

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

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

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue and underlined font**.

The previous version dated December 2009 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
460103	Clarified that any person receiving funds on behalf of annuitant can be requested to provide an accounting of expenditures, and that the requirement to maintain the records is not limited to those holding the status of Representative Payee.	Update
460201	Clarified active duty death Survivor Benefit Plan benefits.	Update
460301	Changed coverage entitlement from RCSBP to SBP.	Update
460303	Included points for drills and other time towards Reserve Component retirement.	Add
461403.C.2.	Edited retroactive SBP annuity payments paid in a lump sum for clarity.	Update
Bibliography	Cited reference for paragraph 460303.	Add

Table of Contents

VOLUME 7B, CHAPTER 46: “SURVIVOR BENEFIT PLAN (SBP) – ANNUITIES”	1
4601 ANNUITY AMOUNT	5
460101. General	5
460102. Eligible Annuitants	5
*460103. Payment of Annuity	5
460104. Provisional Annuity Payments.....	9
*4602 DEATH OF MEMBER ON ACTIVE DUTY	10
460201. Active Duty Deaths.....	10
460202. Qualified Annuitants	10
460203. Annuity Amount	11
460204. Line-of-Duty Determination	12
460205. Responsibilities	12
*4603 INACTIVE-DUTY TRAINING DEATH	12
460301. Entitlement.....	12
460302. Qualified Annuitants	13
460303. Annuity Amount	13
460304. Line-of-Duty Determination	13
460305. Responsibilities	14
4604 DEPENDENCY AND INDEMNITY COMPENSATION (DIC) OFFSETS AND SPECIAL SURVIVOR INDEMNITY ALLOWANCE (SSIA)	14
460401. When Required	14
460402. DIC Offset.....	14
460403. Social Security Offset	16
4605 CAUSES OF OVERPAYMENTS	16
460501. SBP Annuity Overpayments	16
4606 LIABILITY	16
4607 LIQUIDATION OF DEBT	16
460701. Debt Liquidation	16
4608 WAIVER OF INDEBTEDNESS	17

Table of Contents (Continued)

460801.	Request a Waiver of Indebtedness	17
460802.	Receipt of Waiver Request	17
4609	TERMINATION OF ANNUITY	17
460901.	Time of Termination	17
460902.	Reasons for Termination.....	17
460903.	Death of Annuitant.....	18
4610	REINSTATEMENT OF ANNUITY	18
461001.	Reinstatement of Spousal Annuity.....	18
461002.	Reinstatement of Child Annuity	19
4611	CERTIFICATIONS OF ELIGIBILITY.....	19
461101.	Purpose.....	19
461102.	Frequency of Certification	19
461103.	Failure to Furnish Certificate	20
461104.	Method of Completing Certifications	20
4612	REPORT OF EXISTENCE (ROE).....	20
461201.	Purpose.....	20
461202.	Frequency.....	20
461203.	Failure to Return Report of Existence	21
4613	SUSPENSION.....	21
461301.	Reasons for Suspension of Payment	21
4614	TAXABILITY OF ANNUITIES	21
461401.	Taxability of SBP Annuity Payments	21
461402.	Taxability of SBP Cost Refunds	21
*461403.	Federal Income Tax Withholding (FITW).....	22
461404.	Income Exclusion.....	22
461405.	Amount of Annuity Subject To Federal Estate Tax.....	23
461406.	State Taxation	23
4615	MINIMUM INCOME WIDOW/SURVIVING SPOUSE	23
461501.	Eligibility Criteria	23
461502.	Amount of Annuity	24

Table of Contents (Continued)

461503. Effective Date of Entitlement 24

461504. Annuitant, Mentally or Physically Incapacitated..... 25

461505. Changes and Termination 25

461506. Reopened Claim..... 25

461507. Causes of Overpayment 25

461508. Liability..... 25

461509. Waiver of Indebtedness..... 26

Table 46-1. Annuity for Surviving Spouse or Former Spouse 27

Table 46-2. Refund of Monthly Premium for SBP Effective January 4, 1994 31

Table 46-3. Taxability of Survivor Benefit Plan/Retired Serviceman’s Family Protection Plan
– Nonresident Annuitants Residing Outside the United States 32

Table 46-4. Taxability of SBP Cost Refunds 33

BIBLIOGRAPHY 34

CHAPTER 46

SURVIVOR BENEFIT PLAN (SBP) ANNUITIES

4601 ANNUITY AMOUNT

460101. General

A. The Survivor Benefit Plan (SBP) provides a monthly annuity of 55 percent of the annuity base amount, cost-of-living adjusted, to the eligible spouse or children. The monthly annuity for a natural person with an insurable interest is 55 percent of the amount of the gross retired pay after cost of participation is subtracted.

