

Key Elements of Public Law 108-136 regarding entitlement to  
Survivor Benefit Plan (SBP) coverage

On 24 November 2003, President Bush signed the National Defense Authorization Act for Fiscal Year (FY) 2004. One of its provisions was the establishment of a new option for surviving spouses in the payment of the Survivor Benefit Plan (SBP) annuity. This new option permits the Secretary of the Navy, in consultation with the surviving spouse, to pay the SBP annuity to the eligible child/children of the deceased service member. The new law also provides SBP coverage for the surviving spouses of reservist who are not eligible for retirement and die while on inactive duty training retroactive to deaths that occurred on or after 10 September 2001. The previous SBP coverage eligibility criteria for active duty service members who are not eligible for retirement remains unchanged. The highlights of the new law include:

- Provides SBP coverage for the qualified annuitant of a reserve component member who is not eligible for retirement who dies while performing inactive duty training and whose death in the LOD.
- Expands SBP beneficiary coverage with respect to qualified dependent children of an eligible member who dies while serving on active duty and in the LOD.
- Provides restrictions on certain insurable interest elections, and all elections involving Supplemental SBP (SSBP) coverage.
- Provides insurable interest coverage in cases to a natural insurable interest person who was a bona fide dependent of the deceased service member.
- The provisions of law for members who are/were retirement-eligible remains unchanged.

On 27 April 2004, the Department of Defense (DOD) published the implementing instructions for the FY 2004 NDAA.

NAVADMIN 065/03 provides guidance to Navy commands when making LOD determinations in active duty death cases. The NAVADMIN also contains procedures to be followed when a Sailor's death is determined to not be in the LOD. The above LOD determination procedures should be followed in case of reservist who are not retirement eligible and who die while performing inactive duty training. PERS-62 currently reviews all LOD packages and provides the necessary certification documentation to the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL).

The DFAS-CL is responsible for all calculations and payments of SBP annuities. Casualty Assistance Calls Officers (CACOs) are cautioned not to speculate about the amount of an SBP annuity. For discussion purposes, however, the CACO may refer to NAVADMIN 065/03 for the formula used to calculate any payable annuity. The CACO should also assist the beneficiary in completing the SBP claims forms. Once completed they should faxed to the DFAS-CL at 216-522-6321 (Attn: Hilda Ford) and forwarded to the Defense Finance and Accounting Service, U.S. Annuitant Pay, Post Office Box 7131, London KY 40742-7131.

Casualty Assistance Regional Area Coordinators should make this information available to CACOs within their regions.

The SBP Program Manager is available to answer questions and provide additional assistance as required. Should the regional area coordinator or CACO be unable to assist or have questions, should contact Mr. Basil Coleman by email at [BASIL.COLEMAN@NAVY.MIL](mailto:BASIL.COLEMAN@NAVY.MIL) or telephone at DSN 882-4304 or 866-827-5672 ask for extension 44304, or commercial 901-874-4304.

18 May 2004

ADMINISTRATIVE MESSAGE

ROUTINE

R 171305Z MAR 03 ZYB MIN PSN 958560J33

FM CNO WASHINGTON DC//N1//

TO NAVADMIN

UNCLAS //N05800//  
NAVADMIN 065/03

MSGID/GENADMIN/CNO WASHINGTON DC/-/MAR//

SUBJ/SURVIVOR BENEFIT PLAN (SBP) ANNUITIES WHEN AN ACTIVE DUTY  
MEMBER DIES IN THE THE LINE OF DUTY (LOD)//

REF/A/DOC/NDAA2002/28DEC2001//

REF/B/DOC/OSD/02MAY2002//

REF/C/DOC/JAGMAN/20AUG2001//

NARR/REF A IS SECTION 642, NATIONAL DEFENSE AUTHORIZATION ACT OF  
FISCAL YEAR 2002, PUBLIC LAW 107-107, DECEMBER 28, 2001, WHICH  
EXPANDED BENEFITS AND COVERAGE UNDER THE UNIFORMED SERVICES SURVIVOR  
BENEFIT PLAN (SBP). REF B IS OSD (FMP) MEMORANDUM "SURVIVOR BENEFIT  
PLAN (SBP) ANNUITIES WHEN MEMBER DIES ON ACTIVE DUTY." REF C IS  
MANUAL OF THE JUDGE ADVOCATE GENERAL (JAGMAN), WHICH CONTAINS DON  
REGULATIONS FOR ADMINISTRATIVE INVESTIGATIONS AND LINE OF DUTY  
DETERMINATIONS.//

RMKS/1. THIS NAVADMIN ESTABLISHES POLICY, PROCEDURES, AND  
RESPONSIBILITIES FOR MAKING LINE OF DUTY DETERMINATIONS WHEN AN  
ACTIVE-DUTY SERVICE MEMBER OF THE USN DIES.

2. REF A MODIFIED THE SURVIVOR BENEFIT PLAN (SBP) PROGRAM IN TWO  
IMPORTANT WAYS: FIRST, SBP BENEFITS ARE NOW PAYABLE TO A QUALIFIED  
SURVIVOR WHEN AN ACTIVE DUTY SERVICE MEMBER DIES IN THE LINE OF  
DUTY, REGARDLESS OF WHETHER THE SERVICE MEMBER WAS RETIREMENT  
ELIGIBLE AT THE TIME OF DEATH. SECOND, THE SBP ANNUITY PAYABLE TO A  
QUALIFIED SURVIVOR (IF THE ACTIVE DUTY SERVICE MEMBER DIES IN THE  
LINE OF DUTY) WAS INCREASED.

