

**VOLUME 7B, CHAPTER 46: “SURVIVOR BENEFIT PLAN (SBP) – ANNUITIES”****SUMMARY OF MAJOR CHANGES**

Changes are identified in this table and also 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 [April 2020](#) is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
2.3	Deleted the paragraph “Provisional Annuity Payments” since provisional payments are no longer made and redesignated all other paragraphs as needed.	Deletion
2.3	Added policy for condition where a beneficiary may be eligible for more than one annuity.	Addition
12.5 and 12.6	Added Exceptions to annual reporting requirements.	Addition
13.4	Added Exceptions to annual reporting requirements.	Addition
References	Updated references as needed.	Revision

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## CHAPTER 46

## SURVIVOR BENEFIT PLAN (SBP) – ANNUITIES

## 1.0 GENERAL

## 1.1 Overview

1.1.1. The SBP provides a monthly annuity of up to 55 percent of the annuity base amount with a cost-of-living adjustment (COLA), to an eligible spouse or children. The monthly annuity for a natural person with an insurable interest, which also includes a COLA, is 55 percent of the amount of the gross retired pay after the cost of participation is subtracted.

1.1.2. Effective December 23, 2016, Public Law (PL) 114-328, Section 642 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, amended Title 10, United States Code (U.S.C.), sections 1448, 1450, and 1451. The amendments expanded entitlement to the Special Survivor Indemnity Allowance (SSIA) and updated the amount of the annuity payable and the processes for paying an annuity to the survivors of Reserve Component (RC) members who die in the line of duty and RC members who die after completing the years of service to be eligible for a non-regular retirement. See Chapter 54.

1.1.3. Public Law (PL) 116-92, Section 622 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020, signed into law on December 20, 2019, amended 10 U.S.C. §1450(c). This legislation created a multi-year phase out of the SBP-Dependency Indemnity Compensation (DIC) offset, beginning in FY 2021, as follows:

1.1.3.1. For amounts payable for all periods prior to and including the period ending on December 31, 2020, the full amount of DIC paid by the [Veterans Administration \(VA\)](#) to the surviving spouse and former spouse will continue to offset the SBP. The spouse or surviving spouse will continue to receive SSIA, if eligible.

1.1.3.2. For amounts payable for the period beginning on January 1, 2021, but ending on December 31, 2021, two-thirds of the amount of DIC paid by the VA to the surviving spouse or former spouse will offset the SBP annuity amount. The spouse or surviving spouse will continue to receive SSIA, if eligible.

1.1.3.3. For amounts payable for the period beginning on January 1, 2022, but ending on December 31, 2022, one-third of the amount of DIC paid by the VA the surviving spouse or former spouse will offset the SBP annuity. The spouse or surviving spouse will continue to receive SSIA, if eligible.

1.1.3.4. For amounts payable for all periods beginning on or after January 1, 2023, there will be no reduction.

Example: A surviving spouse who is entitled to a \$1,200 SBP annuity and \$1,500 DIC paid by VA, will continue to have his or her SBP fully offset in 2020. Because DIC is greater than the amount of SBP, it results in a net SBP payment of \$0 after offset for all months of 2020. Beginning in 2021, this same spouse would receive a \$200 SBP payment, because only \$1,000 of the \$1,500 DIC paid by VA (i.e., two-thirds of the \$1,500 amount of DIC) would be counted against the SBP. In addition, this spouse would receive SSIA because he or she remains subject to the SBP-DIC offset. In 2022, this same surviving spouse would receive \$700 for SBP, because only \$500 DIC paid by VA (i.e., one-third of the \$1,500 amount of DIC) would be counted against the SBP. This spouse would remain eligible for SSIA. In 2023, the offset is lifted and the surviving spouse receives both SBP and DIC in full. In 2023, SSIA is no longer payable.

1.1.4. The SBP annuity is restored on January 1, 2023, to any eligible surviving spouse for whom the service previously determined it was appropriate to provide an annuity for the dependent child(ren) of the member instead of the surviving spouse in accordance with paragraph 3.2.3.

1.1.5. Effective January 1, 2023, SSIA is discontinued.

## 1.2 Purpose

The purpose of this chapter is to provide information for those eligible to receive annuities, how they are paid, and the amounts to be paid.

## 1.3 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, 26, and 38. 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.

## 2.0 ANNUITIES

### 2.1 Eligible Annuitants

2.1.1. Spouse or Former Spouse Only. The SBP annuity for an eligible spouse or former spouse may be reduced by a percentage of Dependency and Indemnity Compensation (DIC) if the annuity is payable on behalf of the same member. See paragraph 1.1.5, section 5.0 and Table 46-1.

2.1.2. Child Only. If there is more than one eligible child, the annuity is paid in equal shares. The annuity for children is not subject to DIC offset.

2.1.3. Spouse and Child or Former Spouse and Child. The annuity is paid to the spouse or former spouse as long as eligibility exists. If the surviving spouse or former spouse dies, remarries before age 55, or otherwise loses eligibility, the annuity is paid to the child annuitant(s). An election for the former spouse and child includes only the children that resulted from the

member/former spouse marriage. The annuity amount for the spouse or former spouse is shown on Table 46-1. The annuity for children is divided into equal shares.

2.1.4. Natural Person With an Insurable Interest. The annuity is payable only to the natural person with an insurable interest as designated by, or on behalf of, the member. The initial annuity amount is 55 percent of the member's gross retired pay less the SBP premium cost at the time of member's death.

## 2.2 Payment of Annuity

2.2.1. Payments in General. Payment of an SBP or RC-SBP annuity is not automatic. Before any claim for an annuity can be considered, it is necessary for the claimant to submit a claim in writing. The claim must minimally contain a signature and an address. Before the annuity can be paid, the claimant must submit a DD Form 2656-7, "Verification for Survivor Annuity." The information of that form allows DFAS to verify information necessary to start annuity payments.

The SBP annuity is paid monthly to the eligible annuitant. The SBP payment is effective the first day after the death of a member unless death occurs on the 30th day of a 31-day month. In that case, the annuity starts on the first day of the next month. Annuity payments end effective the last day of the month before the month in which the annuitant becomes ineligible.

### 2.2.1.1. Payments subject to offset:

2.2.1.1.1. When the payment of premiums is in arrears, no annuity may be paid until the unpaid premiums, with interest accrued at the rate approved by the Department of Defense (DoD) Board of Actuaries under 10 U.S.C. § 1465 for the purpose of determining the retirement accrual cost, has been recovered. See Office of the Actuary and subparagraph 6.2.3. For the establishment and collection of a debt for unpaid SBP premiums, see Volume 16, Chapter 2.

2.2.1.1.2. Debts to the United States or any of its instrumentalities incurred by the annuitant may be offset from the annuity.

2.2.1.2. Debts of a deceased member, other than for delinquent premiums, are not the responsibility of the annuitant and may not be offset involuntarily against the annuity.

2.2.1.3. The annuity is neither assignable nor subject to execution, levy, attachment, or garnishment (except for alimony or child support).

2.2.1.4. If the Secretary of the Military Department concerned (or designee) determines that a participating member is presumed dead, the annuity accrues from the first day after retired or retainer pay was suspended or would have been suspended had the member been in receipt of pay on the basis that the member is missing.

2.2.1.5. Checks are not mailed to an annuitant living in a currency-blocked country. See [Title 31, Code of Federal Regulations \(CFR\), section 211.1](#) for specific conditions for withholding the delivery of checks to addresses outside the United States.

## 2.2.2. Third Party Payees

2.2.2.1. Trustees in Bankruptcy. The annuity may be paid on behalf of an annuitant to a trustee in bankruptcy pursuant to an order of the bankruptcy court in a proceeding under [Chapter 13 of the Bankruptcy Code](#) since such proceeding is voluntary.

2.2.2.2. Incapacitated Annuitants. An annuity may be paid to a third party on behalf of an incapacitated annuitant only if the third party has been appointed as guardian, custodian, or other fiduciary pursuant to a state court order or has been designated a representative payee under subparagraph 2.2.3. Otherwise, the annuity may be paid only to the annuitant unless the annuitant has been determined to be incompetent of managing his or her own affairs by a state court, physician, or psychologist. If the annuity cannot be paid directly to the annuitant or to a third party, amounts will remain unpaid and credited on account until the annuitant is determined to be competent or until a third party has been properly appointed to receive the annuity on behalf of the annuitant. The annuity payment will still be treated as income to the annuitant. Regardless of whether the Representative Payee is a trustee (unless a trustee of Special Needs Trust as described in subparagraph 2.2.3.6.), an Internal Revenue Service (IRS) Form 1099, Miscellaneous Income, will be issued in the annuitant's name.

