

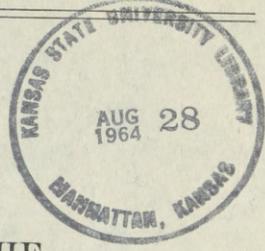
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# TO PROTECT ANNUITY RIGHTS OF RETIRED SERVICEMEN'S SURVIVORS

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## HEARING BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES UNITED STATES SENATE EIGHTY-EIGHTH CONGRESS SECOND SESSION

ON

### S. 2021

#### AMENDING THE CONTINGENCY OPTION ACT IN ORDER TO PROTECT THE RIGHT TO ANNUITIES OF SURVIVORS OF RETIRED SERVICEMEN

AUGUST 5, 1964

Printed for the use of the Committee on Armed Services



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## TO PROTECT ANNUITY RIGHTS OF RETIRED SERVICEMEN'S SURVIVORS

WEDNESDAY, AUGUST 5, 1964

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES,  
Washington, D.C.

The subcommittee appointed to consider S. 2021, composed of Senators Thurmond (chairman), Inouye, and Case met, pursuant to notice, at 10:30 a.m., in room 212, Old Senate Office Building.

Present: Senators Thurmond (presiding) and Inouye.

Also present: T. Edward Braswell, Jr., professional staff member, and Charles B. Kirbow, chief clerk.

Senator THURMOND. The subcommittee will come to order.

The subcommittee, consisting of the Chair, Senator Inouye, and Senator Case, was appointed by Senator Russell for the purpose of considering S. 2021, which was introduced by Senator Yarborough. This bill would amend the retired servicemen's family protection plan, formerly known as the Contingency Option Act, by providing that where a Reserve member not on active duty has met all the requirements for eligibility for retired pay and for the annuity plan, his survivors would have the right to an annuity if he dies after reaching age 60 but before the first day of the following month when he becomes entitled to retired pay.

(S. 2021 is as follows:)

[S. 2021, 88th Cong., 1st sess.]

A BILL To amend the Contingency Option Act in order to protect the right to annuities of survivors of retired servicemen

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 1437 of title 10, United States Code, is amended by striking out at the beginning of the first sentence thereof "Each annuity" and inserting in lieu thereof "(a) Except as provided in subsection (b) of this section, each annuity".

(b) Such section is further amended by adding at the end thereof a new subsection as follows:

"(b) In any case in which a person—

"(1) has met all the requirements for the receipt of retired or retainer pay under chapter 67 of this title,

"(2) has made an election in favor of a beneficiary or beneficiaries under section 1434 of this title, and

"(3) dies prior to the date on which he would have first become eligible for the receipt of retired or retainer pay under such chapter 67,

an annuity shall be paid under this chapter to such beneficiary or beneficiaries, as the case may be, upon application filed by such beneficiary or beneficiaries as provided in regulations prescribed by the Secretary concerned, beginning as of the first day of the month in which such person would have been eligible to receive retired or retainer pay under chapter 67 of this title had he not died."

(c) The amendments made by subsections (a) and (b) of this section shall become effective as of October 1, 1963, but no benefits shall accrue to any person as a result of the enactment of such amendments prior to the date of enactment of this Act.

Senator THURMOND. It may be recalled that the family protection plan itself is a system whereby all members of our Armed Forces at certain points prior to their retirement may file an election under which they decide to receive a reduced amount of retired pay in order to provide an annuity for their survivors. One key feature of this plan is that the retired person must be in receipt of retired pay in order for survivors to be eligible for payments. Under another law, the Uniform Retirement Date Act, practically all persons throughout the Federal Government, military and civilian, are retired on the 1st of the month following the month of their retirement eligibility. This was a bookkeeping device enacted many years ago in order to simplify the administration.

As the Chair understands it, Senator Yarborough's bill concerns itself with a reservist who, after filing all the necessary papers, becomes eligible for retirement pay at age 60, and who dies after the date of his 60th birthday and before the 1st day of the following month, when he would be eligible for his first retired paycheck. It is the understanding of the Chair that the Army in the last few days has examined the files of the case in which Senator Yarborough is interested and has discovered that the deceased officer, based on presently available evidence, made no election in behalf of his survivors.

We are glad to have with us today Senator Yarborough, sponsor of this bill, and Col. Winston G. Whall, Assistant Director, Compensation Affairs Directorate, Department of Defense.

