

CHAPTER 51

SURVIVOR BENEFIT PLAN - MINIMUM INCOME WIDOW5101 ELIGIBILITY CRITERIA

510101. An annuity under the minimum income widow provision of the SBP law (see paragraph 420102 of this volume) is payable to widows receiving a Spanish-American War pension without regard to income. The annuity is payable to all other widow's who meet all of the following conditions.

A. The widow is not otherwise entitled to an annuity under other provisions of the Plan or to Dependency and Indemnity Compensation from the Department of Veterans Affairs.

B. The widow is eligible for a widow's non-service-connected death pension from the Department of Veterans Affairs under 38 U.S.C., Chapter 15, subchapter III (reference (ar)).

C. The widow has annual income from all sources (including amount of RSFPP annuity entitlement but excluding amount of VA pension), as determined by the Department of Veterans Affairs, that is less than the annual income rate in [Appendix R](#). If the widow previously was denied an annuity because of income in excess of income limitations, entitlement may exist upon notice from the widow or from the Department of Veterans Affairs that her current yearly income, as determined by the Department of Veterans Affairs, is less than the income limitation. The annuitant is not entitled to a monetary adjustment for periods before October 1, 1976.

D. The widow 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 widow of a person who was entitled to retired or retainer pay when he died. Remarriage by the widow 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: DD Form 1885 (Survivor Benefit Plan-Minimum Income Claim) and DD Form 1895 (Request for Veterans Administration Pension and Annual Income Information) have been approved for use in administering the minimum income widow annuity under Public Law 92-425 (reference (ew)) and 38 U.S.C. 1503 (reference (ar)).

5102 AMOUNT OF ANNUITY

The maximum annuity payable is shown in [Appendix R](#). The Department of Veterans Affairs determines the yearly entitlement and advises the DFAS. This amount is prorated by the DFAS-Denver Center and is paid on a monthly basis.

510201. The annuity of a widow receiving a Spanish-American War pension is reduced by the amount of any RSFPP which may be payable.

510202. The amount of the annuity is neither rounded nor increased to reflect retired pay cost-of-living adjustments. However, the annual income rates ([Appendix R](#)) shall be increased by the same amount and shall have the same effective date whenever there is an increase in the limitation on annual income for the purposes of eligibility for pension benefits under 38 U.S.C. 1541(b) (reference (ar)).

510203. There is no social security offset against the annuity.

510204. The annuity is subject to federal income tax.

510205. The annuity is neither assignable nor subject to execution, levy, attachment, or garnishment (except for alimony or child support).

5103 EFFECTIVE DATE OF ENTITLEMENT

The effective date of entitlement is the date that the SBP law was enacted (September 21, 1972) or the date on which the requirements of law are met, whichever is later, subject to the 6-year statute of limitations.

5104 ANNUITANT - MENTALLY OR PHYSICALLY INCAPACITATED

510401. If, for any reason, a minimum income widow is mentally or physically incapable of applying for or negotiating the payment of the annuity, a court-appointed guardian may act on her behalf. If no guardian has been or will be appointed, the person having care, custody, and control of the incapacitated annuitant is authorized to act on her behalf.

510402. A report of existence is required when the annuitant receives payments through foreign postal channels or through a third party if the annuitant is incapacitated. See paragraph 500201 of this volume.

510403. The yearly certificate of continued eligibility is not required.

5105 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 Department of Veterans Affairs. 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 which are due and payable at the time of annuitant's death may, on receipt of a properly executed and documented claim, be paid to the widow's estate.

5106 REOPENED CLAIM

The DFAS-Denver Center will reestablish an annuity that has been temporarily suspended because of the widow's excessive income or net worth as of the first day of the month in which the widow meets the income level for an annuity as determined by the Department of Veterans Affairs. Notification of any change in income is the widow's responsibility.

5107 CAUSES OF OVERPAYMENT

510701. The widow's minimum income annuity was not timely terminated when her annual income exceeded the applicable rates shown in [Appendix R](#).

510702. Erroneous computation.

510703. Insufficient or untimely information.

5108 LIABILITY

510801. 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:

A. The annuitant by making direct remittance to the DFAS-Denver Center.

B. The annuitant authorizing the Department of Veterans Affairs to reduce the pension under 38 U.S.C., Chapter 15, subchapter III (reference (ar)), and remitting the amount collected to the DFAS-Denver Center.

C. The DFAS-Denver Center by reducing later annuity payments to minimum income widows.

5109 WAIVER OF INDEBTEDNESS

The request for waiver consideration is handled under the provisions of 10 U.S.C. 1453 (reference (c)). See section 4704 of this volume.