DEPARTMENT OF DEFENSE APPROPRIATIONS FOR 1977

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

SUBCOMMITTEE ON THE DEPARTMENT OF DEFENSE

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MILITARY PERSONNEL ENTITLEMENT BILLS REFERRED UNDER SECTION 401(b), CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

Printed for the use of the Committee on Appropriations

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DEPARTMENT OF DEFENSE APPROPRIATIONS

WEDNESDAY, SEPTEMBER 8, 1976.

PERSONNEL ENTITLEMENT BILLS FROM HOUSE ARMED SERVICES COMMITTEE

WITNESSES

VERNON McKENZIE, PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS)
LT. COL. (P) JOHN M. GASPER, DEPUTY DIRECTOR OF COMPENSATION, OASD (M. & R.A.)
ROBERT K. COX

Mr. MAHON. The three bills under consideration this afternoon have all been favorably reported by the House Armed Services Committee. Only one of the bills has also been favorably reported by the Senate Armed Services Committee. These bills were referred to the Committee on Appropriations under the provision of section 401(b) which provides that when an authorizing committee reports a bill containing entitlement authority and the entitlement authority is in excess of the amount allocated to the authorizing committee under the budget resolution, the bill is referred to the Committee on Appropriations. The Appropriations Committee then has 15 legislative days in which to deal with the bill. After 15 days, the committee is automatically discharged from further consideration of the bill if no action has been taken. The conference report on the Budget and Impoundment Control Act of 1974 emphasized that the jurisdiction of the Appropriations Committees shall relate to the cost of the program and not to substantive changes in the legislation.

When a bill is referred to the committee under this procedure, we have the following options: (1) do nothing and allow the bill to be discharged at the end of 15 legislative days; (2) report the bill without amendment with a recommendation that the bill be passed as reported; (3) report the bill without amendment with a recommendation that it not be passed; and (4) report the bill with an amendment that reduces or increases the amount of budget authority.

The three bills before us today include a proposal to pay a bonus to Berry plan doctors (H.R. 14772); a bill which would provide survivors benefits to certain widows of reservists who died before August 14, 1968, and whose death occurred after his 60th birthday but before the first day of the next month (S. 2090); and a bill which permits the recalculation of retired pay for military retirees who were recalled to active duty for 2 or more years during the period October 1, 1963, to October 1, 1973 (H.R. 4105).

VARIABLE INCENTIVE PAY FOR MEDICAL OFFICERS WHO ENTERED THE MILITARY SERVICES THROUGH THE BERRY PLAN (H.R. 14772)

The committee will take up the proposal to provide a bonus (variable incentive pay) for medical officers who entered service through the Berry plan first since this proposal is considered controversial in that it does not have the support of the Department of Defense and could be the most expensive of the three proposals. Testifying in behalf of the Department of Defense on this proposed legislation is the Honorable Vernon McKenzie, who is the Principal Deputy Assistant Secretary for Health Affairs, Department of Defense.

Mr. McKenzie, you have appeared before this committee on a number of previous occasions and the committee again welcomes you. I believe it would be best if you presented your statement at this time. You can either read the statement or summarize as you prefer. Following your presentation, the committee will have some additional questions for you. Please keep in mind that the committee did not receive your statement before the detailed questions were written. Therefore, some of our follow-up questions may be somewhat redundant.

You may proceed.

Mr. McKenzie. Thank you, Mr. Chairman.

The Armed Forces physicians' appointment and residency consideration program—or the Berry plan as it soon became known—was established in 1954. The concept on which the plan is based was conceived in 1952 by the late Brig. Gen. Harold W. Glattly while he was serving as Chief of the Personnel Division in the Army Surgeons General's Office. Two years later, Dr. Frank Berry, shortly after becoming the Assistant Secretary of Defense for Health and Medical, recognized the great value of the concept and established the program for the entire Defense Establishment. The program was an instant success and continues—22 years later—to be an invaluable source of physician specialists for the Armed Forces. Without it the military medical services could not have provided high quality care to our Armed Forces during the two decades in question. Nor could we have moved smoothly, as we are now doing, toward an all-volunteer health force.

