

# CRS Report for Congress

## Military Death Benefits: Status and Proposals

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David F. Burrelli  
Specialist in National Defense  
Foreign Affairs, Defense, and Trade Division

Jennifer R. Corwell  
Research Associate in Defense Resources  
Foreign Affairs, Defense, and Trade Division



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# Report Documentation Page

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# Military Death Benefits: Status and Proposals

## Summary

Department of Defense (DOD) benefits for survivors of deceased members of the armed forces vary significantly in purpose and structure. Benefits such as the death gratuity provide immediate cash payments to assist these survivors in meeting their financial needs during the period immediately following a member's death. Similarly, the Servicemembers' Group Life Insurance (SGLI) provides the life insurance policy value in a lump sum payment following the servicemember's death. Other benefits such as the Veterans Affairs Dependency and Indemnity Compensation (DIC) and the Survivor Benefit Plan (SBP), are designed to provide long-term monthly income. Additional death benefits provided by the DOD for survivors and dependents include housing assistance, health care, commissary and exchange benefits, educational assistance, and burial, funeral, and related benefits. Survivors may also receive death benefits from Social Security.

In response to P.L. 108-375, February 1, 2005, DOD presented proposed survivor benefit changes during a Senate Armed Services Committee hearing. DOD recommended an increase in the death gratuity benefit from its current amount of \$12,420 to \$100,000, limited to servicemembers killed in an area or operation designated by the Secretary of Defense. In addition, the DOD also recommended an increase in Servicemembers' Group Life Insurance (SGLI) coverage from \$250,000 to \$400,000, with the premiums for the additional \$150,000 coverage paid for by the government for servicemembers serving in areas or operations designated by the Secretary of Defense. Military personnel not serving in such designated areas could receive the additional coverage, but at their own expense through higher monthly premiums. As proposed by DOD, both of these measures would be made retroactive to October 7, 2001, when U.S. military operations began in Afghanistan. The President proposed these same increases as part of his FY2005 Supplemental Appropriations request. The Death Benefits Enhancements (P.L. 109-13) increased the Death Gratuity to \$100,000 and the SGLI to \$400,000 for those who die from wounds, injuries or illness that are combat or combat-training related. P.L. 109-80 and P.L. 109-163 made these benefits permanent for nearly all active duty deaths.

This report describes the various death benefits from the Department of Defense, Department of Veterans Affairs (VA), and Social Security available to certain survivors of members of the Armed Forces who die on active duty. (This report does not consider benefits available to civilian employees of the Department of Defense.) Benefits are listed, along with their purpose, how they are calculated, and where appropriate, recent changes. Finally, two hypothetical examples for determining a level of death benefits and a Government Accountability Office (GAO) summary comparing military and other death related benefits are presented in the Appendices. The report will be updated as events warrant.

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# Military Death Benefits: Status and Proposals

## Introduction

Department of Defense (DOD) benefits for survivors of deceased members of the armed forces vary significantly in purpose and structure. Benefits such as the death gratuity provide immediate cash payments to assist these survivors in meeting their financial needs during the period immediately following a member's death. Similarly, the Servicemembers' Group Life Insurance (SGLI) provides the life insurance policy value in a lump sum payment following the servicemembers' death. Other benefits such as the Veterans Affairs Dependency and Indemnity Compensation (DIC) and the Survivor Benefit Plan (SBP), are designed to provide long-term monthly income. Survivors may also receive death benefits from Social Security.

As a part of the FY2005 National Defense Authorization Act, Congress directed the Administration to assess and recommend enhanced benefits for deceased members of the armed forces. (See Appendix C for a discussion of that legislation.) In response, on February 1, 2005, DOD presented proposed changes to the Senate Armed Services Committee. Specifically, DOD proposed to increase death benefit payments by nearly \$250,000 to families of U.S. servicemembers killed in designated combat zones. This proposed increase would have effectively doubled the cash that survivors can receive in immediate government payments and life insurance proceeds to \$500,000. Defense officials also requested that these benefits be made retroactive to October 2001 for relatives of U.S. troops killed in Iraq and Afghanistan. It has been reported that DOD had estimated that its plan would cost about \$280 million in retroactive payments alone.<sup>1</sup> The President proposed these same increases as part of his FY2005 Supplemental Appropriations request.<sup>2</sup> The Death Benefits Enhancements<sup>3</sup> increased the Death Gratuity to \$100,000 and the SGLI to \$400,000 for those who die from wounds, injuries or illness that are combat or combat-training related. Public Law 109-163, January 6, 2006, made these changes permanent for nearly all active duty deaths, retroactive to October 7, 2001. P.L. 109-80 (September 30, 2005) and P.L. 109-163 (January 6, 2006) made these benefits permanent for

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<sup>1</sup> Graham, Bradley, "Military Chiefs Criticize Curbs In Plan to Raise Death Benefits," *Washington Post*, February 2, 2005: 20.

<sup>2</sup> U.S. President, George W. Bush, FY2005 Supplemental Appropriations Request, February 14, 2005.

<sup>3</sup> P.L. 109-13, May 11, 2005.

nearly all active duty deaths. In addition, P.L. 110-118<sup>4</sup> increased the benefits for survivors of retired or retirement-eligible service members by providing a monthly allowance of \$50 in 2009 and increasing by \$10 each year after that until 2013.

Listed below is a description of the various death benefits from the Department of Defense, Department of Veterans Affairs (VA), and Social Security available to certain survivors of members of the Armed Forces who die on active duty. The following describes each benefit's specific purpose, as well as current policy regarding the level of benefits available to survivors. It should be noted that some benefits, such as the SBP and the VA Dependency and Indemnity Compensation (DIC), may offset one another (i.e., whenever a surviving spouse of an SBP participant is also entitled to DIC, the spouse's monthly SBP annuity is reduced by the amount of the DIC payment). Thus, calculating the level of some benefits usually involves a number of variables which can make each case different from another.