B. If a former spouse election was effective prior to March 1, 1986, then the annuity was provided under the insurable interest category. If a former spouse election was effective March 1, 1986 or later, or coverage was changed to spouse category with the former spouse's concurrence, then the annuity is provided under the spouse category.

C. [Effective October 1, 2005, the phased-elimination of the two-tier system began.](#) After April 1, 2008, the SBP annuity for a spouse or former spouse was [no longer](#) reduced at age 62.

460102. Eligible Annuitants

A. Spouse Only. See Table 46-1. The SBP annuity for a spouse may be reduced by any Dependency and Indemnity Compensation (DIC) if the annuity is payable on behalf of the same member. See section 4604.

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

C. 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, then the annuity is paid to the child annuitants. An election for 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 in equal shares. If the spouse is not married to the member for one year prior to the member's death, then spouse qualifies as the eligible annuitant on the birth of a posthumous child resulting from the member's marriage.

D. 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 annuity amount is 55 percent of the member's gross retired pay less cost at the time of member's death.

*460103. Payment of Annuity

A. Payments in General. The SBP annuity is paid monthly to the eligible annuitant. The SBP payment is effective the first day after the death of the 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.

1. Payments subject to offset:

a. When the payment of premiums is in arrears, no annuity may be paid until that debt with interest (6 percent compounded annually) has been recovered. See 461301.C.

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

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.

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

4. If the Secretary of the Military Department concerned determines that a participating member is presumed dead, then 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.

5. Do not mail checks to an annuitant living in currency-blocked countries. See Appendix A for a list of blocked countries.

B. Third Parties Payees

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

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 460103.C. 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, then 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 trust, an Internal

Revenue Service (IRS) Form 1099 (Miscellaneous Income) will be issued in the annuitant's name. See paragraph 461401 of this chapter.

3. Power of Attorney. An eligible survivor 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.

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 then 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.

5. Surety Bonds. In cases where it appears necessary to protect the annuitant, the Secretary 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 concerned will determine the amount necessary in surety bond(s) based on the amount of the SBP annuity payable. A surety bond ordinarily will not be required if the a payee is a close family member or a government or financial institution.

6. Accounting. Any person receiving payment on behalf of an annuitant, except as stated below, shall be required to maintain and, upon request by the Secretary 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, then 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 concerned determines that a more frequent submission is required.

a. 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 financial affairs.

b. 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 concerned.

c. If the Secretary concerned has evidence to suggest that the annuity funds have been or are being misused by the payee, then 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.

C. Representative Payee. The SBP annuity due a minor, 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.

1. An annuitant is determined to be incompetent if the Secretary 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 request 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 also will have the opportunity to submit additional evidence before a determination is made.

2. If a court order provides for payment of a fee to the representative payee, or if the Secretary concerned determines that payment of a fee is necessary in order to obtain the fiduciary services of a representative payee, then 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 shall be limited to 4 percent. The representative payee will be notified of the fee percentage allowed. The fee is not a separate payment to be mailed to the 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.

3. The selection of the 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 the:

- a. Spouse.
- b. Son or daughter or legally adopted son or daughter.
- c. Brother or sister.
- d. Parents.
- e. Head of Federal or state institution.
- f. Trustee of a private trust.
- g. 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, then the Secretary of the Military Department concerned shall determine which applicant is a more appropriate payee.

4. In addition to SBP annuity payments (including payments to Minimum Income Widows covered under section 4615 of this chapter), annuity payments under Uniformed Services Contingency Option Act Retired Serviceman Family Protection Plan (RSFPP), and Reserve Component SBP also may be made to a representative payee.

5. The representative payee will be required to submit Reports of Existence and Certificates of Continued Eligibility as specified in section 4611 or 4612 of this chapter.

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

D. Rounding. Monthly annuities, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

E. Cost of Living Adjustments.

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 cost-of-living adjustment is delayed by law, the increased annuity due to a cost-of-living adjustment is not delayed. The cost-of-living adjustment applies to the monthly gross annuity amount before any reductions, such as DIC.

2. See subparagraph 461502.B. regarding cost-of-living adjustments for the minimum income widow annuity.

460104. Provisional Annuity Payments

A. In cases involving delayed receipt of an annuity application, the [Director, Retired and Annuitant Pay Operations](#), may authorize provisional annuity payments for 2 consecutive months, provided that all of the following conditions have been met:

1. The Military Service verifies that the member is deceased.
2. The annuitant has been contacted.
3. The SBP election confirms the beneficiary's identity and eligibility.
4. The Military Service verifies school attendance for dependent child annuitants age 18 to 22.

