

VOLUME 7B, CHAPTER 37: “RETIRED SERVICEMAN’S FAMILY PROTECTION PLAN (RSFPP) - 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 [July 2019](#) is archived.

| PARAGRAPH | EXPLANATION OF CHANGE/REVISION | PURPOSE |
|------------------|---|----------------|
| All | Updated hyperlinks and formatting to comply with current administrative instructions. | Revision |
| 370503 | Relocated from section 3708 to better align with common themes and redesignated as needed. | Revision |
| 370504 | Relocated from section 3708 to better align with common themes and redesignated as needed. | Revision |
| 3706 | Relocated and consolidated the section on “Payments to Children” with “Payments to Widow(ers)” to better align with common themes and redesignated as needed. | Revision |
| 371303 | Revised language to allow for exceptions due to Federal or State disaster, a pandemic, or when any other natural emergency is declared. | Revision |
| 371401 | Revised to clarify excluded addressees. | Revision |
| 371403 | Revised language to allow for exceptions due to Federal or State disaster, a pandemic, or when any other natural emergency is declared. | Revision |
| 371603 | Revised to update the Federal Income Tax Withholding rate for a one-time payment. | Revision |
| References | Updated reference where applicable. | Revision |

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CHAPTER 37

**RETIRED SERVICEMAN'S FAMILY PROTECTION
PLAN (RSFPP) – ANNUITIES**

3701 GENERAL

370101. Purpose

The purpose of the RSFPP was to permit members of the uniformed services who retired on or before September 20, 1972, to elect to receive a reduced amount of any retired pay in order to provide an annuity payable to **eligible annuitant(s)** upon that **retired** member's death. This election was subject to certain limitations specified in the law and elaborated in the regulations in this chapter. The **Survivor Benefit Plan (SBP)** replaced the RSFPP (see Chapters 42 through 49) as the primary military retired pay annuity protection plan on September 21, 1972. An annuity payable under the 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 pay policies and requirements established by **the DoD** in this chapter are derived primarily from, and prepared in accordance with the United States Code (U.S.C.), including Titles 10, 11, 26, 31, and 42. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

3702 EFFECTIVE DATE OF ANNUITY

370201. Annuity Accrual

Each annuity payable normally accrues as of the first day of the month in which the **retired** member dies. If the Secretary concerned makes a determination that a participating **retired** 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 **retired** member's missing status. For **retired** members who elected coverage for spouse and children (often referred to as "Option 3"), an annuity is payable to the eligible children on the first day of the month in which the widow or widower becomes an ineligible annuitant. For a child who is at least age 18, but under age 23, and pursuing a full-time course of study at a recognized educational institution (see section 3712 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

A. A completed application is required for payment of the annuity.

B. Payments are made in equal monthly installments thereafter as long as entitlement exists. If a properly completed application was received, the first payment must be made no later than:

1. The 15th of the month after the month in which the retired member dies, or

2. 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 [retired](#) member is presumed dead.

370203. Annuitant Eligibility

No annuity accrues or is paid for a 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

370301. Upon Death or Presumption of Death

Upon official notification of death or Secretarial determination that a participating [retired](#) member is presumed dead, annuity accounts are established in accordance with the provisions of the election made by or on behalf of the [retired](#) member using DoD [\(DD\) Form 2656-7](#), Verification for Survivor Annuity to validate 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 Veterans Affairs (VA) Dependency and Indemnity Compensation (DIC). Payments for a representative payee of an RSFPP annuitant follow the same requirements as payment under the Survivor Benefit Plan. See Chapter 46 for more information.

370302. Additional Annuity Information

Annuities payable are in addition to any pension(s) or other payment(s) to which the beneficiaries may now or later be entitled by law, and may not be considered income under any law administered by the VA, except when the annuitant is entitled to DIC as a parent of a veteran. For additional information affecting annuity payments, see Table 37-1.

370303. Settlement of Arrears

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

3704 CLAIMS FOR ANNUITY

The claim for annuity payments must be properly completed and signed by the person(s) authorized to receive the 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:

- A. The payments are to be made directly to the annuitant; and
- B. The annuitant has not been determined to be incompetent of managing **their** own affairs by a state court, physician, or psychologist.

NOTE: For additional information on annuity payments, see Chapter 46. An annuitant whose application is signed with an "X" must be witnessed (by two disinterested persons), 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 (DOHA) for certification before payment.