3. SBP ANNUITIES ARE CALCULATED AS A PERCENTAGE OF THE SBP BASE  
AMOUNT. NORMALLY, THE ANNUITY IS EITHER 55 OR 35 PERCENT OF THE SBP  
BASE AMOUNT. WHEN AN ACTIVE DUTY DEATH IS DETERMINED TO BE IN THE  
LINE OF DUTY, THE SBP BASE AMOUNT IS EQUAL TO RETIRED PAY AS IF THE  
SERVICE MEMBER RETIRED WITH TOTAL (100 PERCENT) DISABILITY, WHICH IN  
TURN IS EQUAL TO 75 PERCENT OF THE MEMBER'S BASE PAY (FINAL OR  
HIGH-36 PAY). THUS, FOR AN ACTIVE DUTY DEATH DETERMINED TO BE IN  
THE LINE OF DUTY, THE CALCULATION OF THE SBP ANNUITY PAYABLE TO A  
QUALIFIED SURVIVOR WILL NORMALLY BE 55 PERCENT OF 75 PERCENT OF THE  
DECEASED SERVICE MEMBER'S FINAL OR HIGH-36 PAY.

4. REF A ONLY AFFECTS THE SBP ELIGIBILITY DETERMINATION OR ANNUITY  
CALCULATION IN CASES DETERMINED TO BE IN THE LINE OF DUTY. FOR  
CASES DETERMINED TO BE NOT IN THE LINE OF DUTY, SBP ELIGIBILITY AND  
ANNUITY CALCULATIONS REMAIN IN EFFECT UNDER THE RULES THAT EXISTED

PRIOR TO REF A. THAT IS, IF THE SERVICE MEMBER WAS NOT RETIREMENT ELIGIBLE AT THE TIME OF DEATH, THEN SBP IS INAPPLICABLE. IF THE SERVICE MEMBER WAS RETIREMENT ELIGIBLE AT THE TIME OF DEATH, AN SBP ANNUITY WILL BE PAID TO A QUALIFIED SURVIVOR, BUT WILL NOT BE COMPUTED ON THE BASIS OF A NOMINAL TOTAL DISABILITY RETIREMENT. RATHER, THE SBP BASE AMOUNT WILL BE COMPUTED ON THE RETIREMENT FOR SERVICE RULES THAT WOULD HAVE APPLIED IF THE SERVICE MEMBER HAD RETIRED AT TIME OF DEATH.

5. PER REF B, LINE OF DUTY DETERMINATIONS ARE NOW REQUIRED IN ALL ACTIVE DUTY DEATH CASES, RETROACTIVE TO 10 SEP 01.

A. "ACTIVE DUTY" IS DEFINED IN 10 U.S.C. 101(D)(1). IT INCLUDES RESERVE MEMBERS ON ACTIVE DUTY FOR ANNUAL TRAINING, WHETHER OR NOT THEIR ORDERS SPECIFY A PERIOD OF MORE THAN 30 DAYS. RESERVE MEMBERS SERVING PERIODS OF INACTIVE DUTY TRAINING ARE NOT INCLUDED.

B. "RETIREMENT ELIGIBLE" IS DEFINED IN 10 U.S.C. 1448(D)(1)(A). IT INCLUDES MEMBERS ELIGIBLE FOR RETIRED PAY; OR QUALIFIED FOR RETIRED PAY EXCEPT THAT THE MEMBER HAS NOT APPLIED FOR OR BEEN GRANTED THAT PAY, OR COMPLETED 20 YEARS OF ACTIVE SERVICE, BUT NOT YET ELIGIBLE TO RETIRE AS A COMMISSIONED OFFICER BECAUSE THE MEMBER HAS NOT YET COMPLETED 10 YEARS OF COMMISSIONED SERVICE.

C. "LINE OF DUTY" IS DEFINED IN SECTION 0223 OF REFERENCE C. SECTIONS 0223-0228 OF REFERENCE C, WHICH PREVIOUSLY APPLIED ONLY TO LINE OF DUTY DETERMINATIONS IN INJURY OR DISEASE CASES, NOW APPLY TO LINE OF DUTY DETERMINATIONS IN DEATH CASES. THUS, AN ACTIVE DUTY SERVICE MEMBER'S DEATH IS PRESUMED TO BE IN THE LINE OF DUTY, AND THAT PRESUMPTION CAN ONLY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE THAT THE DEATH:

- (1) WAS THE RESULT OF THE SERVICE MEMBER'S OWN INTENTIONAL MISCONDUCT OR WILLFUL NEGLIGENCE, OR
- (2) OCCURRED WHILE AVOIDING DUTY BY DESERTING, OR
- (3) OCCURRED WHILE ABSENT WITHOUT LEAVE AND SUCH ABSENCE MATERIALLY INTERFERED WITH THE PERFORMANCE OF REQUIRED MILITARY DUTIES, OR
- (4) OCCURRED WHILE CONFINED UNDER A SENTENCE OF COURT-MARTIAL THAT INCLUDED AN UNREMITTED DISHONORABLE DISCHARGE, OR
- (5) OCCURRED WHILE CONFINED UNDER A SENTENCE OF A CIVIL COURT FOLLOWING A CONVICTION OF A FELONY OFFENSE.