B. Upon receipt of the annuity application, there will be an adjustment for the difference between the actual annuity entitlement due and the provisional annuity payments made.

C. Annuity payments will be suspended if a completed annuity application is not received within 60 days of the first provisional payment.

*4602 DEATH OF MEMBER ON ACTIVE DUTY

460201. Active Duty Deaths

A. SBP benefits under this section may be payable as provided in section 4601 of this volume for:

1. A member who dies while on active duty after: 1) becoming eligible to receive retired pay; 2) qualifying for retired pay, except that the member has not applied for or been granted that pay; or 3) completing 20 years of service but before the member is eligible to retire as a commissioned officer, because the member has not completed 10 years of active commissioned or service; or

2. A member who dies on active 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.

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

C. Death is Not in the Line of Duty.

1. If the member was on active duty and retirement eligible at the time of death, as [described in paragraph 460201](#) and the death is not in the line of duty, then the SBP base amount is equal to the retired pay as if the member were retired for length of service under applicable law of the respective service of the deceased member.

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

460202. Qualified Annuitants

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

A. 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. If there are multiple court orders for former spouse elections, then the court order with the earliest date will take precedence.

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

C. Children. The annuity is payable to the dependent children of the member when:

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

2. For a member who dies on or after October 7, 2001, 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.

D. Insurable Interest Deemed Election. If no annuity is payable under subparagraphs A., B., or C. of this paragraph, the Secretary 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\(2\)](#).

460203. Annuity Amount

The annuity is computed with a base amount equal to the amount of retired pay that would have been paid to the member had the member been retired on the date of death, as follows:

A. Qualified Death in the Line of Duty. The SBP base amount is equal to the retired pay as if the member retired with total (100 percent) disability which is equal to 75 percent of the appropriate retired pay base. The annuity is then computed at 55 percent of the SBP base amount. For members of the Reserve Components 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.

B. 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, section 6601), the SBP base will be computed using the REDUX method with the prescribed reduced cost-of-living adjustment. The annuity is computed at 55 percent of the SBP base amount.

C. Insurable Interest Deemed Election. If an annuity is payable pursuant to subparagraph 460202.D., the SBP base amount is equal to the retired pay computed as if the member retired with total (100 percent) disability, which is equal to 75 percent of the appropriate retired pay base, less the cost of participation. The annuity is then computed at 55 percent of the SBP base amount.

460204. Line-of-Duty Determination

A. 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:

1. Occurred while the member was not serving on active duty;
2. Was the result of the member's own intentional misconduct or willful negligence; or
3. Occurred during a period of unauthorized absence.

B. 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 must also 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.

460205. Responsibilities

A. 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 SBP annuity. The Military Services will inform DFAS of their line-of-duty determinations using the DD Form 1300, "Report of Casualty"; Block 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 line-of-duty determinations, however, must be supported by a written finding which describes the circumstances of death that support the line-of-duty determination.

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

*4603 INACTIVE-DUTY TRAINING DEATH

460301. Entitlement

A Reserve Component member who dies from injuries or illness incurred or aggravated while performing inactive-duty training and the death is determined to have occurred in the line of duty is entitled to coverage under the SBP program.

A. Death in the Line of Duty. Qualified survivors of a member who is not retirement eligible and dies from injuries or illness incurred or aggravated while performing inactive-duty training and the death is determined to be in the line of duty, may be eligible for SBP benefits.

B. Death Not in the Line of Duty. The death of a Reserve Component member who is not retirement eligible and whose death is determined to have occurred “not in the line of duty” does not qualify under this section.

460302. Qualified Annuitants

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

A. Former Spouse by Court Order. The annuity is payable to the former spouse if the member was required under a court order or spousal agreement to provide an annuity to the former spouse upon becoming eligible to participate in the RCSBP or if the member has made an election to provide an annuity to the former spouse.

B. Current Spouse. The annuity is payable to the current surviving spouse unless the annuity is payable to the former spouse.

C. Children. Children of the member when the former spouse is not eligible and either there is no surviving spouse or the surviving spouse later dies. The children are not qualified annuitants if a surviving spouse loses entitlement to the annuity for a reason other than death, see section 4401 of this volume.

460303. Annuity Amount

The annuity payable for a death that occurred while performing inactive-duty training under this section shall be the amount equal to 55 percent of the retired pay to which the member would have been entitled based on the member's years of service at the time of death, computed as for a Reserve Component retirement [which also includes points for drills and other time](#).