## Death Gratuity<sup>5</sup>

**Purpose:** "To provide an immediate cash payment to assist survivors of deceased members of the armed forces to meet their financial needs during the period immediately following a member's death and before other survivor benefits, if any, become available."<sup>6</sup>

In Fiscal Year (FY) 2004, a tax-free, lump sum of \$12,420 was paid by DOD in the event of a death while the member was serving on active duty (including certain members of the reserve components during training). It was paid to one of various "eligible survivors" as described in law.<sup>7</sup> The designated survivor of virtually all deceased DOD military personnel receives this gratuity immediately. In FY2004, the death gratuity statute was amended to provide that the gratuity be adjusted upward by the same amount as any increase in military base pay.<sup>8</sup> As part of what was formally called the Death Benefits Enhancement,<sup>9</sup> the Death Gratuity was increased to \$100,000 in a case of death resulting from wounds, injuries or illnesses that occur in a combat zone (as designated by the Secretary of Defense) or in combat-related activities (including training, hazardous conditions or situations involving an instrumentality of war). This increase was made retroactive for deaths that occurred on or after October 7, 2001. These additional payments were scheduled to terminate on September 30, 2005. Public Law 109-77<sup>10</sup> provided that the provisions of, and amendments made with regard the Death Gratuity by Public Law 109-13 shall

<sup>4</sup> Sec. 644, January 22, 2008.

<sup>5</sup> 10 U.S.C. §§ 1475-1480; P.L. 108-13; Stat. 1520; section 646; November 24, 2003.

<sup>6</sup> U.S. Department of Defense, Office of the Secretary of Defense, *Military Compensation Background Papers*, 5<sup>th</sup> ed., September 1996: 621.

<sup>7</sup> 10 U.S.C. § 1477.

<sup>8</sup> P.L. 108-375; sec. 643; October 8, 2004: 708-709.

<sup>9</sup> P.L. 109-13; sec. 1013; May 11, 2005.

<sup>10</sup> P.L. 109-77; sec. 115; September 27, 2005.

continue in effect through the earlier of: (1) the date specified in section 106(3) [November 18, 2005] of this joint resolution; or (2) with respect to any such section of Public Law 109-13, the date of the enactment into law of legislation that supersedes the provisions of, or the amendments made by, that section.

On January 6, 2006, the National Defense Authorization Act for Fiscal Year 2006<sup>11</sup> permanently increased the Death Gratuity in all cases for servicemembers who die on active duty. This increase was made retroactive to October 7, 2001.

Under law, the beneficiary(ies) are designated in order of eligibility with the surviving spouse first, followed by the children, etc. If so designated by a service member, others can receive this benefit including parents or siblings. Recently, it was reported that a service member, a single parent, died while on active duty and that her financially struggling parents who had custody of the surviving child were unable to access this benefit. P.L. 110-28 (May 25, 2007) contained language that allows a covered service member to designate up to 50 percent of the death gratuity (in 10% increments) to a person other than the recipient under law. This authority ended September 30, 2007.

On January 22, 2008, the National Defense Authorization Act for Fiscal Year 2008<sup>12</sup> modified the law by striking the existing list of beneficiaries and replacing it with a new list by the order of eligible beneficiaries (subject to certain qualifications): 1) any individual designated in writing, 2) the surviving spouse, 3) children, 4) parents, 5) an executor or administrator of the estate, and, 6) other next of kin. The Senate also included report language addressing the need for pre-deployment counseling on survivor benefits and directing the Secretary of Defense to review such counseling. Further, this provision is effective no later than July 1, 2008; requires the notification of the spouse if an election were made under this authority that would exclude a current spouse from any portion of the death gratuity benefit; provides for partial designations in 10 percent increments; and provides that death gratuity elections made before the enactment of P.L. 110-28, would remain lawful and effectual.

## Social Security Survivors' Benefits

**Purpose:** "To require employees and employers — in the present case, members of the uniform services and the Federal Government, respectively — to jointly finance a Federal Old-Age, Survivors, Disability, and Health Insurance (OASDHI) program in order to provide pre- and post-retirement income and security to covered employees and their families."<sup>13</sup>

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<sup>11</sup> P.L. 109-163; sec. 664; January 6, 2006.

<sup>12</sup> P.L. 110-181; sec 6, January 22, 2008.

<sup>13</sup> U.S. Department of Defense, Office of the Secretary of Defense, *Military Compensation Background Papers*, 5<sup>th</sup> ed., September 1996: 671.

Active duty military personnel have been fully covered by Social Security and have paid Social Security taxes since January 1, 1957. In addition to providing monthly benefits to civilian retirees and retired military personnel, the social security program provides benefits to the widows and widowers of deceased military and civilian retirees. Social Security survivor benefits are based on a spouse's (or former spouse's) employment, including military service, and are first payable at age 60; at age 50, if the surviving spouse is totally disabled; or, at any age if and as long as there are children under the age of 16.

In 2007, the average monthly Social Security benefit for a surviving parent of a minor was \$742. The average benefit for a child of a deceased parent was \$691. This monthly benefit is payable to a surviving dependent unmarried child who is either: (1) under age 18, (2) a full time elementary or secondary school student under age 19, or (3) a disabled person age 18 or older whose disability began before the age of 22.<sup>14</sup> A surviving widow with one child therefore would receive an average monthly benefit of \$1,433. Existing rules limit the maximum family benefit, so it would not necessarily increase by \$691 for each additional child.

