

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

Chapter CC29.5--Officers' Relations, Services, and Benefits
Subchapter CC29.5--Death Benefits
Personnel INSTRUCTION 5--Survivor Benefit Plan

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Section A. Purpose and Scope

1. This INSTRUCTION provides information concerning the Survivor Benefit Plan (SBP), an annuity program which permits members of the uniformed services who reach retirement eligibility to leave a portion of their retired pay to their survivors. It states the essential provisions of the law governing SBP and establishes administrative procedures as they apply to the Commissioned Corps of the Public Health Service (PHS). This INSTRUCTION does not cover information and exceptions of limited applicability. Refer to the SBP statutory authority, 10 United States Code (U.S.C.) 1447 et seq. for additional detail.

2. For information on the Retired Serviceman's Family Protection Plan (RSFPP), refer to Commissioned Corps Personnel Manual (CCPM), Subchapter CC29.5, INSTRUCTION 4. RSFPP is applicable only to officers who retired prior to 1972.
3. For information on Dependency and Indemnity Compensation (DIC), which is paid by the Veterans Administration (VA) to the eligible dependents of officers whose death is found to be service-connected, refer to CCPM, Subchapter CC29.5, INSTRUCTION 6.

Section B. Authority

1. The Survivor Benefit Plan is set forth in 10 U.S.C. 1447 et seq.
2. PHS commissioned officers are entitled to participate in SBP under the authority of 42 U.S.C. 213a(a)(5).

Section C. Responsibilities

1. The Joint Department of Defense and Uniformed Services Survivor Benefit Plan Board, of which PHS is a member, is responsible for promulgating the regulation governing the implementation and administration of SBP, coordinating uniform administration of SBP by the seven uniformed services, and reporting to Congress regarding the operation of and participation levels in SBP.
2. The Division of Commissioned Personnel (DCP), Office of the Surgeon General, is responsible for the administration of SBP within PHS.

Section D. Overview of SBP

1. General. SBP provides a retired PHS officer with the opportunity to defer receipt of a portion of retired pay so that a beneficiary designated by the officer will receive an annuity from PHS upon the officer's death. Participation in SBP allows a retiree to ensure a guaranteed, minimum level of income for the designated beneficiary from the Federal Government after the retiree's death.
2. Eligible Beneficiaries. An officer can elect one of the following beneficiary designations:
 - a. Spouse or former spouse only (An officer may elect only one, which automatically precludes coverage of the other.);

- b. Spouse/former spouse and children;
- c. Children only; or
- d. Insurable interest person.

3. Cost and Amount of Annuity.

- a. Cost. The monthly cost to the retiree for the annuity is based on the amount of the annuity the retiree elects to provide and the category of individual the retiree designates as beneficiary. The cost is not subject to Federal income tax. Refer to the sections of this INSTRUCTION that discuss each beneficiary group for the specific cost formula. The approximate cost of providing an annuity in the maximum amount to each beneficiary group follows:

- (1) Spouse/former spouse - slightly less than 10% of the retiree's retired pay.
- (2) Children only - based on actuarial tables and is generally between 1 to 3 percent of retired pay.
- (3) Insurable interest person - between 10 and 40 percent of the retiree's monthly retired pay.

- b. Amount of Annuity.

- (1) The amount of the annuity is determined by the officer's election of a "base amount", which can be between \$318.27 (as increased from time to time by COLAs to active duty pay) per month and the full amount of retired pay. The annuity is 55% of the base amount while the spouse is under age 62, and 35% of the base amount when the spouse is age 62 or older. The annuity amount for an insurable interest person is computed under a different formula and is generally lower.
- (2) The beneficiaries of officers who were deceased, retired, or eligible to retire on October 1, 1985, may have the amount of their annuity computed under the SBP law in effect prior to March 1, 1986, if use of that method would provide them with a higher annuity payment. DCP will compute an eligible beneficiary's annuity using both methods and pay the annuity that is more advantageous. The computation method used in this case is set forth in 10 U.S.C. 1451(e)(3).