460304. Line-of-Duty Determination

For the purpose of determining eligibility for SBP benefits under this section, a service member's death will be generally considered to be in the line of duty unless:

A. The death occurred while the member was not serving on inactive-duty training;

B. The death was the result of the member's own intentional misconduct or willful negligence; or

C. The death occurred from injuries or illness incurred or aggravated during a period of unauthorized absence.

460305. Responsibilities

The Military Services will make a determination and a written finding as to whether a member's death occurred in the line of duty from injuries or illness incurred or aggravated while performing inactive-duty. A written finding must describe the circumstances under which the member died, and it must also address whether the death was caused by the member's own intentional misconduct or willful negligence. Once DFAS receives the determination, DFAS will compute and pay the annuity to qualified survivors.

4604 DEPENDENCY AND INDEMNITY COMPENSATION (DIC) OFFSETS AND SPECIAL SURVIVOR INDEMNITY ALLOWANCE (SSIA)

460401. When Required

The gross SBP annuity payable to a surviving spouse must be offset by an award of DIC, unless the eligible surviving spouse remarries after age 57, and thereby, retains entitlement to DIC. A surviving spouse who receives DIC due to remarriage after age 57 becomes entitled to the full SBP annuity unreduced by DIC, as well as the full DIC entitlement.

460402. 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 the cost-of-living adjusted. 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 paragraph 460402.C., the SBP annuity is reduced by the amount of the DIC as of the date on which the DIC payment begins. The DIC offset, if applicable, equals the actual DIC payment the spouse receives, and it increases each time DIC rates increase. 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 results from the overlap of the DIC and SBP payments.

A. Premium Refund Due to DIC Award

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 premiums

actually paid and the premiums that would have been needed to provide the annuity payable after the DIC reduction. If DIC entitlement is lost due to remarriage of the surviving spouse after age 55, but prior to age 57, then SBP may be reinstated. See subparagraph 460402.C.

2. Full Refund. When DIC is equal to or greater than the annuity, the SBP annuity ends permanently, except under the conditions shown in subparagraph 460402.C. The SBP premium is refunded after any annuity debt is liquidated. If the annuitant dies before a refund of SBP premium is made, then the refund shall be made to the annuitant's beneficiaries in the order of precedence. See Chapter 31, of this volume, for further information.

3. Supplement Survivor Benefit Plan (SSBP). SSBP premiums are not refunded.

B. Sample Computation of Refund. See Tables 46-2, 46-3, and 46-4 for a sample computation of refund.

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

1. If the spouse whose SBP annuity entitlement was adjusted under subparagraph 460402.A. subsequently loses entitlement to DIC because of remarriage occurring on or after the beneficiary's 55th birthday, but before age 57, then the annuity is reinstated under conditions specified in subparagraph 460402.C.2 on the effective date of the loss of DIC entitlement. The annuity is adjusted to reflect all authorized cost-of-living adjustments.

2. The surviving spouse who loses entitlement to DIC must repay all amounts refunded under subparagraphs 460402.A.1. and 2., in either a lump sum or in installments. If repayment is in installments, then 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 cost-of-living adjustment, the same percentage increase will be applied to the installment deduction. No interest will accrue until the date of the first readjusted annuity payment. Thereafter, interest accumulates on any unpaid balance at the rate established by the [Department of Defense \(DoD\) Board of Actuaries](#), until the full amount has been repaid. Thus, the remaining debt on the date of each installment deduction will be increased by a factor established by the DoD Board of Actuaries. This is based on the 12th root of 1 plus the current annual interest rate used by the DoD Board of Actuaries to determine the retirement accrual cost. See <http://actuary.defense.gov/>.

D. 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.

E. Special Survivor Indemnity Allowance (SSIA). A surviving spouse who is receiving DIC and who is not collecting the full amount of SBP due to receipt of DIC may be entitled to a 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. Receipt of the SSIA is conditioned upon the requirements enumerated in the law.

460403. Social Security Offset

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

4605 CAUSES OF OVERPAYMENTS

460501. SBP Annuity Overpayments

Generally, SBP annuity overpayments are caused by:

- A. Failure to reduce annuity by the amount of DIC.
- B. Non-termination of annuity because of ineligibility.
- C. Erroneous computation.
- D. Insufficient or untimely information.
- E. A determination by the Secretary of the Military Department concerned (or designee) that a participating member is alive after the Secretary concerned previously determined that the member was presumed dead.

4606 LIABILITY

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, then 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 Chapter 28, Table 28-1 for the collection of member's indebtedness.)

4607 LIQUIDATION OF DEBT

460701. Debt Liquidation

Upon discovery of an overpayment, advise the annuitant of the debt and the method in which the overpayment is being, or may be, liquidated. The debt may be liquidated by:

- A. The annuitant making direct remittance to the DFAS-Cleveland Site.