## **Servicemembers' Group Life Insurance (SGLI)<sup>15</sup>**

**Purpose:** "To make life insurance protection available to members of the uniformed services at a reasonable cost."<sup>16</sup>

All members of the uniformed services are automatically insured for the maximum coverage under Servicemembers' Group Life Insurance. The maximum coverage was \$250,000, which was/is paid in a lump sum. The cost of this coverage is \$0.65 per \$10,000 of coverage per month.<sup>17</sup> Service members can decline coverage entirely or opt for less than the maximum coverage. According to the Office of the Deputy Under Secretary of Defense (Military Personnel Policy), as of November 2004, only 8.4% of active duty servicemen declined full coverage of SGLI.<sup>18</sup>

As noted above in the "Death Gratuity" section, the SGLI was increased up to \$400,000 at no additional cost for those who die from wounds, injuries, or illnesses that occur in a combat zone (as designated by the Secretary of Defense) or in combat-related activities (including training, hazardous conditions or situations involving an instrumentality of war). This increase was made retroactive for deaths that occurred on or after October 7, 2001, and would terminate on September 30, 2005. Further,

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<sup>14</sup> U.S. Department of Defense, Office of the Secretary of Defense, *Military Compensation Background Papers*, 5<sup>th</sup> ed., September 1996: 679-680.

<sup>15</sup> 38 U.S.C. §§ 1965 et seq.

<sup>16</sup> U.S. Department of Defense, Office of the Secretary of Defense, *Military Compensation Background Papers*, 5<sup>th</sup> ed., September 1996: 615.

<sup>17</sup> For more information see the website, online at [<http://www.insurance.va.gov/SgliSite/SGLI/sgliPremiums.htm>].

<sup>18</sup> Tom Tower, Directorate of Compensation, Office of the Deputy Under Secretary of Defense (Military Personnel Policy), (703) 693-1059, February 2, 2005.

a member with a spouse may not elect less than the maximum coverage without the written consent of the member's spouse. An unmarried member who opts for less than the maximum coverage, will have their designated next of kin or designated beneficiary notified. Again, as noted above, language was included in the FY2006 Defense Appropriations Act to fund this increase for FY2006. Thus, the increase in SGLI would likely continue at least for the next fiscal year. P.L. 109-13 also changed the coverage increments that may be provided from \$10,000 to \$50,000.

On July 26, 2005, the House passed H.R. 3200. Among its provisions, this bill repeals the language in P.L. 109-13 regarding SGLI and in its place makes permanent (effective September 1, 2005) the increase in this benefit from \$250,000 to \$400,000. In addition, H.R. 3200, repeals the 'spousal consent' language regarding those who opt for less than the maximum coverage under SGLI and instead requires 'spousal notification.' Notification of designated next-of-kin or other designated beneficiaries would continue for unmarried servicemembers. H.R. 3200 requires the Secretary to make a good faith effort to provide notification, but a lack of notification does not invalidate the servicemember's decision. Finally, H.R. 3200 would make permanent the change in increments of SGLI coverage from \$10,000 to \$50,000.

P.L. 109-163 sought to make the increase to \$400,000 in SGLI permanent for all military active duty deaths. However, as noted above, H.R. 3200 made the increase permanent effective September 1, 2005. However, as constructed and considering the varying "effective" dates of the above laws, the SGLI increase is made permanent and retroactive to October 7, 2001, except for those non-qualifying (e.g., not related to OEF, OIF) deaths that occurred between May 11, 2005 and September 1, 2005. Discussions with both DOD and congressional staff seem to indicate that this may have been an oversight that could be the subject of reconsideration.

In addition, P.L. 109-163 also contained a provision (sec. 613) that requires the Secretary of Defense, in the case of a member participating in SGLI and who is serving in OEF or OIF, to pay an allowance equivalent to the monthly amount deducted from the member's pay for the first \$150,000 of SGLI (or a lesser amount if the servicemember opted to participate at a reduced level, for example). Further, this language gave the Secretary of Defense permissive authority to cover up to an additional \$250,000 in SGLI coverage for those who have SGLI coverage and are participating in OEF or OIF.

The National Defense Authorization Act for Fiscal Year 2007 expanded on the FY2006 provision by requiring the services to fund up to \$400,000 of SGLI coverage for all service members serving in OEF or OIF.<sup>19</sup> SGLI coverage is available in \$50,000 increments up to \$400,000 with premiums of \$0.07 per \$1,000 coverage.

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<sup>19</sup> P.L. 109-364, October 17, 2006, sec. 606.

## VA Dependency and Indemnity Compensation (DIC)

**Purpose:** “To authorize a payment to the surviving dependents of a deceased military member partially in order to replace family income lost due to the member’s death and partially to serve as reparation for the death.”<sup>20</sup>

VA Dependency and Indemnity Compensation benefits are integrated with the military Survivor Benefit Plan or SBP (see below). In other words, payment received via DIC brings about a dollar-for-dollar reduction in SBP benefits. DIC benefits can also be terminated as a result of remarriage by the surviving spouse. The DIC benefit is \$1,091 per month for the surviving spouse and a children’s payment of \$271 per month for each child (plus if there are children under the age 18 the surviving spouse receives an additional \$250 per month for two years) as of January 1, 2006 for the survivors of members who died on or after January 1, 1993.<sup>21</sup> Add \$233 if the veteran at the time of death was entitled to disability compensation rated as total disability (including a rating based on unemployability) for the eight years immediately preceding the death and if the veteran was married to the same spouse for the same eight years. Additional benefits may be provided to a spouse if the spouse is housebound, has dependents under age 18, or between the ages of 18 and 23 and attending school, or the dependent became permanently incapable of self-support before the age of 18 due to a mental or physical disability.<sup>22</sup> Surviving parents in some cases may also be eligible for DIC benefits, depending on the parents’ income and marital status.<sup>23</sup>

