

## SUBCHAPTER C—PERSONNEL

### PART 716—DEATH GRATUITY

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SOURCE: 24 FR 7523, Sept. 18, 1959, unless otherwise noted.

#### Subpart A—Provisions Applicable to the Navy and the Marine Corps

##### § 716.1 Principal rule.

Under title 10 U.S.C., section 1475, the Secretary of the Navy shall have a death gratuity paid immediately upon official notification of the death of a member of the naval service who dies while on active duty, active duty for training, or inactive duty training. The death gratuity shall equal six months' basic pay (plus special, incentive, and proficiency pay) at the rate to which the deceased member was entitled on the date of his death but shall not be less than \$800 nor more than \$3,000. A kind of special pay included is the 25% increase in pay to which a member serving on a naval vessel in foreign waters is entitled under 10 U.S.C. 5540 when retained beyond expiration of enlistment because such retention was essential to the public interest.

##### § 716.2 Definitions.

For the purposes of this part, terms are defined as follows:

(a) *Member of the naval service.* This term includes:

(1) A person appointed, enlisted, or inducted into the Regular Navy, Regular Marine Corps, Naval Reserve or Marine Corps Reserve, and includes a midshipman at the United States Naval Academy;

(2) Enlisted members of the Fleet Reserve and Fleet Marine Corps Reserve and retired members;

(3) A member of the Naval Reserve Officers Training Corps when ordered to annual training duty for 14 days or more, and while performing authorized travel to and from that duty; and

(4) Any person while en route to or from, or at a place for final acceptance for entry upon active duty in the naval service who has been ordered or directed to go to that place, and who has been provisionally accepted for such duty.

(b) *Active duty.* This term is defined as (1) full-time duty performed by a member of the naval service, other than active duty for training, or (2) as a midshipman at the United States Naval Academy, and (3) authorized travel to or from such duty or service.

(c) *Active duty for training.* Such term means:

(1) Full-time duty performed by a member of a Reserve component of the naval service for training purposes;

(2) Annual training duty performed for a period of 14 days or more by a member of the Naval Reserve Officers Training Corps; and

(3) Authorized travel to or from such duty.

(d) *Inactive-duty training.* Such term is defined as any of the training, instruction, appropriate duties, or equivalent training, instruction, duty, appropriate duties, or hazardous duty performed with or without compensation by a member of a Reserve component prescribed by the Secretary of the Navy pursuant to sections 206, 309, and

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1002 of title 37 U.S.C. or any other provision of law. The term does not include:

(1) Work or study performed by a member of a Reserve component in connection with correspondence courses in which he is enrolled, or

(2) Attendance at an educational institution in an inactive status under the sponsorship of the Navy or Marine Corps.

[24 FR 7523, Sept. 16, 1959, as amended at 37 FR 6471, Mar. 30, 1972; 44 FR 25647, May 2, 1979]

### § 716.3 Special situations.

(a) *Service without pay.* Any member of a Reserve component who performs active duty, active duty for training, or inactive-duty training without pay shall, for purposes of a death gratuity payment, be considered as being entitled to basic pay, including special pay and incentive pay if appropriate, while performing such duties.

(b) *Death occurring while traveling to and from active duty for training and inactive-duty training.* Any member of a Reserve component who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive-duty training and who dies from an injury incurred on or after January 1, 1957 while proceeding directly to or directly from such active duty for training or inactive-duty training, shall be deemed to have been on active duty for training or inactive-duty training as the case may be.

(c) *Hospitalization.* A member of a Reserve component who suffers disability while on active duty, active duty for training, or inactive-duty training, and who is placed in a new status while he is receiving hospitalization or medical care (including out-patient care) for such disability, shall be deemed, for purposes of death gratuity payment to have continued on active duty, active duty for training, or inactive-duty training, as the case may be, in the event of his death in such status.

(d) *Discharge or release from a period of active duty.* A person who is discharged or released from active duty (other than for training) is considered to continue on that duty during the period of time required for that person to go to

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his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released.

[24 FR 7523, Sept. 18, 1959, as amended at 25 FR 7792, Aug. 16, 1960]

### § 716.4 Eligible survivors.

(a) The death gratuity shall be paid to or for the living survivor or survivors of the deceased member first listed below:

(1) The lawful spouse. (For purpose of this part, a man or woman shall be considered to be the spouse if legally married to the member at the time of the member's death.)

(2) His children (without regard to their age or marital status) in equal shares.

(3) Parent(s), brother(s) or sister(s) or any combination of them, when designated by the deceased member.

(4) Undesignated parents in equal shares.