D. "QUALIFIED SURVIVOR" IS DEFINED IN 10 U.S.C. 1448(D). IT INCLUDES, IN THE FOLLOWING ORDER OF PRECEDENCE: (1) A FORMER SPOUSE WITH A COURT ORDER REQUIRING SBP (10 U.S.C. 1448(D)(3)), (2) THE SURVIVING SPOUSE, OR (3) THE SERVICE MEMBER'S DEPENDENT CHILD(REN). A COURT ORDERED FORMER SPOUSE ANNUITY TAKES PRECEDENCE OVER ANY OTHER SBP ANNUITY PAYABLE BASED ON THE SERVICE OF THE DECEASED MEMBER. A MEMBER'S DEPENDENT CHILDREN QUALIFY TO RECEIVE AN ANNUITY WHEN A FORMER SPOUSE ANNUITY DOES NOT APPLY AND THERE IS NO SURVIVING SPOUSE OR THE SURVIVING SPOUSE LATER DIES. 10 U.S.C. 1448(D)(2). A MEMBER'S DEPENDENT CHILDREN ARE NOT QUALIFIED ANNUITANTS WHEN A SURVIVING SPOUSE LOSES ENTITLEMENT TO AN ANNUITY AS A RESULT OF A REMARRIAGE BEFORE AGE 55. NO OTHER PERSONS ARE QUALIFIED TO RECEIVE BENEFITS UNDER THIS NEW PROVISION OF THE SBP.

6. PROCESS. PER REF B, LINE OF DUTY DETERMINATIONS ARE NOW REQUIRED IN ALL ACTIVE DUTY DEATH CASES, RETROACTIVE TO 10 SEP 01. LINE OF DUTY DETERMINATIONS IN DEATH CASES SHALL BE MADE AS FOLLOWS:

A. EACH ACTIVE DUTY DEATH SHALL BE SUBJECT TO, AT A MINIMUM, A PRELIMINARY INQUIRY IN ACCORDANCE WITH REF C. THE PRELIMINARY INQUIRY SHALL BE CONDUCTED BY THE COMMAND TO WHICH THE DECEASED MEMBER WAS ATTACHED (OR THE GAINING COMMAND FOR SERVICE MEMBERS WHO DIE IN TRANSIT). THE COMMAND CONDUCTING THE PRELIMINARY INQUIRY, OR

HIGHER AUTHORITY, SHALL DECIDE WHETHER THE PRELIMINARY INQUIRY IS SUFFICIENT TO BASE A LINE OF DUTY DETERMINATION OR WHETHER THERE IS NEED FOR A FULL INVESTIGATION. IN MANY DEATH CASES, A PRELIMINARY INQUIRY CONSISTING OF A BASIC LETTER REPORT ATTACHED TO A MEDICAL RECORD ENTRY OR ACCIDENT REPORT WILL BE SUFFICIENT TO BASE A LINE OF DUTY DETERMINATION. THE PERMISSIBLE FINDINGS ARE (1) IN THE LINE OF DUTY AND NOT DUE TO THE MEMBER'S OWN MISCONDUCT (2) NOT IN THE LINE OF DUTY AND NOT DUE TO THE MEMBER'S OWN MISCONDUCT OR (3) NOT IN LINE OF DUTY AND DUE TO THE MEMBER'S OWN MISCONDUCT.

B. IF THE COMMAND COMPLETING THE PRELIMINARY INQUIRY OR INVESTIGATION IS NOT A GENERAL COURT-MARTIAL CONVENING AUTHORITY (GCMCA) WITH AN ASSIGNED STAFF JUDGE ADVOCATE (SJA), THE COMMAND WILL FORWARD THE INQUIRY/INVESTIGATION TO THE FIRST GCMCA IN ITS CHAIN OF COMMAND WITH AN ASSIGNED SJA. THE COMMAND WILL INCLUDE A WRITTEN RECOMMENDATION CONCERNING THE LINE OF DUTY DETERMINATION.

C. THE GCMCA WITH AN ASSIGNED SJA IS THE COGNIZANT OFFICIAL FOR MAKING THE FORMAL LOD DETERMINATION, SUBJECT TO A LIMITED REVIEW PROCESS DESCRIBED IN PARA F BELOW. THE GCMCA SHALL MAKE THE LINE OF DUTY DETERMINATION IN ACCORDANCE WITH THE GUIDANCE IN SECTIONS 0223-0228 OF REF C.

D. ADVERSE DETERMINATIONS. BEFORE MAKING A DETERMINATION THAT AN ACTIVE DUTY DEATH WAS NOT IN THE LINE OF DUTY, THE GCMCA OR THEIR SJA SHALL AFFORD A KNOWN POTENTIAL SBP BENEFICIARY THE OPPORTUNITY TO REVIEW THE REPORT OF INVESTIGATION AND PROVIDE RELEVANT INFORMATION TO THE GCMCA. A "KNOWN POTENTIAL SBP BENEFICIARY" IS THE PERSON WHO WOULD OTHERWISE BE THE RECOGNIZED QUALIFIED SURVIVOR IF A FAVORABLE DETERMINATION WERE MADE. THE NAVY SBP PROGRAM MANAGERS WILL PROVIDE ASSISTANCE FOR NAVY COMMANDS IN IDENTIFYING POTENTIAL BENEFICIARIES. ORDINARILY, THE KNOWN POTENTIAL SBP BENEFICIARY SHALL BE PROVIDED 30 CALENDAR DAYS FROM RECEIPT OF THE REPORT OF INVESTIGATION TO PROVIDE INFORMATION TO THE GCMCA. IN AN ADVERSE DETERMINATION CASE IN WHICH THERE IS NO KNOWN POTENTIAL SBP BENEFICIARY, THE GCMCA SHALL MAKE THE LINE OF DUTY DETERMINATION FOLLOWING A REVIEW OF THE INVESTIGATION BY THE SJA.

E. THE LOD DETERMINATION SHALL BE MADE IN WRITING BY THE GCMCA AND FORWARDED TO COMMANDER, NAVY PERSONNEL COMMAND (PERS-62), 5720 INTEGRITY DRIVE, MILLINGTON, TN 38055-6220 OR HQMC (MMSR-6).