## Military Survivor Benefit Plan<sup>24</sup>

**Purpose:** “To establish a program to insure that the surviving dependents of military personnel who die...will continue to have a reasonable level of income.”<sup>25</sup>

As originally created, the military Survivor Benefit Plan (SBP) was designed to provide an annuity to the survivors of retirement-eligible military personnel. However, recent legislation<sup>26</sup> has expanded the coverage to the survivors of individuals who die while on active duty, effective September 10, 2001. Under these

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<sup>20</sup> U.S. Department of Defense, Office of the Secretary of Defense, *Military Compensation Background Papers*, 5<sup>th</sup> ed., September 1996: 627.

<sup>21</sup> Prepared Statement of the Honorable David, S.C. Chu, OUSD(P&R), Before the Senate Armed Services Committee, February 1, 2005.

<sup>22</sup> For additional information, see [<http://www.vba.va.gov/bln/21/Milsvc/Docs/Diceg.doc>].

<sup>23</sup> U.S. Department of Defense, Office of the Secretary of Defense, *Military Compensation Background Papers*, 5<sup>th</sup> ed., September 1996: 636.

<sup>24</sup> 10 U.S.C. §§ 1447 et seq.

<sup>25</sup> U.S. Department of Defense, Office of the Secretary of Defense, *Military Compensation Background Papers*, 5<sup>th</sup> ed., September 1996: 683.

<sup>26</sup> P.L. 107-107; 115 Stat. 1151-1152, December 28, 2004.

provisions, the surviving spouses of active duty personnel who die are provided an annuity. This annuity for an active duty (non-retirement-eligible) member is determined by assuming the individual would have been eligible to retire with a total (100%) disability at the time of death (under sec. 1201, title 10 USC).<sup>27</sup> The surviving spouse's annuity is based on the amount of disability retired pay the servicemember would have received. Currently, the spouse's share is 55% of the member's disability retired pay if the surviving spouse is under age 62, and 40% if age 62 or over. As a result of language included in the FY2005 National Defense Authorization Act, this reduction in benefits for those survivors age 62 and over is scheduled to be phased out by April 1, 2008.<sup>28</sup> Depending on when the individual entered the service, the computation base may be either the terminal monthly base pay (for those who entered service on or before September 7, 1980) or the average of the 36 months (or "high three" years) during which the member earned the highest rate of base pay (for those who entered the service after September 7, 1980). The amount of monthly disability pay is computed either by multiplying the determined amount of base pay by the percentage disability, or by computing 2.5% of base pay times the member's years of service, whichever is higher. However, this amount cannot exceed 75% base pay. Because the legislation assumes the level of disability is total (100%), the amount of base pay (or "high three") used would be multiplied by 75%.

For an active duty member who is eligible to retire, the SBP benefit is computed to be 55% of the retired pay they would have been eligible to receive had they retired at the time of their death.

When a survivor is also eligible to receive both SBP and DIC (see above), they do not receive the full amount of both benefits. Rather, the SBP benefit is offset or reduced on a dollar-for-dollar basis by any DIC benefits received. If the DIC benefit is larger than the SBP benefit, then the survivor receives only the DIC benefit. If, however, the SBP benefit is larger than the DIC benefit, the survivor receives the full DIC benefit and any SBP benefits less an amount equivalent to the DIC benefit. As a result of legislation enacted in 2003,<sup>29</sup> surviving spouses of active duty personnel are allowed to designate their children, if any, as the recipient of the SBP benefit in order to avoid this offset. This change was effective November 23, 2003. (Children remain eligible to receive SBP until they reach age 18 or 22; or for life if mentally or physically incapacitated and if the incapacitating condition existed prior to age 18. Eligibility terminates if the child marries.) The National Defense Authorization Act for Fiscal Year 2007<sup>30</sup> changed the effective date of designating children as the SBP beneficiaries for active duty survivors to October 7, 2001. Any benefits as a result

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<sup>27</sup> Under these provisions, the member's disability may not be the result of intentional neglect or misconduct.

<sup>28</sup> P.L. 108-375; 118 Stat. 1811; October 28, 2004.

<sup>29</sup> P.L. 108-136, November 24, 2003.

<sup>30</sup> P.L. 109-364, October 17, 2006, sec. 644.

of this change is payable for months after the enactment of this language. A surviving spouse who remarries prior to age 55 loses SBP eligibility.<sup>31</sup>

Language was included in the Senate version of the National Defense Authorization Act for Fiscal Years 2006 and 2007 to repeal this SBP/DIC offset. This language was dropped by the Conference Committee each time.<sup>32</sup> Again, language was included in the Senate version of the National Defense Authorization Act for Fiscal Year 2008 to repeal this SBP/DIC offset. This language, too, was dropped by the Conference Committee and in its place language was enacted that provided a survivor indemnity allowance to survivors of service members who were entitled to retired pay, or would be entitled to reserve component retired pay but for the fact they were not yet 60 years of age. Beginning in FY2009, the monthly allowance of \$50 would be increased by \$10 each year through FY2013.

## Housing<sup>33</sup>

**Purpose:** “To provide a cash allowance to military personnel not provided with government quarters adequate for themselves and their dependents to enable such personnel to obtain civilian housing as a substitute.”<sup>34</sup>

Previously, family members of a military member who dies in the line of duty were allowed 180 days’ free occupancy of Government quarters or 180 days of Basic Allowance for Housing (BAH) if they live in civilian housing.<sup>35</sup> P.L. 109-13 (sec. 1022) extended these housing benefits to 365 days. BAH varies in accordance with whether military personnel have dependents or are single. It is based on annual surveys of housing costs in several hundred metropolitan areas around the United States. P.L. 109-163 ( sec. 611) codified this enhanced benefit.