Senator Yarborough, do you wish to testify yourself on this bill?

Senator YARBOROUGH. Yes, Mr. Chairman, I have a brief statement.

Senator THURMOND. We will be pleased to hear you.

#### STATEMENT OF HON. RALPH YARBOROUGH, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator YARBOROUGH. I wish to commend the distinguished chairman and the members of this subcommittee and the able staff for the speed with which they have arranged this hearing on S. 2021. While this bill has been pending since August of 1963, this subcommittee was only created and I think the bill assigned to it a very few days ago.

This bill would correct such an obvious inequity in our laws and cost such a negligible amount that I can conceive of no valid objection to its enactment.

The bill concerns payment of annuities for survivors of retired members of the Armed Forces who are in the Reserves. Under present law, a member of the Armed Forces may elect to accept a reduced amount of retired pay in order to provide an annuity for his widow and children under 18 years of age who also meet other limiting conditions and that annuity might be 50 or 25 or 12½ percent of the reduced amount of the man's retired or retainer pay.

In order for the intended beneficiary to qualify for the annuity in case of re-service, he must have been in receipt of retired pay at the

time of his death. For the convenience of Government bookkeeping an individual does not start receiving retired pay until the beginning of the month following the month in which he actually qualified for retired pay. Thus, if a reservist dies between the date on which he qualified for retired pay and the first of the following month, his intended beneficiary will receive no annuity.

Mr. Chairman, members of the committee, this will apply only to that very limited case where a member of the Reserve retires and then dies after he retires and before the first of the next month.

This amendment will correct the unintended inequity by amending section 1437, title 10, United States Code, so that in cases in which a reservist has completed all the age and service requirements for the receipt of retired pay but dies between the date on which he qualifies, and the first of the following month, his properly designated beneficiaries will receive the annuity to which they are entitled.

This inequity in our laws was revealed to me personally through the recent death of an old and valued friend, Col. Robert D. Kirk. Colonel Kirk, a reservist, qualified for retired pay on November 16, 1962, having attained the age of 60 and completed sufficient qualifying service.

However, such pay could not become effective until December 1, 1962, the first day of the month following the month age 60 was attained. This is caused by the operation of the Uniform Date Act for the convenience of Government bookkeeping. Colonel Kirk died on November 22, 1962, after having qualified for retired pay November 16, 1962. But since he was not in actual receipt of retired pay prior to his death, no retired pay occurred in his case. He could only be in receipt of it December 1.

Research into this case has raised doubts as to whether the bill would actually cover Colonel Kirk's widow since he may not have made an election to provide an annuity for his widow. This, however, does not in any way weaken the force of the argument in favor of the bill. The Kirk case serves to point out just what can happen under existing inequitable law and, Mr. Chairman, after I introduced this bill, it was printed in some service magazine, Stars and Stripes or Army Times or somewhere that there are some other cases. I do not recall that I had notification about them. People read about this law and whether it covered Colonel Kirk's widow or not, this is a weakness and an inequity in our law in those cases mentioned where the Reserve officer retires, has designated his wife as beneficiary, and then dies before his first retired check is received.

The Department of Defense in the interests of actuarial soundness has recommended an amendment that would require a reduction in the amount of annuity to recover the amount by which the person's retired pay would have been reduced to provide the annuity if he had been entitled to that pay on the day he first met all the requirements. In other words, the widow's first monthly annuity payment will be reduced by the amount that her husband's first monthly pension payments would have been reduced. The reduction would apply only to the first month.

Mr. Chairman, this change is acceptable to me.

Now, I strongly oppose the Defense Department's other suggested change which would restrict application of the legislation to cases occurring subsequent to the passage of this act. S. 2021, on the other hand, as introduced, would apply to all cases that have occurred since the passage of the Contingency Option Act in 1953, although payments would only be made for time periods subsequent to the enactment of S. 2021. In other words, had, say, Colonel Kirk properly designated his widow and she became entitled under this bill that I have introduced, it would apply to cases where the status had been fixed prior to the passage of this bill but they would be eligible for money only beginning with the passage of this bill. So retroactively, so far as actual cash payments are concerned, it would not be a penny earned prior to the effective date of this bill, but as to status, it would recognize the status as of the time of death.