4. Automatic coverage.

- a. Automatic Enrollment on Retirement Date. An officer with a spouse and/or child at the time of retirement is automatically enrolled in SBP at the maximum amount at the time of retirement unless he/she declines enrollment in writing, has no eligible beneficiaries, or elects participation at less than the maximum level.
- b. Upon Active Duty Death After 20 Years of Service. Once an active duty officer attains 20 years of active service, making him/her retirement eligible, if he/she should die while still on active duty, the officer is automatically enrolled in SBP at the maximum amount. In this case, an SBP annuity would be paid by PHS to the officer's surviving spouse, or if there is no spouse, dependent children, based on what the officer's retired pay would have been had the officer retired on the day he/she died.

5. Irrevocability. All decisions concerning SBP participation are final on the date of retirement. Only a change in the status of a beneficiary permits an officer to change an SBP election after retirement, except for open enrollment periods discussed in Section J.7. of this INSTRUCTION.

- a. Election Not To Participate. An election to decline participation in SBP when an officer has an eligible spouse at the time of retirement bars the officer from enrolling in SBP in the future.
- b. Beneficiary Election. Once an officer fails to provide SBP coverage to an eligible beneficiary at the time of retirement, that person, and the beneficiary group to which that person belonged can never be provided SBP coverage by the officer after retirement. There are certain limited exceptions described in Section H. of this INSTRUCTION.

For example, at the time of retirement an officer elects spouse only coverage and has two dependent children. After retirement, the officer cannot change the SBP beneficiary designation from spouse only to spouse and child or to child only.

- c. Amount of Annuity. The level of the annuity selected by the officer at retirement generally cannot be changed following retirement. The only exception to this rule allows an officer to increase the level of participation for a spouse if he/she remarries following retirement.

6. Cost-of-Living Increases. Whenever a cost-of-living adjustment (COLA) is made to retired pay, both the cost of SBP coverage and the amount of the annuity payable will increase by the same percentage as the COLA.

7. Spousal Concurrence. Before an officer with a spouse can decline participation in SBP, or elect to participate at less than the maximum level, the officer's spouse must concur in the election. If the spouse objects, the officer will be enrolled at the maximum level. However, if an officer elects to provide an annuity to a former spouse, the election is permitted without concurrence from the current spouse.
8. Unmarried Officer. An officer who is unmarried at the time of retirement, and who has no eligible child beneficiary retains eligibility to enroll in SBP after retirement if he/she subsequently acquires a spouse or child.

Section E. Spouse or Former Spouse As An SBP Beneficiary

1. Spouse Eligibility.

- a. A spouse is an eligible SBP beneficiary if the spouse:
 - (1) Was married to the officer from the time the officer retired through the date the officer died;
 - (2) Married the deceased officer subsequent to the officer's retirement and the marriage lasted for at least one year immediately preceding the officer's death; or
 - (3) Is the parent of a child born of the marriage to the officer.

2. Former Spouse Eligibility.

- a. A former spouse is an eligible SBP beneficiary if the former spouse:
 - (1) Was married to the officer for at least one year, or is the parent of a child of that marriage; and
 - (2) The former spouse was not passed over as a spouse beneficiary at the time the officer retired.
- b. A court of competent jurisdiction may order an officer to elect a former spouse as an SBP beneficiary, or the officer and the former spouse may enter into a voluntary written agreement to that effect. To subsequently change this election, the court order requiring the election must be modified to permit the change, or the former spouse and officer must execute another voluntary written agreement effecting the change.

3. Cost, Amount and Duration of the Annuity.

- a. Cost. The monthly cost of providing SBP coverage for a spouse or former spouse is computed by applying a cost formula to an amount called the base amount.

- (1) Base Amount. The base amount is a dollar amount of retired pay, selected by the officer, for use in computing both the monthly cost to the officer and the monthly amount of the annuity paid to the surviving spouse/former spouse upon the officer's death.

- (a) The base amount selected by the officer can range from \$318.27 (as increased from time to time by COLAs to active duty pay) to the full amount of the officer's retired pay.

- (2) Cost Formula. The cost is determined by taking 2 1/2% of the first \$318.27 of the base amount, and adding it to 10% of the remaining base amount. Example:

Officer A elects his full retired pay of \$2,000 as the base amount.

<u>Formula</u>	<u>Retired Pay</u>	<u>Cost</u>
2 1/2% x	\$ 318.27	= \$ 7.96
<u>10% x</u>	<u>1681.73</u>	<u>+ 168.17</u>

Base amount: \$2000

Monthly cost to officer = \$176.13

- (3) Suspension of Cost. If an officer is paying for SBP coverage of a spouse, the cost is suspended if the spouse becomes an ineligible beneficiary because of the spouse's death or divorce. If the officer is also providing child coverage, the cost for the child coverage continues as long as there are eligible children.

b. Amount of the Annuity.

