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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Chapter CC29--Officers' Relations, Services, and Benefits
Subchapter CC29.5--Death Benefits
Personnel Instruction 4--Retired Serviceman's Family Protection Plan

CONTENTS

Section A. Purpose and Scope

This Instruction provides information concerning the Retired Serviceman's Family Protection Plan under which certain retired officers are receiving reduced retired pay in order to provide a percentage of their retired pay for a survivorship annuity (see Section C for background on the Plan).

Section B. Statutory Authority

Subchapter I of chapter 73, title 10, United States Code, authorizes the Retired Serviceman's Family Protection Plan. The provisions of law are implemented by regulations approved by the Secretary of Health, Education, and Welfare, on February 10, 1969. 1/

Section C. Background

The Retired Serviceman's Family Protection Plan was authorized by legislation enacted in 1953. The legislation, originally known as the Uniformed Services Contingency Option Act, was later codified as chapter 73 of title 10, United States Code. It was amended and renamed the Retired Serviceman's Family Protection Plan in 1961. The Plan was changed in March 1966 by Public Law 89-365, to exclude the cost of the coverage from the officer's taxable income and to exclude the value of the survivor annuity from the officer's gross estate for Federal estate tax purposes. The Plan was significantly changed by the enactment of Public Law 90-485 on August 13, 1968. It was then discontinued for all officers retiring on and after September 21, 1972, which was the effective date of the new Survivor Benefit Plan established by Public Law 92-425 (see INSTRUCTION 5 of this Subchapter). The Plan, however, continues in effect for those officers who retired before September 21, 1972, and chose to continue their coverage. The Plan, as it applies to these officers, is stated in this Instruction.

1/ These regulations are on file with the Employee Relation Branch, OPM, OAM.

Section D. Responsibilities

1. Commissioned Personnel Operations Division. This Division is responsible for:

   a. Advising the surviving beneficiaries about their entitlement to the annuity and furnishing them with the application form for claiming payment.

   b. Requesting verification of the beneficiaries entitlement to dependency and indemnity compensation in the case of the officers referred to in paragraph 4, Section I.

2. DHEW Central Payroll Division. This Division is responsible for:

   a. Notifying a retired officer of the amounts to be deposited and when deposits are to be made during any period in which he is not receiving retired pay or active duty pay (ref. Section H, paragraph 6).

   b. Determining and refunding the amount due an officer when he is removed from the temporary disability retired list for any reason other than permanent retirement (ref. Section H, paragraph 5).

   c. Paying the annuity to surviving eligible beneficiaries.

   d. Obtaining documentary evidence of children's continued eligibility for the survivor annuity after age 18 (ref. Section I, paragraph 3).

Section E. Types and Amount of Annuities

1. An officer participating in the Plan had the choice of electing any one of the following options. He could also elect a combination of Options 1 and 2, provided the total of the annuities was not more than maximum allowed for a single option.

a. Option 1 is an annuity payable to or on behalf of the surviving spouse until death or remarriage.

b. Option 2 is an annuity payable to or on behalf of surviving eligible children until there is no longer a child eligible to receive the annuity. The annuity is payable in equal shares to or on behalf of the surviving children remaining eligible at the time payment is due.

c. Option 3 is an annuity payable to or on behalf of the surviving spouse and children. The annuity is payable to the spouse until death or remarriage and thereafter payment of the annuity is payable in equal shares to or on behalf of the surviving children remaining eligible at the time payment is due. (Officers may allocate a part of the annuity under this option for payment to surviving children who are not children of the surviving spouse eligible for the annuity.1/ The allocation may not, however, exceed the equal share which the children would receive if there were no surviving spouse.)

2. Amount of Annuity. The amount of the annuity depends on the amount elected by the officer and when heretired.

a. Officers who retired before August 13, 1968, were permitted to elect annuities in amounts of 1/8, 1/4, or 1/2 of their reduced retired pay (i.e., the amount of retired pay remaining after deduction of the cost).

1/ A child loses eligibility for an annuity under the Plan if he is adopted by a third person before the parent-officer's death. His eligibility is not affected if he is adopted by a third person after the parent-officer's death (36 C.G.325).

b. Officers who retired on and after August 13, 1968, were permitted to specify either a dollar amount or a percentage of their retired pay as the amount of the survivor annuity. However, the amount of the annuity could not be more than 50% nor less than 12 1/2% of their full retired pay (and in no case, less than $25 a month).

Section F. Eligible Beneficiaries

1. Eligible beneficiaries under the Plan include--

a. The lawful spouse of an officer who was married to the officer at the time of retirement.

b. A child who was living on the date of the officer's retirement and who meets the following requirements:

(1) A legitimate child under 18 years of age and unmarried.