(5) Undesignated brothers and sisters in equal shares. In paragraphs (a)(2), (3) and (4), respectively, of this section, the terms "child" and "parent" have the meanings assigned to them by title 10 U.S.C. section 1477 and the term "parents" includes persons in loco parentis as indicated by that section. The terms "brother" and "sister" in paragraphs (a) (3) and (5) of this section include brothers and sisters of the half blood and those through adoption.

(b) *Designation of payee by service member.* Where the service member has designated a beneficiary and is not survived by a spouse, child, or children, the payment will be made to the specific person designated by him provided the designee falls within the class of beneficiaries permitted as set forth in paragraph (a)(3) of this section. If more than one person is so designated on the Record of Emergency, payment will be made in equal shares unless the member designated a proportionate share to each beneficiary. Frivolous designations, such as one per centum to a particular beneficiary, should not be made.

(c) *Death of survivor prior to receipt of gratuity.* (1) If a survivor dies before receiving payment, or if a designated beneficiary predeceases the member

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(and there is no other designated beneficiary) such amount shall be paid to the then living survivor or survivors listed first under paragraph (a) of this section.

(2) In case one of the beneficiaries (parents or brothers or sisters) designated by a member, pursuant to paragraph (a)(3) of this section, to receive death gratuity payment dies prior to the member's death, or after his death but prior to the time payment is made, the share which would have been paid to the deceased designee may be paid to the other person or persons designated.

[24 FR 7523, Sept. 18, 1959, as amended at 37 FR 6471, Mar. 30, 1972]

### §716.5 Delegation of authority.

(a) Pursuant to the authority contained in title 10 U.S.C., section 1479, as to deaths described in section 1475 thereof, the Secretary of the Navy has delegated to commanding officers of naval commands, installations, or districts, with respect to naval personnel, and to Marine Corps commanding generals and officers in command of regiments, battalions or equivalent units and of separate or detached commands who have custody of service records, with respect to Marine Corps personnel, authority to certify for the payment of death gratuity the lawful spouse or designated beneficiary(ies) of the deceased service member who was residing with him at or near his place of duty at the time of his death, except in cases in which a doubt may exist as to the identity of the legal beneficiary. Disbursing officers are authorized to make payment of the death gratuity upon receipt of certification from the Commanding Officer.

(b) The Secretary of the Navy has delegated authority to the Chief of Naval Personnel as to naval personnel, and to the Commandant of the Marine Corps (Code MSPA-1) as to Marine Corps personnel, the authority to certify the beneficiary(ies) for receipt of payment of death gratuity in all appropriate cases of payment of death gratuity under the Servicemen's and Veterans' Survivor Benefits Act (now reenacted in 10 U.S.C. 1475-1480), including, but not limited to:

(1) Cases in which a doubt may exist as to the identity of the legal beneficiary; and

(2) Cases in which the widow or designated beneficiary(ies) of the deceased service member was not residing with him at or near his place of duty at the time of his death.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979]

### §716.6 Death occurring after active service.

(a) Under title 10 U.S.C., section 1476, the death gratuity will be paid in any case where a member or former member dies on or after January 1, 1957, during the 120-day period which begins on the day following the date of his discharge or release from active duty, active duty for training, on inactive duty training, if the Administrator of Veterans' Affairs determines that:

(1) The decedent was discharged or released, as the case may be, from the service under conditions other than dishonorable from the last period of the duty or training performed; and

(2) Death resulted from disease or injury incurred or aggravated while on such active duty or active duty for training; or while performing authorized travel to or from such duty; or

(3) Death resulted from injury incurred or aggravated while on such inactive-duty training or while traveling directly to or from such duty or training.

(b) For purposes of computing the amount of the death gratuity in such instances, the deceased person shall be deemed to be entitled on the date of his death to basic pay (plus any special, incentive and proficiency pay) at the rate to which he was entitled on the last day he performed such active duty, active duty for training, or inactive duty training. A kind of special pay included is a pay increase under 10 U.S.C. 5540; see §716.1.

(c) The Department of the Navy is precluded from making payment of the death gratuity pending receipt of the determinations described in paragraph (a) of this section. In view of this, commands should insure that the medical records and reports of investigations by fact-finding bodies be submitted to the Navy Department at the earliest

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possible date. The Veterans' Administration is promptly notified of all deaths of this category reported, and upon the request of that agency all pertinent data is forwarded.

### §716.7 Payment of the death gratuity.

(a) *Claim certification and voucher for the death gratuity payment.* The Comptroller General of the United States has approved DD Form 397 as the form to be used hereafter for claim certification and voucher for the death gratuity payment.