F. FOR ADVERSE DETERMINATION CASES, THE GCMCA SHALL FORWARD A COMPLETE COPY OF THE INVESTIGATION TO NAVPERSCOM (PERS-62). (PERS-62) WILL FORWARD TO CNP FOR REVIEW. CNP SHALL REVIEW THE LOD DETERMINATION AND UNDERLYING INVESTIGATION. THE DETERMINATION OF THE GCMCA SHALL BE SUSTAINED UNLESS CNP DETERMINES THAT A SUBSTANTIAL ERROR OCCURRED THAT COULD MATERIALLY AFFECT THE DETERMINATION. IN SUCH CASES, CNP CAN MAKE A DIFFERENT DETERMINATION OR RETURN THE CASE TO THE GCMCA FOR FURTHER INVESTIGATION. THE REVIEW AND DETERMINATION OF THE CNP SHALL BE ADMINISTRATIVELY FINAL.

7. THIS NAVADMIN DOES NOT CREATE OR VEST ANY RIGHT IN LAW OR EQUITY IN ANY PERSON. LOD DETERMINATIONS IN DEATH CASES ARE NOT SUBJECT TO JUDICIAL REVIEW.

8. JAGMAN CHANGES. THE JAGMAN CHANGES IMPLEMENTING REP A MAY BE FOUND AT [HTTP://WWW.JAG.NAVY.MIL/HTML/JAGVIRTUALLIBRARY.HTM](http://www.jag.navy.mil/html/jagvirtuallibrary.htm).

9. POINT OF CONTACT FOR LEGAL ISSUES CONCERNING LOD DETERMINATIONS SHOULD BE ADDRESSED TO THE LOCAL SJA OR OJAG CODE-15. POC FOR SBP MATTERS IS MR. BASIL COLEMAN AT (901) 874-4304/DSN 882, 1-800-255-8950, EXT 44304 OR FAX (901) 874-2611/DSN 882.

10. RELEASED BY VADM G. L. HOEWING, N1.//

BT  
NNNN



## DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

1750  
PERS-62  
24 May 04

### MEMORANDUM FOR CASUALTY ASSISTANCE CALLS/FUNERAL HONORS SUPPORT PROGRAM COORDINATORS

Subj: AMPLIFYING GUIDANCE REGARDING THE NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL YEAR 2004 (NDAA 04),  
PUBLIC LAW 108-136 OF 24 NOVEMBER 2003, CHANGES TO THE  
SURVIVOR BENEFITS

1. The attached five Navy Supplemental Guidance Papers are intended to amplify and clarify the Department of Defense (DOD) implementing policies and procedures dated 27 April 2004. The attachments address the Survivor Benefit Plan (SBP) changes associated with Public Law 108-136 and their effect on SBP annuities based on changes to Dependency and Indemnity Compensation (DIC) which are incorporated in into Public Law 108-183. The SBP changes in Public Law 108-136 have been incorporated into United States Code, Chapter 73, Sections 1448(b)(1) and 1448(f). The current statute can be assessed at <http://uscode.house.gov/title 10.htm>.

2. I recommend you read the Navy Supplemental Guidance Papers and corresponding DoD implementing policy and procedures changes in order to gain a more precise understanding, as well as, review Title 10, United States Code. Topics are presented in the same order in these documents to facilitate easier comparison. The five papers are:

- a. Expanded Benefits for Active Duty Deaths
- b. Limitations on Certain Insurable Interest and Supplemental Survivor Benefit Plan (SSBP) Election by Disability Retirees
- c. Insurable Interest Annuity Deemed Election for Active Duty Deaths
- d. Expanded Survivor Benefits for Inactive Duty Training (IDT)
- e. Effect on SBP Annuity when a Surviving Spouse Entitled to DIC Remarries after Age 57

Subj: AMPLIFYING GUIDANCE REGARDING THE NATIONAL DEFENSE  
AUTHORIZATION ACT FOR FISCAL YEAR 2004 (NDAA 04),  
PUBLIC LAW 108-136 OF 24 NOVEMBER 2003, CHANGES TO THE  
SURVIVOR BENEFITS

3. My point of contact is Mr. Basil Coleman who can be reached  
at [basil.coleman@navy.mil](mailto:basil.coleman@navy.mil) or DSN 882-4304, commercial  
901-874-4304 or 866-827-5672 ask for extension 44304.

A handwritten signature in black ink, appearing to read "M. P. Wardlaw", with a long horizontal line extending to the right.

M. P. WARDLAW

POINT PAPER

Mr. Basil Coleman  
PERS-622/874-4304  
20 May 04

Subj: Supplemental Guidance for Navy Use - Section 645(a),  
National Defense Authorization Act for Fiscal Year 2004,  
Public Law 108-136 of 24 November 2003, Subj: Expanded  
Benefits for Active Duty Deaths

BACKGROUND

Section 645(a) of Public Law 108-136 amended Title 10, United States Code, Section 1448(d) to expand the beneficiary coverage for surviving dependent children of eligible Sailors who die while on active duty while in the line of duty. Section 645(a) changed the benefit options for the children of Sailors who die on active to more closely parallel the options available to the surviving children of retirees. While this new change specifically applies to Section 1448(d), it should not be considered a change for other areas of the SBP.