(2) A stepchild, under 18 years of age and unmarried, who is in fact dependent on the officer for over half of his or her support. The term "stepchild" means a child of the officer's spouse by a former marriage. The stepchild relationship terminates upon the divorce of the parent spouse, but not upon the death of the parent spouse.

(3) A legally adopted child, under 18 years of age and unmarried.

(4) A child, as defined above, who is 18 or more years of age and unmarried, and who is incapable of self-support because of a mental or physical incapacity existing before his 18th birthday.

(5) A child of an officer who retired on and after November 1, 1968, as defined above, who is at least 18, but under 23 years of age, is unmarried, and is pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

Section G. Changes in Coverage

1. Revocation. 1/ A retired officer may request cancellation of his coverage at any time. The request must be made in writing to the Commissioned Personnel Operation Division. The request, once received by that division, will be irrevocable but will not be effective until the 1st day of the seventh month following the month in which the request is received.

2. Reduction in Amount of Annuity. 1/ A retired officer may request a reduction in the amount of the survivor annuity coverage at any time. The reduction, however, may not be less than 12 1/2% of his retired pay and in no case less than $25 monthly. The request must be in writing to the Commissioned Personnel Operations Division. The request, once received by that division, will be irrevocable but will not be effective until the 1st day of the seventh month following the month in which the request is received. The cost of the reduced annuity will be computed on the basis of the cost table in effect on the date of the officer's retirement and the amount of retired pay to which he was entitled on the date of his retirement.

3. Children Age 18-22. 2/ An officer who elected coverage for children only (Option 2) may request that children age 18-22 not be considered as eligible beneficiaries if there are no other eligible children under age 18. This election may be made even though the children qualify as full-time students. Such request must be in writing and will be effective the first day of the month following receipt of the request by the Division of Central Payroll.

1/ The provisions of this paragraph apply to officers who retired on and after August 13, 1968, and to officers who retired before August 13, 1968, if they elected the so-called "restoration option."

2/ Applies only to officers who retired on and after November 1, 1968.

4. Refunds. There will be no refunds of amounts withheld from retired pay when an officer revokes or changes his coverage as provided above.

Section H. Deductions from Retired Pay

1. Cost of Annuity. The cost of the annuity which is withheld from the officer's retired pay, is computed on the basis of the officer's age and the age of his eligible beneficiaries in accordance with the actuarial tables in effect on the date of the officer's retirement.

2. Termination of Cost. The cost deducted from the officer's retired pay will cease:

   a. On the 1st day of the month following that in which there is no eligible beneficiary under the annuity option elected. 1/

   b. On the 1st day of the month following that in which the spouse under an elected Option 3 (Family Option) ceases to be eligible because of death or divorce. Coverage for eligible children will continue without cost to the officer. 1/

   c. On the date of the officer's death. The amount of the deduction from his retired pay will be prorated through the date of his death.

1/ The provisions of this paragraph apply to officers who retired on and after August 13, 1968, and to officers who retired before August 13, 1968, if they elected the so-called "restoration option."

3. Changes in Amount of Retired Pay. The cost and the amount of the survivor annuity were computed on the basis of the amount of the officer's retired pay at the time of his retirement. Except where an adjustment is made as provided in Section G, both the cost and the amount of the survivor annuity remain the same, even though retired pay is:

   a. Decreased because of disability compensation awarded by the Veterans Administration.

   b. Decreased under the Dual Compensation statute because of employment in a Federal civilian position.

   c. Increased because of a cost-of-living increase authorized on or subsequent to, the effective date of retirement.

4. Recall to Active Duty. An officer's coverage under the Plan will continue during any period of recall to active duty. The amount normally deducted from his retired pay for the coverage will be deducted from his active duty pay.

5. Removal from the Temporary Disability Retired List. An officer who is removed from the temporary disability retired list for any reason other than permanent retirement will be paid a refund in an amount which represents the difference between the amount of the deductions withheld from his retired pay and the cost of an amount of term insurance which is equal to the protection provided his beneficiaries during the period he was on the temporary disability retired list. Determination of the cost will be in accordance with tables prepared for this purpose which are available in both the Division of Central Payroll and the Commissioned Personnel Operations Division.