- (1) Spouse/Former Spouse Under Age 62. The SBP annuity payable is 55% of the base amount if the spouse/former spouse is under 62 years of age at the time he/she becomes eligible to receive the annuity.

Example. Surviving spouse/former spouse is age 53 at the time the retiree dies. The retiree had elected a base amount of \$2,000.

55% x \$2,000 = \$1,100, the monthly annuity

- (2) Spouse/Former Spouse Age 62 or Older. The SBP annuity payable is 35% of the base amount if or when the spouse/former spouse is 62 years of age or older. If the officer was deceased, retired, or retirement eligible on October 1, 1985, the spouse/former spouse may be eligible to use a different annuity computation if it is more advantageous (see (3) below).

Example. Surviving spouse/former spouse turns 62 while receiving the annuity, or is 62 when the retiree dies. The base amount was \$2,000.

35% x \$2,000 = \$700, the monthly annuity

- (a) The percentage for computing the annuity decreases at age 62 because the survivor will generally start receiving Social Security old age benefits at this time, and SBP is regarded as supplementing the Social Security benefit at this point.
- (3) Grandfather Provision Concerning Annuity Computation. As explained in Section D.3.(b)(2) above, the beneficiaries of officers who were deceased, retired, or retirement eligible as of October 1, 1985, are eligible to have their SBP annuity computed under 10 U.S.C. 1451(e)(3) if it results in a higher annuity payment.
- (4) Suspension of Annuity. The SBP annuity paid to the spouse/former spouse is suspended if he/she remarries before age 55. If the remarriage ends, the SBP annuity is restarted. The SBP annuity is not stopped if the spouse/former spouse remarries at age 55 or later.
- (5) Termination of Annuity. The SBP annuity payable to the spouse/former spouse terminates upon his/her death.
- c. Start of Annuity Payments. Entitlement to the SBP annuity payment commences to the surviving spouse/former spouse effective with the first day after the death of the retiree. Actual payments of the annuity are made at the end of each month. However, PHS cannot start payment of the SBP annuity until it is notified of the retiree's death and has received a copy of the death certificate. If late notification is received, payment will be made retroactively to the date of the retiree's death.

4. Reduction in Annuity Upon Receipt of DIC. The SBP annuity is integrated with Dependency and Indemnity Compensation (DIC), payable by the Veterans Administration (VA) to the surviving spouse (DIC is not payable to a former spouse) when VA finds an officer's death to be service-connected. When VA awards DIC to a surviving spouse, the SBP annuity is reduced by the amount of DIC paid.

For example, if the SBP annuity is \$1,000 and VA pays DIC of \$800, PHS will pay \$200 in SBP to bring the combined SBP and DIC payment to the \$1,000 level. The benefit of replacing a portion of the SBP annuity with DIC is that DIC is nontaxable. It is important to remember that DIC is payable only if the officer's death is service-connected. Therefore, if an officer is given a disability rating from VA for heart disease, but dies of cancer, no DIC will be paid since the death was not the result of the service-connected disability.

- a. When the SBP annuity is reduced or suspended because the surviving spouse is receiving DIC, the surviving spouse will receive a refund from PHS for the cost of the SBP annuity taken from the officer's retired pay that relates to the part of the SBP annuity not being paid.
 - b. Entitlement to DIC payments ceases if the surviving spouse remarries, regardless of age. In this case, the SBP annuity will be reinstated to the surviving spouse provided he/she is age 55 or older. If the SBP annuity is restored, any amount of the officer's SBP deductions that had been refunded to the surviving spouse must be repaid.
5. When an Officer Has Both a Spouse and Former Spouse. An officer can provide only one SBP annuity. If, at the time of retirement, an officer has both a spouse and a former spouse, the officer may, except as set forth in Section E. 7 and 8, below, designate either individual as the SBP beneficiary, precluding election of the other for life. If an officer has more than one former spouse at the time of retirement, he/she may elect to provide SBP coverage to only one of the former spouses.
 6. Automatic Spouse Coverage. If a retirement eligible officer dies while on active duty and the surviving spouse is under 62 years of age, he/she is entitled to receive an SBP annuity equal to 55% of what the officer's retired pay would have been if the officer had retired on the day he/she died. If the surviving spouse is age 62 or older, the annuity would be equal to 35% of what the officer's retired pay would have been.
 7. Automatic Former Spouse Coverage. If a retirement eligible officer dies while on active duty and there is a court order providing that the former spouse will be designated the officer's SBP beneficiary, the former spouse will be eligible to receive an SBP annuity upon the officer's death. If the former spouse is under age 62 when the officer dies, the

annuity will be 55% of what the officer's retired pay would have been if the officer had retired on the day he/she died. If the former spouse is age 62 or older, the annuity would be 35% of what the officer's retired pay would have been.