DISCUSSION

Eligible children of a Sailor identified as a qualified death based on the provisions above now qualify for an SBP annuity if there is no surviving spouse. The surviving spouse of an active duty Sailor may become ineligible to receive an SBP annuity for the following reason: (1) death, (2) remarriage before age 55, or (3) feloniously causing the Sailor's death. The annuity payable to the children will be effective the date the spouse became ineligible, or 24 November 2003 whichever is later. Retroactive payments prior to 24 November 2003 were not authorized.

The surviving spouses of Sailors who died on or after 24 November 2003 may, after counseling, request that the Assistant Commander, Navy Personnel Command, Fleet Support (acting on behalf of the Secretary of the Navy) establish an annuity for the Sailor's eligible dependent children, and excluding the surviving spouse. This provision does not apply to surviving spouses of Sailors who died prior to 24 November 2003.

PERS-622, in coordination with the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL), will identify the surviving spouses of Sailors who meet the above criteria. PERS-622 will work with the assigned Casualty Assistance Calls Officer (CACO) to determine if there are eligible child/children. If so, the CACO will assist the surviving spouse in completing the required claim forms and forward them to the DFAS for processing.

DFAS-CL will, when an annuity was already established for the surviving spouse and is changed retroactively changed to child only coverage under this new provision, determine any amounts previously paid to the surviving spouse and consider these payments as if they were made to the dependent children.

#### RECOMMENDATION

None. For information purposes only.

POINT PAPER

Mr. Basil Coleman  
PERS-622/874-4304  
20 May 04

Subj: Supplemental Guidance for Navy Use - Section 645(b),  
National Defense Authorization Act for Fiscal Year 2004,  
Public Law 108-136 of 24 November 2003, Subj: Limitations  
on Certain Insurable Interest and SSBP Elections by  
Disability Retirees

BACKGROUND

Section 645(b) of Public Law 108-136 amended Title 10, United States Code, Section 1448(d) to restrict payment of certain insurable interest and or Supplemental Survivor Benefit Plan (SSBP) annuities to the survivors of Sailors who retire for disability. Sailors who are retired for disability, who subsequently die within one year of retirement for a cause related to the disability for which they were retired will have SSBP elections and insurable interest elections voided. This restriction does not pertain to Sailors who retire based on years of service. Section 645(b) does not preclude Sailors who retire by reason of disability from making a SSBP or insurable interest SBP election.

DISCUSSION

A Sailor who makes a SSBP election who retired on or after 24 November 2003 will have their election voided if they die within one year of retirement of a caused related to that disability retirement. The voiding of SSBP elections under the provisions of Section 645(b) does not affect regular SBP elections or annuities.

The Defense Finance and Accounting Service-Cleveland Center (DFAS-CL) will identify Sailors to PERS-622 who retired for disability on or after 24 November 2003 who elected SSBP or insurable interest and die within one year of retirement. Once the Navy certifies the cause of death, DFAS-CL will establish the annuity account or refund premiums as appropriate.

PERS-622 will obtain a copy of to the death certificate from either the DFAS-CL or the designated beneficiary. Once the death certificate and any other substantiating documentation is obtained, PERS-622 will verify information from the Navy Physical Evaluation Board (PEB) and make a determination if the cause of death was related to the disability retirement.

PERS-622 will then forward the documentation to the DFAS-CL for appropriate action.

Command Career Counselors or others providing Physical Evaluation Board (PEB) counseling will notify Sailors retiring for disability (Chapter 61) of these new provisions of law and of the restrictions that apply when making a SSBP and certain insurable interest elections. They will also ensure that Sailors retiring for disability, who elect SSBP or insurable interest coverage, have the following statements entered in Block 29 of their DD Form 2656.

"I elect Supplemental Survivor Benefit Plan (SSBP) and understand that if I die within one year of my date of retirement for a cause that is related to my retirement disability, that the SSBP election will be invalid and that any premiums deducted for such coverage will be refunded to my surviving spouse."

"I elect insurable interest category coverage and understand that if I die within one year of my date of retirement from a cause related to my disability retirement this election will be invalid unless the designated beneficiary qualifies as a bona fide dependent based on current law. Any premiums previously deducted from my retired pay will be refunded to the designated insurable interest beneficiary."

#### RECOMMENDATION

None. For information purposes only.

POINT PAPER

Mr. Basil Coleman  
PERS-622/874-4304  
20 May 04

Subj: Supplemental Guidance for Navy Use - Section 645(c),  
National Defense Authorization Act for Fiscal Year 2004,  
Public Law 108-136 of 24 November 2003, Subj: Insurable  
Interest Annuity Deemed Elections for Active Duty Deaths

BACKGROUND

Section 645(c) of Public Law 108-136 amended Title 10, United States Code, Section 1448(d) to permit payment of an SBP annuity to a natural person who has an insurable interest, if no other annuity is payable on behalf of the deceased Sailor. The insurable interest persons who qualify are limited to those who qualify as a dependent as defined under Section 1072(2) of Title 10, United States Code. These persons may include an unmarried dependent child, or a parent who at the time of the Sailor's death lived in their household and relied on the Sailor for 50 percent or more of their support. PERS-622 will review all requests for insurable interest coverage. If approval is granted, the Assistant Commander, Navy Personnel Command, Fleet Support (PERS-6) will approve the election on behalf of the Secretary of the Navy.

DISCUSSION

A Sailor must have died on active duty, on or after 24 November 2003, while in the line of duty if not retirement eligible, and had no spouse, eligible children, or former spouse with court ordered SBP coverage to qualify to have such an election made on their behalf.

An eligible annuitant is a person who does not qualify as a spouse, eligible dependent child (up to age 18 or 22 if a full time unmarried student), or former spouse with court ordered SBP coverage.