6. Deposits. An officer who is participating in this Plan will, during an period in which he is not receiving retired pay or active duty pay, be required to deposit the amount which would have been withheld from his retired pay had he been receiving that pay.

a. The deposit, when required, will be payable to the Treasurer of the United States and will be forwarded monthly to the DHEW Division of Central Payroll. That Division will in all cases inform the officer of the amount to be deposited and when such deposits are to be made.

b. If deposits are not made within 30 days of the due date, the Division of Central Payroll will inform the officer that he is delinquent from such due date and that his designated beneficiary will not be eligible for the annuity provided under the Plan until the arrears have been paid. The notification of delinquency will advise the officer that 15 additional days have been granted to him in which to remit his deposit, and that if the arrears are not deposited within that period, he will be charged interest to include the first day of delinquency. In no case will the expiration date of the 15 days exceed a date later than 45 days from the date the deposit was due. The interest will be computed monthly and the rate will be that used in computing the cost tables in effect of the officer's retirement. If the officer later becomes in receipt of retired pay, any arrears with compound interest will be withheld.

Section I. Payment of the Annuity

1. Claim for the Annuity. Annuity payments will be made by the DHEW Division of Central Payroll upon application by the eligible beneficiary on Form PHS-2146-3. This form will be furnished to the beneficiary by the Commissioned Personnel Operations Division upon notice of the retired officer's death.

2. Period of Payment. Payment of the annuity will accrue from the first day of the month in which the officer died and will be made at the end of each month (see exception for children in paragraph 3b, below). There will be no payment for the month in which entitlement to the annuity terminates.

3. Payment to Children. The following special rules apply in the case of children.

   a. Annuities for a child or children will be paid to the child's guardian, or if there is no guardian, to the person who has care, custody, and control of the child or children.

   b. For those officers who retired on and after November 1, 1968, the annuity under an election of Option 2 or 3 will be payable to or on behalf of children age 18-22 who are full-time students. If a child has been receiving a survivor annuity when he reaches age 18, the annuity will continue until age 23 so long as he is a full-time student. If the child becomes eligible after reaching age 18, the annuity will accrue from--

      (1) the first day of the month in which the retired officer died, or

      (2) the first day of the month in which the child first becomes (or again becomes) eligible. An eligible child under this paragraph might become ineligible at age 18 and again become eligible by furnishing proof of status as a full-time student as indicated below.

   c. Proof that the child is pursuing a full-time course of study or training will be required semi-annually. For this purpose, a child will be considered to be pursuing a full-time course of study or training during an interval between school periods that does not exceed 150 days if he has satisfactorily demonstrated that he has a bona fide intention of commencing, resuming, or continuing to pursue a full-time course of study or training immediately after that interval.

   d. If a disabled child over 18 is an eligible beneficiary, proof will be required that the incapacity for self-support existed before the child reached age 18. Proof of continued incapacitation will be required every two years, except in those cases where medical prognosis indicated recovery is not possible.

4. Dependency and Indemnity Compensation. Eligible beneficiaries may receive the survivor annuity under this Plan in addition to the dependency and indemnity compensation (DIC) which is paid by the Veterans Administration for service-connected death, unless the officer made an election on or after October 4, 1961, and retired for disability before completing 19 years 1/ creditable service for pay purposes. If, under the exception indicated, either the widow or child is eligible for DIC, the annuity will not be paid to either the widow or the child. However, the amount withheld from the officer's retired pay will be refunded to his beneficiaries, less any amount paid as an annuity, without interest.

5. Indebtedness. Except as provided in paragraph 6, below, the annuity provided under this Plan is not assignable nor subject to execution, levy, attachment, garnishment, or other legal process.

6. Recovery of Erroneous Payments. The Director, Commissioned Personnel Operations Division may use any means provided by law to recover annuity amounts paid erroneously to any individual under the Plan. He may authorize such recovery by adjustment in subsequent payments to which the individual is entitled. No recovery, however, will be made when, in his judgment or the judgment of the Comptroller General, the individual to whom the erroneous payment was made is without fault and recovery would be contrary to the purpose of the Plan or would be against equity and good conscience.

7. Increases in Survivor Annuity. The amount of the survivor annuity remains fixed during the period of the survivor's entitlement. There is no provision under the Plan for increasing the survivor annuity because of cost of living increases.

1/ This restriction applies to officers retired for disability before November 1, 1968, with less than 18 years of service for pay purposes.

