuity entitlement terminates when the youngest child becomes an ineligible annuitant.

370704. Unique Conditions

For unique conditions affecting entitlement and payment of annuities for a child or children, see Table 37-3 for decisions of the Comptroller General.

3708 COLA

370801. Annuities Payable on or After September 30, 1978

Annuities payable on September 30, 1978 to a spouse or child of a member who died on or before March 20, 1974 were increased by 66.1 percent, effective October 1, 1978. The 66.1 percent increase was the percentage change in retired and retainer pay authorized by 10 U.S.C. 1401a from September 21, 1972 to September 30, 1978.

370802. Rounding

Whenever retired pay is increased through a COLA, each annuity payable on the day before the effective date of that increase to a spouse or child, or to a member who dies on or before March 20, 1974, is increased at the same time by the same percentage. Beginning October 1, 1983, after each COLA, the annuity as adjusted, if not a multiple of \$1, is rounded to the next lower multiple of \$1. All subsequent adjustments are based on the rounded amount.

3709 CAUSES OF OVERPAYMENTS

Overpayments in annuity payments may be caused by one or more of the following situations:

370901. Notification

Failure of the annuitant, custodian, or guardian to notify the Secretary of the Military Department concerned (or designee) of:

- A. Remarriage of the annuitant, before age 60 or death; or
- B. Youngest child reaching age 18; or
- C. Marriage or death of a child annuitant; or
- D. Recovery of an incapacitated child, or
- E. Termination of student status; or
- F. Erroneous computation; or
- G. Correction of member's military records.

370902. Concurrent Payment

Concurrent payment of RSFPP annuity and DIC if the RSFPP was payable based on the service of a member who retired for disability before completing 18 years of service after October 5, 1961, or before completing 19 years of service after November 1, 1968.

*370903. Presumption of Death

A Secretarial determination that a member is alive after the Secretary of the Military Department concerned (or designee) previously determined that the member was presumed dead. The member is liable for any indebtedness created where the annuity payments were made based on the presumption of such member's death. The member's indebtedness cannot be considered for waiver under [10 U.S.C. 2774](#) or [10 U.S.C. 1442](#). If the member dies before those payments are fully recovered, the annuitant may be liable for the indebtedness if the annuitant was the recipient of the annuity payments made under the presumption of death. (See [Volume 16, Chapter 3, Section 0304, Table 3-7](#), for collection of indebtedness from retired or retainer pay.)

3710 RECOVERY OF OVERPAYMENTS

Upon discovery of an overpayment, start recovery action immediately. Advise the annuitant of the debt and the method in which the overpayment is being, or may be, recovered.

3711 METHOD OF RECOVERY

The debt resulting from an annuity overpayment shall be liquidated by one of the following methods:

371101. Direct Remittance

Send a direct remittance to the Defense Finance and Accounting Service (DFAS), Cleveland Center.

371102. Future Payment Amounts

Reduction by the DFAS-[CL](#) Center of later RSFPP annuity payments, or withholding of future annuity payments until debt has been liquidated.

3712 WAIVER OF INDEBTEDNESS

When applicable, the DFAS-[CL](#) Center advises the annuitant of the right to request a waiver of indebtedness.

371201. Overpayment Recovery

Recovery of an overpayment of the RSFPP annuity is not required if, in the judgment of the DFAS Director or the Director's designee, there was no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purpose of the plan or against equity and good conscience. Proof of hardship is not required if the waiver otherwise is in order. Suspension of collection action may be authorized on receipt of a waiver request. Refund of an amount withheld before receipt of a request for waiver is not authorized. When a waiver is granted, refund amounts collected after receipt of the waiver request.

371202. Failure to Withhold

Failure to withhold the cost of coverage from retired pay of a member cannot be considered an overpayment of annuity to a designated beneficiary to authorize waiver of recovery of the overpayment.

371203. Correction of Records

RSFPP annuitants who obtain a correction of records for entitlement to additional survivorship annuity under a second election may not retain the benefits of the original election. A correction made under [10 U.S.C. 1552](#), except when procured by fraud, is final and conclusive on all officers of the United States. Recovery of overpayments that occur in these instances may not be waived under 10 U.S.C. 1442. Repayment may be made over a reasonable period of time as determined by the retired pay activity.