B. The annuitant authorizing the VA to reduce DIC and remit the amount collected to the DFAS-Cleveland Site.

C. The DFAS-Cleveland Site reducing later SBP annuity payments.

4608 WAIVER OF INDEBTEDNESS

460801. Request a Waiver of Indebtedness

When applicable, the DFAS-Cleveland Site 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.](#)

460802. 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.

4609 TERMINATION OF ANNUITY

460901. Time of Termination

Entitlement to an SBP annuity terminates effective as of the first day of the month in which eligibility is lost. If a determination is made by the Secretary of the Military Department concerned (or designee) that a participating member is alive after the Secretary concerned previously determined that the member was presumed dead, the annuity is terminated immediately since no entitlement exists.

460902. Reasons for Termination

Terminate the SBP annuity when:

A. DIC equals or exceeds an SBP annuity that is subject to offset. No annuity is paid to children when the SBP annuity is no longer payable due to DIC, although the member had also provided coverage for children.

B. Spouse or former spouse (spouse category) annuitant remarries before age 55 or dies. If the member also provided coverage for children, then 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.

C. Child or children annuitants lose eligibility because of:

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

2. Marriage or death of child annuitant.

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 461002.

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, then the child's annuity terminates on the first of July after the 22nd birthday.

5. Reinstatement of spouse or former spouse (spouse category) annuity following divorce or annulment.

D. A natural person with an insurable interest dies. The termination is final. There are no provisions for designating a contingent survivor annuitant.

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

460903. Death of Annuitant

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

4610 REINSTATEMENT OF ANNUITY

461001. Reinstatement of Spousal Annuity

A. Remarriage Before Age 55 that is Terminated by Death of Spouse. Reinstates the annuity effective the first day of the month in which the death occurs. If annuity entitlement from the terminated marriage exists, then 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 which had formerly been terminated, then update the annuity by any cost-of-living increases which occurred after termination.

B. Remarriage Terminated by Divorce or Annulment. Reinstates the SBP annuity effective the first day of the month in which the marriage terminates by divorce or annulment. Legal review is appropriate if discrepant information or annotations result in doubt or if divorce or annulment was granted by a court in a foreign country.

C. Loss of DIC Entitlement Because of Remarriage Between Ages 55 and 57.

The annuity is reinstated effective as of the date of the loss of the DIC entitlement, adjusted to reflect all cost-of-living adjustments. See subparagraph 460402.C.

461002. Reinstatement of Child Annuity

A. 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.

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

C. 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.

4611 CERTIFICATIONS OF ELIGIBILITY

461101. Purpose

The certificate validates continued eligibility of annuitants, whether eligible spouse, former spouse or children. The spouse, former spouse, and child must meet eligibility requirements in [section 4203](#) of this volume.

461102. Frequency of Certification

A. Annually. Each year, the eligible spouse, former spouse custodian, or legal fiduciary for a minor child must submit a certificate of eligibility to the DFAS-Cleveland Site.

B. Biennially. Every 2 years, a medical certification must be submitted to the DFAS-Cleveland Site for an incapacitated child over 18 years of age, unless medical prognosis indicates the disability is permanent.

C. 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.

1. A payment to a student continues during any interval between school years that do not exceed 150 days if the student demonstrates, to the satisfaction of the DFAS-Cleveland Site, that he or she 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.

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.

461103. 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.

461104. Method of Completing Certifications

The annuitant as identified above 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 and personal identification number. If payments are made on behalf of the annuitant, then the annuitant's name must also accompany the electronic signature. An electronic signature is not authorized for medical certifications or intent to attend school.

4612 REPORT OF EXISTENCE (ROE)

461201. Purpose

The ROE fulfills the requirement for:

- A. An annuitant who receives payment through foreign postal channels.

NOTE: The ROE is not required when the payment is addressed to a United States Consulate, American Embassy, military attaché, or FPO or APO address.

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

461202. Frequency

An ROE is required on a semiannual basis for an annuitant described in subparagraph 461201. 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 Social Security Number and personal identification number. If payments

are made on behalf of the annuitant, then the annuitant's name must also accompany the electronic signature.

461203. Failure to Return Report of Existence

Annuity payments are suspended if the annuitant, custodian, or legal fiduciary fails to return the ROE as required. Payments are resumed only after receiving satisfactory proof of existence.

4613 SUSPENSION

461301. Reasons for Suspension of Payment

- A. Non-receipt of certificate of eligibility or report of existence;
- B. Non-receipt of verification of school attendance;
- C. An annuitant will not receive annuity payments while there are still premiums owed on the SBP account. Once all premiums that are owed have been recouped, then payment of the annuity will commence/recommence;
- D. Adjustment of the annuity due to administrative error.
- E. 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. Payments can be reinstated. See paragraph 461002.