I think that is only just, that that status be recognized as at the time it occurred, be fixed. In legislation of this type, we always run into the problem of cutoff dates. Thankfully in this instance the cutoff date should be no real problem since we are affecting only a tiny group of people and since the cost to the Government would be negligible. We should not put ourselves in the situation of alleviating a prospectively unjust situation for one very small group of people, those who will come after passage of this bill, and refusing to right the wrong to the other small group which is already suffering from the inequity of the existing law. The correction of an inequity should extend to all who are dealt with unjustly. We cannot say unto these widows, "You have been dealt with unfairly in the past, therefore we shall continue to be unfair to you in the future."

And so, Mr. Chairman, I urge the passage of S. 2021 because this bill will correct the inequity in our laws, because the time for passage is long overdue, because the cost to the Government will be so small as to be negligible. Again I thank the distinguished chairman for his prompt consideration of this bill. I think this is an unjust and inequitable treatment of widows of Reserve officers that came about through a hiatus of the law unintentionally. Now having been called to the attention of the Congress and known, I think it should be—this inequity and injustice should be corrected.

Thank you very much.

Senator THURMOND. Thank you, Senator Yarborough, for your statement. We are glad to have you with us. We will be pleased to have you remain for the rest of the hearing if you have the time.

Senator YARBOROUGH. Thank you, Senator.

Senator THURMOND. Senator Inouye, do you have any questions?

Senator INOUE. Yes. Just as a matter of interest, about how many people would be involved in this?

Senator YARBOROUGH. I do not have figures on that. I think some inquiry was made about that.

Senator INOUE. Whatever it is as you stated—

Senator YARBOROUGH. Very, very small.

Senator INOUE. It must be negligible.

Senator YARBOROUGH. Negligible, because it only happens when you are dealing with the Reserve officers. I understand Regular Army officers are not covered by this cutoff date. They would be eligible if they die after—if they die between the time they retire and the first of the following month because their pay status is slightly

different. It is the law under which Reserve officers are paid that causes this hiatus. It applies only in cases of the reservist who dies after he has fully earned retirement, has designated his wife then, or widow later, as she becomes a widow, as a beneficiary, taking the reduction, and if he has done that—taken a reduction—he has paid for it.

As has been pointed out in one statement I read in the past, this costs the Government nothing, because if he has made a proper designation, this is paid for with deductions, already paid for. If he has not made a proper designation, my bill does not attempt to extend this to people, to widows, where there has been no designation. But if he has made it, is has been paid for with the deductions. It is a contractual right.

Now, due to this small hiatus, that is one little group, he retires, but if he is a Reserve officer, he is considered to be on retirement pay only when he receives that check the first of the following month. So it is that very limited group, between the date of having served out at least 20 years and retired, and the first of the following month they die.

Senator INOUE. Mr. Chairman, the Senator from Texas should be commended for bringing this inequity to our attention, and I am certain this subcommittee will expeditiously handle the bill.

Senator YARBOROUGH. I thank the distinguished Senator from Hawaii very much.

Senator THURMOND. I might ask you this question, Senator. I understood you to say that in 1953, I believe the law was passed, that the correction should be made as of that time. Possibly this is a misprint, but I notice—

Senator YARBOROUGH. It was called to my attention there is a misprint in my bill. The effective date should have been 1953.

Senator THURMOND. I thought possibly that is what you meant.

Senator YARBOROUGH. Yes. The misprint has been called to my attention.

Senator THURMOND. It is not retroactive, but your statement indicates that you want it retroactive. So it is your desire for it to be retroactive.

Senator YARBOROUGH. Yes. I would like to work out the effective date on line 16, page 2, to be October 1, 1953. I am advised by my staff that there now appears there is some dispute as to what was the actual effective date of the Contingency Option Act of 1953. That is the one under which the hiatus has arisen. I would like to have permission of the committee to insert on line 16—the date is the year 1953, but the actual effective date of that—

Senator THURMOND. What you want done is to make it retroactive.

Senator YARBOROUGH. To that date this hiatus arose.

Senator THURMOND. Does counsel have any questions?

Mr. BRASWELL. No, sir.