The Berry plan operates in a manner that is mutually advantageous both to the young physician and the Armed Forces. For those selected for participation, it permits them to complete their specialty training on an uninterrupted basis under a guaranteed draft deferment, following which they serve on active duty for 2 years to fulfill their draft obligation. They serve on active duty in a higher grade than their contemporaries who did not participate in the program. During most of the years that the so-called doctor draft was in existence, the Berry plan was the major source of physician procurement for the Armed Forces.

Although the draft has ended, we are still experiencing the residential effects of the Berry plan. For example, we have approximately 2,700 Berry plan participants who are now on active duty. For the next fiscal year, we anticipate that approximately 500 physicians who will be completing their specialty training under the Berry plan

will enter on active duty, but the following year, fiscal year 1978, will mark the virtual end of the plan, at which time we expect approximately 200 Berry plan participants to enter on active duty.

Under H.R. 14772, physicians who are serving on active duty under the Berry plan for 2 years could, if otherwise eligible, be paid an amount not to exceed $9,000 for each year of their remaining active duty obligation if they sign a written agreement to remain on active duty for 1 or more years beyond their obligation. Once their 2 years of obligated Berry plan service was completed, they would be eligible to receive the $13,500 maximum payment for additional years of voluntary service on the same basis as any other physician who has completed—or who never incurred—obligated service.

If H.R. 14772 is enacted, there are three groups of Berry plan participants who would be affected by it in fiscal year 1977. The first group consists of the approximately 1,400 participants who entered on active duty during the summer of 1975 and who have almost 1 full year left of their initial commitment. The second group would be the approximately 1,000 who are entering on active duty this summer and who obviously have approximately 2 years left to serve. The third group consists of the approximately 500 who will enter on active duty next summer. We estimate that, if H.R. 14772 is enacted, the additional budget costs to the Department of Defense for fiscal year 1977 would be $3.3 million, and for fiscal year 1978 $2.6 million with declining amounts in subsequent years.

Earlier this year, when the Department of Defense forwarded its legislative proposal to the Congress to extend the bonus law on a temporary basis for 1 year, serious consideration was given to including in the proposal provisions similar to those contained in H.R. 14772. We decided against such a course of action, however, primarily on the basis that it would be inappropriate to ask the Congress at that time to take any action with respect to the bonus law other than a simple, temporary extension. Our rationale stemmed from the concern expressed by the Congress in enacting the Veterans' Administration Physicians and Dentists Pay Comparability Act of 1975—Public Law 94–123. Section 4(a) of that law directs the Comptroller General of the United States and the Director, Office of Management and Budget, to submit to the Congress, not later than August 31, 1976, separate reports covering the following:

"(1) An investigation of the short-term and long-term problems facing the departments and agencies of the Federal Government (including the uniformed services) in recruiting and retaining qualified physicians and dentists.

"(2) An evaluation of the extent to which the implementation of a uniform system of pay, allowances, and benefits for all physicians and dentists employed in such Federal departments and agencies would alleviate or solve such recruitment and retention problems.

"(3) An investigation and evaluation of such other solutions to such recruitment and retention problems as each deems appropriate.

"(4) On the basis of the investigations and evaluations required to be made under paragraphs (1), (2), and (3) of this subsection (A) an identification of appropriate alternative suggested courses of legislative or administrative action (including proposed legislation) and cost estimates therefor, which in the judgment of the Comptroller

General or Director, as the case may be, will solve such recruitment and retention problems, and (B) a recommendation, and justification therefore, of which such course should be undertaken."

We believe that the two reports that the Congress has directed will play a significant role in the development of the legislation which we anticipate will be submitted to the Congress next year dealing with an overall long-term bonus plan for physicians and dentists. Until that plan is developed, we hope to avoid any piecemeal approaches to the problem which may make the attainment of a long-term solution more difficult.