2.2.2.3. Power of Attorney. An eligible annuitant who is physically or mentally incapacitated (but who has not been determined to be mentally incompetent by a state court, physician, or psychologist) may accept assistance from a person holding a power of attorney in completing (including the signature element) and filing the annuity application form. Benefit payments based on an annuity application signed by the person holding the power of attorney must be made payable directly to the annuitant.

2.2.2.4. Minor Child Annuitants. An annuity for a minor child is 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 as the custodian, or to a representative payee of the child. An annuity may be paid directly to the child when the child is considered to be of majority age under the law in the state of residence. The child is considered an adult for annuity purposes and a custodian or legal fiduciary is not required. See Appendix H for age of majority by state.

2.2.2.5. Surety Bonds. In cases where it appears necessary to protect the annuitant, the Secretary of the Military Department concerned may require a person receiving payments on behalf of the annuitant to provide a surety bond in an amount sufficient to protect the interests of the annuitant. The payee may pay for such bond(s) out of the SBP annuity. This is part of the periodic financial accounting by the payee. The Secretary of the Military Department concerned will determine the amount necessary in the surety bond(s) based on the amount of the SBP annuity payable. A surety bond ordinarily will not be required if the payee is a close family member or a government or financial institution.



2.2.2.6. Special Needs Trusts (SNT). A special needs trust is also known as a supplemental needs trust. An SNT is a legal instrument that can be established in order to ensure that assets are retained that can be used for the supplemental needs of a certain disabled individual, without disqualifying that individual from other Federal or State benefits that the disabled individual may be entitled to receive. The NDAA for FY 15, PL 113-291, amended 10 U.S.C. §§ 1448, 1450, and 1455, to give Military Service members and retirees the option to direct payment of an SBP annuity for a dependent child to an SNT. An SNT is a legal instrument specifically designed for the benefit of a person considered disabled under [42 U.S.C. § 1382c\(a\)\(3\)](#). State law governs an SNT. In accordance with the SBP statute, an SNT must also comply with [42 U.S.C. § 1396p\(d\)\(4\)](#). If an SNT was not designated as a beneficiary prior to the death of the Service member or retiree who had previously elected child coverage, the disabled dependent child's surviving parent, grandparent, or court-appointed legal guardian or fiduciary may irrevocably elect to designate an SNT as beneficiary. The following documentation is required to establish an SNT as beneficiary:

2.2.2.6.1. A written statement of the decision to have the annuity paid to the SNT;

2.2.2.6.2. An attorney's SNT Certification; and

2.2.2.6.3. The name and tax identification number for the SNT by or before the time the beneficiary applies for their annuity. Certified SNT paperwork must be submitted to the following Defense Finance and Accounting Service (DFAS) address:

DFAS  
U.S. Military Retired Pay  
8899 East 56th Street  
Indianapolis, IN 46249-1200

There are two types of SNTs that comply with 42 U.S.C. § 1396p(d)(4), a "First-Party SNT" prepared in compliance with 42 U.S.C. § 1396p(d)(4)(A), and a "Pooled Trust" prepared in compliance with 42 U.S.C. § 1396p(d)(4)(C).

2.2.2.6.3.1. First-Party SNT. A First-Party SNT is a type of SNT [that](#) is established by a disabled dependent child's parent, grandparent, legal guardian, or a court for the benefit of the disabled dependent child. Transfers into a First-Party SNT do not prevent a person with special needs from accessing government benefits. See 42 U.S.C. § 1396p(d)(4)(A).

2.2.2.6.3.2. Pooled Trust. A pooled trust is a type of SNT established by a non-profit organization, with individual beneficiaries creating accounts within the larger trust. Thus, the assets of many people with special needs are "pooled." Transfers into a pooled trust, like transfers into a First-Party SNT, do not prevent a person with special needs from accessing government benefits. See 42 U.S.C. § 1396p(d)(4)(C).

2.2.2.7. Accounting. Any person receiving payment on behalf of the annuitant, except as stated in subparagraph 2.2.3., is required to maintain and, upon request by the

Secretary of the Military Department concerned, provide a periodic accounting of expenditures and investments of amounts paid to the payee. If the payee is a close family member or a government or financial institution, a periodic accounting will not be required, but may be requested. In situations where a periodic accounting is required, it ordinarily will be submitted annually, unless the Secretary of the Military Department concerned determines that a more frequent submission is required.

2.2.2.7.1. Final financial reporting will be required upon the loss of a beneficiary's eligibility, a change of representative payee, or the determination later that an annuitant is competent to manage their financial affairs.

2.2.2.7.2. Major expenditures (i.e., those in excess of \$1,000 or the value of the annuity for 1 year, whichever is less) from the payee's bank account for the annuitant require prior written approval by the Secretary of the Military Department concerned.

2.2.2.7.3. If the Secretary of the Military Department concerned has evidence to suggest that the annuity funds have been or are being misused by the payee, the annuity may be suspended. An investigation will be conducted to determine if a new payee should be appointed or if payments may be resumed to the payee.

2.2.3. Representative Payee. The SBP annuity due a minor who is a mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed may be paid to a representative payee who, in the judgment of the Secretary of the Military Department concerned, is responsible for the care of the annuitant. The representative payee is required to spend or invest the amount paid on behalf of the annuitant solely for the benefit of the annuitant. The representative payee must certify that SBP payments received on the annuitant's behalf are used for the annuitant's benefit.

2.2.3.1. An annuitant is determined to be incompetent if the Secretary of the Military Department concerned receives an actual determination of incompetency made either by a state court or by a physician or psychologist. A representative payee will not be established solely on the basis of a letter from a third party that an annuitant is incapable of handling financial affairs. The annuitant will be notified of actions being taken to make a determination of incompetency and will be provided an opportunity to review the evidence being considered. The annuitant will also have the opportunity to submit additional evidence before a determination is made.

2.2.3.2. If a court order provides for payment of a fee to the representative payee, or if the Secretary of the Military Department concerned determines that payment of a fee is necessary in order to obtain the fiduciary services of a representative payee, a monthly fee will be allowed. In such circumstances, a fee of 4 percent of the monthly SBP annuity will be allowed, unless a court order dictates a lesser fee. In the case of a spouse or former spouse annuitant, the fee will be no more than 4 percent of the adjusted annuity (gross annuity less any DIC offset). Any court order that provides for a fee in excess of 4 percent will be limited to 4 percent. The representative payee will be notified of the fee percentage allowed. The fee is not a separate

payment mailed to a representative payee, but can be withheld by the representative payee from the monthly annuity payment. The fee is part of the periodic financial accounting by the representative payee.

2.2.3.3. The selection of a representative payee will be made on the basis of the individual annuitant's circumstances. Generally, the order of preference for appointing a representative payee is:

2.2.3.3.1. Spouse,

2.2.3.3.2. Son or daughter or legally adopted son or daughter,

2.2.3.3.3. Brother or sister,

2.2.3.3.4. Parents,

2.2.3.3.5. Head of federal or state institution,

2.2.3.3.6. Trustee of a private trust, or

2.2.3.3.7. Any other individual whose appointment appears to be in the best interest of the annuitant.

Note: If more than one person or institution requests to be named the representative payee of the annuitant, the Secretary of the Military Department concerned will determine which applicant is a more appropriate payee.

2.2.3.4. In addition to SBP annuity payments (including payments to Minimum Income Widows covered under section 15.0), annuity payments under the Uniformed Services Contingency Option Act Retired Serviceman Family Protection Plan (RSFPP), and RCSBP may also be made to a representative payee.

2.2.3.5. The representative payee will be required to submit a Report of Existence (ROE) and a Certificate of Eligibility (COE) as specified in section 12.0 or 13.0.

2.2.3.6. An annuity paid to a person on behalf of the annuitant in accordance with these provisions discharges the obligation of the United States for the payment to the annuitant in the amount of the annuity paid.

2.2.4. Rounding. Monthly annuities, if not a whole dollar, are rounded to the next lower whole dollar (for example, if a monthly annuity is calculated to be \$500.99 the annuity paid will be \$500).

### 2.2.5. COLA

2.2.5.1. Normally, SBP annuities increase at the same time and by the same percentage that retired pay increases. Exception: When the payment of increased retired pay due to a COLA is delayed by law, the increased annuity due to a COLA is not delayed. The COLA applies to the monthly gross annuity amount before any reductions, such as DIC.

2.2.5.2. See subparagraph 15.2.1 regarding COLA for the minimum income widow annuity.

### \*2.3 More than One Annuity

A spouse or former spouse who is a potential SBP or RC-SBP beneficiary due to marriages to more than one member who participated in SBP may not receive a double SBP benefit and must choose which annuity to receive. Therefore, a surviving spouse may not receive more than one annuity concurrently as (a) the surviving spouse of two different members, (b) the surviving former spouse of two different members, or (c) the surviving spouse of one member and also the surviving former spouse of a different member. For example, if an individual is the surviving spouse of a member and also the surviving former spouse of a different member, the individual may only receive one annuity. In that circumstance, the surviving spouse must choose which annuity to receive. However, an individual may be the recipient of two or more annuities concurrently, as long as only one is a spouse or former spouse annuity.