Senator YARBOROUGH. Retroactive as to right but not as to actual payments. It provides for payments only from the time it is passed. It would not let the widow accumulate what she is entitled to back there. I really think they should draw that, too, but we left it prospective as to monetary payments only in the hope there would be no objection to it, and it might be corrected rather than stir up objec-

tions on the ground it is retroactive. It is not retroactive as to actual payments made, the period of time in which they are made.

Senator THURMOND. All right. Thank you, Senator. Keep your seat, if you will. We would like you to stay with us throughout the hearing.

**STATEMENT OF COL. WINSTON G. WHALL, U.S. ARMY, ASSISTANT DIRECTOR, COMPENSATION AFFAIRS, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER**

Senator THURMOND. Colonel Whall, would you have a seat?

Colonel WHALL. Thank you, sir.

Senator THURMOND. You may proceed.

Colonel WHALL. Thank you. I have a prepared statement, sir.

Mr. Chairman and members of the committee, the Department of Defense welcomes the opportunity of presenting to this—

Senator THURMOND. You might just tell your name and your position and who you represent.

Colonel WHALL. I am Col. Winston G. Whall, U.S. Army, Assistant Director, Compensation Affairs, Office of the Assistant Secretary of Defense for Manpower.

Senator THURMOND. All right.

Colonel WHALL. The Department of Defense welcomes the opportunity of presenting to this committee its views on S. 2021. This bill would permit the surviving beneficiaries of a limited number of retired reservists in the Armed Forces to receive an annuity under the retired serviceman's family protection plan.

Under present law, Regular members of the uniformed services, as well as members of the active and inactive lists of the Reserve components, may elect to receive a reduced amount of retired pay in order to provide an annuity for their widows and eligible surviving children after their death in retirement. Congress, when enacting this legislation, based its provisions on the premise that this system of benefits would be operated at no additional cost to the Government other than for administrative expenses. In other words, it would be a self-supported system based on the actuarially equivalent method with deductions in retired pay from the group as a whole being sufficient to pay the survivors benefits. Accordingly, for a person to participate in the plan he must be entitled to retired pay at the time of his death.

The persons whose beneficiaries would be protected by this legislation are Reserve members of the Armed Forces who have elected to participate under the plan and who have qualified for retired pay for non-Regular service under chapter 67, title 10, United States Code, formerly title III, Public Law 810, 80th Congress, but who die between the date they attain age 60 and the first day of the following calendar month, the date when their retirement becomes effective under the provisions of the Uniform Retirement Date Act. At the present time the survivor of such a person has no protection under the plan because the member was not entitled to retired pay when he died.

The fact that the member was not entitled to retired pay when he died, even though he fulfilled the age and service requirements, is due to the operation of a separate law, the so-called Uniform Retire-

ment Date Act, that provides that "Retirement authorized by law of Federal personnel of whatever class, civil, military, naval, judicial, legislative, or otherwise, and for whatever cause retired" shall take effect on the first day of the month following the month in which the retirement would otherwise be effective.

S. 2021 would change this situation so that in the rare event that a reservist should die in the fractional-month period, his survivor would be entitled to an annuity under the retired serviceman's family protection plan notwithstanding the fact that there had been no deduction from retired pay. Furthermore, S. 2021 does not provide for any payment into the plan from any source. From a strictly actuarially equivalent approach, there should be a payment or a deduction from retired pay for any period of coverage—including the fractional month involved with respect to all reservists affected—not only the few dying in the fractional month but also the vast majority who live through it.

The Department of Defense favors S. 2021 which is designed to correct legislative language which results in penalizing a small group of our retired personnel. After considering the problem in its broadest aspects and after due deliberation by the Board of Actuaries, which advises on the administration of the plan, and taking into account the administrative and fiscal problems that would be created by requiring proportionate deductions for the fractional-month period, together with the relative insignificant effect on the financing operations of the plan, the Department of Defense does not consider that such deductions are necessary in this situation.

However, in keeping with the principle of self-funding of the plan through paid participation, the Department of Defense recommends that a substitute bill be enacted which would require a payment into the plan based upon a proportionate contribution for the fractional month period involved.

This proposal would permit the properly designated beneficiaries of a reservist who has completed all the age and service requirements for retirement under the provisions of chapter 67, title 10, United States Code, and has applied for retired pay and who dies between the time that he attains age 60 and the first day of the following month to receive an annuity under the plan. However, this annuity would be reduced by the amount by which the person's retired pay would have been reduced under the plan for the fractional month period involved—that period beginning with the day he completed all service requirements and attained age 60 and ending with the date of his death.