Our thinking on this matter has not changed in the intervening months. Accordingly, the Department of Defense is opposed to the enactment of H.R. 14772 at this time.

I appreciate this opportunity of appearing before the subcommittee. I will be happy to answer any questions you may have regarding these matters.

Mr. MAHON. Thank you, Mr. McKenzie.

Before we go into our questions, we will insert in the record at this point the documents referred from the Committee on Armed Services.

[The documents follow:]

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. No. 94–
2d Session } { 1438 Part 1

PROVIDING FOR VARIABLE INCENTIVE PAY FOR ARMED SERVICES MEDICAL OFFICERS WHO ENTERED SERVICE THROUGH THE BERRY PLAN AND WHO AGREE TO EXTEND THEIR ACTIVE-DUTY SERVICE

AUGUST 26, 1976.—Ordered to be printed

Mr. STRATTON, from the Committee on Armed Services, submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 14772]

The Committee on Armed Services, to whom was referred the bill (H.R. 14772) to amend section 313 of title 37, United States Code, to pay variable incentive pay to medical officers who participated in the Berry Plan, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike lines 9 and 10 on page 1 and lines 1 and 2 on page 2 and substitute the following:

> this section, be paid an amount not to exceed $9,000 for each full year of his remaining active-duty obligation, and for periods of remaining active-duty obligation of less than a year, one-twelfth of that amount for each month or fraction thereof of his remaining active-duty obligation, if he executes a written active-duty agreement to remain on active duty for one or more years beyond such obligation.
>
> SEC. 2. This Act becomes effective October 1, 1976.

EXPLANATION OF THE AMENDMENT

The amendment provides that in cases where the physician concerned has a period of remaining active duty that is less than one year, he may receive a prorated bonus of one-twelfth of $9,000 for each month or fraction thereof remaining. The amendment also provides that the act becomes effective on October 1, 1976.

Purpose

The purpose of the bill is to provide that physicians who entered, or will enter, the Armed Forces through the Berry Plan, who are presently not eligible for Variable Incentive Pay (VIP) because of a two-year service obligation, may receive a reduced bonus of up to $9,000 per year for their obligated service, provided they sign an agreement to serve for one additional year beyond their obligation.

Discussion

The Berry Plan was established in 1954. It was an arrangement under which a young physician would be guaranteed a draft deferment while he was completing his specialty training. In exchange for that deferment, the physician agreed to serve on active duty for two years to fulfill his draft obligation. This arrangement was mutually advantageous to both the physician and the Armed Forces. The doctor was able to pursue training in his specialty without interruption by military service, and the Armed Forces secured the services of a doctor trained in a needed specialty.

Although the draft is no longer in effect, there are about 2,700 Berry Plan doctors now on active duty fulfilling their active-duty obligation, with approximately 700 still taking specialty training who are committed to serve on active duty for two years on completion of that training. Five hundred will enter on active duty in fiscal year 1977, and the remainder will enter on active duty in fiscal year 1978.

With the end of the draft, a number of actions have been taken to ensure that there will be a continuing input of doctors into the Armed Forces to provide for the health-care needs of military personnel. Among those actions was the enactment of the Variable Incentive Pay by Public Law 93–274. Under that law, bonuses of up to $13,500 a year are authorized for military physicians. However, the law bars payment of such bonuses during periods of obligated service of up to four years.

Accordingly, Berry Plan physicians, during their initial two years of service, are not eligible for Variable Incentive Pay. As a result, there is a serious moral problem with respect to Berry Plan physicians. They are working side by side with doctors who did not have an active-duty obligation and who are currently receiving additional compensation of as much as $13,500 per year more than Berry Plan physicians—although, in many cases, the Berry Planners are more highly trained.