Example: A child of two members could receive an annuity from each parent, or an individual who was a spouse beneficiary of one member could also be a beneficiary of another member under the insurable interest category.

## 3.0 DEATH OF MEMBER ON ACTIVE DUTY

### 3.1 Active Duty Deaths

3.1.1. SBP Benefits. SBP benefits under this section may be payable as provided in section 1.0 for:

3.1.1.1. A member who dies while on active duty after:

3.1.1.1.1. Becoming eligible to receive retired pay;

3.1.1.1.2. Qualifying for retired pay, except that the member has not applied for or been granted that pay; or

3.1.1.1.3. Completing 20 years of service but before the member is eligible to retire as a commissioned officer, because the member has not completed the required years of active commissioned service (usually 10 years); or

3.1.1.2. A member who dies on active duty in the line of duty on or after September 10, 2001. Active duty includes members on active duty for annual training. Reserve members on active duty are included whether or not their orders specify a period of more than 30 days. Limited benefits may be payable under this section when the death is not in the line of duty in the case of a member who is eligible to receive retired pay prior to the date of death.

3.1.2. Death in the Line of Duty. If the member was on active duty at the time of death and death is in the line of duty, the death qualifies for SBP benefits under this section.

3.1.3. Death is Not in the Line of Duty

3.1.3.1. If the member was on active duty and retirement eligible at the time of death, as described in paragraph 3.1 and death is not in the line of duty, the SBP base amount is equal to the member's retired pay. The retired pay is computed as if the member were retired for length of service under applicable law of the respective service of the deceased member.

3.1.3.2. If the member was not on active duty, or was on active duty but was not eligible for retired pay and death is not in the line of duty, the member's death does not qualify for SBP benefits.

3.2 Qualified Annuitants

The annuity payment will be made based on the following priority:

3.2.1. Former Spouse Based on the Court Order. The annuity is payable to a former spouse if the member is required by a court order or spousal agreement or has made an election to provide such coverage or if the former spouse has deemed an election in accordance with 10 U.S.C. § 1450(f)(3). **No payment may be made to a surviving spouse if the member is required under a court order to provide an annuity to a former spouse even if the former spouse has not deemed an election in accordance with 10 U.S.C. § 1450(f)(3).** If there are multiple court orders ordering the member to elect former spouse SBP coverage, the court order with the earliest date will take precedence.

3.2.2. Current Spouse. The annuity is payable to a surviving spouse unless the annuity is payable to a former spouse.

3.2.3. Child. The annuity is payable to the dependent children of the member when:

3.2.3.1. There is no eligible former spouse and either there is no eligible surviving spouse or the surviving spouse later dies; or

3.2.3.2. For a member who dies on or after October 7, 2001, but before January 1, 2023, the Secretary of the Military Department concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children instead of paying an annuity to the surviving spouse.

3.2.3.3. Effective January 1, 2023, if after consultation with the surviving spouse, the service previously determined it was appropriate to provide an annuity for the dependent child(ren) of the member instead of the surviving spouse, the annuity will be restored to the surviving spouse if still eligible. If the surviving spouse is ineligible to receive SBP, the annuity shall continue to be paid to the eligible child or children, unless and until the spouse regains SBP eligibility.

3.2.4. Insurable Interest Deemed Election. If no annuity is payable under subparagraphs 3.2.1, 3.2.2, or 3.2.3, the Secretary of the Military Department concerned may pay an annuity to a natural person with an insurable interest in the member, if the person is a dependent of the member as defined in [10 U.S.C. § 1072\(2\)](#).

### 3.3 Annuity Amount

3.3.1. Qualified Death in the Line of Duty. The SBP base amount is equal to the higher of the retired pay of the member based on length of service, or the retired pay as if the member retired with a total (100 percent) disability equal to 75 percent of the appropriate retired pay base. The annuity is computed at 55 percent of the SBP base amount. For members of the RCs who die while serving on active duty, the retired pay base will be computed as if the member had been entitled to basic pay for the 36 months preceding retirement or the entire period the member was a member of a uniformed service (if less than 36 months), regardless of whether the member served the entire period on active duty.

3.3.2. Qualified Death Not in the Line of Duty. The SBP base amount will be computed as if the member retired for length of service based on the final basic pay or high-36 average as applicable. However, for members who elected to receive the Career Status Bonus (see Volume 7A, Chapter 66), the SBP base will be computed using the Reduced Retirement (REDUX) method with the prescribed reduced COLA. The annuity is computed at 55 percent of the SBP base amount.

3.3.3. Insurable Interest Deemed Election. If an annuity is payable pursuant to subparagraph 3.2.4., the SBP base amount is equal to retired pay computed as if the member retired with a total (100 percent) disability, which is equal to 75 percent of the appropriate retired pay base, less the cost of participation. The annuity is computed at 55 percent of the SBP base amount.

### 3.4 Line of Duty Determination

3.4.1. Purpose. For the purpose of determining eligibility for SBP benefits, a member's death will generally be considered to have occurred in the line of duty unless the death:

3.4.1.1. Occurred while the member was not serving on active duty;

3.4.1.2. Was the result of the member's own intentional misconduct or willful negligence; or

3.4.1.3. Occurred during a period of unauthorized absence.

3.4.2. Investigation to Determine the Cause of Death. The Military Services will conduct an investigation and make a written finding as to whether a member's death was in the line of duty while the member was on active duty. The written finding must describe the circumstances under which the member died, and it also must address whether the death was caused by the member's own intentional misconduct or willful negligence, or whether the death occurred during a period of unauthorized absence.

### 3.5 Responsibilities

3.5.1. Military Services. The Military Services must review the death of each member who died on active duty to ascertain whether the death was in the line of duty and whether there are any qualified survivors entitled to an SBP annuity. The Military Services will inform DFAS-CL of their line of duty determinations using the DoD (DD) Form 1300, Report of Casualty; section 10 of the DD Form 261, Report of Investigation Line of Duty and Misconduct Status; or any other form authorized under individual Service regulations. All in the line of duty determinations must be supported by a written finding describing the circumstances of death that support the line of duty determination.

3.5.2. DFAS-CL. DFAS-CL does not require a copy of the written finding, only an official communication from the Military Service to indicate the Military Service's determination that death is in the line of duty, i.e., "YES" or "NO." Once DFAS-CL receives the determination, they will compute and pay SBP annuities to qualified survivors for qualified deaths.

### 4.0 DEATH OF MEMBER ON INACTIVE DUTY TRAINING (IDT)

An RC member who dies from injuries or illness incurred or aggravated while performing IDT is entitled to coverage under the SBP program if the death is determined to have occurred in the line of duty. See Chapter 54.

### 5.0 DEPENDENCY AND INDEMNITY COMPENSATION (DIC) OFFSETS AND SPECIAL SURVIVOR INDEMNITY ALLOWANCE (SSIA)

#### 5.1 When Required

The gross SBP annuity payable to a surviving spouse may be offset by an award of DIC, unless the eligible surviving spouse remarries after age 57 (after age 55 on or after January 5, 2021), and thereby, retains entitlement to DIC and SBP. A surviving spouse who receives DIC due to remarriage after age 57 (or age 55 as applicable) becomes entitled to the full SBP annuity unreduced by DIC, as well as the full DIC entitlement. Effective January 5, 2021, 38 USC § 103(d)(2)(b) was amended, reducing the DIC remarriage provision from age 57 to 55.

A multi-year phase out of the DIC offset of SBP annuities began on January 1, 2021. See subparagraphs 1.1.3 – 1.1.5 for details regarding the phase out periods and corresponding offset amounts.

## 5.2 DIC Offset

The Department of Veterans Affairs (VA) determines entitlement to and the amount of the DIC award. DIC rates are listed in Appendix L. DIC rates were based on pay grade of member until January 1, 1993. Effective January 1, 1993, DIC is payable at a flat rate, with COLA. The survivors of members who died before January 1, 1993 continue to receive DIC rates based on pay grade if it exceeds the flat rate. The award is effective the first day of the month in which the retiree dies. The DIC payment begins on the first day of the month after the effective date of the award. Except as provided in subparagraph 5.2.3., the SBP annuity is reduced as of the date on which the DIC payment begins. For offset purposes, the DIC entitlement does not include any amount attributable to child entitlement or aid and attendance. Payment of the SBP annuity is not withheld or delayed pending verification of the DIC award if the annuitant signs a statement authorizing the VA to collect any overpayment that may result. A multi-year phase out of the DIC offset of SBP annuities began on January 1, 2021. See subparagraphs 1.1.3 – 1.1.5 for details regarding the phase out periods and corresponding offset amounts.