Area Coordinators will make this information available to assigned Casualty Assistance Calls Officers (CACOs) and, when necessary, consult with PERS-622 to determine if the survivors in an active duty case without a spouse, eligible children, or a former spouse with court order SBP has an otherwise eligible dependent who may qualify insurable interest coverage.

Assigned CACOs will forward requests, along with the associated documentation, to PERS-622 proving that the person requesting insurable interest was:

- A valid dependent at the time of the Sailor's death
- Otherwise not authorized an annuity under the provisions of Section 1448(d)

PERS-622 will adjudicate all requests for a deemed insurable interest election and provide the CACO a copy of that determination.

If a request is approved, the CACO will assist the eligible beneficiary in completing the required annuity claim forms to be provided to the DFAS-CL for processing.

The DFAS-CL will establish the payable SBP annuity based on the information provided by PERS-62.

RECOMMENDATION

None. For information purposes only.

POINT PAPER

Mr. Basil Coleman  
PERS-622/874-4304  
20 May 04

Subj: Supplemental Guidance for Navy Use - Section 644,  
National Defense Authorization Act for Fiscal Year 2004,  
Public Law 108-136 of 24 November 2003, Subj: Expanded  
Survivor Benefits for Inactive Duty Deaths

BACKGROUND

Section 644 of Public Law 108-136 amended Title 10, United States Code, Section 1448(f) to expand and include all Reserve Component Sailors who died in the line of duty while performing inactive duty for training (IDT) retroactive to 10 September 2001. This section of law only pertains to those Reserve Component Sailors who were not retirement eligible and died in the line of duty while on IDT since 10 September 2001. Reserve Component Sailors who die while on active duty are not subject to the provisions of Section 644, as they were previously covered.

DISCUSSION

In contrast to active duty deaths, IDT deaths do not authorize Supplemental SBP, insurable interest coverage or child only election when there is an eligible surviving spouse. In the case of IDT deaths, the SBP is payable to eligible children only if there is no spouse or the spouse subsequently dies.

Retired pay in the case of reservists will be computed based on the provisions of Section 12733, Title 10, United States Code. PERS-62 will request a statement of service from PERS-482 to determine what the Sailor's qualifying years of service were on their date of death.

In order for a Reserve death to qualify for coverage, the Sailor must die while in the line of duty (LOD). The procedures outlined in NAVADMIN 065/03, which govern active duty LOD findings, also apply in these types of reserve cases. PERS-622 will adjudicate cases that involve Reserve Component Sailors who are not retirement eligible and died while on IDT and certify those findings to the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL).

The Naval Reserve Personnel Center (NRPC), New Orleans will ultimately be the proponent and answer questions about this provision of the law as it applies to the Reserve Component Survivor Benefit Plan (RCSBP).

RECOMMENDATION

None. For information purposes only.

POINT PAPER

Mr. Basil Coleman  
PERS-622/874-4304  
20 May 04

Subj: Supplemental Guidance for Navy Use - Section 101,  
Veterans Benefits Act of 2003, Public Law 108-183 of  
18 December 2003, Subj: Effect on SBP Annuity When a  
Surviving Spouse Entitled to DIC Remarries After Age 57

BACKGROUND

Section 101 of Public Law 108-183 permits the remarriage of on or after 16 December 2003 of widows of veterans after age 57 without loss of Veterans Dependency and Indemnity Compensation (DIC). Surviving spouses of veterans who remarried prior to 16 December 2003 after age 57 may have their DIC reinstated if they submit an application to the Secretary of Veterans Affairs prior to 16 December 2004.

DISCUSSION

The dollar for dollar reduction (offset) of the SBP annuity associated with the payment of DIC to an eligible spouse remains unchanged.

The PERS-675 (Retired Activities and GI Programs Branch) staff will, in coordination with PERS-622 through publication of information in the quarterly Navy retiree newsletter "Shift Colors", disseminate information about the one-year period to surviving spouses who may have remarried after age 57 but prior to 16 December 2003, to submit an application to the Department of Veterans Affairs requesting reinstatement of DIC.

PERS-62 and PERS-675 will incorporate this change into their future survivor benefit/retiree briefings.

RECOMMENDATION

None. For information purposes only.

ORIGINAL



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
4000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-4000

17 May 02

FORCE MANAGEMENT  
POLICY

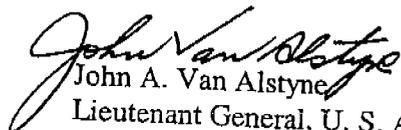
MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(HUMAN RESOURCES)  
PRINCIPAL DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(PERSONNEL PROGRAMS)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(FORCE MANAGEMENT AND PERSONNEL)  
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE

SUBJECT: Survivor Benefit Plan (SBP) Annuities when Member Dies on Active Duty

This memorandum provides uniform guidance to the Services and the Defense Finance and Accounting Service (DFAS) for implementing section 642, National Defense Authorization Act for Fiscal Year 2002 (NDAA 2002), Public Law 107-107, December 28, 2001. This section of law provides new benefits under the Uniformed Services Survivor Benefit Plan (SBP). The new benefits are effective for deaths of members that occur on or after September 10, 2001. New benefits are provided in the case of most members not yet retirement eligible. Increased benefit amounts are provided in most cases of members eligible for retired pay. No new benefits are provided when the death of a member is determined to be not in Line-of-Duty.

Policies, procedures, and responsibilities for the new provisions of law are attached. These include the criteria for a qualified death, the determination of qualified beneficiaries, the computation of benefits, and guidelines for Line-of-Duty determinations necessary to support the award of benefits. Since these provisions apply retroactively, Services should identify qualified recipients and DFAS should initiate annuity payments as quickly as possible.