The surviving spouse and dependent children receive an additional benefit entitling them to “...move one time at Government expense. Household goods will not be moved a greater distance than the personal travel. One motor vehicle can be shipped at Government expense.”<sup>36</sup>

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<sup>31</sup> For more information on the SBP, see CRS Report RL31664, *The Military Survivor Benefit Plan: A Description of Its Provisions*, by David F. Burrelli.

<sup>32</sup> U.S. Congress, Conference Committee, National Defense Authorization Act for Fiscal Year 2006, H.R. 1815, Rept. 109-360, 109<sup>th</sup> Congress, 1<sup>st</sup> Sess., December 18, 2005: 738, and, U.S. Congress, Conference Committee, National Defense Authorization Act for Fiscal Year 2007, H.R. 5122, Rept. 109-702, 109<sup>th</sup> Congress, 2<sup>nd</sup> Sess., September 29, 2006: 755.

<sup>33</sup> *2003 Uniformed Services Almanac*, 43<sup>rd</sup> Edition: 183; 37 U.S.C. § 403 (1).

<sup>34</sup> U.S. Department of Defense, Office of the Secretary of Defense, *Military Compensation Background Papers*, 5<sup>th</sup> ed., September 1996: 81.

<sup>35</sup> *2003 Uniformed Services Almanac*, 43<sup>rd</sup> Edition: 183.

<sup>36</sup> Statement by General Richard A. Cody, Vice Chief of Staff United States Army, before the Senate Armed Services Committee, February 1, 2005.

P.L. 109-163 also increased the period of time allowed for a surviving family of servicemembers who die on active duty to select a residence for which they may receive travel and transportation allowances from one year to three years after the death of the member.

## Health Care<sup>37</sup>

**Purpose:** “To make medical care available to members of the uniformed services and their dependents in order to help ensure availability of physically acceptable and experienced personnel in time of national emergency; to provide incentives for armed forces personnel in time of national emergency; to provide incentives for armed forces personnel to undertake military service and remain in that service for a full career, and to provide military physicians and dentists exposure to the total spectrum of demographically diverse morbidity necessary to support professional training programs and ensure professional satisfaction for a medical service career.”<sup>38</sup>

Unremarried surviving spouses and minor children of deceased military personnel remain eligible to receive military health care benefits subject to certain limitations. As the DOD website on military health care benefits, known as TRICARE, states, “[s]urviving family members of deceased active duty servicemembers remain eligible for TRICARE benefits at the active duty dependent rates for a three-year period. At the end of the three-year period, TRICARE eligibility continues, but at the retiree dependent rates.”<sup>39</sup> Surviving spouses remain eligible for TRICARE benefits throughout their lifetime if they do not remarry. Surviving unmarried dependents remain eligible for TRICARE benefits until the age of 21, or until the age of 23 if they are a full-time student. Eligibility for TRICARE may also be extended for a dependent if the child is incapable of self-support because of a mental or physical disability and the condition existed prior to age 21.<sup>40</sup>

P.L. 109-163 contained two provisions concerning military survivors. First, sec. 713 would expand eligibility for survivor benefits under the TRICARE dental plan to include the active duty spouse of a member who dies on active duty and had served for a period of more than 30 days. Second, sec. 715 authorized any surviving dependent child of a deceased member to continue to receive benefits under TRICARE Prime as if the servicemember parent were still alive, and without annual premiums, until age 21 or 23 if enrolled in an educational program.

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<sup>37</sup> 10 U.S.C. §§ 1072 et seq.

<sup>38</sup> U.S. Department of Defense, Office of the Secretary of Defense, Military Compensation Background Papers, 5<sup>th</sup> ed., September 1996: 661.

<sup>39</sup> See [<http://www.tricare.osd.mil>] for more information. See also CRS Report RL33537, *Military Medical Care Services: Questions and Answers*, by Richard A. Best Jr.

<sup>40</sup> See [<http://www.tricare.osd.mil/Factsheets/viewfactsheet.cfm?id=174>] for more information.

## Commissary and Exchange Benefits<sup>41</sup>

**Purpose:** “To provide quality merchandise and necessary services to authorized patrons at moderate prices and to generate reasonable earnings to supplement appropriated funds for the support of Department of Defense morale, welfare, and recreation (MWR) programs.”<sup>42</sup>

Under regulations, a surviving spouse of a member who dies while on active duty remains eligible to use commissary (military supermarkets) and exchange (military department stores) stores until the spouse remarries. Unmarried dependent children retain commissary and exchange store privileges until the age of 21, or until the age of 23 if they are a full-time student. Eligibility for commissary and exchange stores may be extended for a dependent if the child is incapable of self-support because of a mental or physical disability and the condition existed prior to age 21.<sup>43</sup>

## Child Care<sup>44</sup>

**Purpose:** “Quality child and youth programs are vital to Service families. Child care is a workforce issue which impacts the effectiveness and readiness of the force.”

Children of a military member who dies in the line of duty are allowed to continue utilizing military child development facilities. Installation commanders review each case and support, to the maximum extent possible, continued attendance at child development centers.

## Survivors’ and Dependents’ Educational Assistance Program (DEA)<sup>45</sup>

**Purpose:** “...providing opportunities for education to children whose education would otherwise be impeded or interrupted by reason of the disability or death of a parent from a disease or injury incurred or aggravated in the Armed Forces...the educational program extended to the surviving spouses of veterans who died of service-connected disabilities and to spouses of veterans with a service-connected total disability permanent in nature is for the purpose of assisting them in preparing to support themselves and their families at a standard

<sup>41</sup> 10 U.S.C. §§ 1061 et seq.