8. Former Spouse Deemed Elections. When a PHS officer is ordered or voluntarily agrees in writing to name a former spouse as his/her SBP beneficiary incident to a divorce proceeding in a court of competent jurisdiction, and then fails to make such an election, the former spouse may request PHS to make such an election. This is referred to as a deemed election. A request for a deemed election must be received by PHS within one year of the effective date of the court order or other written agreement.
 - a. If the election was ordered by the court, the former spouse must provide PHS with a certified copy of the appropriate court order. Only court orders issued on or after November 14, 1986, shall be honored by PHS because prior to that date state courts were prohibited by law from issuing such orders.
 - b. If the election was made by a voluntary written agreement between the PHS officer and the former spouse, the agreement must be incorporated into, ratified or approved by the court as part of the divorce proceeding. In this case the November 14, 1986, limiting date is not applicable. However, the former spouse must submit the request to PHS within one year of the effective date of the court order or written agreement, whichever is later.
 - c. A deemed election for a former spouse will override any other SBP election the officer may have made.

Section F. Children as SBP Beneficiaries

1. Child Eligibility. To be eligible as an SBP beneficiary under the child category, the child must:
 - a. Be unmarried;
 - b. Meet one of the following criteria:
 - (1) Be under 18 years of age;
 - (2) Be at least 18, but under 22 years of age and pursuing a full-time course of study or training in an appropriately recognized educational or academic institution; or
 - (3) Be incapable of self-support because of a mental or physical incapacity which existed before age 18, or incurred on or after age 18 but before age 22 while pursuing a full-time course of study; and

- c. Be the child of the officer making the SBP election, including an adopted child, stepchild, foster child, or recognized natural child who lived with the officer in a regular parent-child relationship. A foster child who is cared for under a social agency contract cannot qualify as a dependent for an SBP annuity.
2. Termination of Child Eligibility. When an eligible child beneficiary marries, or reaches any of the age limits set forth in Section F.1 above, the child is no longer an eligible SBP beneficiary. Monthly costs for, and annuity payments to, other children who remain eligible dependents continue until the youngest child is no longer an eligible beneficiary.
3. Child Beneficiary Election Options.
 - a. Spouse and Child Coverage/Former Spouse and Child Coverage. By making this election, an officer does not increase the amount of the total SBP annuity payable, but does ensure that the eligible children will continue to receive the SBP annuity in the event the spouse/former spouse becomes ineligible to receive SBP for any reason.
 - b. Child Only Coverage. Child only coverage may be elected even if there is a spouse eligible to be named as an SBP beneficiary. If child only coverage is elected, the SBP annuity will stop when the youngest child ceases to be an eligible dependent.
 - c. Insurable Interest Coverage of Child. An officer who has no eligible spouse at the time of retirement and who has only one dependent child, may elect to provide an SBP annuity to that child for life by using the insurable interest coverage instead of child only coverage. By doing this, the SBP annuity payable to the child is not terminated when the child ceases to be a dependent. However, the cost to the officer to provide this type of SBP coverage is much higher than child only coverage (see Section G. for information about insurable interest coverage).
4. Cost and Amount of Annuity.
 - a. Spouse and Child Coverage/Former Spouse and Child Coverage.
 - (1) Cost. The cost of spouse and child/former spouse and child coverage is the cost of the spouse coverage plus the cost of the child coverage. The child coverage cost is computed using actuarial tables based on the base amount elected by the officer and the age of the youngest child. Generally, adding child coverage to spouse/former spouse coverage adds only a few dollars a month to the total cost to the officer. Because the cost is based on the age of the youngest child,

the number of children covered does not affect the cost, which is the same whether one or ten children are designated as beneficiaries.