4614 TAXABILITY OF ANNUITIES

461401. Taxability of SBP Annuity Payments

SBP annuity payments are taxable for Federal income tax purposes. See Table 46-3 for exceptions; also see paragraph 461203 for when SBP annuity payments are treated as "designated distributions" for tax withholding guidance purposes. 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.

461402. Taxability of SBP Cost Refunds

A refund of SBP costs (i.e., SBP premiums, resulting from an administrative error, correction of records, or awarding 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 46-4). The SBP cost refund:

A. 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.

B. 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) to pay for the cost of SBP coverage, and

C. 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.

*461403. Federal Income Tax Withholding (FITW)

A. 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, the DFAS-Cleveland Site will withhold on the basis of "married, three exemptions." The annuitant may use TD Form W-4P (Withholding Certificate for Pension and Annuity Payments) or any substitute form furnished by the payer.

B. Notice Requirements. The DFAS-Cleveland Site 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, the DFAS-Cleveland Site 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.

C. Lump-Sum (One-Time) or Nonperiodic Distribution Payments.

1. SBP Cost Refunds. An SBP cost refund is a refund of premiums rather than a distribution of benefits. As a nonperiodic 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.

2. Other. Retroactive SBP annuity payments paid in a lump sum constitute periodic distributions and are subject to the tax withholding rules of subparagraph 461403.A. Likewise, if the lump sum payment of an SBP annuity is the result of administrative error or delay in the start of an annuity, then the payment is treated as a periodic payment subject to the withholding rules of subparagraph 461403.A.

461404. Income Exclusion

A. Consideration for Contract. The SBP annuitant is entitled to an income exclusion when, upon 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. The DFAS-Cleveland Site 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 died, \$1,000 of the total “consideration for contract” had not yet been excluded from the member’s nondisability retired pay. DFAS would report the taxable annuity less \$1,000, and this reported residual amount would be used by the surviving spouse in his or her income-tax computation for the calendar year.

B. 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 section 1202 of this volume). Instead, upon the member’s death, the annuity paid to the member’s survivor will be exempt from Federal income tax until the amount excluded equals the total of the member’s direct cost payments.

461405. 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 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.

461406. 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.

4615 MINIMUM INCOME WIDOW/SURVIVING SPOUSE

461501. Eligibility Criteria

An annuity under the minimum income widow/surviving spouse provision of the SBP law (see paragraph 420102) is payable to widows receiving a Spanish-American War pension without regard to income. The annuity is payable to all other surviving spouses who meet all of the following conditions:

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

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

C. 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, then 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.

D. 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, then 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) are used in administering the minimum income widow annuity.

461502. Amount of Annuity

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

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

B. 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.

C. The annuity is subject to Federal income tax.

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

461503. 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.

461504. Annuitant, Mentally or Physically Incapacitated

A. 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, then the person having care, custody, and control of the incapacitated annuitant is authorized to act on his or her behalf.

B. 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 4612 of this chapter.

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

461505. 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 which 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 estate of the surviving spouse.

461506. Reopened Claim

The DFAS-Cleveland Site 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.

461507. Causes of Overpayment

A. 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.

B. Erroneous computation.

C. Insufficient or untimely information.

461508. 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:

- A. The annuitant by making direct remittance to the DFAS-Cleveland Site.
- B. The annuitant authorizing the VA to reduce the pension and remitting the amount collected to the DFAS-Cleveland Site.
- C. The DFAS-Cleveland Site by reducing later annuity payments to minimum income widows.

461509 Waiver of Indebtedness

The request for waiver consideration is handled under the provisions of section 4608 of this volume.

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

ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE					
R U L E	A	B	C	D	E
	If member dies or is declared dead	and	and the annuitant	then the annuity is (notes 2 and 6)	and is offset by (note 9)
1	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	Dependency and Indemnity Compensation (DIC).
2		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)		
3		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)		
4		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)		
5	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% disability on the date of death	DIC.

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

ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE					
R U L E	A	B	C	D	E
	If member dies or is declared dead	and	and the annuitant	then the annuity is (notes 2 and 6)	And is offset by (note 9)
6	on active duty and was entitled to retired or retainer pay, (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	DIC
7	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 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)

ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE					
R U L E	A	B	C	D	E
	If member dies or is declared dead	and	and the annuitant	then the annuity is (notes 2 and 6)	and is offset by (note 9)
8	while eligible to provide a Reserve Component 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.
9	before becoming eligible to provide a Reserve Component annuity	the member's death is in the line of duty from injuries or illness incurred or aggravated while performing inactive-duty training (note 10)	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		DIC

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

ANNUITY FOR SURVIVING SPOUSE OR FORMER SPOUSE					
R U L E	A	B	C	D	E
	If member dies or is declared dead	and	and the annuitant	then the annuity is (notes 2 and 6)	and is offset by (note 9)
10	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.
11	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			

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 shall be 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, then 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, shall be 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, then 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 shall be removed if an annuitant remarries subsequent to their 57th birthday.
- See section 5208 of this volume, for additional information or [10 U.S.C.1448\(f\)](#).