Separate guidance is being staffed to govern the practice of imminent death retirements. Deaths on active duty do not result in any Insurable Interest or Supplemental SBP benefits. All SBP elections remain available to all members who are retired, whether for length of service or for disability.

  
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(Military Personnel Policy)

Attachment: As stated  
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# ORIGINAL

## Implementing Policies, Procedures, and Responsibilities Section 642, P.L. 107-107, December 28, 2001

### General

Section 642, Public Law 107-107, December 28, 2001, provides expanded benefits under the Uniformed Services Survivor Benefit Plan (SBP) for the qualified survivors of eligible members who die in the Line-of-Duty while serving on active duty. These benefits are effective for a death on or after September 10, 2001. Active duty is that duty defined by 10 U.S.C. 101(d)(1). This includes reserve members on active duty for annual training duty, whether or not their orders specify a period of more than 30 days. Reserve members serving periods of inactive duty training are not included.

This document provides uniform guidance as to when a death qualifies survivors for benefits, which survivor or survivors are entitled to an annuity, and how annuities will be computed. It also establishes general guidelines for Line-of-Duty determinations and prescribes implementing responsibilities and procedures.

### Qualified Deaths

A qualified death under the provisions of Section 1448(d), title 10, United States Code [10 U.S.C. 1448(d)], as amended by P.L. 107-107, is a death of a member on active duty who:

- (1) Died in the Line-of-Duty, or
- (2) Died not in the Line-of-Duty, but was retirement eligible as described by 10 U.S.C. 1448(d)(1)(A).

Benefits for those described in (2) are unchanged by the amendments of P.L. 107-107.

Guidance is provided below concerning the determination of whether the member's death was in the Line-of-Duty.

The death of a member is not a qualified death if the member was not on active duty, or was on active duty but whose death is determined to be not in the Line-of-Duty and the member was not eligible to retire as described in 10 U.S.C. 1448(d)(1)(A). The survivors of members whose death is not qualified are not entitled to SBP benefits under the provisions of 10 U.S.C. 1448(d), but may be entitled to other benefits under existing laws and regulations.

## Qualified Annuitants

The amendments of P.L. 107-107 did not change the law with respect to who may receive an SBP annuity based on a qualified death (as described above). The only changes were in the criteria for a qualified death and the method of calculating the annuity.

In general, an annuity is payable to a surviving spouse unless an annuity is payable to a former spouse under the provisions of 10 U.S.C. 1448(d)(3). A former spouse annuity takes precedence over any other SBP annuity payable because of the service of the deceased member.

Under the provisions of 10 U.S.C. 1448(d)(2), a member's children qualify to receive an annuity under these provisions only when a former spouse annuity does not apply and either there is no surviving spouse or the surviving spouse later dies. A member's children are not qualified annuitants when a surviving spouse loses entitlement to an annuity as a result of a remarriage before age 55.

No other persons are qualified to receive benefits under these provisions. No benefits will be paid under these provisions to a person with an insurable interest as described in 10 U.S.C. 1448(b)(1).

## Annuity Amounts

The annuity payable for a qualified death (as described above) under the provisions of 10 U.S.C. 1448(d) will be computed with the SBP base amount equal to the amount of retired pay that would have been paid to the member had that member been retired on the date of death as follows:

- (1) For a qualified death in the Line-of-Duty, the SBP base amount is equal to the retired pay as if the member were retired with total (100%) disability under 10 U.S.C. 1201 (which is equal to 75% of the appropriate retired pay base as described below). The annuity is then normally either 55 or 35 percent of the SBP base amount, following the provisions of 10 U.S.C. 1451(c).
- (2) For a qualified death not in the Line-of-Duty and the member is retirement eligible under 10 U.S.C. 1448(d)(1)(A), the SBP base amount is equal to the retired pay as if the member were retired for length of service under the applicable section of law for the respective service of the deceased member (which is 2.5% multiplied by the qualifying creditable years of service multiplied by the appropriate retired pay base as described below). The annuity is then normally either 55 or 35 percent of the SBP base amount, following the provisions of 10 U.S.C. 1451(c).

**Retired Pay Base:** The retired pay base applicable to a qualified death will be calculated as described under 10 U.S.C. 1406 or 1407 as appropriate to the deceased

member's Date of Initial Entry on Military Service (DIEMS). Further, such annuity calculations shall be made without regard to any reduction in the multiplier that would apply to a member under 10 U.S.C. 1409(b)(2) who elected to receive a bonus under the provisions of 37 U.S.C. 322. Cost-of-living adjustments (COLAs), however, shall be applied in the same percentage that would have applied to the member's retired pay (had the member not died). Therefore, for members who elected the bonus under 37 U.S.C. 322, the COLA applied to the SBP annuity will be reduced pursuant to 10 U.S.C. 1401a(b)(3).

No supplemental SBP (SSBP) benefits will be paid under these provisions to a surviving spouse of a member who dies while serving on active duty. Any SBP annuity paid under these provisions to a surviving spouse shall be reduced by the amount of dependency and indemnity compensation to which the surviving spouse is entitled under 38 U.S.C. 1311(a). Any such reduction shall be effective on the date of the commencement of the period of payment of such compensation.

### **Line-of-Duty Determinations**

For purposes of determining eligibility for SBP benefits under 10 U.S.C. 1448(d), a service member's death will generally be considered to have occurred in Line of Duty unless: (1) the death occurred while the member was not serving on active duty, (2) the death was the result of the member's own intentional misconduct or willful negligence, or (3) the death occurred during a period of unauthorized absence.