3713 TERMINATIONS

371301. Time of Termination

Entitlement to the RSFPP annuity terminates as of the end of the month that precedes the month in which eligibility ceases.

371302. Reasons for Termination

Terminate RSFPP annuity upon:

A. Death of Widow or Widower. Terminate payments the last day of the month that precedes the month in which widow or widower dies. If children are involved, see section 3714 for further information.

B. Remarriage of Widow or Widower Before Age 60. Terminate payments the last day of the month that precedes the month in which widow or widower, younger than age 60, remarries. If children are involved, see paragraph 371402 for further information.

C. Loss of Eligibility by Child Annuitant. Reasons for loss are:

1. Youngest child reaching age 18 and not incapable of self-support (applicable to children of members who retired before November 1, 1968).

2. Youngest child reaching age 18 and not pursuing a full-time course of study nor incapable of self-support (applicable to children of members retiring on or after November 1, 1968).

3. Youngest child who is pursuing full-time course of study, reaching age 23 and not incapable of self-support (applicable to children of members who retired on or after November 1, 1968).

4. Marriage or death of child annuitant.

5. Recovery of an incapacitated child over age 18. Annuity may be suspended if the annuitant becomes independently capable of earning amounts sufficient for his or her own particular personal needs through substantial and sustainable gainful employment. The annuitant will receive advance written notice from DFAS prior to suspension. The annuitant will be given an opportunity to submit rebutting evidence. The annuity may be reinstated (see subparagraph 371402.B).

6. Termination of student status of a child over age 18 and under age 23 (applicable only to retirees who retired on or after November 1, 1968).

7. Reinstatement to widow or widower of annuity previously terminated.

D. Secretarial Determination. Terminate payments the last day of the month preceding the month in which the Secretary of the Military Department concerned (or designee) determines that a participating member previously presumed to be dead is now alive.

371303. Due and Unpaid Annuity

If, upon death of the annuitant, an amount remains payable to the annuitant but is unpaid because the annuity checks were not negotiated or because payments had not been established, the account is settled in accordance with Chapter 31. There is no designated beneficiary for settlement of arrears of an annuity.

3714 REINSTATEMENTS

371401. Remarriage Before Age 60

The annuity is not reinstated.

371402. Reinstatement on Behalf of Children

A. If an annuity was terminated because of the death or remarriage of the widow or widower before age 60, and the member's election also included coverage for children, then reestablish the full annuity in equal shares in favor of the eligible children (see section 3707). The effective date is the first day of the month in which the death or remarriage of the widow or widower occurred.

B. An annuity to an incapacitated child over 18 years of age may be reinstated upon either a recurrence of the original disability that rendered the annuitant incapable of self-support or upon receipt of evidence from the annuitant that, although engaged in substantial and sustainable gainful employment, wages are not sufficient to cover his or her particular needs.

371403. Annulment

A. Annulment of a "Void" Marriage

1. The annuity may not be reinstated for any period earlier than the date of separation after the discovery that the marriage was void.

2. The annuity may not be reinstated for any period in which annuity payments were made on behalf of children under subparagraph 371403.A.3. When notice is received that the widow or widower's remarriage was void, payment to the children under subparagraph 371403.A.3 is suspended pending resolution of the issues involved.

3. In the absence of a judicial decree terminating the marriage as void, the case must be sent to the Defense Office of Hearings and Appeals for decision.

B. Annulment of a “Voidable” Marriage. The annuity may not be reinstated when a voidable marriage is annulled.

371404. Reinstatement After Age 60 Remarriage

If the annuity was terminated because of remarriage, and the widow or widower was 60 years of age or older, the annuity may be reinstated not earlier than October 1, 1978. The annuity will be increased by COLA, if appropriate, in accordance with paragraph 370802.

3715 ANNUAL CERTIFICATE OF ELIGIBILITY

371501. Purpose

The certificate validates the continued eligibility of annuitants, whether widow or widower, or eligible children. A widow or widower remains eligible, unless remarried before age 60. Children must meet prescribed criteria for continued eligibility;

A. Are unmarried and under 18 years of age.

B. Are more than 18 years of age, unmarried, and incapable of self-support because of being mentally defective or physically incapacitated, if that condition existed before they reached age 18.