Mr. Chairman, this concludes my statement, and I will be pleased to answer any questions you may have on this subject.

Senator THURMOND. Under this plan does the law provide that if a reservist can make such an option that the beneficiaries are confined to a certain group, for instance, as widows or brothers and sisters or just how far does the law permit this to go?

Colonel WHALL. Widows and children.

Senator THURMOND. Is that as far as the law will go?

Colonel WHALL. Yes.

Senator THURMOND. It would not allow it to go to brothers and sisters.

Colonel WHALL. No, sir.

Senator THURMOND. It would have to be the widows and children.

Colonel WHALL. Yes, sir.

Senator THURMOND. Then could he choose between the widow and children or does it automatically provide it has to go to both?

Colonel WHALL. He can choose, sir, or he can designate both, either way. There are options that will permit this. Either the widow alone, the widow and the children, or the children if the widow predeceases him, predeceases the children.

Senator THURMOND. Well, suppose a man is not married when he retires and marries later?

Colonel WHALL. If he has made an election prior to retirement but is not married and has no dependents at the time of his retirement, he does not participate in the plan. Even though he may marry later, the widow or the wife that he has at that time does not participate in the plan.

Senator THURMOND. In other words, he would have to elect at the time he retires—whether he wants to enter this plan.

Colonel WHALL. Yes, sir. He has to elect at least 3 years prior to the date he retires or at the 18th year. This is the preselection requirement so that everybody has an equal opportunity on the rates and costs.

For example, if the 18th year is assumed to be the year that people will make an election, not knowing just how long they are going to live but knowing that retirement will be after the 20-year point—

Senator THURMOND. You are speaking of 20 years. What about 30 years or more?

Colonel WHALL. This is all right, sir. If he does not make an election at the 18-year point, then if he retires at 30 or more, he must have made an election 3 years prior to that date, the difference here being that if a man makes an election at 18 years and retires at 20, he is under the plan, but if he makes an election at 28 years and retires at 30, he is not under the plan because at that time it is assumed that he has a little better idea of his physical condition and the question of survival.

Senator THURMOND. The Department of Defense, I observe, does recommend the passage of this bill with the amendment I referred to.

Colonel WHALL. Yes, sir. This is right, sir.

Senator THURMOND. Senator INOUE.

Senator INOUE. I noted in Senator Yarborough's testimony, Colonel, that the Department was against qualifying those beneficiaries who could have been beneficiaries prior to the enactment of this bill.

Colonel WHALL. Yes, sir.

Senator INOUE. Are you still objecting to that?

Colonel WHALL. Yes, sir, we do. It is our view that general legislation which provides benefits to our personnel should be prospective in nature rather than retroactive. This involves pay, quarters allowance, subsistence.

Senator INOUE. But, Colonel, in this case the awards are prospective, aren't they?

Colonel WHALL. Yes, sir.

Senator INOUE. It is just a qualification that is retroactive.

Colonel WHALL. This is right.

Senator INOUE. And you are opposed to that.

Colonel WHALL. Yes, sir. We feel it should be prospective rather than retroactive in this type.

Senator INOUE. But the Department agrees with the Senator that that is inadequate.

Colonel WHALL. Yes, sir. We deny them by virtue of another law which is not tied in at all with the annuity plan that is one law, and by denying the man retired pay under such—until the first day of the month following 60, we have brought about an inequity that we feel should be corrected.

Senator INOUE. But actuarially, the proposal made by Senator Yarborough will not raise havoc with your plan even if you included those potential beneficiaries who would become beneficiaries prior to this act.

Colonel WHALL. This is true, sir. It would not. The reason that we recommended that there be a deduction is a matter of principle, that the plan must be self-supporting. The people who participate in it are members, retired members. The Government does not contribute money to the payment of these survivor annuities. The Government only sustains the administrative expense of administering the plan. So in fairness to all of the people who are involved, and who are paying, we feel that this principle should be adhered to.

Senator INOUE. Thank you, Mr. Chairman.

Senator THURMOND. Do you have any questions you would like to ask the colonel, Senator Yarborough?

Senator YARBOROUGH. Yes, I do have one.