For purposes of this section, the military services will make a written finding as to whether a member's death on or after September 10, 2001 was in the Line-of-Duty while the member was serving 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 and whether the death occurred during a period of unauthorized absence.

With the exception of the requirements contained in this memorandum and other current DoD guidance governing Line of Duty determinations and investigations, each military service should continue to apply its own existing regulatory guidance and procedures. A copy of all Line-of-Duty determinations will be retained by the military services for the period required by agency regulations but not less than three years, and will be subject to a DoD Joint Service review to be conducted approximately one year after implementation of this law. The DoD Joint Service review will assess uniformity and consistency among the military services with respect to this provision of law.

### **Responsibilities**

The military services must review the death of each member who died on active duty on or after September 10, 2001, to ascertain whether the death was in the Line-of-Duty and

whether there are any qualified survivors entitled to SBP payments. The military services will inform the Defense Finance and Accounting Service (DFAS) of their Line-of-Duty determinations. The determination may be recorded in the remarks section of the DD Form 1300, Report of Casualty; Block 10 of the DD Form 261, Report of Investigation Line of Duty and Misconduct Status; or on any other form authorized under individual Service regulations. However, all Line of Duty (LOD) determinations must be supported by a written finding which describes the circumstances of death that support that LOD determination, as outlined in the guidance above. 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 -- Yes or No.

DFAS shall establish and pay SBP annuities to qualified survivors for qualified deaths as prescribed above.

The Office of the Under Secretary of Defense (Personnel and Readiness) in conjunction with the military services will convene a DoD Joint Service review board to review Line-of-Duty findings for consistency and uniformity among the military services after approximately one year of experience with the statute. This review board will make recommendations as appropriate to ensure consistency and uniformity.

**Implementing Policies, Procedures, and Responsibilities**  
**Section 644, National Defense Authorization Act for Fiscal Year 2004,**  
**P.L. 108-136, November 24, 2003**  
**Expanded Survivor Benefits For Inactive Duty Training Deaths**

**General**

Section 644, National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, November 24, 2003, provides benefits under the Survivor Benefit Plan (SBP) for the qualified annuitant of a reserve component member not otherwise covered under 10 U.S.C. 1448(f)(1)(A) who dies while performing inactive duty training and the death is determined to have occurred in line of duty.

Section 644 applies to deaths that occur on or after September 10, 2001.

The following guidance specifically pertains to the changes in the SBP Program resulting from section 644 and should not be considered comprehensive guidance for the entire Program. Policy pertaining to unchanged provisions of the law remains in effect unless otherwise noted herein.

**Qualified Deaths**

Benefits may be payable under Section 1448(f)(1)(B) of title 10, United States Code, when a member dies while performing inactive duty training and the death is determined to be in line of duty.

The term "inactive duty training", as defined in Section 206(22) of title 37, United States Code, includes:

- (1) traveling directly to or from the place at which such duty is performed; or
- (2) remaining overnight, immediately before the commencement of inactive-duty training; or
- (3) remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site of the inactive-duty training is outside reasonable commuting distance of the member's residence.
- (4) serving on funeral honors duty under Section 12503 of title 10, United States Code or Section 115 of title 32, United States Code, to include:
  - (i) traveling to or from the place at which the member was to so serve; or
  - (ii) remaining overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence.

Thus, under this provision, effective for deaths occurring on or after September 10, 2001, an immediate Reserve Component SBP annuity may be payable in the event of the death of a reserve component member who is not retirement eligible and whose death is determined to be **in line of duty**, as prescribed below, while performing inactive duty training.

The death of a reserve component member who is not retirement eligible and whose death is determined to have occurred **not in line of duty** does not qualify under this provision.

## **Qualified Annuitants**

Consistent with section 1448(f) of title 10, United States Code, an RC-SBP annuity under this provision of law is payable to a qualified annuitant in the following sequence:

- (1) to the member's 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 Reserve Component SBP or if the member has made an election to provide an annuity to the former spouse.
- (2) to the surviving spouse.
- (3) to the surviving eligible dependent children if there is no surviving spouse or if the surviving spouse subsequently dies. (**Note:** the dependent child is not a qualified annuitant if the surviving spouse loses entitlement to the annuity for a reason other than death.)

## **Annuity Amounts**

The annuity payable for a death that occurred while performing inactive duty training under this provision is computed in the same manner as an annuity payable under 10 U.S.C. 1448(f)(1)(A).

No Supplemental SBP (SSBP) benefits will be paid under this provision to a surviving spouse of a member who dies while performing inactive duty training. SSBP benefits prescribed under subchapter III of chapter 73, title 10, United States Code do not apply when a member dies while performing inactive duty training.

## **Line of Duty Determinations**

For purposes of determining eligibility for SBP benefits under section 1448(f)(1)(B) of title 10, United States Code, a service member's death will generally be considered to have occurred in line of duty unless: (1) the death occurred while the member was not serving on inactive duty training, (2) the death was the result of the member's own intentional misconduct or willful negligence, or (3) the death occurred during a period of unauthorized absence.

For purposes of this section, the military service concerned will make a written finding as to whether a member's death on or after September 10, 2001, was in the line of duty while the member was performing inactive duty training. 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 and whether the death occurred during a period of unauthorized absence.

## **Responsibilities**

The Secretary of the Military Department concerned shall identify and review the circumstances of all reserve component deaths that occurred while the member was performing inactive duty in the line of duty on or after September 10, 2001, and determine the benefits applicable under section 644 of the National Defense Authorization Act for Fiscal Year 2004, P.L. 108-136.

Consistent with this new authority, the Defense Finance and Accounting Service (DFAS) shall pay annuities to qualified beneficiaries in relation to qualified deaths.