C. Are at least 18 but under 23 years of age, and pursuing a full-time course of study or training (applies only to children of members who retired on or after November 1, 1968). This study may be in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution (a child is considered to be pursuing a full-time course of study or training during an interval between school years that does not exceed 150 days if the child demonstrated to the satisfaction of the Secretary of the Military Department concerned (or designee) that the child has a bona fide intention of resuming or continuing to pursue a full-time course of study or training in a recognized educational institution immediately after the interval). For the purpose of this subsection, a child who is at least 18 but less than 23 years of age, and is not pursuing a course of study or training, is considered an eligible beneficiary unless the member applies to the Secretary concerned to have such child considered not to be an eligible beneficiary.

D. Are legitimate or adopted children of the member, or step-children dependent upon the member for their support.

E. Are living on the date when the member is retired or becomes entitled to retired pay or, if the member was already retired or entitled to retired pay on November 1, 1953, living on that date.

F. Have been adopted by a third person before the parent-member's death. A child loses his or her eligibility for an annuity under the plan under this condition. However, the eligibility is not affected if the child is adopted by a third person after the parent-member's death.

371502. Certification Frequency

A. Annually. A certificate of eligibility must be sent to the DFAS-Cleveland Center each year by either of the following:

1. Widow or Widower of Any Age. The form must be signed by the widow or widower. An electronic signature may be used provided access to the Defense Retiree and Annuitant Pay System was gained using both the Social Security number and a personal identification number via MyPay. The legal fiduciary must sign the form or use the electronic signature if the annuitant is mentally incompetent. If the electronic signature is used, it must include the annuitant's name.

2. Custodian or legal fiduciary for minor children. The certificate of eligibility form signed by the custodian or legal fiduciary must be accompanied by a document evidencing custodianship.

B. Biennially. A medical certification must be submitted every 2 years for any incapacitated child over 18 years of age, unless a medical prognosis indicates that the disability is permanent.

C. Other. A student between ages of 18 and 23 must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided.

1. Payments to students continue during any interval between school years that does not exceed 150 days if the students have demonstrated to the satisfaction of the DFAS-Cleveland Center that they have a bona fide intention of starting, resuming, or continuing a full-time course of study or training in a recognized educational institution immediately after that interval.

2. An eligible student annuitant under the RSFPP who is properly enrolled in a recognized educational institution employing the usual quarter or semester system and who becomes ill or requires nonelective surgery during the school term retains the student status for the rest of that term.

371503. Failure to Return Certificate of Eligibility

The annuity payment is suspended if the annuitant, custodian, or legal fiduciary fails to furnish the certificate as required. Payments will be restarted only after receiving satisfactory proof of eligibility.

3716 REPORT OF EXISTENCE (ROE)

371601. Purpose of ROE

The ROE fulfills the requirement for proof of existence for the following:

A. Annuitants Who Receive Payments Through Foreign Postal Channels. Annuity checks mailed to an Army Post Office, Fleet Post Office, finance officer, or disbursing officer at an overseas address **does** not require submission of a report of existence. NOTE: Do not mail checks to an annuitant living in currency-blocked countries. See [31 Code of Federal Regulations 211.1](#) for specific conditions for withholding the delivery of checks to addresses outside the United States.

B. Mentally Incompetent Annuitants. Mentally incompetent annuitants who receive payments through a legal fiduciary.

C. Third Party Annuitants. Annuitants whose payments are sent to a third party, other than a financial institution for negotiation under a power of attorney.

371602. ROE Requirement

An ROE is required on a semi-annual basis for those annuitants that meet the criteria of paragraph 371601. Receipt of the certificate within the prescribed timeframe verifies the annuitant's existence. Under no circumstances may the ROE be signed by other than the annuitant, custodian, or legal fiduciary; however, electronic signature as referenced in paragraph 371502 is authorized.

371603. Failure to Return ROE

The annuity payment is suspended if the annuitant, custodian, or legal fiduciary fails to return the ROE as required. Payments will be restarted only after receiving satisfactory proof of existence.

3717 FEDERAL INCOME TAX

Annuities paid under the RSFPP are taxable for Federal income tax purposes. Refunds for coverage premiums are taxable income to the annuitant. The refund of premiums may result from administrative error, corrections of record, late receipt of withdrawal request, or youngest child attaining age 18. See Chapter 46, Table 46-3, for exceptions on the taxability of the annuities.