- (2) Suspension of Cost. When an officer is paying to provide coverage for children, the monthly cost of child coverage is suspended when the youngest child is no longer an eligible beneficiary.
- (3) Amount of Annuity. As stated above, an officer does not increase the amount of the annuity payable, which is either 55% or 35% (depending upon the age of the spouse) of the base amount originally elected by the officer. The annuity is paid directly to the surviving spouse, or if the spouse becomes ineligible, the annuity is paid on behalf of the children.
- (4) Suspension and Termination of Annuity.
 - (a) Under spouse and child or former spouse and child coverage, the SBP annuity payment continues even if one class of beneficiary becomes ineligible. Thus, if the spouse becomes ineligible for the annuity, the children continue to receive it as long as they are eligible. If the children become ineligible, the spouse continues to receive it as long as he/she remains eligible.
 - (b) The SBP annuity payment under this type of coverage terminates only after the spouse and all the children become ineligible beneficiaries.

b. Child Only Coverage.

- (1) Cost. The cost of child only coverage is an actuarial charge based on the base amount elected by the officer and the age of the youngest child of those designated by the officer as beneficiaries. The number of children covered is not a factor when computing the cost or the annuity.
- (2) Suspension of Cost. When the youngest child designated as a beneficiary is no longer an eligible SBP beneficiary, the monthly deductions of the cost from the officer's retired pay will be suspended.
- (3) Amount of Annuity. The annuity will be 55% of the base amount elected by the officer, regardless of the number of children covered. It will be paid to the parent or guardian of the children in one lump sum.

- (4) Termination of Annuity and Coverage. When the youngest child is no longer an eligible beneficiary, SBP coverage is suspended if the officer is still alive, or the SBP annuity payments cease if the annuity payments have begun.
5. Automatic Coverage of Children. When a retirement-eligible, active duty officer dies, and there is no eligible spouse; or if the eligible spouse subsequently dies after the SBP annuity is started; the surviving dependent children of the officer are entitled to receive an SBP annuity equal to 55% of what the officer's retired pay would have been had he/she retired on the day he/she died.

Section G. Insurable Interest Beneficiary

1. Definition of Insurable Interest Person. A person named as a beneficiary under the insurable interest provision of SBP is any person who has bona fide financial interest in the continued life of the officer/ retiree, i.e. someone who stands to realize some financial gain during the lifetime of the retired officer. Documentation of the person's actual financial interest in the officer may be required if that interest is not obvious from the stated relationship between the individual designated as the beneficiary and the officer.
2. Insurable Interest Election. An insurable interest election may be made when an officer has no eligible spouse or child beneficiary (or only one dependent child as explained in Section F.3.c. above). An insurable interest election may be terminated if a retiree acquires a spouse and/or eligible children and elects to provide SBP coverage for the new spouse and/or children instead.
3. Cost. The monthly cost is 10% of the officer's full retired pay, plus an additional 5% of his/her retired pay for each full five years the named beneficiary is younger than the officer. The total cost cannot exceed 40% of the officer's full retired pay. If the named beneficiary is the same age or older than the officer, the reduction is 10%. When the person named is 30 years younger than the officer, the maximum cost of 40% is reached.
4. Amount of Annuity. The annuity payable to an insurable interest beneficiary is 55% of the officer's retired pay after the retired pay is reduced by the cost of the annuity.
5. Example Computation of Cost and Annuity. The officer's retired pay was \$2,000 per month. The officer was age 57 and the insurable interest person was 35, creating a 22 year difference in their ages. The monthly cost to the officer would be:

10% of \$2,000 (full retired pay)	= \$200.00
plus <u>5% for each 5 years difference in age (20%)</u>	<u>= 400.00</u>
Total monthly cost to officer	= \$600.00

The annuity payable to the beneficiary upon the retiree's death would be: 55% of \$1,400 (\$2000 minus the cost \$600) = \$770 monthly annuity

6. Termination of Annuity. The SBP annuity payment to an insurable interest beneficiary terminates only upon the death of the beneficiary.