<sup>42</sup> U.S. Department of Defense, Office of the Secretary of Defense, Military Compensation Background Papers, 5<sup>th</sup> ed., September 1996: 703.

<sup>43</sup> DOD 1330.17-R, Armed Services Commissary Regulations (ASCR), April 1987 and DOD Instruction 1330.21, Armed Services Exchange Regulations.

<sup>44</sup> Witte, Janice, Director of the Office of Children and Youth, DUSD(MPP), (703) 614-3330.

<sup>45</sup> See [[http://www.gibill.va.gov/education/pamphlets/CH35/CH35\\_Pamphlet.htm](http://www.gibill.va.gov/education/pamphlets/CH35/CH35_Pamphlet.htm)] for more information.

of living level which the veteran, but for the veteran's death or service disability, could have expected to provide for the veteran's family."<sup>46</sup>

Dependents' Educational Assistance (DEA) provides education and training opportunities to eligible dependents of certain veterans, including the surviving spouse and children of a servicemember who died of a service-connected disability (the disability must have arisen from active service in the Armed Forces). This VA program offers monthly benefits for a maximum of 45 months to pay for education benefits.<sup>47</sup> These benefits may be used for degree and certificate programs, apprenticeship, and on-the-job training, as well as correspondence courses for surviving spouses. Remedial, deficiency, and refresher courses may be approved under certain circumstances. The surviving spouse's eligibility to receive these benefits ends 20 years from the date the VA finds them eligible.<sup>48</sup> In addition, a surviving spouse's eligibility for this benefit ends if she/he is remarried before the age of 57. However, the termination of a surviving spouse's remarriage, either by death or divorce, will reinstate DEA benefits to the surviving spouse.<sup>49</sup> Dependent children of the veteran may receive the benefits of attending school or job training between the ages of 18 and 26. In certain instances, it is possible to begin receiving the benefit before they reach the age of 18 and to continue receiving it after the age of 26. Also, marriage is not a bar to this benefit for children of the deceased or disabled veteran.<sup>50</sup>

In addition to DEA, the "VA will also pay a special Montgomery GI Bill death benefit to a designated survivor in the event of a service-connected death of an individual while on active duty or within one year after discharge or release. The deceased must either have been entitled to educational assistance under the Montgomery GI Bill program or a participant in the program who would have been so entitled but for the high school diploma or length of service requirement. The amount paid will be equal to the participant's actual military pay reduction, less any education benefits paid."<sup>51</sup>

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<sup>46</sup> 38 U.S.C. §§ 3500 et seq.

<sup>47</sup> Christenson, Sig, "GIs' Families Not Left Destitute," *San Antonio Express-News*, February 3, 2005.

<sup>48</sup> 38 U.S.C. § 3512(b)(1)(C) as amended by P.L. 108-452.

<sup>49</sup> Statement of Epley, Robert J., Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration, Department of Veterans Affairs before the Senate Committee on Armed Services, February 1, 2005.

<sup>50</sup> See [[http://www.gibill.va.gov/education/pamphlets/CH35/CH35\\_Pamphlet.htm](http://www.gibill.va.gov/education/pamphlets/CH35/CH35_Pamphlet.htm)] for more information.

<sup>51</sup> Federal Benefits for Veterans and Dependents, Department of Veteran Affairs, 2004 edition, p. 56.

## Burial, Funeral, and Related Benefits<sup>52</sup>

Under law, the responsibilities of the Federal Government are the following:<sup>53</sup>

[T]he Secretary [of the military department] concerned may provide for the recovery, care and disposition of the remains of personnel who die while on active duty including the following:

1. Recovery and identification of the remains.
2. Notification of the next of kin or other appropriate person.
3. Preparation of the remains for burial, including cremation if requested by the person designated to direct the disposition of the remains.
4. Furnishing of a uniform or other clothing.
5. Furnishing of a casket or urn, or both, with outside box.
6. Hearse service.
7. Funeral director's services.
8. Transportation of the remains, and round trip transportation and prescribed allowances for an escort ..., to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized. [Changes made in the National Defense Authorization Act for Fiscal Year 2007<sup>54</sup> affect the transportation of remains of service members who die in a combat theater of operations and who are transported by air to Dover Air Force Base, Delaware. Unless directed otherwise, when the remains are transported by air, the remains shall be transported by a military or military-contracted aircraft and the transportation of said remains shall be the primary mission of that aircraft. This language also included provisions for an Honor Guard, in addition to the escort mentioned above, to travel with the remains or to meet the remains at the place to which the transfer is made.]
9. Interment of the remains.
10. Presentation of a flag of the United States to the person designated to direct disposition of the remains, except in the case of a military prisoner who dies while in custody of the Secretary and while under a sentence that includes a discharge.

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<sup>52</sup> For additional information, see CRS Report RS21545, *Military Funeral Honors and Military Cemeteries: Frequently Asked Questions*, by Mari-Jana "M-J" Oboroceanu.

<sup>53</sup> 10 U.S.C. § 1481 et seq.

<sup>54</sup> P.L. 109-364, October 17, 2006, sec. 562.

11. Presentation of a flag of equal size to the flag presented under paragraph 10 (above) to the parents or parent, if the person to be presented a flag under paragraph 10 is other than the parent of the decedent.