3718 FEDERAL INCOME TAX WITHHOLDING (FITW)

371801. General Provisions

RSFPP annuity payments are subject to FITW. An annuitant has the right to elect no withholding. In the absence of such an election, or if the annuitant does not otherwise submit a withholding certificate, the DFAS Center will withhold on a "married-three exemptions" basis.

371802. Notice Requirements

The DFAS-Cleveland Center must advise the annuitant of the withholding requirement and the right to elect "no withholding" when making the first payment to the annuitant.

Thereafter, the DFAS-Cleveland Center must send an annual notice to the annuitant of the right to elect no withholding, to revoke an election, or to submit a new withholding certificate. An annuitant also may submit a withholding certificate at any time to elect no withholding, revoke such election, or request any rate of withholding.

371803. One Time Payments

RSFPP annuity payments, other than the regular monthly entitlement, are subject to FITW at the rate of 20 percent unless the annuitant has elected no withholding.

3719 INCOME EXCLUSION

371901. Gross Income Exclusion

The annuitant may exclude from gross income:

A. Premiums for coverage deducted from retired pay before January 1, 1966 not previously excluded from the member's retired pay.

B. The amount of direct remittance for any RSFPP premiums not previously excluded from the member's retired pay.

*371902. Special Exclusion

In addition, the annuitant may exclude from the RSFPP annuity gross income an amount not to exceed \$5,000 if the member retired on disability and dies prior to attaining retirement age (Public Law 89-365). [As of August 20, 1996, Public Law 104-188, section 1402\(a\) repealed the \\$5,000 exclusion.](#)

*3720 FEDERAL ESTATE TAX

The value of the annuity at the time of the member's death may be subject to Federal estate tax if any portion of the cost was paid by direct remittance, or if the value of the annuity exceeds the amount that may be excluded from the gross estate. DFAS may furnish the annuitant the current annuity amount and/or a summary of annual payments, and total cost paid (separate totals for deductions and direct remittances). For a computation of the amount of an annuity that will be subject to the tax, if any, the executor of the member's estate may write to:

Internal Revenue Service
Chief, Estate and Gift Tax
555 N. Woodlawn St.
Building 4
Wichita, KS 67208

3721 STATE TAXATION

Whether RSFPP annuities are subject to state inheritance or income tax and the method of calculating such tax depend upon the laws of the state concerned; however, the IRS Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts) information is furnished to the appropriate state tax authority.

3722 FURTHER TAX INFORMATION

Survivors should be advised that further information concerning taxation of RSFPP annuities may be obtained from the District Director of Internal Revenue or the state tax authority (see Appendix J, for state tax reporting addresses).