370405. Limitation

A. The Barring Act. This act bars payment of any claim not received within 6 years from the date it accrues. See [31 U.S.C. section 3702](#).

B. Denial of Claim. A claim not received within 6 years of the [retired member's](#) death must be denied as untimely pursuant to the Barring Act and Department of Defense Instruction 1332.42.

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 [retired member'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 [retired member](#) is:

1. One-eighth, one-quarter, or one-half of the [retired member's](#) gross retired pay on date of retirement; or

2. A specific dollar amount of not more than 50 percent, nor less than 12.5 percent of the [retired member'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 [retired member](#), is one-eighth or one-quarter of the [retired member'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 [retired member'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 [retired member](#), is:

1. One-eighth or one-quarter of the [retired member's](#) gross retired pay on date of retirement; or

2. A specific dollar amount of not more than 25 percent, nor less than 12.5 percent of the retiree's gross retired pay on date of retirement, but in no case less than \$25.

*370503. Cost-of-Living Adjustments for Annuities

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 of a member who died on or before March 20, 1974, is increased at the same time by the same percentage. 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.

*370504. 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 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

370601. Payments to Widow(ers)

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

370602. Payment to Children

A. 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.

B. 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.

C. 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.

D. Unique Conditions. For unique conditions affecting entitlement and payment of annuities for a child or children, see Table 37-3 for Comp Gen decisions.

3707 CAUSES OF OVERPAYMENTS

One or more of the following situations may cause overpayments in annuity payments:

370701. Failure to Notify

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

370702. 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.

370703. Presumption of Death

A Secretarial determination that a **retired** member is alive after the Secretary of the Military Department concerned (or designee) previously determined that the **retired** member was presumed dead. The **retired** member is liable for any indebtedness created where the annuity payments were made based on the presumption of such **retired** member's death. The **retired** member's indebtedness cannot be considered for waiver under [10 U.S.C. § 2774](#) or [10 U.S.C. § 1442](#). If the **retired** 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 and Table 3-7, for collection of indebtedness from retired or retainer pay.)

3708 RECOVERY OF OVERPAYMENTS

Upon discovery of an overpayment, recovery action will begin immediately. The annuitant will be advised of the debt and the method in which the overpayment is being, or may be, recovered, in accordance with Volume 16.

3709 METHOD OF RECOVERY

One of the following methods will be used to liquidate the debt resulting from an annuity overpayment:

370901. Direct Remittance

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

370902. Future Payment Amounts

The DFAS-CL Center reduces the later RSFPP annuity payments, or withholding of future annuity payments until debt has been liquidated.

3710 WAIVER OF INDEBTEDNESS

When applicable, the DFAS-CL Center advises the annuitant of the right to request a waiver of indebtedness.

371001. 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.

371002. 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.

371003. 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.

3711 TERMINATIONS

371101. Time of Termination

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

371102. Reasons for Termination of the RSFPP Annuity

A. Death of Widow or Widower. Payments are terminated the last day of the month that precedes the month in which widow or widower dies. If children are involved, see paragraph 371202 for further information.

B. Remarriage of Widow or Widower Before Age 60. Payments are terminated 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 371202 for further information.

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

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

2. The 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. The 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. The marriage or death of child annuitant;

5. The 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 371202.B);

6. The 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); or

7. The reinstatement to widow or widower of annuity previously terminated.

D. Secretarial Determination. Payments are terminated 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.

371103. 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.

3712 REINSTATEMENTS

371201. Remarriage Before Age 60

The RSFPP annuity is not reinstated.

371202. 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 the full annuity is reestablished in equal shares in favor of the eligible children (see section 3706). 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.

371203. 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. A void marriage is invalid and never existed therefore; it requires no formal termination.

2. The annuity may not be reinstated for any period in which annuity payments were made on behalf of children under paragraph 371202. When notice is received that the widow or widower's remarriage was void, payment to these children is suspended pending resolution of the issues involved.

3. In the absence of a judicial decree terminating the marriage as void, the case be sent to the DOHA for a decision.

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

371204. 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 the COLA, if appropriate, in accordance with paragraph 370503.