Section H. Enrollment

1. Explanation of SBP to Officer and Spouse. When an officer submits his/her retirement papers, form PHS-1373, "Separation of a Commissioned Officer," information about SBP and an election form will be sent to the officer by DCP. Any questions about the information should be referred to either the Compensation Branch or Officer Services Branch, both of DCP, where specialists working with SBP can provide counseling and answer questions about SBP.
2. Election Form Required. Every retiring officer is required to submit a completed and signed SBP election form, PHS-5150, "Survivor Benefit Plan Election Certificate," prior to the effective date of retirement, even if the officer has no eligible SBP beneficiaries.
3. Automatic Enrollment Upon Retirement. An officer is automatically enrolled in SBP at the maximum level on the date of his/her retirement if he/she has an eligible spouse and/or children, unless the officer declines participation or participates at less than the maximum level by submitting a properly completed form PHS-5150 to DCP prior to the effective date of retirement.
4. Spousal Concurrence Required. The officer's spouse must indicate concurrence in the officer's SBP election by signing the spousal concurrence block on the PHS-5150. IF THE SPOUSE DOES NOT CONCUR IN THE OFFICER'S ELECTION OF LESS THAN MAXIMUM COVERAGE OR NOT TO PARTICIPATE, THE OFFICER WILL BE ENROLLED AT THE MAXIMUM LEVEL WITH THE SPOUSE DESIGNATED AS THE BENEFICIARY. PHS is required by law to make this election on behalf of the current spouse over all objections from the officer. If an officer submits the PHS-5150 and the spouse has not completed the spousal concurrence block, DCP will contact the spouse directly and ask for concurrence in the election, even if the officer did elect maximum SBP coverage. Spousal concurrence is not required when an officer elects a former spouse as his/her SBP beneficiary pursuant to a court order or a voluntary written agreement with a former spouse.
5. Documentation of Beneficiary Eligibility. Birth dates, marriage dates, and dependent children status will normally be accepted as shown on an officer's election form. Documentation showing the financial relationship between an officer and an insurable interest beneficiary may be required if the relationship is not obvious from the information provided on the election form. The type of documentation required will depend upon the type of relationship being established.

6. Computation and Payment of Cost. When the officer's PHS-5150 is received, the cost of the SBP coverage selected by the officer will be computed by the Compensation Branch, and a monthly deduction for the cost will be started with the retiree's first retired paycheck.
7. SBP Records. A copy of the officer's PHS-5150 will be placed into both the officer's official personnel folder (OPF) and payroll file. This form is subject to the Privacy Act of 1974, and will be treated in accordance with the requirements of that Act. The PHS-5150 is contained in Privacy Act record systems 09-37-0002, "PHS Commissioned Corps Personnel Records, HHS/OASH/OM," the system in which the OPF is maintained; and 09-19-0017, "Pay, Leave, and Attendance Records, HHS/OS/ASPER," the system in which the payroll file is maintained. A copy of these system notices is contained in CCPM, Subchapter CC26.1, INSTRUCTION 7, "Rights, Responsibilities, and Personnel Records of PHS Commissioned Officers Under the Privacy Act."
8. Former Spouse Enrollment. In addition to the PHS-5150, an officer electing SBP coverage for a former spouse must submit either a copy of the court order which requires election of the former spouse, or a voluntary written agreement making this election. The agreement must state that the officer agrees to the former spouse election and it must be signed by both the officer and the former spouse.
9. Deemed Elections. A former spouse may request DCP to make a deemed election for the officer, as explained in Section E.8 above. Notice will be sent to the retiree that a deemed election has been made, indicating the amount of the monthly deduction that will be made from the retiree's retired pay. The notice will include a copy of the court order and other documents which authorize the deemed election.
10. Mentally Incompetent Officer. When an officer is retired due to a psychiatric disability and determined to be mentally incompetent by medical officers of the uniformed services or VA, or is adjudged mentally incompetent by a court of competent jurisdiction, the Director, DCP, may make the appropriate SBP election on behalf of the officer upon the request of the spouse, child or children, guardian, trustee, etc. of such officer. If the officer is subsequently determined to be mentally competent by VA or a court of competent jurisdiction, the officer may, within 180 days of such determination or judgment, change or revoke the election made on his/her behalf. In such a case, the change or revocation is effective on the date of the officer's request for such change or revocation. Deductions previously withheld will not be refunded.
11. Correction of Election. The Director, DCP is authorized to correct, change, or revoke an SBP election when he/she considers it necessary to correct an administrative error. Except when procured by fraud, a correction will be final and conclusive on all officers of the United States.

Section I. Enrollment Changes After Retirement.