H.R. 14772 would amend section 313 of title 37, United States Code, to provide that a Berry Plan physician serving in his obligated period of two years could be paid a bonus of $9,000 for each year of his remaining active-duty obligation if he executed an agreement to serve for at least one year after completing his active-duty obligation. For periods of remaining active-duty obligation of less than one year, a bonus of one-twelfth of $9,000 for each month or fraction of a month would be payable. The bill would be effective October 1, 1976. There would be no retroactive payment.

It should be understood that for the one year of additional service beyond the obligation period, the Berry Planner would be eligible

for the same bonus as other physicians serving without obligation. The Defense Department regulations for the VIP bonus provide for graduated payments depending on the length of the agreement. For example, the bonus is $12,000 for a one-year agreement and $13,500 a year for a four-year agreement. The Berry Plan physician who agreed to serve for one additional year beyond his two-year obligation, therefore, would be paid $12,000 for that third year.

The committee believes that enactment of H.R. 14772, as amended, by providing a reasonable, effective financial incentive for Berry Plan doctors to agree to remain in service for a period of at least one year after completion of their active-duty obligation, will assist in retaining a substantial number of these highly qualified physicians beyond their obligated service.

Testimony of Admiral Custis

Although the Department of Defense officially opposed the bill, as indicated in the Departmental Data section further on in this report, VAdm. D. L. Custis, then Surgeon General of the Navy, appeared before the Military Compensation Subcommittee at the request of the chairman of the subcommittee and gave persuasive testimony that the bonus for Berry Plan physicians is necessary from the standpoint of the quality of medical care in the Armed Forces. Excerpts from Admiral Custis' testimony follow:

> Admiral Custis. You see, we are going through a crunch period when the pipeline of the Berry plan is running dry.
>
> In the case of the Navy, in 1971 we had 742 accessions from the Berry plan. By 1976 this fell to 235. Next year we will accede 129. By 1978 there will only be 32 in our pipeline.
>
> As this major source of accessions dwindles, the new source in terms of the H.R. 2 scholarship graduates, the buildup there does not happen soon enough for us. So that whereas last year we had to recruit "off the street" 187 doctors, this year our recruiting quota, to maintain our end strength, is over 525.
>
> We have no confidence that we can recruit that many volunteer accessions.
>
> . . . Who is this Berry planner? He represents some of our most talented medical officers.
>
> I think it is ironic that we are in a situation where we are authorized to recruit off the street a physician who is a graduate of a foreign medical school, who is predominantly trained in a foreign curriculum, who, in most cases does not have specialty certification. We are authorized to bring that man off the street and pay him $13,000 in bonus, whereas, we have Berry planners on active duty who receive not one penny subsidy for the education through college, medical school or residency training for board certification as a specialist, who is working side by side with this first active-duty member that I described, and yet receiving as much as $13,000 less income for his services.

It is a paradox. It is ironic. It is an injustice. It shouldn't have happened and should be corrected independent of any overall consideration of a more definitive piece of legislation for incentive pay.

What we are asking really, then, is to be able to take advantage of this Berry plan recruiting pool of high-class talent. It won't be there much longer. Two more years will see that pipeline pretty well empty. We need the authority, now, to attract those who would be interested in staying with us were they treated fairly. And I submit, what they have been given is most unfair treatment. It is a demoralizing situation.

Enactment of this legislation would, in the opinion of the committee, assist in bridging the period between termination of the draft and the input of military physicians under the scholarship programs and later from the Uniformed Services University of the Health Sciences.

Departmental Data

The Department of Defense opposes the enactment of H.R. 14772 at this time, as indicated by the testimony of the Honorable Vernon McKenzie, Acting Assistant Secretary for Health Affairs, Department of Defense, who appeared as the official witness on the bill before the Military Compensation Subcommittee. Mr. McKenzie's statement appears in the printed hearing (House Armed Services Committee document No. 94–56). The excerpt from Mr. McKenzie's statement below explains the Department's position on the bill:

The concept on which the plan is based was conceived in 1952 by the late Brig. Gen. Harold W. Glattly while he was serving as Chief of the Personnel Division in the Army Surgeons General's Office. Two years later, Dr. Frank Berry, shortly after becoming the Assistant Secretary of Defense for Health and Medical, recognized the great value of the concept and established the program for the entire Defense establishment.