Colonel, have you all been able to estimate what the cost would be, how many cases there are like this in the country? Do you have any records?

Colonel WHALL. We do not, sir. We have had one unofficial report that there was a Marine Corps officer who died under the same circumstances as Colonel Kirk, but this is the only one.

Senator YARBOROUGH. There has been some publicity about this bill in some Federal paper, maybe Stars and Stripes. I recall having a few letters about it, but I do not know the cases.

Colonel WHALL. We believe there probably are some cases, but they are so few, when you consider the number of retirements each year in the Reserves and the small percentage that participate.

Senator YARBOROUGH. The number is so negligible that actuarially it will have no effect on the retirement.

Colonel WHALL. No, sir. It will not. In other words, it will not affect it.

Senator YARBOROUGH. I believe that is all.

Senator THURMOND. Any other questions, Senator?

Senator YARBOROUGH. If this bill is dated 1953, that is when the hiatus arose, wasn't it, on the 1953 law?

Colonel WHALL. That was when the act went into effect, in 1953.

Senator YARBOROUGH. This inequity did not arise prior to 1953, when these two laws became effective.

Colonel WHALL. This is true. Before 1953 the law was not in effect and—

Senator YARBOROUGH. So if S. 2021 passes with the 1953 date, it would correct the inequities that have arisen since.

Colonel WHALL. Since that date, yes sir.

Senator YARBOROUGH. Thank you. I believe that is all, Mr. Chairman.

Senator THURMOND. Is there any other witness who desires to testify on this bill?

We have a letter here from the Reserve Officers Association of the United States that we will place in the record if there is no objection. We also have a letter from the General Counsel of the Department of Defense that we will insert in the record if there is no objection.

(The documents referred to are as follows:)

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,  
Washington, D.C.

Hon. RICHARD B. RUSSELL,  
Chairman, Committee on Armed Services,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on S. 2021, 88th Congress, a bill to amend the Contingency Option Act in order to protect the right to annuities of survivors of retired servicemen.

The purpose of this bill is to provide an annuity under the retired serviceman's family protection plan (title 10, U.S.C., secs. 1431-1446, as amended)—formerly the Uniformed Services Contingency Option Act of 1953—for the surviving beneficiaries of a Reserve member of the Armed Forces not in an active duty status, who qualifies for retired pay for nonregular service under chapter 67, title 10, United States Code, and who has elected to participate in the plan, but who dies between the date he perfects his eligibility for retirement and the first day of the following month when his retirement would become effective pursuant to the Uniform Retirement Date Act (5 U.S.C. 47a).

The purpose of the retired serviceman's family protection plan is to permit members of the uniformed services to elect a reduced amount of retired pay during their lifetime in order that their widows and children may receive survivor annuities determined as fixed percentages of the reduced retired pay and payable after his death in retired status.

It was the intent of Congress, when establishing this program, that it would result in no cost to the Government except for administrative expenses. In other words, the basic principle underlying this program is that reductions in retired pay shall be computed by the actuarially equivalent method, using appropriate actuarial tables. Thus, "income," in the form of reductions to retired pay, should meet the "costs" in the form of annuities paid to the beneficiaries of deceased retirees who had participated in the plan. Therefore, under the above philosophy, in order for the intended beneficiary to qualify for the annuity, the member must have been entitled to retired pay at the time of death.

Personnel who qualify for retirement under the provisions of chapter 67, title 10, United States Code, become entitled to retired pay on the first day of the month following the month in which they reach age 60, rather than on the day following the date they attain age 60. This condition results from the operation of the Uniform Retirement Date Act, which applies to all Federal personnel, regardless of class, civil, military, naval, judicial, legislative, or otherwise, and for whatever cause retired.

As the law now stands, if a member, who has qualified for retired pay under the provisions of chapter 67, title 10, United States Code, and made a valid election under the retired serviceman's family protection plan, dies between the time he reaches age 60 and the first of the following month, his intended beneficiary will not receive an annuity under the plan because he had not, in fact, been awarded retired pay.

This bill would change this situation so that the survivors would have this protection. However, S. 2021 does not provide for any payment into the plan from any source. From a strictly actuarially equivalent approach, there should be a payment or deduction from retired pay for any period of coverage, including the fractional month involved.