1. General. Information about a change in SBP coverage after retirement may be obtained from:

Compensation Branch, DCP
Room 4-50, Parklawn Building
5600 Fishers Lane
Rockville, MD 20857

2. Change In Beneficiary Status. Generally, any time a covered beneficiary becomes ineligible, or a newly eligible beneficiary is acquired, adjustments in SBP costs or payments must be made.

- a. It is the responsibility of the officer or the person receiving the annuity to notify DCP immediately of the change. Notice should be made in writing to the address shown in Section I.1. above. Failure to make this notification will result in over or underpayment, which will ultimately require collection back by the government in the case of overpayment, or a refund in the case of an underpayment.
- b. Appropriate proof of the changed status should accompany the notice. The list below, although not all inclusive, identifies the documents most frequently required as proof of the changed status:
- (1) A marriage certificate or divorce decree to document change in marital status.
 - (2) A death certificate to document the death of a beneficiary.
 - (3) The birth certificate or a copy of documentation creating a parent-child relationship, such as adoption papers, marriage certificate, or similar papers when an officer acquires a new dependent child.
 - (4) A letter of certification from the school of full-time attendance for children over age 18 but under age 22 who are newly enrolled in school, in order to reestablish their eligibility as SBP beneficiaries. Periodic recertification is also required for each new school year, after classes begin, to determine whether the child's eligibility continues.
 - (5) With respect to a disabled child incapable of self-support because of a physical or mental condition which occurs prior to age 18, or age 22 if a full-time student, a physician's certificate describing the nature and extent of the disability. The certificate must indicate when the disability began and the prognosis for recovery.

Recertification by the physician of the continued incapacitation caused by the disability will be required every two years after the initial certification, unless the medical prognosis indicates recovery is improbable.

3. Changing SBP Coverage With New Marriage. Upon remarriage, a retired officer, who participated in SBP on behalf of a previous spouse, has three options. They are: to resume SBP coverage as before; to decline SBP coverage of the new spouse; or, to resume coverage at a higher level. There is no authority to decrease the level of SBP coverage for a new spouse other than total declination of coverage.
 - a. Notice must be provided to DCP to resume coverage, to decline coverage or to increase the level of coverage within one year after the new marriage.
 - b. The declination of coverage of the new spouse is irrevocable.
 - c. The following criteria apply when an officer elects to increase SBP coverage for the new spouse:
 - (1) The base amount may be increased up to the full value of the officer's retired pay.
 - (2) Before the increased value of the coverage will be effective, the officer must submit payment to PHS for the difference between the amount that would have been withheld from his/her retired pay if the higher level of coverage had been in effect from the time SBP participation began and the amount actually withheld from retired pay for SBP costs during that time.
4. No Refund of Contributions. When an SBP beneficiary becomes ineligible prior to the officer's death, SBP deductions already made from the officer's retired pay on behalf of that beneficiary are not refundable. If a beneficiary becomes ineligible after the officer's death, the SBP deductions are not refundable unless the beneficiary becomes ineligible solely because of receipt of DIC.

Section J. Miscellaneous

1. Recall to Active Duty. An election made by an officer who is recalled to active duty is not voided by the recall. However, the officer is not required to make any payment for SBP coverage during any period of active duty of more than 30 days. Coverage for retired officers recalled to active duty is the same as for officers who are retirement eligible while on active duty.

2. Waiver or Reduction of Retired Pay. When a retired officer's retired pay is waived or significantly reduced below the amount of the monthly SBP premium which was being deducted from his/her retired pay, the officer must make deposits to the SBP account for the outstanding balance of the monthly SBP premium in order to continue participation in SBP. Circumstances in which this may occur include:
 - a. Waiver of PHS retired pay to receive disability compensation from VA; or
 - b. Waiver of PHS retired pay in order to receive credit for PHS active duty service for a civil service retirement annuity. When an officer waives PHS Commissioned Corps retired pay in order to receive a civil service retirement annuity, the officer has the option of continuing participation in SBP or starting participation in the survivor annuity program provided for civil service retirees. When the officer elects to continue SBP participation, he/she must make monthly deposits to the SBP account. If the officer elects to stop SBP participation in favor of the civil service program, no refund of SBP contributions is made.
 - c. Reduction of PHS retired pay, due to employment in a civil service position in which the retiree's combined PHS retired pay and civil service salary exceeds Executive Schedule Level 5. However, in this case the retiree does not make deposits to the SBP account. The law specifically provides that in this situation PHS will make the SBP contributions on the retiree's behalf until the retired pay is restored to an amount equal to or greater than the monthly SBP cost.
3. Federal Income Tax.
 - a. Retirees. The amount withheld from an officer's retired pay for SBP coverage is not subject to Federal income tax.
 - (1) When a retired officer is not receiving retired pay for any reason and is required to make a direct payment of SBP premiums, called deposits, the deposits may not be used as a tax exemption from other income. The deposits, however, will accumulate as "consideration for the contract" for later use 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.
 - (a) DCP will furnish the retired officer with a statement of the total amount of deposits when the officer returns to retired pay status.