### 5.2.1. Premium Refund Due to DIC Award

5.2.1.1. Partial Refund. When an annuity is reduced due to DIC entitlement, a refund of SBP premiums is made based on the difference between the actual premiums paid and the premiums that would have been needed to provide the annuity payable after the DIC reduction. If DIC entitlement was lost due to the remarriage of the surviving spouse occurring before January 5, 2021, after age 55, but prior to age 57, SBP may be reinstated in full. See subparagraph 5.2.3.

5.2.1.2. Full Refund. For periods prior to January 1, 2020, when DIC is equal to or greater than the annuity, a portion of the SBP annuity is withheld, except under the conditions shown in subparagraph 5.2.3. The SBP premium is then refunded after any annuity debt is liquidated. If the annuitant dies before a refund of SBP premium is made, the refund must be made to the annuitant's beneficiaries in the order of precedence. See Chapter 31 for further information.

5.2.1.3. Surviving spouses of retired members who received a refund of SBP or RC-SBP premiums, whether in part or in full, due to the DIC offset prior to January 1, 2020 will not be required to repay such premiums when SBP or RC-SBP payments are adjusted in accordance with subparagraphs 1.1.3 – 1.1.5.

5.2.1.4. Surviving spouses of retired members who died on or after January 1, 2020, but before January 1, 2023, will receive a prorated refund of SBP or RC-SBP premiums for the period of time that the surviving spouse is subject to the DIC offset. Surviving spouses of retired members who die on or after January 1, 2023, will not receive a refund of SBP or RC-SBP premiums.

5.2.1.5. Supplement Survivor Benefit Plan (SSBP). SSBP premiums are not refunded. SSBP was repealed effective April 1, 2008.



5.2.2. Sample Computation of Refund. See Tables 46-2 and 46-3 for a sample computation of a refund. SSBP was repealed effective April 1, 2008.

5.2.3. Reinstatement of SBP Annuity Upon Loss of Entitlement to DIC Because of Remarriage Between Ages 55 and 57

5.2.3.1. If the spouse whose SBP annuity entitlement was adjusted under subparagraph 5.2.1 subsequently loses entitlement to DIC because of remarriage **before January 5, 2021, and** occurring on or after the beneficiary's 55<sup>th</sup> birthday, but before age 57, the annuity is reinstated under conditions specified in subparagraph 5.2.3.2 on the effective date of the loss of DIC entitlement. **Effective January 5, 2021, 38 U.S.C. § 103(d)(2)(B) was amended, reducing the DIC remarriage provision from age 57 to 55.** The annuity is adjusted to reflect all authorized COLAs.

5.2.3.2. The surviving spouse who loses entitlement to DIC must repay all amounts refunded under subparagraphs 5.2.1.1 and 5.2.1.2, in either a lump sum or installments. If the repayment is in installments, the installment payments are deducted from the SBP annuity payable. The installment will be 50 percent of the DIC amount or 50 percent of the gross annuity, whichever is less. When annuity is increased by a COLA, the same percentage increase will be applied to the installment deduction. Thereafter, interest accumulates on any unpaid balance until the full amount has been repaid. Thus, the remaining amount on the date of each installment deduction will be increased by a monthly factor based on the 12<sup>th</sup> root of 1 plus the current annual interest rate approved by the DoD Board of Actuaries under 10 U.S.C. § 1465 for the purpose of determining the retirement accrual cost. For the establishment and collection of a debt for refunded SBP premiums, see Volume 16, Chapter 2.

5.2.4. Late Award of DIC. When a claim for DIC is not filed within 1 year after the member's death, and the spouse received an SBP annuity, no cost refund is made when DIC is later awarded. The effective date of the reduced annuity is the date that the VA received the claim.

5.2.5. Special Survivor Indemnity Allowance (SSIA). A surviving spouse who is entitled to DIC under 38 U.S.C. § 1311 and who is not collecting the full amount of SBP due to receipt of DIC may be entitled to SSIA. SSIA is a separate fixed monthly entitlement, but may not exceed the amount of the annuity in any month that is subject to offset by the DIC. See 10 U.S.C. § 1450(m). Receipt of the SSIA is conditional upon the requirements enumerated in the law. See subparagraphs 1.1.3 – 1.1.5 for details on the DIC offset phase out period.

### 5.3 Social Security Offset

Effective April 1, 2008, the Social Security Offset Method was eliminated permanently for all annuitants.

## 6.0 CAUSES OF OVERPAYMENTS AND SUSPENSION OF PAYMENT

### 6.1 General Causes of Overpayment

Generally, SBP annuity overpayments are caused by:

6.1.1. Failure to reduce an annuity by the amount of DIC;

6.1.2. Non-termination of annuity because of ineligibility;

6.1.3. Erroneous computation;

6.1.4. Insufficient or untimely information; or

6.1.5. A determination by the Secretary of the Military Department concerned (or designee) that a participating member is alive after the Secretary of the Military Department concerned previously determined that the member was presumed dead.

## 6.2 General Reasons for Suspension of Payment

Generally, payments are suspended for:

6.2.1. Non-receipt of a COE or ROE;

6.2.2. Non-receipt of verification of school attendance;

6.2.3. An annuitant will not receive annuity payments while there are still premiums owed on the SBP account. Once all premiums (with interest accrued at the rate approved by the DoD Board of Actuaries under 10 U.S.C. § 1465 for the purpose of determining the retirement accrual cost) that are owed have been recouped, payment of the annuity will commence/recommence;

6.2.4. Adjustment of the annuity due to administrative error; and/or

6.2.5. An incapacitated child over age 18 becomes independently capable of earning amounts sufficient for his or her own particular personal needs through substantial and sustainable gainful employment. Once suspended, payments can be reinstated. See paragraph 11.2.

## 7.0 LIABILITY AND OVERVIEW OF ANNUITANT INDEBTEDNESS

The annuitant is liable for debts created from the overpayment of an annuity. The member is liable for any indebtedness created because 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. § 1453](#). If the member dies before such payments are fully recovered, the annuitant may be liable for the indebtedness if such annuitant was the recipient of the annuity payments made under the presumption of death. See Volume 16, Chapter 2 for the collection of member's indebtedness.

## 8.0 LIQUIDATION OF DEBT

### 8.1 Debt Liquidation

Upon discovery of an overpayment, the annuitant must be provided with due process notice in accordance with Volume 16, Chapter 2, or in other regulations pertaining to debt collection found elsewhere. The due process notice must include the amount of the debt and the method in which the overpayment is being, or may be, liquidated.

## 8.2 Direct Remittance

The annuitant may liquidate the overpayment by making direct remittance to DFAS-CL.

## 8.3 Reduced DIC

The VA may reduce DIC and remit the amount collected to DFAS-CL.

## 8.4 Reduced SBP Annuity

DFAS-CL may reduce later SBP annuity payments.

## 9.0 WAIVER OF INDEBTEDNESS

### 9.1 Request a Waiver of Indebtedness

When applicable, DFAS-CL advises the annuitant of the right to request a waiver of indebtedness. The right to request a waiver does not constitute removal of the responsibility for repayment of the debt. If a waiver request is granted, repayment of the debt is not required.

### 9.2 Receipt of Waiver Request

Suspension of collection action may be authorized upon receipt of a waiver request. Refund of an amount withheld before receipt of a request for a waiver is not authorized. When a waiver is granted, any amount collected after the receipt of the waiver request is refunded to the annuitant.

## 10.0 TERMINATION OF ANNUITY

### 10.1 Time of Termination

Entitlement to an SBP annuity terminates effective as of the first day of the month in which eligibility is lost. The annuity is terminated immediately if a determination is made by the Secretary of the Military Department concerned (or designee) that a participating member is alive after it was previously determined that the member was presumed dead.

## 10.2 Reasons for Termination

The SBP annuity is terminated when:

10.2.1. The spouse or former spouse (spouse category) annuitant remarries before age 55 or dies. If the member also provided coverage for children, the full annuity is payable, in equal shares, to the remaining eligible dependent children effective on the first of the month in which the spouse or former spouse dies or remarries;

10.2.2. The child annuitant(s) lose eligibility because of:

10.2.2.1. Child's attaining age 18 and not pursuing a full-time course of study;

10.2.2.2. Marriage or death of child annuitant;

10.2.2.3. An incapacitated child over age 18 becomes independently capable of earning amounts sufficient for his or her own particular personal needs through substantial and sustainable gainful employment. This termination is not automatic; an annuitant will be given an opportunity to submit rebutting evidence. This annuity may be reinstated; see paragraph 11.2;

10.2.2.4. Termination of student status (child over age 18 and under age 22). If the student reaches age 22 before July 1 or after August 31 of a calendar year, the child's annuity terminates on the first of July after the student's 22<sup>nd</sup> birthday. If a student reaches age 22 between July 1 and August 31 (inclusive) of a calendar year, the student loses eligibility and the annuity terminates on the first day of the month in which the age of 22 was reached; or

10.2.2.5. Reinstatement of a spouse or former spouse (spouse category) annuity following divorce or annulment;

10.2.3. A natural person with an insurable interest dies. The termination is final because there are no provisions for designating a contingent survivor annuitant; or

10.2.4. The Secretary of the Military Department concerned (or designee) determines that a participating member is alive after it was previously determined that the member was presumed dead.