3713 ANNUAL CERTIFICATE OF ELIGIBILITY (COE)

371301. Purpose

The certificate validates the continued eligibility of annuitants, whether widow or widower, or eligible child. Only the following persons are eligible to be made the beneficiaries of, or to receive payments under, an annuity elected by a member of the Armed Forces:

A. The spouse of the member on the date when the member is retired or becomes entitled to retired or retainer pay, or if the member was already retired or entitled to retired or retainer pay on November 1, 1953, the spouse on that date;

B. The children, living on November 1, 1953, of the member already retired or entitled to retired or retainer pay on that date, or the children who are living on the date the member retires with pay, and who:

1. Are unmarried;
2. Fall in one of the following age categories:
 - a. Under the age of 18;

b. At least 18, but under 23, years of age and pursuing a full-time course of study or training 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:

(1) Does not exceed 150 days and

(2) He or she has demonstrated to the satisfaction of the Secretary concerned to have a bona fide intention of commencing, resuming, or continuing to pursue a full-time course of study or training in a recognized educational institution immediately after that interval.

NOTE: This applies only to children of members who retired on or after November 1, 1968; or

c. More than 18 years of age and incapable of self-support because of a [mental defect or physical incapacity](#), if that condition existed before they reached age 18;

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

4. Have not been adopted by a third person before the parent-member's death. See [36 Comp Gen 325](#).

NOTE: A child's eligibility for an annuity under the plan is not affected if a third person adopts the child after the parent-member's death.

371302. Certification Frequency

A. Annually. A COE must be sent to the DFAS-CL Center each year by either of the following:

1. Widow or Widower of Any Age. The widow or widower must sign the form. 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 COE 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-CL 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 non-elective surgery during the school term retains the student status for the rest of that term.

D. COE Not Required

1. Effective August 1, 2013. As of August 1, 2013, all annuitants over age 55, not mentally incompetent, living in the United States, or living outside the United States and receiving their pay by direct deposit will not be required to submit an annual COE.

2. Effective November 23, 2016. As of November 23, 2016, child annuitants under the age of 14 will not be required to submit an annual COE.

*371303. Failure to Return COE

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.

NOTE: The Director, DFAS, or designee may suspend COE requirements when a Federal or State disaster, a pandemic, or any other natural emergency is declared. The Director, DFAS, or designee may also determine the amount of time of the suspension, not to exceed 90 days. Upon expiration of the 90-day term, the suspension may be reviewed for further extension, but in no instance may the suspension exceed one year. The action to suspend the COE requirement should take into consideration audit and risk management protocols including the ability to validate the identity of the annuitant from other government sources.

3714 REPORT OF EXISTENCE (ROE)

*371401. Purpose of ROE

The ROE fulfills the requirement to prove the existence of an annuitant who receives payment through foreign postal channels. The ROE is not required when the payment is addressed to a U.S. Consulate, American Embassy, military attaché, Fleet Post Office, or Army Post Office address. Checks will not be mailed to an annuitant living in currency-blocked countries. See section 211.1 of Title 31 of the Code of Federal Regulations for withholding the delivery of checks to addresses outside of the United States.

371402. ROE Requirement

An ROE is required on a semi-annual basis for those annuitants that meet the criteria of paragraph 371401. 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 371302 is authorized.

*371403. Failure to Return ROE

The annuity payment is suspended if the annuitant, custodian, or legal fiduciary fails to return the ROE as required. Payments held in suspension are released and future payments are resumed only after receiving satisfactory proof of existence.

NOTE: The Director, DFAS, or designee may suspend ROE requirements when a Federal or State disaster, a pandemic, or any other natural emergency is declared. The Director, DFAS, or designee may also determine the amount of time of the suspension, not to exceed 90 days. Upon expiration of the 90-day term, the suspension may be reviewed for further extension, but in no instance may the suspension exceed one year. The action to suspend the ROE requirement should take into consideration audit and risk management protocols including the ability to validate the identity of the annuitant from other government sources.

3715 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.

3716 FEDERAL INCOME TAX WITHHOLDING (FITW)

371601. 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-CL Center will withhold on a “married-three exemptions” basis. See Internal Revenue Service (IRS) [Publication 15-A](#).

371602. Notice Requirements

The DFAS-CL 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-CL 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.

*371603. One-Time Payments

RSFPP annuity payments, other than the regular monthly entitlement, are subject to FITW at the rate of 22 percent unless the annuitant has elected no withholding.