When a servicemember dies, the Service's Casualty Assistance Office (CAO) sends personnel to notify the next-of-kin of the loss. This representative then works with the family following notification of the loss, through funeral preparations, burial and the entire process of determining benefits and compensation. They provide counseling, arranging for the military funeral (if desired), serving as an official representative if/when problems arise, and ensuring that the families receive the benefits and compensation due to them.<sup>55</sup> Families have access to their CAO representative during the days, weeks, months and years after the servicemember's death.<sup>56</sup>

Further, if an individual pays any expense payable by the United States the Secretary is authorized to reimburse the individual or her/his representative. The payment of these expenses is limited to amounts not larger than what would have normally been incurred by the Secretary in furnishing the supply or service concerned.

Although not a "death benefit" per se, special rules apply to those whose remains can not be recovered, as well as situations in which commingled remains cannot be identified. In these circumstances, burial of the remains in a common grave at a national cemetery may be considered necessary.

Military honors are provided at the time of burial. Headstones and markers are also provided. Those who die on active duty may be buried at Arlington National Cemetery. In addition, the member's spouse and dependent children may also be buried at Arlington subject to limitations.<sup>57</sup> Provisions for burial in other national cemeteries or in state veterans cemeteries vary.

P.L. 109-163 (sec. 564) directed the Defense Department to implement revisions to DOD Instruction 1300.18 requiring that military members designate, in writing, a person authorized to direct disposition of their remains. The Secretary of Defense was required to report on actions to implement this policy by September 1, 2006.

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<sup>55</sup> Prepared Statement of the Honorable David S.C. Chu, OUSD(P&R), Before the Senate Armed Services Committee, February 1, 2005.

<sup>56</sup> Statement by General Richard A. Cody, Vice Chief of Staff United States Army, before the Senate Armed Services Committee, February 1, 2005.

<sup>57</sup> The surviving spouse, minor child, or permanently dependent child of any person already buried in Arlington National Cemetery may also be buried there. In addition, a widow or widower of the following may be buried in Arlington National Cemetery: a member of the Armed Forces who was lost or buried at sea or officially determined to be missing in action; a member of the Armed Forces who is interred at a U.S. military cemetery overseas that is maintained by the American Battle Monuments Commission; a member of the Armed Forces who is interred at Arlington National Cemetery as part of a group burial. For more information on burial limitations in Arlington National Cemetery, see *2004 Uniformed Services Almanac*, 44<sup>th</sup> ed.: 179-180.

Finally, P.L. 109-163 (sec. 662) modified titles 10 and 38, of the United States Code, to expand the prohibition against the interment of anyone in a national cemetery, as well as the use of military honors, for anyone convicted of a capital offense (as defined), or when the circumstances involved would bring discredit upon the person's service or former service. (This language expands upon a law Congress passed in 1997. That law barred those convicted of capital crimes from being buried in a national cemetery. The 1997 law was ostensibly passed to prevent the possibility of Oklahoma City bomber Timothy McVeigh, a veteran, from being buried at Arlington. McVeigh was put to death on June 11, 2001.)

Section 404 of P.L. 109-461 required the removal of Russell Wayne Wagner's remains from the columbarium at Arlington National Cemetery. Although an honorably discharged Vietnam veteran, Wagner was convicted of killing an elderly Maryland couple in 1994. Wagner died in 2005 while serving two life terms. Because he was eligible for parole, he could have an Arlington service. Following protests from the deceased couple's son, language was included in the Veterans Benefits, Health Care and Information Technology Act of 2006 requiring the removal of Wagner's remains. In December, 2006, Wagner's remains were removed and returned to his sister.<sup>58</sup>

P.L.109-364<sup>59</sup> made changes with regard to transportation of remains for those who die in a combat theater of operations and whose remains are returned to the U.S. First, it requires a uniformed escort at all times. Second, it requires that the transportation of remains from Dover Air Force Base, DE, to a military airfield shall be by military or contracted aircraft whose exclusive mission is the transportation of remains. In addition to the above escort, there shall be a military escort either from Dover AFB, or at the receiving airfield. This escort, or honor guard shall be of sufficient number to transfer the casket to a hearse for local transportation, and shall attend the remains until delivery to the next-of-kin. This escort shall consist of active duty or Ready Reserve members of the armed forces. This law established January 1, 2007, as the effective date.

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<sup>58</sup> Bahramour, Tara, "Ashes Removed Under Law Disqualifying Felons," *The Washington Post*, January 4, 2007: B2.

<sup>59</sup> 120 Stat. 2083; sec. 562; September 29, 2006.

## **Appendix A. Two Hypothetical Examples for Determining a Level of Death Benefits**

Determining the value of death benefits to survivors is highly dependent upon individual circumstances. Such variables include increases in benefits resulting from annual cost of living adjustments, possible changes in eligibility (such as remarriage), tax implications, etc. In addition, such an assessment would need to take into consideration all benefits incurred as a result of military service of the decedent. (As noted above, these would include social security benefits.) Since Dependency and Indemnity Compensation are integrated with SBP, these benefits are considered here. Social Security benefits have been excluded from these examples because the primary focus of this report is to examine the death benefits provided by the Department of Defense and the Department of Veteran Affairs. Any computation of death benefits based on a hypothetical situation is unlikely to be representative of the “average” or “typical” benefits received by the survivors of military personnel who die while on active duty. Indeed, the value of many of the benefits, such as health care and commissary/exchange privileges, cannot be quantified.

The following examples are, at best, rough estimates, and are intended for illustrative purposes only.

The first example consists of a Marine Corps Corporal (E-4) who is killed while on active duty in Iraq in January 2008. The Corporal has been in the service for four years. Given the above, the Corporal’s spouse could receive a \$100,000 death gratuity. Assuming the Corporal had maintained full participation in the SGLI, the surviving spouse would also receive an additional \$400,000.