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

REFUND OF MONTHLY PREMIUM FOR SBP EFFECTIVE JANUARY 4, 1994 (See note)

The refund of premiums due a spouse or former spouse is determined using the following defined values:

Current Basic Premium (CBP): The actual current premium amount for the basic Survivor Benefit Plan (SBP) spouse coverage elected by the member. This does not include premiums for child coverage, Supplemental SBP (SSBP) premiums, open-enrollment premium additions, or any interest charges.

Current Recalculated Premium (CRP): The implied current premium associated with recalculated SBP basic annuity as reduced due to receipt of Dependency and Indemnity Compensation (DIC). This does not include premiums for child coverage, SSBP premiums, open-enrollment premium additions, or any interest charges.

Total Premiums (TP): 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, ODASD (Military Personnel Policy) by the DoD Actuary and the Defense Manpower Data Center in coordination with the DFAS.

Premium Refund (PR): This is the premium refund amount. The premium refund is determined according to the following formula:

$$PR = (1 - CRP/CBP) \times TP$$

For example: Member is a retired 0-5, deceased July 1, 1993.
Data is for June 1994.

Retired Pay:	\$2,297.00
Current Basic Premium (CBP):	149.31
SBP Spouse Annuity: $.55 \times 2,297 =$	1,263.00
DIC Annuity:	750.00
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:	
$PR = (1 - 60.63/149.31) \times 10,153.08$	
$= (1 - .4060679) \times 10,153.08$	
$= .5939321 \times 10,153.08 = 6,030.24$	

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

Table 46-3. Taxability of Survivor Benefit Plan/Retired Serviceman's Family Protection Plan – Nonresident Annuitants Residing Outside the United States

TAXABILITY OF SURVIVOR BENEFIT PLAN/RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN - NONRESIDENT ANNUITANTS RESIDING OUTSIDE THE UNITED STATES				
R U L E	A	B	C	D
	If the SBP annuitant resides in the country of	and	then the SBP annuity is	at the rate of
1	Australia, Belgium, Cyprus, Egypt, Finland, France, Germany, Iceland, Kazakhstan, Korea, Morocco, Netherlands, New Zealand, Norway, Pakistan, Romania, Sweden, Russia, Trinidad and Tobago, and United Kingdom	is a citizen of the country in which residing	not taxable (note)	
2	China, Estonia, Hungary, India, Ireland, Italy, Latvia, Lithuania, Luxembourg, Mexico, Portugal, Spain, South Africa, Switzerland, Thailand, Turkey, and Venezuela	is a national of the country in which residing		
3		is not a national of the country in which residing	taxable	30 percent.

NOTE: In order to claim entitlement to exemption from taxation based upon a tax convention or Treaty, a nonresident alien annuitant is required to file Treasury Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding).

Table 46-4. Taxability of SBP Cost Refunds

TAXABILITY OF SBP COSTS REFUND			
R U L E	A	B	C
	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)

NOTES:

1. [Internal Revenue Code section 122](#) caused amounts deducted from military retired pay to fund an SBP annuity to be 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.
2. Under [Internal Revenue Code section 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.
3. VA disability compensation is exempt from taxation, as shown in [Title 38, United States Code \(U.S.C.\), section 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, then 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.
4. Under [Internal Revenue Code section 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.
5. 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.
6. Since 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).

BIBLIOGRAPHY

CHAPTER 46 SURVIVOR BENEFIT PLAN (SBP) ANNUITIES

4601 – ANNUITY AMOUNT

460101.A	10 U.S.C. 1451(a)
460101.B.	10 U.S.C. 1448 Public Law 99-145, section 723 November 8, 1985
460101.C.	10 U.S.C. 1451(a)(1)
460102	10 U.S.C. 1450
460102.B	10 U.S.C. 1450(a)(3)
460102.C	10 U.S.C. 1447 (7)-(10) 10 U.S.C. 1450(b)) Public Law 99-661, section 643, November 14, 1986
460102.D	DoDI 1332.42, June 23, 2009
460103	10 U.S.C. 1450(b) DoDI 1332.42, June 23, 2009
460103.A.4	66 Comp Gen 260, B-222190 (1987)
460103.A.5.	61 Comp Gen 245, B-205176 (1982)
460103.B.1.	10 U.S.C. 1455 DoDI 1332.42, June 23, 2009
460103. B.2&3.	66 Comp Gen 340, B-226018 (1987)
460103.C.	10 U.S.C. 1455(b)
460103.D.	10 U.S.C. 1451(g)(2)