Table 37-1. Comptroller General Decisions – Annuity Payments, General

COMPTROLLER GENERAL DECISIONS - ANNUITY PAYMENTS, GENERAL		
Decision Number	Synopsis	
1	35 Comp Gen 12 41 Comp Gen 500	<u>Unpaid Cost for Coverage.</u> Any unpaid RSFPP cost at time of a retiree's death, including nonpayment of direct remittance or erroneous computation of cost, must be collected before payment of any annuities.
2	34 Comp Gen 664	<u>Retired Pay Status Relinquished.</u> Personnel who relinquish retired status (either voluntarily or involuntarily) are not permitted to pay RSFPP costs to entitle beneficiaries to annuities.
3	43 Comp Gen 125	<u>Effective Date of Payment.</u> Annuity payments are paid under provisions of the RSFPP law as amended effective Oct 4, 1961, even though the election was made on Oct 4, 1961, before the hour in which the President signed the bill which amended the law.
4	34 Comp Gen 151 38 Comp Gen 146	<u>Annuity Payment Adjustments.</u> Annuity payments must be adjusted on the basis of proper retired pay at the time the election became effective as though the member had actually been receiving such pay at that time. This applies to elections by members who elected while in a "saved pay" status, who later elected and received pay under the Career Compensation Act (CCA) retroactive to Oct 1, 1949.
5	MS Comp Gen B156862, June 30, 1965	<u>Failure to Submit Valid Election Form.</u> After a member's death a copy of the RSFPP election is found in his personal effects. If it is not attested or notarized, and neither the original nor duplicate is located, it cannot be established that the member made an election. On the basis of information available, no annuity is payable.
6	43 Comp Gen 418	<u>Allocations of Annuity.</u> The allocation of annuity payable under option 3 between the present spouse and the children of a former marriage applies to elections made before and after the October 4, 1961 RSFPP amendment. Public Law 90-485, August 13, 1968.
7	MS Comp Gen B-139217, June 29, 1959, August 12, 1960	<u>Withholding Annuity to Satisfy Members Indebtedness.</u> Annuity payments may be withheld to satisfy the member's indebtedness for overpayment of retired pay since the annuitant is under no obligation to the United States. However, the annuitant may voluntarily agree to repay the indebtedness by withholding from the annuity.
8	39 Comp Gen 481 MS Comp Gen B-141131, December 30, 1959	<u>Valid Intent of Member to Elect Spouse and Child Coverage.</u> Both the spouse and children are covered when it can be established that the member intended to cover the children listed on the election certificate even though the election was checked to show spouse only.
9	65 Comp Gen 621	<u>Annuity Payments.</u> Should not be made payable to an agent acting under power of attorney when the annuitant is mentally incompetent even if a state statute had preserved the validity of a power of attorney executed before the annuitant was declared to be incompetent.
10	66 Comp Gen 340	<u>In the Absence of a Determination of Incompetence.</u> Made by a state court, physician, or psychologist that an annuitant is incapable of managing his or her own affairs, payments may be made directly to the annuitant. An individual, in accordance with a valid power of attorney, may assist the annuitant in completing and filing the annuity application form. (65 Comp Gen 621, clarified).

Table 37-2. Comptroller General Decisions – Annuity Payments, Widow or Widower

COMPTROLLER GENERAL DECISIONS - ANNUITY PAYMENTS, WIDOW OR WIDOWER		
Decision Number		Synopsis
1	MS Comp Gen B-158906, June 7, 1966	<u>Validity of Annuitant's Marriage to the Member.</u> Evidence must be of record to establish that a former marriage was legally ended. No annuity payments are authorized to be paid until legal proceedings are instituted to determine the validity of the marriage.
2	44 Comp Gen 480	<u>Foreign Divorce.</u> The State of New York does not recognize a foreign divorce unless both parties appear personally or through authorized counsel in the country where the foreign divorce is obtained.
3	43 Comp Gen 567	<u>Foreign Divorce.</u> A member's marriage to a woman who had previously obtained an illegal foreign divorce is not valid for annuity payment purposes.
4	MS Comp Gen B-154387, July 16, 1964	<u>Interlocutory Decree of Divorce.</u> An interlocutory decree does not end a marriage. A foreign divorce in the interim period is not valid. The final divorce decree terminates the marriage.
5	42 Comp Gen 112	<u>Divorce and Later Remarriage to Same Spouse.</u> A spouse who divorces the member after retirement terminates eligibility for annuity. A later remarriage of the same people to each other does not reinstate eligibility to the annuity, even though deductions from pay are continued under terms of the member's election.
6	38 Comp Gen 208	<u>Annuity Elections at Time of Correction of Records.</u> A member is regarded as having been in a retired status on November 1, 1953, effective date of the RSFPP law, if after that date a Correction of Records retired the member retroactive to a date before November 1, 1953. A spouse whom the member married after November 1, 1953 is not entitled to annuity since he or she was not the spouse on November 1, 1953.