(b) *Active duty deaths (Navy).* To effect immediate payment of death gratuity the following actions will be taken:

(1) The commanding officer will ascertain that the deceased member died while on active duty, active duty for training, or inactive-duty training, and will obtain the name, relationship, and address of the eligible survivor from the Service Record of the deceased. The Dependency Application/Record of Emergency Data (NAVPERS 1070/602) or Record of Emergency Data (DD Form 93), will normally contain this information. In addition, in the case of enlisted personnel, the Application for Dependents Allowance (BAQ [Basic Allowance for Quarters]), NAVPERS Form 668, may serve as a source of corroboration. He will, with the cooperation of the disbursing officer, initiate preparation of a Claim Certification and Voucher for Death Gratuity Payment, DD Form 397, in original and five copies, completing blocks 5 through 14 inclusive, and the administrative statement in block 18. The administrative statement in block 18 will be signed by the commanding officer or acting commanding officer.

(2) The disbursing officer will, upon receipt of the DD Form 397, draw a check to the order of the eligible survivor named in block 5, complete blocks 2, 3, 4, and the check payment data portion of block 18.

(3) Under arrangements made by the commanding officer, the check and the original and one copy of the voucher, DD Form 397, will be delivered to the payee. The payee will be required to complete block 15, sign in block 17a, and have two witnesses complete block 17 on the original voucher at the time

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the check is delivered. Under no circumstances will the check be delivered to the payee until this action has been accomplished. The payee will retain the copy of the voucher, DD Form 397, and the signed original voucher will be returned by hand to the disbursing officer by the person designated to deliver the check.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979]

### §716.8 Payments excluded.

(a) No payment shall be made if the deceased member suffered death as a result of lawful punishment for a crime or for a military or naval offense, except when death was so inflicted by any hostile force with which the Armed Forces of the United States have engaged in armed conflict.

(b) No payment will be made to a survivor implicated in the homicide of the deceased in the absence of evidence clearly absolving such survivor of any felonious intent.

(c) Unless the laws of the place where a minor beneficiary resides provide that such a payment would grant a valid acquittance of the Government's obligation to make a payment of death gratuity to or for a minor, a death gratuity of more than \$1,000 may not be paid in whole or in part to a parent as natural guardian of a minor or to any other person who is not a legal guardian appointed by the civil court to manage the minor's financial affairs.

[24 FR 7523, Sept. 18, 1959, as amended at 37 FR 6471, Mar. 30, 1972; 44 FR 25647, May 2, 1979]

### §716.9 Erroneous payment.

Where through administrative mistake of fact or law, payment of the death gratuity is made to a person clearly not entitled thereto, and it is equally clear that another person is entitled to the death gratuity, the Chief of Naval Personnel (Pers-732) or the Commandant of the Marine Corps (Code MSPA-1), as appropriate, will certify payment to the proper payee, irrespective of recovery of the erroneous payment. On the other hand, where a payment of the death gratuity has been made to an individual on the basis of representations of record made

by the deceased member as to his marital and dependency status, and the Government otherwise has no information which would give rise to doubt that such status is as represented, the payment is not to be regarded as "erroneous." The Government has a good acquittance in such cases even though it may subsequently develop that the payee is not the proper statutory payee of the gratuity and no second payment is authorized.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979]

### Subpart B—Provisions Applicable to the Navy

#### §716.10 Procedures.

(a) *Action by commanding officers.* See §716.7(b)—(1) *Immediate payment—Eligible beneficiary residing with deceased member.* Commanding officers, in order to expedite the payment of the death gratuity, will, upon official notification of death, ascertain the duty status of the deceased, and determine the eligibility of the spouse or designated beneficiary who was residing with the deceased member on or near his duty station at the time of his death. The services of a staff or district legal officer will be utilized as required. Every effort should be made to effect prompt payment (within 24 hours, if possible). It is the intent that determinations of entitlement by commands in the field will be confined largely to spouses and parents designated by the service member who were living with him at the time of his death.

(2) *Questionable cases.* If entitlement to the death gratuity payment is questionable after seeking advice of the staff or district legal officer, such case will be forwarded promptly to the Chief of Naval Personnel (Pers-732) with a brief statement relative to the facts which raised the issue of doubt. Every effort will be made to expedite action by a review of the official records of the decedent in the Bureau of Naval Personnel and the Family Allowance Activity at Cleveland, Ohio. Those cases wherein the service member was in a deserter status, absent without leave, or in the custody of civil authorities at the time of death, wherein

guardianship must be provided for the protection of the decedent's children, or wherein a technicality exists which makes immediate certification legally unsound, will be considered questionable.

(3) *Exception.* Where the entitlement of the survivor who is living with the deceased at the time of his death is questionable and such survivor is in dire financial circumstances, the Chief of Naval Personnel (Pers-G23) shall be requested by message to make an adjudication of entitlement. If it is determined that the survivor is entitled to the payment, the commanding officer will be authorized by message to execute DD Form 397.