3717 INCOME EXCLUSION

371701. 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; and

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

371702. 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 (PL) 89-365). As of August 20, 1996, PL 104-188, section 1402(a) repealed the \$5,000 exclusion.

3718 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. The DFAS-CL Center 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 more information on the computation of the amount of an annuity that will be subject to the tax, if any, the executor of the member's estate may go to the IRS [website](#).

3719 STATE TAXATION

Whether RSFPP annuities are subject to state inheritance or income tax and the method of calculating such tax depends 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, etc., information is furnished to the appropriate state tax authority.

3720 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. Comp Gen Decisions – Annuity Payments, General

| COMP GEN DECISIONS - ANNUITY PAYMENTS, GENERAL | |
|---|--|
| Decision Number | Synopsis |
| 1 35 Comp Gen 12 B-123191, July, 13, 1995 and 41 Comp Gen 500 B-147403, February 1, 1962 | <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 B-123189, June 8, 1995 | <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 B-151843, August 5, 1963 | <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 B-121144, October 4, 1954 and 38 Comp Gen 146 B-113387, August 25, 1958 | <u>Annuity Payment Adjustments.</u> Annuity payments must be adjusted based on 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 retroactive to Oct 1, 1949. |
| 5 Comp Gen B-156862, 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. Based on information available, no annuity is payable. |
| 6 43 Comp Gen 418 B-152520, October 25, 1963 | <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. PL 90-485, August 13, 1968. |
| 7 Comp Gen B-139217, June 29, 1959 and August 12, 1960 | <u>Withholding Annuity to Satisfy Members Indebtedness.</u> Annuity payments may not 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. |

Table 37-1. Comp Gen Decisions – Annuity Payments, General (Continued)

| COMP GEN DECISIONS - ANNUITY PAYMENTS, GENERAL | | |
|---|---|---|
| Decision Number | | Synopsis |
| 8 | 39 Comp Gen 481 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 B-221545, June 3, 1986 | <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 B-226018, March 18, 1987 | <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. Comp Gen Decisions – Annuity Payments, Widow or Widower

| COMP GEN DECISIONS - ANNUITY PAYMENTS, WIDOW OR WIDOWER | |
|--|--|
| Decision Number | Synopsis |
| 1 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 B-155792, February 16, 1965 | <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 B-153183, February 14, 1964 | <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 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 B-149378, August 10, 1962 | <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 B-136499, September 16, 1958 | <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. Comp Gen Decisions – Annuity Payments, Child or Children

| COMP GEN DECISIONS - ANNUITY PAYMENTS, CHILD OR CHILDREN | |
|---|---|
| Decision Number | Synopsis |
| 1 47 Comp Gen 270 B-160939, November 14, 1967 | <u>Custodianship of Minor Child.</u> Payment of RSFPP Annuity 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 B-126138, March 21, 1956 | <u>Custodianship of Minor Children.</u> Payment 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 B-163102, January 18, 1968 | <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 B-165095, October 1, 1968 | <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 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 Department of Defense Directive 1332.17, section 102c) to qualify as an eligible RSFPP beneficiary. In addition, proof of continued incapacitation of a child annuitant is required at least every 2 years after age 18. |
| 6 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 B-154831, November 10, 1964 | <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 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 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 B-129194, October 18, 1956 | <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. |

Table 37-3. Comp Gen Decisions – Annuity Payments, Child or Children (Continued)

| COMP GEN DECISIONS - ANNUITY PAYMENTS, CHILD OR CHILDREN | | |
|---|--|--|
| Decision Number | | Synopsis |
| 11 | 35 Comp Gen 521 B-126138, March 21, 1956 | <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 B-207764, February 8, 1983 | <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 is given the opportunity to submit rebutting evidence. |
| 13 | 62 Comp Gen 302 B-207626, April 13, 1983 | <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 the annuity cannot be paid directly to annuitant or properly paid to third party, the annuity should accrue to annuitant's account until annuitant recovers or until guardian is appointed by court. |

REFERENCES*CHAPTER 37 – RETIRED SERVICEMAN’S FAMILY PROTECTION PLAN (RSFPP) – ANNUITIES****3701 – GENERAL**

| | |
|--------|--|
| | PL 98-525, October 19, 1984 |
| | 11 U.S.C., Chapter 13 |
| 370101 | PL 87-381, October 4, 1961 |
| | 66 Comp Gen 260 |
| | 42 U.S.C. § 659 |
| | PL 83-239, section 9, August 8, 1953 |