Table 37-3. Comptroller General Decisions – Annuity Payments, Child or Children

COMPTROLLER GENERAL DECISIONS - ANNUITY PAYMENTS, CHILD OR CHILDREN		
Decision Number	Synopsis	
1	47 Comp Gen 270	<u>Custodianship of Minor Child. Payment of RSFPP Annuity.</u> May be made to a natural parent having care and custody of minor child or children, without the appointment of a legal guardian, even though such payments might eventually exceed the sum of \$1,000.
2	35 Comp Gen 521	<u>Custodianship of Minor Children. Payment.</u> Can also be made to an adopting parent, as custodian of minor child since all rights and duties were acquired with the adoption.
3	47 Comp Gen 371	<u>Child Physically Incapacitated.</u> A chiropractor's statement attesting to a child's physical incapacity is sufficient to substantiate eligibility as a beneficiary under RSFPP.
4	48 Comp Gen 167	<u>Ineligible Child.</u> Child born May 1, 1950, became eligible for annuity benefits on May 1, 1968. Payment for month of April 1968 is proper.
5	MS Comp Gen, B-160876, April 18, 1967	<u>Incapacitated Child.</u> An incapacitated child does not have to meet that condition as of member's retirement date of Nov 1, 1953, if later (as required by DoDD 1332.17, section 102c) to qualify as an eligible RSFPP beneficiary. Also, proof of continued incapacitation of a child annuitant is required at least every 2 years after age 18.
6	MS Comp Gen B-158411, March 10, 1966	<u>Mentally Incapacitated Child.</u> Mentally incapacitated child who married and whose marriage was annulled is considered unmarried and an eligible contingent beneficiary.
7	44 Comp Gen 280	<u>Unmarried Child.</u> The term "unmarried child" is defined as not having a husband or wife at time of member's retirement, and without regard to the fact that the child may have been previously married.
8	MS Comp Gen B-131677, June 3, 1957	<u>Legitimate Child.</u> Children born from illegal marriage (one spouse not legally divorced from prior marriage) may be considered legitimate children for RSFPP annuity payments.
9	MS Comp Gen B-132012, June 17, 1957	<u>Clarification of Election Fraction.</u> A member who elected option 2 with both 1/2 and 1/8 factors checked, who failed to clarify the fraction desired, and who later stated a wish not to participate in the plan, must be assumed to have elected the minimum of 1/8 rate.
10	36 Comp Gen 325	<u>Adoption of Child.</u> Child of deceased retired member receiving annuity under option 2 who is adopted after death of a retired member, is entitled to continue receiving the annuity. An adoption before death of retired member, or divorce from wife in which member elected option covering stepchild constitutes basis for terminating reduction of retired pay if option 4 included, and likewise voids entitlement to annuity upon later death of retiree.
11	35 Comp Gen 521	<u>Amendatory Birth Certificate.</u> Amendatory birth certificate along with statement on election form is normally sufficient to substantiate date of birth and claimed relationship of adopted child.
12	62 Comp Gen 193	<u>Incapacitated Annuitant.</u> Annuity payable to an incapacitated annuitant may not be suspended unless annuitant is capable of earning amounts sufficient for own particular personal needs through substantial and sustainable gainful employment. Advance written notice will be made prior to suspension and annuitant shall be given the opportunity to submit rebutting evidence.
13	62 Comp Gen 302	<u>Incapacitated Annuitant - Reinstatement of Annuity - Payment to Third Parties.</u> An annuity may be reinstated upon the recurrence of original disabling condition. Annuity payments to incapacitated adult can be made to third parties only if appointed as guardian by court or under valid power of attorney. Power of attorney executed by mentally incapacitated annuitant may be invalid, even in absence of formal adjudication of incompetence. If annuitant suffering from mental illness has not been adjudged incompetent, and is considered by psychiatrist to be competent to manage annuity properly for personal maintenance, annuity may be paid directly to annuitant. If annuity cannot be paid directly to annuitant or properly paid to third party, annuity should accrue to annuitant's account until annuitant recovers or until guardian is appointed by court.

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ANNUITIES (10 U.S.C. §§ 1431 – 1446)**

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Public Law 83-239, section 9, August 8, 1953

3702 – EFFECTIVE DATE OF ANNUITY

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370201.C

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370204

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3703 – ANNUITY PAYMENTS

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3704 – CLAIMS FOR ANNUITY

370401

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3705 – ANNUITY AMOUNTS

370501.A

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370502.A

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370502.B.2

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3713 – TERMINATIONS

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371302.C.5 62 Comp Gen 193

3714 – REINSTATEMENTS

371401 Public Law 95-397, September 30, 1978
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371502.B	DoDD 1332.17, paragraph 505b, December 18, 1968
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3716 – REPORT OF EXISTENCE

371601	31 CFR 211.1 Treasury Fiscal Requirements Manual 2090.10
371602	54 Comp Gen 285

3717 – FEDERAL INCOME TAX

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3719 – INCOME EXCLUSION

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