The Board of Actuaries, which advises on the administration of the plan, has noted this situation, but has concluded that in view of the administrative problems

involved in making such payments, the relatively few dying in this fractional month, and the relatively insignificant effect on the financing operations of the plan, there would be no objection to the enactment of S. 2021 as drafted in its present form insofar as its bearing on the cost of the plan is concerned.

The Department of Defense favors this proposal and desires that the survivors of this group of individuals receive this protection. However, the Department believes that to include in the plan those reserves who die after their 60th birthday and before the first of the following month without requiring a proportionate contribution for this period for which coverage is provided, would be an injustice to all other participants in the plan.

Inasmuch as the reductions in retired pay have been computed by the actuarially equivalent method, the Department of Defense believes that in the interest of fairness and equity the annuity should be appropriately reduced to recover the amount by which the person's retired pay would have been reduced under the plan to provide the annuity elected by him if he had become entitled to retired pay on the day he attained age 60.

Accordingly, the Department of Defense proposed that the enclosed substitute bill be enacted. This substitute proposal would provide that, in cases where a reservist who is not on active duty and who has completed all age and service requirements for the receipt of retired pay and save for the operation of the Uniform Retirement Date Act would be entitled to retired pay, and who has made a valid election under the retired serviceman's family protection plan, but dies between the time that he attains age 60 and the 1st day of the following month, his properly designated beneficiaries would receive an annuity under the plan, reduced by the amount by which the person's retired pay would have been reduced under the plan for the fractional month period involved—that period beginning with the day he attained the age and service requirements for retired pay and ending with the date of his death.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

L. NIEDERLEHNER, *Acting General Counsel.*

A BILL To amend section 1437 of title 10, United States Code, relating to payments of annuities based on retired pay of members of armed forces

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1437 of title 10, United States Code, is amended to read as follows:

“§ 1437. Payment of annuity

“(a) Except as provided in subsection (b), each annuity payable under this chapter accrues as of the first day of the month in which the person upon whose reduced pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends.

“(b) If a person has—

“(1) met all the age and service requirements prescribed by section 1331(a) of this title for retired pay under chapter 67 of this title;

“(2) applied for retired pay under chapter 67 of this title, to be effective under section 47a of title 5 on the first day of the month following the month in which he first met all those requirements; and

“(3) elected to provide an annuity under section 1434 of this title;

but dies before that day, the annuity shall be paid under this chapter, effective as of that day, upon application by the beneficiary under regulations prescribed by the Secretary concerned. However, the annuity shall be appropriately reduced to recover the amount by which the person's retired pay under chapter 67 of this title would have been reduced under this chapter to provide the annuity elected by him if he had become entitled to that pay on the day he first met all the age and service requirements prescribed by section 1331(a) of this title.”

SEC. 2. This Act applies only in the case of a person who dies on or after the date of enactment of this Act.

RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES,  
Washington, D.C., August 5, 1964.

HON. RICHARD B. RUSSELL,  
Chairman, Senate Armed Services Committee,  
Washington, D.C.

DEAR MR. CHAIRMAN: We are most pleased that you are holding hearings this date on S. 2021, a bill introduced and sponsored by your colleague, Senator Ralph W. Yarborough, of Texas. This bill would correct a gross inequity of law that has existed for some time.

Because of a quirk in current law, if a Reserve officer becomes qualified for and retires under the provisions of chapter 67, title 10, United States Code, having elected an option under the retired serviceman's family protection plan and dies prior to the receipt of his first retirement check, his widow is not entitled to any benefits under that plan.

This has happened in one or two instances and may very well happen again. It is our strong belief that this was not intended to be so, and in those few instances in which this situation occurs, it causes grievous hardship to the retired serviceman's widow and other dependents.

For these reasons, we strongly support S. 2021, urge a speedy, favorable report on the part of your committee and request you make every effort to assure its expeditious enactment.

We would appreciate it if this letter could be inserted as part of the record of the hearings on S. 2021.

Sincerely,

JOHN T. CARLTON,  
Colonel, U.S. Army Reserve, Executive Director.

Senator THURMOND. If there are no other witnesses, we will conclude the open hearings. That concludes the hearing this morning.

Senator YARBOROUGH. Thank you, Mr. Chairman, for holding the hearings.

(Whereupon, at 11 a.m., the hearing in the above-entitled matter was concluded.)