## 10.3 Death of Annuitant

For the payment of any unpaid annuity amounts, see Chapter 31.

## 11.0 REINSTATEMENT OF ANNUITY

### 11.1 Reinstatement of Spousal Annuity

11.1.1. Remarriage Before Age 55 Terminated by Death of Spouse. Reinstatement of the annuity is effective the first day of the month in which the death occurs. If annuity entitlement

from the terminated marriage exists, the spouse or former spouse may not receive both annuities but must elect the one desired. If the spouse or former spouse elects to receive the annuity that had formerly been terminated, the annuity is updated by any COLA increases that occurred after termination.

11.1.2. Remarriage Terminated by Divorce or Annulment. Reinstatement of the SBP annuity is effective the first day of the month in which the marriage terminated by divorce or annulment. Legal review is appropriate if discrepant information or annotations result in doubt or if the divorce or annulment was granted by a court in a foreign country. If the spouse or former spouse elects to receive the annuity that had formerly been terminated, the annuity is updated by any COLA increases that occurred after termination.

11.1.3. Loss of DIC Entitlement Because of Remarriage Between Ages 55 and 57. For periods prior to January 5, 2021, the annuity is reinstated effective as of the date of the loss of the DIC entitlement, adjusted to reflect all COLAs. Effective January 5, 2021, 38 U.S.C. § 103(d)(2)(B) was amended by reducing the DIC remarriage provision from age 57 to 55. See subparagraph 5.2.3.

## 11.2 Reinstatement of Child Annuity

11.2.1. Reinstatement of Annuity to Incapacitated Annuitant. An annuity to an incapacitated child over 18 years of age may be reinstated upon the recurrence of the original disability rendering the annuitant incapable of self-support, or if the annuitant furnishes evidence that, although engaged in substantial and sustainable gainful employment, wages are not sufficient to cover his or her particular personal needs.

11.2.2. Child Resumes School Attendance. The child's eligibility for an annuity that was terminated for school nonattendance is reinstated effective the first day of the month that the child resumes school attendance.

11.2.3. Child's Marriage Terminated by Annulment. An annulment of a child's marriage which renders the marriage void or invalid, or by a judicial decree by a court of competent jurisdiction declaring the marriage void, would serve as a basis for reinstating a child's eligibility for annuity prospectively from the date of the judicial decree. The termination of a child's marriage by death or divorce does not serve as a basis for reinstatement of annuity eligibility.

## 12.0 CERTIFICATE OF ELIGIBILITY (COE)

### 12.1 Purpose

The certificate validates continued eligibility of annuitants, whether eligible spouse, former spouse, or children. The spouse, former spouse, and the child must meet the eligibility requirements as outlined in Chapter 44.

## 12.2 Failure to Furnish Certificate

Annuity payments are suspended if the annuitant, custodian, or legal fiduciary fails to furnish the certificate as required. Payments are restarted only after receiving satisfactory proof of eligibility.

## 12.3 Method of Completing COEs

The annuitant as identified in paragraph 460201 may submit the required certification in writing or by electronic signature via [myPay](#). A valid electronic signature must include the annuitant's Social Security number (SSN) and personal identification number. If annuity payments are made to a representative payee or other third party on behalf of the annuitant, the third party may submit the required COE by electronic signature via myPay, but the annuitant's name must also accompany the electronic signature. An electronic signature is not authorized for medical certifications or intent to attend school.

## 12.4 COE Not Required

12.4.1. 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.

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

## \*12.5 Frequency of Certification

12.5.1. Annually. A COE must be submitted annually for a spouse or former spouse annuitant under age 55, and custodian, or legal fiduciary for a minor child. After the spouse/former spouse has reached age 55, the certificate is no longer required.

12.5.2. Biennially. A medical certification must be submitted to DFAS-CL every 2 years for an incapacitated child over 18 years of age, unless medical prognosis indicates the disability is permanent.

12.5.3. Other. A student between the ages of 18 and 22 must submit 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.

12.5.3.1 A payment to a student continues during any interval between school years that does not exceed 150 days if the student demonstrates, to the satisfaction of DFAS-CL, that the student has a bona fide intention of resuming or continuing a full-time course of study or training in a recognized educational institution immediately after that interval.

12.5.3.2. An eligible student annuitant under SBP properly enrolled in a recognized educational institution employing the usual quarter or semester system, who becomes ill or

requires non-elective surgery during the school term, retains his or her student status for the rest of that term.

#### \*12.6 Exceptions to COE and ROE Requirements

The Director, DFAS or designee may temporarily suspend COE/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. The action to suspend the ROE takes into consideration audit and risk management protocols including the ability to validate the identity of the annuitant from other government sources.

### 13.0 Report of Existence (ROE)

#### 13.1 Purpose

The ROE fulfills the requirement for:

13.1.1. An annuitant who receives payment through foreign postal channels.

Note: 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.

13.1.2. A mentally incompetent annuitant who receives payments through either a court-ordered legal representative or representative payee.

#### 13.2 Frequency

The ROE is required on a semiannual basis for an annuitant described in paragraph 13.1. Receipt of the certificate semiannually verifies the annuitant's existence. Under no circumstances may the ROE be signed by other than the annuitant, custodian, or legal fiduciary; however, an electronic signature is authorized via myPay. A valid electronic signature must include the annuitant's SSN and personal identification number. If annuity payments are made to a representative payee or other third party on behalf of the annuitant, the third party may submit the required certification by electronic signature via myPay, but the annuitant's name must also accompany the electronic signature.

#### 13.3 Failure to Return ROE

Annuity payments are 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.

#### \*13.4 Exceptions to ROE Requirements

See subparagraph 12.6

## 14.0 TAXABILITY OF ANNUITIES

### 14.1 Taxability of SBP Annuity Payments

SBP annuity payments are taxable for Federal income tax purposes. See [IRS Publication 525](#) for exceptions. In the case of a representative payee receiving an annuity payment on behalf of an annuitant, the income is attributable to the annuitant and an IRS Form 1099 will be issued in the annuitant's name.

### 14.2 Taxability of SBP Cost Refunds

A refund of SBP costs (i.e., SBP premiums), resulting from an administrative error, correction of records, or award of DIC may or may not be taxable income to the member or the annuitant. The taxability of an SBP cost refund depends on the source from which it is made, as discussed in this section (also see Table 46-3). The SBP cost refund:

14.2.1. Constitutes taxable gross income to the retired member or the annuitant when it includes premium deductions taken from the retired member's taxable retired pay in order to pay for the cost of SBP coverage;

14.2.2. Does not constitute taxable gross income to the retired member or the annuitant when it is made from the retired member's direct remittance payments (by check or electronic mechanism, i.e., Pay.gov or Electronic Fund Transfer) to pay for the cost of SBP coverage; and

14.2.3. Does not constitute taxable gross income to the retired member or the annuitant when it is made from the retired member's VA disability compensation or by deduction from nontaxable military disability retired pay.

### 14.3 Federal Income Tax Withholding (FITW)

14.3.1. Monthly or Periodic Payments. Monthly or periodic SBP annuity payments are treated as income for FITW purposes. An annuitant, however, may elect no withholding of Federal income tax. In the absence of an annuitant election, or if the annuitant does not otherwise submit a withholding certificate, DFAS-CL will withhold on the basis of "married, three exemptions." The annuitant may use Form W-4P, Withholding Certificate for Pension and Annuity Payments, or any substitute form furnished by DFAS.

14.3.2. Notice Requirements. DFAS-CL must advise the annuitant of the withholding requirement, as well as the right to elect that no tax be withheld, when making the first monthly or periodic payment to the annuitant. Thereafter, DFAS-CL must provide 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 an election, or request any rate of withholding.



### 14.3.3. Lump-Sum (One-Time) or Non-Periodic Distribution Payments

14.3.3.1. SBP Cost Refunds. An SBP cost refund is a refund of premiums rather than a distribution of benefits. As a non-periodic distribution, an SBP cost refund is subject to FITW at the rate of 10 percent. The annuitant, however, may elect no withholding of FITW. The annuitant has the right to make an FITW election for this refund separately from any election already in operation for all other SBP annuity payments.

14.3.3.2. Other. Retroactive SBP annuity payments paid in a lump sum constitute periodic distributions and are subject to the tax withholding rules of subparagraph 14.3.1. Likewise, if the lump sum payment of an SBP annuity is the result of administrative error or delay in the start of an annuity, the payment is treated as a periodic payment subject to the withholding rules of subparagraph 14.3.1.