The basic DIC benefit for this Corporal’s spouse is \$1091 per month (January 2008). The 2008 base pay of the Corporal is \$2,047.80 per month. This is the figure used in determining the SBP benefit, although the actual figure would be slightly less since it would be based on the average 36 months of base pay (high three). The disability pay of such an individual is 75% of base pay, or \$1,535 per month. Under SBP coverage, the surviving spouse would receive 55% of this amount, or approximately, \$844 per month. However, because there is a dollar-for-dollar offset with DIC, the entire SBP is offset by DIC and the spouse receives only the monthly DIC benefit of \$1091. Nevertheless, the spouse remains eligible to receive SBP as long as he/she does not remarry prior to reaching the age 55. Further, SBP benefits are subject to annual cost of living increases. Assuming the surviving spouse is 30 years old at the time of the Corporal’s death, assuming no cost of living adjustments, and assuming the spouse does not remarry and lives to the age of 74 (528 months), it is possible to compute an approximate life time benefit from SBP/DIC. Such an individual could expect to receive approximately \$576,048 from SBP/DIC. If the Death Gratuity and SGLI are added, the total is \$1,076,048.

**Table 1. Corporal's (E-4) Death Benefits**

Death Gratuity		\$100,000
SGLI		\$400,000
DIC (monthly)		\$1,091
SBP (monthly)	\$816 less \$1,067 DIC offset	\$0
Total	DIC only	\$1,091

**Note:** Amounts are rounded to the nearest dollar.

The second example consists of an Air Force Lieutenant Colonel (O-5), with eighteen years of service, who dies while on active duty. The basic DIC benefit for the Lieutenant Colonel's spouse is \$1091 per month. As in the case above, the Lieutenant Colonel's spouse would be eligible to receive both the death gratuity (\$100,000) and the full SGLI benefit (\$400,000). The base pay of this officer is \$7,212.00 per month. Using the same assumptions as those in the above case, the officer's spouse can expect to receive approximately \$2,974 per month (from SBP) until age 62. If the spouse reaches age 62 before 2008, this monthly SBP amount may be reduced. After 2008, it will remain at 55%. For the purpose of this example, SBP will remain at the 55% level. Finally, given the above assumptions, such an individual could expect to receive a lifetime benefit of approximately \$1,570,272 from SBP/DIC. With the Death Gratuity and SGLI, the total is \$2,070,272.

**Table 2. Lieutenant Colonel's (O-5) Death Benefits**

Death Gratuity		\$100,000
SGLI		\$400,000
DIC (monthly)		\$1,091
SBP (monthly)	\$2,974 less \$1,091 DIC offset	\$1,783
Total	DIC + SBP	\$2,974

**Note:** Amounts are rounded to the nearest dollar.

Again, it must be emphasized that these examples are for broad illustrative purposes only and can not incorporate the full range of variables that could apply in any specific instance. Indeed, the amount received can be increased by including social security benefits. In addition, many surviving spouses have designated their child(ren) as SBP beneficiary(ies), thus eliminating any offset that occurs when the spouse receives DIC. Finally, it is not possible to incorporate the full range of in-kind benefits such as health care, housing, etc., that may substantially increase the actual value of these benefits.

## Appendix B. Government Accountability Office (GAO) Summary on Military and Civilian Death Benefits

In July 2004, the Government Accountability Office (GAO) released a report comparing death benefits of military and civilian government employees.<sup>60</sup> The following is a verbatim reproduction from the summary of that report “What GAO Found” (summary page):

The military provides survivor benefits that are comparable in type but not in amount to those provided by 61 civilian government entities (federal government, 50 states and the District of Columbia, and 9 cities with populations of at least 1 million) when employees die in the line of duty.

- Social Security payments, a death gratuity, burial expenses, and life insurance are four types of lump sum survivor benefits provided by the military and at least some government entities; the federal government and some states additionally provide a lump sum payment through their retirement plans. Recurring payments are also provided by Social Security to the survivors for deceased servicemembers and most deceased government employees in 61 civilian government entities GAO studied. Other types of payments are specific to the military or civilian government entities. GAO identified two programs with recurring payments for the military and two other types of programs for the civilian government entities.
- For the four hypothetical situations GAO used to examine the amount of cash payments provided to survivors, survivors of deceased servicemembers almost always obtain higher lump sums than do the survivors of deceased employees from 61 civilian government entities. The amount of recurring payments to deceased servicemembers’ survivors in three of the four situations exceeds those provided by the federal government, typically exceeds those provided by at least one-half of the states, but are typically less than those provided by one-half the cities.
- The military also provides more types of noncash survivor benefits than do civilian government entities, with some benefits being comparable in type and others differing among the entities.

The survivors of civilian government employees in some high-risk occupations may receive supplemental benefits — a death gratuity, higher life insurance, higher benefits from the retirement plan, or a combination of the three — beyond those that the entities provide to civilian government employees in general. For example,

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<sup>60</sup> United States Government Accountability Office, Military Personnel, Survivor Benefits for Servicemembers and Federal, State, and City Government Employees, GAO-04-814, July 2004, summary page. Highlights of the report may be obtained at [<http://www.gao.gov>].

survivors of federal, state, and city government law enforcement officers and firefighters who die in the line of duty may be entitled to a lump sum payment of more than \$267,000 under the Public Safety Officers' Benefits Act. Further, 34 states and 5 cities provide survivors of employees in high-risk occupations with additional cash benefits that are not available to survivors of state and city employees in general. The addition of these supplemental cash benefits to those provided to the survivors of deceased general government employees can result in lump sum and recurring payments being generally higher for survivors of government employees in high-risk occupations than for servicemembers' survivors.