(b) *Action by Casualty Assistance Calls Program (CACP) officers; Potential beneficiary not residing with member—(1) Widow(er).* The CACP officer, on his or her initial visit to a widow(er), determines, propriety permitting, whether there is an urgent need for financial assistance. If there is an urgent need for financial assistance, the CACP officer should obtain DD Form 397 from any military disbursing office and, on his or her second visit to the widow(er), have him or her sign it and obtain the signatures of two witnesses on the form. It should be noted that the following procedure is confined to cases in which the decedent's eligible survivor for the death gratuity is a widow(er), and efforts to effect immediate payment in accordance with the intent of the governing statute are appropriate. In such cases, the CACP officer, upon learning that a widow(er), not residing with his or her spouse at or near the spouse's duty station, is in urgent need of financial assistance, shall advise the Chief of Naval Personnel (Pers-732) of the need by message. The CACP officer shall send a copy of this message to the decedent's duty station, if known. Upon receipt, the disbursing officer will furnish the Navy Finance Center, Cleveland, Ohio 44199, with the decedent's basic monthly pay [plus any special (see §716.1), incentive, and proficiency pay] in the event the pay account has not been forwarded previously to that center sufficiently early to have reached there. The CACP officer shall also send a copy of his message to the Navy Finance Center

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with the request that payment of the death gratuity be made upon receipt of the certification of beneficiary entitlement from the Chief of Naval Personnel (Pers-732).

(2) *Navy Relief.* In cases where there is immediate need prior to receipt of the death gratuity, the Navy Relief Society will be contacted by the Casualty Assistance Calls Program officer.

(c) *Action by the Chief of Naval Personnel.* (1) In all cases where death gratuity is not authorized to be paid locally and in cases where authority exists to pay locally but entitlement is questionable (see paragraph (a)(2) of this section), the Chief of Naval Personnel (Pers-732) will expedite adjudication of claims. As indicated in paragraph (b)(1) of this section CACP officers will refer cases of urgent financial need to the Chief of Naval Personnel (Pers-732) by message for action.

(2) If a minor is entitled to a death gratuity under 10 U.S.C. 1477 not exceeding \$1,000, such death gratuity may be paid to the father or mother as natural guardian on behalf of the minor, provided a legally appointed guardian has not been appointed, upon substantiation by a sworn (notarized) statement of the natural guardian:

(i) That no legal guardian has been appointed and that such an appointment is not contemplated;

(ii) The relationship of the natural guardian to the minor;

(iii) That the minor is in the actual custody of the natural guardian;

(iv) That an amount paid to the natural guardian will be held for, or applied to, the use and benefit of the minor.

If the death gratuity to which a minor is entitled exceeds \$1,000, the appointment of a legal guardian on behalf of the minor is requested. Certification of the minor eligible to receive the death gratuity is made by the Chief of Naval Personnel (Pers-732) and payment is effected by the Navy Finance Center, Cleveland, OH 44199;

(d) *Cross-servicing procedure.* Payment of the death gratuity may be made by a disbursing officer who is maintaining the pay record of a member of another service, provided the command to which the member is attached and

which maintains his service record is in the immediate vicinity and certifies the beneficiary eligible to receive payment on the proper voucher (DD Form 397). Otherwise the pay record will be sent to the Army Finance Center, Air Force Finance Center, Commandant of the Marine Corps (Code CDB), the Navy Finance Center, of the Commandant, U.S. Coast Guard, as appropriate.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979; 45 FR 43165, June 26, 1980]

### Subpart C—Provisions Applicable to the Marine Corps

#### §716.11 Procedures.

(a) *Action.* Commanding officers will direct immediate payment of the gratuity where the deceased member's spouse was, in fact, residing with the member on or near the station of duty at the time of the member's death while on active duty, active duty for training, or inactive-duty training. Every effort should be made to effect such payment promptly (within 24 hours, if possible). In cases where the eligible survivor residing with the member on or near the duty station is other than a spouse, commanding officers may direct the payment of death gratuity when the case can be properly determined, and an urgent need exists for immediate payment. Proper determination is imperative.

(b) *Qualifications.* (1) Where any doubt exists as to the legal recipient of the gratuity, the case will be referred to the Commandant of the Marine Corps (Code MSPA-1) for determination.

(2) [Reserved]

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25648, May 2, 1979]

### PART 718—MISSING PERSONS ACT

Sec.

718.1 General provisions.

718.2 Allotments.

718.3 Transportation of dependents.

718.4 Delegations.

#### §718.1 General provisions.

(a) Under the provisions of the Missing Persons Act, as amended, a finding