## 14.4 Income Exclusion

14.4.1. Consideration for Contract. The SBP annuitant is entitled to an income exclusion when, upon the death of the participant member, the “consideration for contract” has been excluded in whole from the member’s gross income. The member’s survivor receiving the annuity may exclude from gross income such annuity payments received until the total exclusion equals the portion of the “consideration of contract” not previously excluded from the member’s taxable income. DFAS-CL will accomplish the applicable direct reduction in taxable income for the annuitant and report the residual amount as taxable income on the annuitant’s IRS Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc. Contact the IRS for further assistance.

Example: When a member dies, and \$1,000 of the total “consideration for contract” was not excluded from the member’s non-disability retired pay, DFAS-CL will report the taxable annuity less \$1,000, and the surviving spouse will use this reported residual amount in his or her income-tax computation for the calendar year.

14.4.2. Direct-Cost Payments. The tax-free benefit on SBP premiums is not available to members who waived military retired pay to receive disability compensation from the VA. See Chapter 12. Instead, upon the member’s death, the annuity paid to the member’s survivor may qualify to be exempt from Federal income tax until the amount excluded equals the total of the member’s direct cost payments, as explained in paragraph 14.2.

## 14.5 Amount of Annuity Subject to 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-CL 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 can contact the IRS for further assistance.

## 14.6 State Taxation

The IRS Form 1099-R information is furnished to the appropriate state tax authority regardless of whether SBP annuities are subject to state inheritance or income tax. The method of calculating such tax depends upon the laws of the state concerned.

## 15.0 MINIMUM INCOME WIDOW/SURVIVING SPOUSE

### 15.1 Eligibility Criteria

An annuity under the minimum income widow/surviving spouse provision of the SBP law (see Chapter 42) is payable to surviving spouses who meet all of the following conditions:

15.1.1. The surviving spouse is not otherwise entitled to an annuity under other provisions of the SBP, or to DIC from the VA;

15.1.2. The surviving spouse is eligible for a widow's non-service connected death pension from the VA;

15.1.3. The surviving spouse has annual income from all sources (including amount of RSFPP annuity entitlement, but excluding the amount of VA pension), as determined by the VA, that is less than the annual income rate in Appendix R. If the surviving spouse previously was denied an annuity because of income in excess of income limitations, entitlement may exist upon notice from the widow or from the VA that his or her current yearly income, as determined by the VA, is less than the income limitation; and

15.1.4. The surviving spouse is a person who, on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974 became, a surviving spouse of a person who was entitled to retired or retainer pay when he or she died. Remarriage by the surviving spouse bars entitlement to an annuity under this provision of law unless the remarriage is terminated by an annulment. If there are questions as to whether an annuity should be reinstated after an annulment, refer the matter to the appropriate legal office.

Note: The DD 1885, Survivor Benefit Plan – Minimum Income Claim, and DD 1895, Request for Veterans Administration Pension and Annual Income Information, are used in administering the minimum income widow annuity. These forms are not currently available electronically. Hardcopies may be obtained by contacting the [DoD Forms Management Program](#) office.

### 15.2 Amount of Annuity

The maximum annuity payable is shown in Appendix R. The VA determines the yearly entitlement and advises DFAS-CL. This amount is prorated by DFAS-CL and is paid on a monthly basis.

15.2.1. The amount of the annuity is neither rounded nor increased to reflect retired pay COLA however, the annual income rates (Appendix R) is increased by the same amount and has

the same effective date whenever there is an increase in the limitation on annual income for the purposes of eligibility for pension benefits.

15.2.2. The annuity is subject to Federal income tax.

15.2.3. The annuity is neither assignable nor subject to execution, levy, attachment, or garnishment (except for alimony or child support).

### 15.3 Effective Date of Entitlement

The effective date of entitlement is the date on which the requirements of law are met, subject to the 6-year statute of limitations.

### 15.4 Annuitant, Mentally or Physically Incapacitated

15.4.1. If, for any reason, a minimum income surviving spouse is mentally or physically incapable of applying for or negotiating the payment of the annuity, a court-appointed guardian may act on his or her behalf. If no guardian has or will be appointed, the person having care, custody, and control of the incapacitated annuitant is authorized to act on his or her behalf.

15.4.2. An ROE is required when the annuitant receives payments through foreign postal channels, or through a third party if the annuitant is incapacitated. See section 13.0.

15.4.3. The yearly certificate of continued eligibility is not required.

### 15.5 Changes and Termination

Changes in the amount of the annuity payable or termination of the annuity must be in accordance with the effective date of change or termination as shown by the VA. If termination is due to death of the annuitant, entitlement ceases as of the first day of the month in which death occurs. Any amounts that are due and payable at the time of annuitant's death may, upon receipt of a properly executed and documented claim, be paid to the person living on the date of the annuitant's death who is the highest in the order of precedence. See Chapters 30 and 31.

### 15.6 Reopened Claim

DFAS-CL will reestablish an annuity that has been temporarily suspended because of the excessive income or net worth of the surviving spouse as of the first day of the month in which the surviving spouse meets the income level for an annuity as determined by the VA. Notification of any change in income is the responsibility of the surviving spouse.

### 15.7 Causes of Overpayment

The following are possible causes of overpayments of an annuity, but such list is not exhaustive:

15.7.1. The minimum income annuity for the surviving spouse was not timely terminated when his or her annual income exceeded the applicable rates shown in Appendix R;

15.7.2. Erroneous computation; or

15.7.3. Insufficient or untimely information.

## 15.8 Liability

The annuitant is liable for debts caused by overpayment of the annuity. The annuity may not be used as an offset against an indebtedness incurred by the member. The debt may be liquidated by:

15.8.1. The annuitant by making direct remittance to DFAS-CL;

15.8.2. The annuitant authorizing the VA to reduce the pension and remitting the amount collected to DFAS-CL; or

15.8.3. DFAS-CL by reducing later annuity payments to minimum income widows.

## 15.9 Waiver of Indebtedness

The request for waiver consideration is handled under the provisions of section 9.0.

Table 46-1. Annuity for Surviving Spouse or Former Spouse

<b>R U L E</b>	<b>If member dies or is declared dead</b>	<b>and</b>	<b>and the annuitant</b>	<b>then the annuity is (Notes 2 and 6)</b>	<b>and is offset by (Notes 9, 10 and 11)</b>
<b>1</b>	in a retired status	the member elected to participate in the program	was married to member on date of election or on date of retirement and is married to member at time of member's death (Note 1)	55 percent of base amount of coverage on date of member's death	DIC.
<b>2</b>	in a retired status	the member elected to participate in the program	was married to member a minimum of 1 year at time of member's death (Note 3)	55 percent of base amount of coverage on date of member's death	DIC.
<b>3</b>	in a retired status	the member elected to participate in the program	is the parent of a "living issue" of the marriage which occurred after the date of retirement (Note 4)	55 percent of base amount of coverage on date of member's death	DIC.
<b>4</b>	in a retired status	the member became eligible and elected to participate on or after September 8, 1982	is the former spouse of a member when member became eligible or the former spouse that a member acquired after becoming eligible to participate and who had been married to member at least 1 year or is the parent of issue of that marriage (Note 4)	55 percent of base amount of coverage on date of member's death	DIC.
<b>5</b>	on active duty	the member's death was found to be in the line of duty	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay base to which member would have been entitled had they been retired for a 100 percent disability on the date of death	DIC.

Table 46-1. Annuity for Surviving Spouse or Former Spouse (Continued)

<b>R U L E</b>	<b>If member dies or is declared dead</b>	<b>and</b>	<b>and the annuitant</b>	<b>then the annuity is (Notes 2 and 6)</b>	<b>and is offset by (Notes 9, 10 and 11)</b>
<b>6</b>	on active duty and was entitled to retired or retainer pay,	the member's death was found to be NOT in the line of duty	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled at date of death based upon the member's years of active service	DIC.
<b>7</b>	on active duty and qualified for retired pay but had not yet applied for or been granted such pay or after completing 20 years of active service, but before member is able to retire as a commissioned officer because member has less than 10 years of active commissioned service (Note 7)	the member's death was found to be NOT in the line of duty	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled at date of death based upon the member's years of active service, in the case of a member who first became a member before September 8, 1980, use the rate of basic pay in effect for the grade in which serving at time of death, unless, as determined by the Secretary of the Military Department concerned, the member would have been entitled to be retired in a higher grade	DIC.