The program was an instant success and continues—22 years later—to be an invaluable source of physician specialists for the Armed Forces. Without it the military medical services could not have provided high quality care to our Armed Forces during the two decades in question. Nor could we have moved smoothly, as we are now doing, toward an All-Volunteer Health Force.

The Berry plan operates in a manner that is mutually advantageous both to the young physician and the Armed Forces. For those selected for participation, it permits them to complete their speciality training on an uninterrupted basis under a guaranteed draft deferment, following which they serve on active duty for 2 years to fulfill their draft obligation. They serve on active duty in a higher grade than their contemporaries who did not participate in the program. During most of the years that the so-called doctor draft was in

existence, the Berry plan was the major source of physician procurement for the Armed Forces.

Although the draft has ended, we are still experiencing the residual effects of the Berry plan. For example, we have approximately 2,700 Berry plan participants who are now on active duty. For the next fiscal year, we anticipate that approximately 500 physicians who will be completing their specialty training under the Berry plan will enter on active duty, but the following year, fiscal year 1978, will mark the virtual end of the plan, at which time we expect approximately 200 Berry plan participants to enter on active duty.

Under H.R. 14772, physicians who are serving on active duty under the Berry plan for 2 years could, if otherwise eligible, be paid an amount not to exceed $9,000 for each year of their remaining active duty obligation if they sign a written agreement to remain on active duty for 1 or more years beyond their obligation. Once their 2 years of obligated Berry plan service was completed, they would be eligible to receive the $13,500 maximum payment for additional years of voluntary service on the same basis as any other physician who has completed—or who never incurred—obligated service.

If H.R. 14772 is enacted, there are three groups of Berry plan participants who would be affected by it in fiscal year 1977. The first group consists of the approximately 1,400 participants who entered on active duty during the summer of 1975 and who have almost 1 full year left of their initial commitment. The second group would be the approximate 1,000 who are entering on active duty this summer and who obviously have approximately 2 years left to serve. The third group consists of the approximately 500 who will enter on active duty next summer.

We estimate that, if H.R. 14772 is enacted, the additional budget costs to the Department of Defense for fiscal year 1977 would be $3.3 million, and for fiscal year 1978 $2.6 million with declining amounts in subsequent years.

Earlier this year, when the Department of Defense forwarded its legislative proposal to the Congress to extend the bonus law on a temporary basis for 1 year, serious consideration was given to including in the proposal provisions similar to those contained in H.R. 14772. We decided against such a course of action, however, primarily on the basis that it would be inappropriate to ask the Congress at that time to take any action with respect to the bonus law other than a simple, temporary extension.

Our rationale stemmed from the concern expressed by the Congress in enacting the Veterans' Administration Physicians and Dentists Pay Comparability Act of 1975—Public Law 94–123. Section 4(a) of that law, directs the Comptroller General of the United States and the Director, Office of

Management and Budget, to submit to the Congress, not later than August 31, 1976, separate reports covering the following:

(1) An investigation of the short-term and long-term problems facing the departments and agencies of the Federal Government—including the uniformed services—in recruiting and retaining qualified physicians and dentists.

(2) An evaluation of the extent to which the implementation of a uniform system of pay, allowances, and benefits for all physicians and dentists employed in such Federal departments and agencies would alleviate or solve such recruitment and retention problems.

(3) An investigation and evaluation of such other solutions to such recruitment and retention problems as each deems appropriate.