3702 – EFFECTIVE DATE OF ANNUITY

| | |
|----------|---------------------------------------|
| | PL 98-525, October 19, 1984 |
| 370201.C | 10 U.S.C. § 1437 |
| | 32 CFR 48.504(b)(3) |
| 370202 | PL 83-239, section 10, August 8, 1953 |
| | 10 U.S.C. § 1437 |
| 370204 | Comp Gen B-134298, November 27, 1957 |

3703 – ANNUITY PAYMENTS

| | |
|--|------------------------------|
| | PL 90-485, August 13, 1968 |
| | PL 98-525, October 19, 1984 |
| | PL 102-190, December 5, 1991 |
| | 10 U.S.C. § 1444a |

3704 – CLAIMS FOR ANNUITY

| | |
|--------|--|
| 370401 | 66 Comp Gen 340 B-226018, March 18, 1987 |
| 370403 | 4 CFR 338 |
| 370405 | 31 U.S.C. § 3702 |

3705 – ANNUITY AMOUNTS

| | |
|------------------------|-------------------------------|
| 370501.A | PL 83-239, August 8, 1953 |
| 370501.B.2 | PL 90-485, August 13, 1968 |
| 370502.A | PL 83-239, August 8, 1953 |
| | PL 87-381, October 4, 1961 |
| 370502.B.2 | PL 90-485, August 13, 1968 |
| 370503 | PL 95-397, September 30, 1978 |
| 370504 | 10 U.S.C. § 1401a |
| | PL 98-94, September 24, 1983 |

REFERENCES (Continued)

3706 – PAYMENTS

370602 PL 90-485, August 13, 1968

3707– CAUSES OF OVERPAYMENTS

370701 PL 98-525, October 19, 1984
PL 95-397, September 30, 1978
370703 10 U.S.C. § 2774
10 U.S.C. § 1442
370704 10 U.S.C. § 1446

3710 – WAIVER OF INDEBTEDNESS

371001 Comp Gen B-184532, September 16, 1975
Comp Gen B-185545, March 18, 1976
55 Comp Gen 1238 B-182704, July 2, 1976
10 U.S.C. § 1442
371002 41 Comp Gen 28 B-145943, July 13, 1961
371003 42 Comp Gen 98 B-149364, August 9, 1962
10 U.S.C. § 1552

3711 – TERMINATIONS

371102 PL 98-525, October 19, 1984
371102.A PL 83-239, August 8, 1953
PL 90-485, August 13, 1968
371102.B PL 83-239, August 8, 1953
PL 90-485, August 13, 1968
PL 95-397, September 30, 1978
371102.C.5 62 Comp Gen 193 B-207764, February 8, 1983

3712 – REINSTATEMENTS

371201 PL 95-397, September 30, 1978
371202 PL 95-397, September 30, 1978
62 Comp Gen 193 B-207764, February 8, 1983
62 Comp Gen 302 B-207626, April 13, 1983

REFERENCES (Continued)

| | |
|------------|--|
| 371203.A.3 | 44 Comp Gen 269 B-152506, November 6, 1964 43 Comp Gen 531 B-152506, January 30, 1964 |
| 371203.B | 42 Comp Gen 500 B-147403, February 1, 1962 43 Comp Gen 531 B-152506, January 30, 1964 |
| 371204 | PL 95-397, September 30, 1978 |

3713 – ANNUAL CERTIFICATE OF ELIGIBILITY

| | |
|--------------|------------------|
| 371301.A – F | 10 U.S.C. § 1435 |
| 371302.C.1 | 10 U.S.C. § 1435 |
| 371302.F | 36 Comp Gen 325 |

3714 – REPORT OF EXISTENCE

| | |
|--------|---|
| 371401 | 31 CFR 211.1 Treasury Fiscal Requirements Manual 2090.10 |
| 371402 | 54 Comp Gen 285 B-178270, October 17, 1974 |

3716 – FEDERAL INCOME TAX WITHHOLDING (FITW)

26 U.S.C. § 3402(o)(3)

3718 – FEDERAL ESTATE TAX

26 CFR 20.2039-2(c)(1)
26 U.S.C. § 2039(c)