Table 46-1. Annuity for Surviving Spouse or Former Spouse (Continued)

<b>R U L E</b>	<b>If member dies or is declared dead</b>	<b>and</b>	<b>and the annuitant</b>	<b>then the annuity is (Notes 2 and 6)</b>	<b>and is offset by (Notes 9, 10 and 11)</b>
<b>8</b>	while eligible to provide an RC annuity but: (a) before being notified of retirement eligibility, or (b) during the 90-day period beginning when member receives notification of retirement eligibility	the member had not made an RCSBP election	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled on the date of death based upon the member's years of creditable service	DIC.
<b>9</b>	before becoming eligible to provide an RC annuity	the member's death is in the line of duty from injuries or illness incurred or aggravated while performing IDT (Note 9)	is married to member on member's date of death, or was the former spouse of a member required under a court order or spousal agreement to provide an annuity upon becoming eligible to participate	55 percent of retired pay to which the member would have been entitled on the date of death based upon the member's years of creditable service	DIC.

Table 46-1. Annuity for Surviving Spouse or Former Spouse (Continued)

<b>R U L E</b>	<b>If member dies or is declared dead</b>	<b>and</b>	<b>and the annuitant</b>	<b>then the annuity is (Notes 2 and 6)</b>	<b>and is offset by (Notes 9, 10 and 11)</b>
<b>10</b>	and retired from both military and civil service	the member elected to participate in the program and did not waive military service for civil service purposes	is the spouse or former spouse of a member when member became eligible or the spouse or former spouse that a member acquired after becoming eligible to participate and who had been married to member at least 1 year or is the parent of issue of that marriage (Notes 1, 2, 3, and 4)	55 percent of base amount of coverage on date of member's death	DIC.
<b>11</b>	and retired from both military and civil service	the member elected to participate in the program and waived military retired pay for civil service purposes, but did not elect survivor coverage at any level under the civil service retirement	is the spouse or former spouse of a member when member became eligible or the spouse or former spouse that a member acquired after becoming eligible to participate and who had been married to member at least 1 year or is the parent of issue of that marriage (Notes 1, 2, 3, and 4)	55 percent of base amount of coverage on date of member's death	DIC

**Notes:**

- For a member married to the same spouse at time of retirement and date of death, the statute does not require that an intervening divorce be followed by 1 year of remarriage immediately before date of death.
- An annuity ends for a spouse of former spouse if remarried before age 55. If the annuity is terminated because of remarriage, it is reinstated if the new marriage ends.
- Minimum requirement for a marriage is 1 year.
- "Living issue" means the "issue by that marriage" or a child of such marriage who dies shortly after birth (such child's birth is the criterion, not the duration of the child's life).
- If member is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to participate in the SBP or if a member has made an election to provide former spouse annuity, the Secretary of the Military Department concerned may not pay the annuity to the surviving spouse.
- All SBP monthly annuities if not a multiple of \$1, is rounded to the next lower multiple of \$1.
- If the "forgotten widow" is entitled to an SBP annuity resulting from a subsequent marriage to a member, the individual may not receive the two annuities, but must elect in writing which to receive. The annuity for a "forgotten widow" is effective December 1, 1980.
- An offset for DIC must be removed if, [prior to January 5, 2021](#), an annuitant remarries subsequent to their 57<sup>th</sup> birthday. [DIC offset must be removed when an annuitant remarries after 55 on or after January 5, 2021.](#)
- The Secretary of the Military Department concerned may determine, after consulting with the surviving spouse, if it is more advantageous to pay the annuity to the child instead of the spouse due to the DIC offset of spouse SBP. See 10 U.S.C. § 1448(f)(1) and (2), and Chapter 54 for additional information. Effective January 1, 2023, the option for a surviving spouse of a member who dies on active or inactive duty, in consultation with the Secretary concerned to transfer the annuity to a surviving child will be discontinued. An eligible surviving spouse, who previously elected to transfer the annuity to a surviving child or children under the provisions of 10 U.S.C. § 1448(d)(2)(B), will have their eligibility restored. If the surviving spouse is ineligible to receive SBP, the annuity shall continue to be paid to the eligible child or children, unless and until the spouse regains SBP eligibility.
- See 10 U.S.C. § 1448(f) for additional information.



11. Per the NDAA for FY 2020, SBP-DIC offset will be phased out over multiple years beginning in FY 2021. See subparagraphs 1.1.3 – 1.1.5 for specific details regarding the phase out.

Table 46-2. Refund of Monthly Premium for SBP Effective January 4, 1994

<b>REFUND OF MONTHLY PREMIUM FOR SBP EFFECTIVE JANUARY 4, 1994 (See Note)</b>																									
The refund of premiums due a spouse or former spouse is determined using the following defined values:																									
<p><u>Current Basic Premium (CBP)</u>: The actual current premium amount for the basic SBP spouse coverage elected by the member. This does not include premiums for child coverage, SSBP premiums, open-enrollment premium additions, or any interest charges.</p>																									
<p><u>Current Recalculated Premium (CRP)</u>: The implied current premium associated with recalculated SBP basic annuity as reduced due to receipt of DIC. This does not include premiums for child coverage, SSBP premiums, open-enrollment premium additions, or any interest charges.</p>																									
<p><u>Total Premiums (TP)</u>: The Total Premiums paid by the member for basic SBP. (Lump sum open enrollment buy-in premiums are not refundable). This does not include any premiums for child coverage, SSBP premiums, or interest charges. This amount may be obtained from historical pay files pertaining to the member and/or from a file of total spouse premiums to be produced under the Director of Compensation, Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy) by the DoD Actuary and the Defense Manpower Data Center in coordination with DFAS-CL.</p>																									
<p><u>Premium Refund (PR)</u>: This is the premium refund amount. The premium refund is determined according to the following formula:</p> $PR = (1 - CRP/CBP) \times TP$																									
<p>For example: Member is a retired O-5, deceased July 1, 1993. Data is for June 1994.</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Retired Pay:</td> <td style="text-align: right;">\$2,297.00</td> </tr> <tr> <td>Current Basic Premium (CBP):</td> <td style="text-align: right;">149.31</td> </tr> <tr> <td>SBP Spouse Annuity: .55 X 2,297 =</td> <td style="text-align: right;">1,263.00 (Note 1)</td> </tr> <tr> <td>DIC Annuity:</td> <td style="text-align: right;">750.00 (Note 2)</td> </tr> <tr> <td>Recalculated SBP Annuity</td> <td style="text-align: right;">1,263.00 - 750.00 = 513.00</td> </tr> <tr> <td>Implied Base Amount = \$513.00/.55</td> <td style="text-align: right;">= 932.73</td> </tr> <tr> <td>Current Recalculated Premium (CRP)</td> <td style="text-align: right;">= 60.63</td> </tr> <tr> <td>Total Premiums (TP) from Data Files</td> <td style="text-align: right;">= 10,153.08</td> </tr> <tr> <td colspan="2">Premium Refund (PR) is:</td> </tr> <tr> <td>PR = (1 - 60.63/149.31) X 10,153.08</td> <td></td> </tr> <tr> <td>= (1 - .4060679) X 10,153.08</td> <td></td> </tr> <tr> <td>= .5939321 X 10,153.08 = 6,030.24</td> <td></td> </tr> </table>		Retired Pay:	\$2,297.00	Current Basic Premium (CBP):	149.31	SBP Spouse Annuity: .55 X 2,297 =	1,263.00 (Note 1)	DIC Annuity:	750.00 (Note 2)	Recalculated SBP Annuity	1,263.00 - 750.00 = 513.00	Implied Base Amount = \$513.00/.55	= 932.73	Current Recalculated Premium (CRP)	= 60.63	Total Premiums (TP) from Data Files	= 10,153.08	Premium Refund (PR) is:		PR = (1 - 60.63/149.31) X 10,153.08		= (1 - .4060679) X 10,153.08		= .5939321 X 10,153.08 = 6,030.24	
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= (1 - .4060679) X 10,153.08																									
= .5939321 X 10,153.08 = 6,030.24																									

Table 46-2 is effective January 4, 1994 for deaths which occurred on or after January 1, 1993.

**Notes:**

1. SBP Spouse Annuity amount is rounded down.
2. DIC Offset will be phased out over three years, see subparagraphs 1.1.3 – 1.1.5 for specific details.