- (b) In case of death of the officer during such a period, the survivor will be furnished with a statement of the total amount of the deposits.
 - (c) 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.
- b. Survivors of all Retirees. The SBP annuity is subject to Federal income tax, except for the exclusion provided in J.3.a.(1) above. The tax is not 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 DCP.
- c. Survivors of Disability Retirees. The survivor of an officer who retired for disability and died before age 64 may be able to exclude from gross income the amount of SBP payments received until the amount excluded equals \$5,000. This is the death benefit exclusion provided under 26 U.S.C. 72(o) and 101(b). Any survivor to whom this might be applicable should contact the nearest office of the Internal Revenue Service for details.
- 4. State Income Tax. The tax exemption for the SBP 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 SBP 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. DCP will issue a corrected W-2 for State income tax, upon request from the officer.
- 5. Gift Tax. An SBP annuity is not considered a transfer for purposes of the Federal gift tax.
- 6. Federal Estate Tax. Because of the complex nature of Federal taxation, all officers and their estate planners should consult the Internal Revenue Service (IRS) for definitive information about the tax status of SBP annuities. General information is set forth below. For more specific information, contact the IRS office identified in 6.b. below.
 - a. The value of the SBP annuity is taxable as part of a deceased officer's gross estate for Federal estate tax purposes, unless:

- (1) The officer retired and elected to participate in SBP prior to January 1, 1983, in which case the entire value of the SBP annuity may be excluded from the officer's gross estate for Federal estate tax purposes (see P.L. 97-248, Section 245(c), as amended by P.L. 98-369, Section 525(b), which repeals the Federal estate tax exclusion formerly provided in 26 U.S.C. 2309); or
 - (2) The officer retired and elected to participate in SBP on or after January 1, 1983, but prior to January 1, 1985, in which case up to \$100,000 of the value of the SBP annuity may be excluded from the officer's gross estate for Federal estate tax purposes (see P.L. 98-369, Section 525(b)).
- b. Requests for calculations of the SBP annuity value, to be used for calculating Federal estate tax, should be addressed to: Ruling Request, Internal Revenue Service, Associate Chief Counsel (Technical), Room 6545, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. The request should include:
- (1) The name of the deceased officer;
 - (2) Date of the officer's birth;
 - (3) Date of the officer's retirement;
 - (4) Date of the officer's death;
 - (5) Type of annuity (Survivor Benefit Plan - Chapter 73 of Title 10 United States Code);
 - (6) Total amount deducted from retired pay;
 - (7) Total additional amount deposited by the officer (if any);
 - (8) Name of the annuity beneficiary;
 - (9) Beneficiary's date of birth; and
 - (10) Monthly amount of the survivor annuity.
- c. If an officer qualifies for an exclusion as described in J.6.a.(1) or (2) above, but the officer made deposits to the SBP fund in addition to those SBP contributions deducted from the officer's retired pay, then for Federal estate tax purposes the officer's estate will include that portion of the value of the SBP annuity that is based on the amount contributed by deposit. If this situation is applicable, consult with a local IRS office or write the IRS office shown above for more information.

7. Open Season Provision. A retired officer who elected to provide an SBP annuity to a former spouse during the period beginning November 8, 1985, through February 28, 1986, may change that election to include SBP coverage for the child of the former spouse as well, provided the change is made by November 13, 1987.

Section K. Privacy Act Provisions

Personnel records are subject to the Privacy Act of 1974. CCPM INSTRUCTION 7, Subchapter CC26.1, "Rights, Responsibilities and Personnel Records of PHS Officers Under the Privacy Act," sets forth the procedures to be followed in the maintenance of these records. The applicable system of records is 09-37-0002, "PHS Commissioned Corps General Personnel Records, HHS/OASH/OM."