4602 ACTIVE DUTY DEATH

460201	10 U.S.C. 1448(d), notes Public Law 107-107, section 642(d) December 28, 2001 Public Law 108-136, section 645, November 24, 2003
460202	10 U.S.C. 1448(d)
460202.C.2.	10 U.S.C 1448(d)(2)(B)
460202.D.	10 U.S.C. 1448(d)(6)(A)
460203	10 U.S.C. 1451(c)
460203.A.	10 U.S.C 1407(c)(3) 10 U.S.C. 1451(c)
460203.B.	10 U.S.C. 1401a(b)(3)
460203.C.	10 U.S.C. 1448(d)(6)(B)

4603 – INACTIVE-DUTY TRAINING DEATH

460301	10 U.S.C. 1448(f)(1)(B) Public Law 108- 136, section 644, November 24, 2003 DoDI 1332.42, June 23, 2009, paragraph 3
460301.B.	10 U.S.C. 1448(f)(1)(B)
460301.C.	10 U.S.C. 1448(f)(2)
460303	10 U.S.C. 12733 10 U.S.C. 1451(c)

4604 – DIC AND SSIA

460401	10 U.S.C. 1450(c) 38 U.S.C. 1311(e) OUSD, P&R Memorandum, October 22, 2009
460402	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
10 U.S.C. 1451 (c)
DoDI 1332.42, June 23, 2009, paragraph 10.e.

460402.B. 10 U.S.C. 1450(e)
10 U.S.C. 1450(k)
61 Comp Gen 287

460402.C.1. 10 U.S.C. 1450(k)
61 Comp Gen 287
54 Comp Gen 838

460402.C.2 10 U.S.C. 1450(k)

460402.D 56 Comp Gen 482

460402.E.. 10 U.S.C. 1450(m)

460403 Public Law 108-375, section 644, October 28,
2004

4605 – CAUSES OF OVERPAYMENTS

460501.E 10 U.S.C. 1450(l)(3)

4606 – LIABILITY

10 U.S.C. 1450(l)(3)

4608 – WAIVER OF INDEBTEDNESS

460801 10 U.S.C. 1453

460802 10 U.S.C. 1453
54 Comp Gen 249
MS Comp Gen B-185466, August 19, 1976

4609 – TERMINATION OF ANNUITY

460902.B 10 U.S.C. 1450

460902.C.1 & 2 10 U.S.C. 1447(11)

460902.C.4 10 U.S.C. 1447(11)

460902.C.5 DoDI 1332.42, June 23, 2009
10 U.S.C. 1450(b)

460902.E 10 U.S.C. 1450(1)(3)

4610 – REINSTATEMENT OF ANNUITY

461001 thru 461003 10 U.S.C. 1450(b), (k)
Public Law 108-183, section 101,
December 16, 2003

4611 – CERTIFICATE OF ELIGIBILITY

461102.B DoDI 1332.42, June 23, 2009

461102.C 10 U.S.C. 1447(11)

4612 – REPORT OF EXISTENCE (ROE)

461202 & 461203 44 Comp Gen 208

4614 – TAXABILITY OF ANNUITIES

461401 26 U.S.C. 3405

461402 26 U.S.C. 3402(o)(3)

461403 26 U.S.C. 3405(a) (1), (2)
[Treasury Reg 31.3402\(g\)-1](#)
[Treasury Reg 35.3405-1T\(b-8\)](#)

461404 26 U.S.C. 101
26 CFR 1.122-1(d)
Treasury Reg. 1-122-1(b)
IRS Publications 575 and 939

461405 IRS Publication 950

4615 – MINIMUM INCOME WIDOW/[SURVIVING SPOUSE](#)

461501.D. 10 U.S.C. 1448, notes
Public Law 92-425, September 21, 1972
Public Law 94-496, Section 2
October 14, 1976

461502 Public Law 92-425, Section 4,
September 21, 1972, amended

By Public Law 94-496, Section 2,
October 14, 1976
10 U.S.C. 1450(i)
Public Law 95-30, Section 501,
May 23, 1977

461503	31 U.S.C. 3702
461505	10 U.S.C. 1450(b)
461506	54 Comp Gen 493
461508	54 Comp Gen 493

Table 46-1

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	Public Law 108-136, section 644, November 24, 2003
Note 8	Public Law 99-661, section 642, November 14, 1986
Note 10	Public Law 108-136, section 644, November 24, 2003

Table 46-4

DoD/GC(Fiscal) opinion March 7, 2000