Table 46-3. Taxability of SBP Cost Refunds

R U L E	If the source of refunded cost is for	then it is taxable to the	
		member	annuitant
1	premium deductions from taxable retired pay	yes (Note 1)	yes (Note 2)
2	premiums paid from VA Disability compensation or premiums deducted from nontaxable military disability retired pay	no (Note 3)	no (Note 4)
3	premiums paid directly by member	no (Note 5)	no (Note 6)

**Note:**

- Under [26 U.S.C. § 122](#), amounts deducted from military retired pay to fund an SBP annuity are excluded from income. Had the deducted amount been paid directly to the member instead, it would have been fully taxable. Consequently, refunded costs that were taken from military retired pay constitute gross income to the member.
- Under [26 U.S.C. § 691](#), the refund is income in respect of a decedent. The tax status of the refund is the same to the annuitant as it would have been had it been refunded to the member. Since the refund of costs deducted from military retired pay would have been gross income to the member, it is also gross income to the annuitant.
- VA disability compensation is exempt from taxation, as shown in [38 U.S.C. § 5301](#). Under certain circumstances, military disability retired pay is also nontaxable, as shown in [26 U.S.C. § 104](#). If the deducted amount had been paid directly to the member instead, it would have been exempt from taxation. Consequently, refunded costs that were taken from VA disability compensation or nontaxable military disability retired pay are also exempt from taxation.
- Under 26 U.S.C. § 691, the refund is income in respect of a decedent. The tax status of the refund is the same to the annuitant as it would have been had it been refunded to the member. Since the refund of costs deducted from VA disability compensation or from nontaxable military disability retired pay would have been excluded from the gross income of the member, it is excluded from the gross income of the annuitant.
- Amounts paid directly by the member to fund the SBP annuity were subject to tax before they were paid by the member. Direct payments by the member do not result in any tax benefit to the member. Consequently, refunds of premiums that were directly paid by the member constitute a nontaxable return of capital and do not constitute gross income.
- Because the refund would have been a return of capital in the hands of the decedent (and would not have been includible in the decedent's gross income), it is also a return of capital to the decedent's beneficiary (and is not includible in the gross income of the beneficiary of the decedent).

## \*REFERENCES

## CHAPTER 46 SURVIVOR BENEFIT PLAN (SBP) – ANNUITIES

## 1.0 – GENERAL (4601)

- 1.1.1 10 U.S.C. § 1451(a)
- 1.1.2 10 U.S.C. § 1448
- 10 U.S.C. § 1450(m)
- 10 U.S.C. § 1451
- 1.1.3 PL 114-328, Section 642, NDAA FY 2017  
PL 116-92, Section 622, NDAA FY 2020

## 2.0 – ANNUITIES (4602)

- 2.1 10 U.S.C. § 1450
- 2.1.2 10 U.S.C. § 1450(a)(3)
- 2.1.3 10 U.S.C. § 1447(7)-(10)
- 10 U.S.C. § 1450(b)
- 2.1.4 DoD Instruction (DoDI) 1332.42,  
December 30, 2020
- 2.2 10 U.S.C. §1450(b)  
DoDI 1332.42, December 30, 2020
- 2.2.1 DoDI 1332.42, December 30, 2020  
GAO Principles of Appropriations Law (1994),  
§ 12-16
- 2.2.1.1.1 10 U.S.C. § 1465
- 2.2.1.4 65 Comptroller General (Comp Gen) 260,  
B-222190, February 17, 1987
- 2.2.1.5 61 Comp Gen 245, B-205176, February 8 1982  
31 CFR 211.1
- 2.2.2.1 10 U.S.C. § 1455  
DoDI 1332.42, December 30, 2020
- 2.2.2.2 & 2.2.2.3 66 Comp Gen 340, B-226018, March 18, 1987
- 2.2.2.6 10 U.S.C. §§ 1448, 1450, and 1455
- 2.2.3 10 U.S.C. § 1455(d)
- 2.2.4 10 U.S.C. § 1451(g)(2)
- 2.3 DoDI 1332.42, December 30, 2020  
10 U.S.C. § 1450(b)  
Croteau v. United States, 823 F.2d 539  
(Fed. Cir. 1987)

## 3.0 – DEATH OF MEMBER ON ACTIVE DUTY (4603)

- 3.1 10 U.S.C. § 1448(d)
- 3.2 10 U.S.C. § 1448(d)

## REFERENCES (Continued)

- 3.2.1 Department of Hearings and Appeals, Appeals Board Reconsideration decision 2019-CL-012301.2 (June 25, 2019)
- 3.2.3.2 10 U.S.C. § 1448(d)(2)(B)
- 3.2.3.3 PL 116-92, Section 622, NDAA FY 2020
- 3.2.4 10 U.S.C. § 1448(d)(6)(A)
- 3.3 10 U.S.C. § 1451(c)
- 3.3.1 10 U.S.C. § 1407(c)(3)  
10 U.S.C. § 1451(c)
- 3.3.2 10 U.S.C. § 1401a(b)(3)
- 3.3.3 10 U.S.C. § 1448(d)(6)(B)
- 4.0 – DEATH OF MEMBER ON INACTIVE-DUTY TRAINING (IDT) (4604)
- 4.1 10 U.S.C. § 1448(f)(1)(B)  
DoDI 1332.42, [December 30, 2020](#)
- 5.0 – DEPENDENCY AND INDEMNITY COMPENSATION (DIC) OFFSETS AND SPECIAL SURVIVOR INDEMNITY ALLOWANCE (SSIA) (4605)
- 5.1 10 U.S.C. § 1450(c)  
38 U.S.C. § 1311(e)  
[PL 116-315, Section 2009](#)  
Office of the Under Secretary of Defense, Personnel and Readiness, October 22, 2009
- 5.2 38 U.S.C. § 1311  
38 U.S.C. § 5110(d)  
38 U.S.C. § 5111(a)  
10 U.S.C. § 1450(c)  
63 Comp Gen 536, B-21446, August 20, 1984  
10 U.S.C. § 1451(c)  
PL 116-92, Section +622, NDAA FY 2020  
DoDI 1332.42, [December 30, 2020](#)
- 5.2.2 10 U.S.C. § 1450(e)  
10 U.S.C. § 1450(k)  
61 Comp Gen 287, B-203380, March 2, 1982
- 5.2.3.1 10 U.S.C. § 1450(k)  
61 Comp Gen 287, B-203380, March 2, 1982  
54 Comp Gen 838, B-181712, April 7, 1975
- 5.2.3.2 10 U.S.C. § 1450(k)  
31 CFR 901.2
- 5.2.4 56 Comp Gen 482, B-186504, April 6, 1977
- 5.2.5 10 U.S.C. § 1450(m)

## REFERENCES (Continued)

- 5.3 PL 108-375, section 644, October 28, 2004
- 6.0 – CAUSES OF OVERPAYMENTS AND SUSPENSION OF PAYMENT (4606)
- 6.1.5 10 U.S.C. § 1450(1)(3)
- 7.0 – LIABILITY (4607)
- 10 U.S.C. § 1450(1)(3)
- 8.0 – LIQUIDATION OF DEBT (4608)
- 8.1 31 CFR 901
- 9.0 – WAIVER OF INDEBTEDNESS (4609)
- 9.1 10 U.S.C. § 1453
- 9.2 10 U.S.C. § 1453  
54 Comp Gen 249, B-182704, July 2, 1976  
Comp Gen B-185466, August 19, 1976
- 10.0 – TERMINATION OF ANNUITY (4610)
- 10.2.2 10 U.S.C. § 1450
- 10.2.3.1 & 10.2.3.2 10 U.S.C. § 1447(11)
- 10.2.3.4 10 U.S.C. § 1447(11)
- 10.2.3.5 DoDI 1332.42, [December 30, 2020](#)  
10 U.S.C. § 1450(b)
- 10.2.5 10 U.S.C. § 1450(1)(3)
- 11.0 – REINSTATEMENT OF ANNUITY (4611)
- 11.1 – 11.3 10 U.S.C. § 1450(b) and (k)  
38 U.S.C. § 103
- 12.0 – CERTIFICATE OF ELIGIBILITY (COE) (4612)
- DoDI 1332.42, [December 30, 2020](#)  
10 U.S.C. § 1447(11)
- 13.0 – REPORT OF EXISTENCE (ROE) (4613)
- 13.2 & 13.3 44 Comp Gen 208, A-3551, October 12, 1964

## REFERENCES (Continued)

## 14.0 – TAXABILITY OF ANNUITIES (4614)

14.1	26 U.S.C. § 3405
14.2	26 U.S.C. § 3402(o)(3)
14.3	26 U.S.C. § 3405(a)(1) and (2) 26 CFR 35.3405-1T(b-8)
14.4	26 U.S.C. § 101 26 CFR 1.122-1(b) 26 CFR 1.122-1(d) IRS Publications 575 and 939
14.5	IRS Publication 950

## 15.0 – MINIMUM INCOME WIDOW/SURVIVING SPOUSE (4615)

15.1.4	10 U.S.C. § 1448
15.2	10 U.S.C. § 1448 10 U.S.C. § 1450(i) 42 U.S.C. § 659
15.3	31 U.S.C. § 3702
15.5	10 U.S.C. § 1450(b)
15.6	54 Comp Gen 493, B-180545, December 17, 1974
15.8	54 Comp Gen 493, B-180545, December 17, 1974

## Table 46-1 – ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE

Rule 1	10 U.S.C. § 1447
Rule 2	10 U.S.C. § 1448(a)
Rule 4	10 U.S.C. § 1448
Rule 6	10 U.S.C. § 1451(c)(1)(A)(ii)
Rule 7	10 U.S.C. § 1451(c)(3)
Rule 10	10 U.S.C. § 1448(f)
Note 10	10 U.S.C. § 1448(f)