Section J. Tax Provisions

1. Federal Income Tax.

   a. Nondisability Retirees. For Federal tax purposes, gross income from retired pay does not include the survivor annuity deductions. For example, if an officer's nondisability retired pay is $10,000 a year and is reduced by $2,000 for the survivor annuity, only his reduced retired pay of $8,000 is gross income for Federal income tax purposes. This will be the amount listed as taxable income on his Form W-2, Statement of Taxable Income and Tax Withholding.

   b. Disability Retirees. Disability retirees who are receiving retired pay computed on the basis of their percentage of disability cannot claim tax exemption for the survivor annuity deductions since (1) the full amount of their retired pay is already exempt under the tax exemptions applying to disability retired pay, and (2) the deductions do not reduce other taxable income. Some disability retirees, however, receive retired pay which is only partially exempt under the disability tax exemption (i.e., those officers who elected to have their retired pay computed on the basis of their "years of service" rather than "percentage of disability" since it provided a greater amount of retired pay). In these cases, an officer's disability tax exemption is the amount of retired pay he would have received had his retired pay been computed on the basis of his percentage of disability. Assume, for example, that an officer's retired pay based on "years of service" is $10,000 a year but it would have been $4,000 a year based on the percentage of his disability. His disability tax exemption is $4,000. If his survivor annuity deductions total $2,000 for the year, his taxable retired pay would be computed as follows:

Gross retired pay	$10,000
Less survivor annuity deductions	2,000
Reduced retired pay	8,000
Less disability tax exemption	4,000
*Net taxable retired pay	$ 4,000

* This is the amount that would be listed as taxable income on the officer's W-2.

c. Retirees Not Receiving Retired Pay. When a retired officer is recalled to active duty, and survivor annuity payments are deducted from his active duty pay, such payments may not be used as a tax exclusion from his active duty pay. This also applies when a retired officer is not receiving retired pay for any other reason and is required to make a deposit (Section H, paragraph 5). The deposits or the deductions from active duty pay, however, will accumulate as a "consideration for the contract" for later usage as a tax exclusion from taxable retired pay, or in the event of the officer's death, as a tax exclusion from the survivor's taxable annuity payments. The DHEW Central Payroll Division will furnish the retired officer or the survivor, as applicable, with a statement of the total amount of the annuity deductions from active duty pay at the time he returns to retired pay status or at his death, as the case may be. The officer or survivor will also be furnished copies of a Supplemental Schedule which must be completed and attached to the Federal Tax return (Form 1040) to support deduction of the deposit from taxable retired pay or the survivor annuity, as applicable.

d. Survivors (All Retirees). The survivor annuity is subject to Federal income tax except for the exclusions provided in paragraphs 1c and 1e of this Section. The tax will not be withheld from the annuity, except at the request of the annuitant. Such request is made on Form W-4P, Annuitant's Request for Federal Income Tax Withholding, which is available at all Internal Revenue Service offices but can also be obtained from the DHEW Division of Central Payroll.

e. Survivors (Disability Retirees). The survivor of an officer who retired for disability and died before attaining "retirement age" 1/ may exclude from gross income the amount of annuity payments received until there has been so excluded annuity payments equaling $5,000. This is the death benefit exclusion provided under section 72(o) and 101(b) of the Internal Revenue Code. The survivor who qualifies for this exclusion will be advised by the Commissioned Personnel Operations Division at the time of the officer's death.

2. State Income Tax. The tax exemption for the survivor annuity deductions applies to Federal income taxes, but not to all State income taxes. Some States follow the Federal rule and some do not. Since the State laws vary, officers should consult their State or local tax authorities in preparing their returns. If the survivor annuity deductions are not exempt from State income tax, the amount shown on the officer's W-2 as taxable income received will not be correct for State tax purposes. The DHEW Division of Central Payroll will issue a corrected W-2 for State income tax upon request from the officer.

3. Gift Tax. Survivor annuities under the Retired Serviceman's Family Protection Plan are not considered gifts for Federal gift tax purposes.

4. Federal Estate Tax. The value of the annuity under the Retired Serviceman's Family Protection Plan is not included in the officer's gross estate for Federal estate tax purposes, except for that portion which is based on deposits and deductions from active duty pay. Under the exception, the value of the annuity to be included in the gross estate will be the proportion that the total of deposits and active duty pay deductions bears to the total payments (deductions from retired pay and active duty pay, plus deposits). If, for example, the total value of the annuity is $20,000, the deductions from retired pay totaled $600, and the deposits totaled $400, the amount of the annuity value to be included in the gross estate for Federal estate tax purposes will be computed as follows:

$$\frac{\$400}{\$1,000} \times \$20,000 \text{ (total value)} = \$8,000$$

1/ Retirement age is the date the officer would have reached age 64.

Requests for calculations of the annuity value should be addressed to the National Office of Internal Revenue Service, Estate Tax Division, Washington, D.C. 20001. The request should include:

1) The name of the deceased officer.
2) His date of birth.
3) His date of retirement.
4) His date of death.
5) Type of annuity (Retired Serviceman's Family Protection Plan - Chapter 73 of Title 10, U.S. Code.)
6) Total amount deducted from retired pay.
7) Total amount deposited by officer (include deductions from active duty pay).
8) Name of annuity beneficiary.
9) Beneficiary's date of birth.
10) Amount of the survivor annuity.