(4) On the basis of the investigations and evaluations required to be made under Paragraphs (1), (2) and (3) of this subsection, (a) an identification of appropriate alternative suggested courses of legislative or administrative action (including proposed legislation) and cost estimates therefor, which in the judgment of the Comptroller General or Director, as the case may be, will solve such recruitment and retention problems, and (b) a recommendation, and justification therefore, of which such course should be undertaken.

We believe that the two reports that the Congress has directed will play a significant role in the development of the legislation which we anticipate will be submitted to the Congress next year dealing with an overall long-term bonus plan for physicians and dentists. Until that plan is developed, we hope to avoid any piecemeal approaches to the problem which may make the attainment of a long-term solution more difficult.

Our thinking on this matter has not changed in the intervening months. Accordingly, the Department of Defense is opposed to the enactment of H.R. 14772 at this time.

Committee Position

The Committee on Armed Services, on August 24, 1976, a quorum being present, approved H.R. 14772, as amended, by voice vote.

Fiscal Data

EXECUTIVE BRANCH ESTIMATE

The Department of Defense estimates that the enactment of H.R. 14772 would result in additional budget costs to the Department for fiscal year 1977 of $3.3 million and for fiscal year 1978 of $2.6 million with declining amounts in subsequent years.

Congressional Budget Office Estimate

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget Act of 1974 is included hereafter:

Congressional Budget Office

COST ESTIMATE

August 20, 1976.

1. Bill Number: H.R. 14772 (as amended by the Armed Services Committee).

2. Bill Title: To amend Section 313 of Title 37, U.S.C., to pay variable incentive pay to medical officers who participated in the Berry Plan, and for other purposes.

3. Purpose of Bill: The purpose of this bill is to authorize a $9,000 per year variable incentive pay to medical officers who participated in the Berry Plan and are serving their initial active duty obligation of two years, if they agree to extend on active duty for at least one additional year. Under the Berry Plan medical students were deferred from the draft to complete advanced specialty training. In exchange for this deferral individuals incurred a two year service obligation upon completion of their advanced training and during their obligated service are currently prohibited from receiving variable incentive pay.

4. Budget Impact: CBO estimates that the following costs would be associated with the provisions of H.R. 14772.

[In millions of dollars]

	Fiscal year—				
	1977	1978	1979	1980	1981
Authorization amount	3.56	3.24	1.17	0.37	0.04
Estimated costs	3.49	3.25	1.21	.38	.05

5. Basis for Estimate: Currently about 15 percent of all medical officers serving nonvoluntary tours of active duty elect to extend their time in service by one year or more. In this estimate CBO assumes that for those medical officers who would receive the variable incentive pay under this amendment for more than one full year the extension rate would increase from 15 percent to 20 percent. The number of medical officers entering active duty each year under the Berry Plan is as follows:

Fiscal year 1976	1437	Fiscal year 1979	25
Fiscal year TQ	991	Fiscal year 1980	2
Fiscal year 1977	511	Fiscal year 1981	0
Fiscal year 1978	219		

If it were assumed that there would be no increase in the extension rate of Berry Plan medical officers as a result of H.R. 14772 the estimated costs would be $3.01 million in fiscal year 1977, $2.44 million in fiscal year 1978 and $.91 million in fiscal year 1919. If the extension rate were assumed to increase 25 percent rather than 20 percent as a result of H.R. 14772, then the costs would be $3.96 million in fiscal year 1977, $4.05 million in fiscal year 1978 and $1.51 million in fiscal year 1979.

6. Estimate Comparison: DoD has estimated the cost of H.R. 14772 to be $3.3 million in fiscal year 1977 and $2.6 million in fiscal year 1978. Upon review it appears that the DoD estimate failed to fully account for the medical officers entering active duty under the Berry Plan during the transition quarter. In addition the Department of Defense used a higher estimate (25 percent) for the extensions that would be realized under H.R. 14772.

Inflation-Impact Statement

It is the belief of the committee that the legislation will not have a significant effect on the national economy.

Oversight Findings

With reference to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

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Changes in Existing Law

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, there is herewith printed in parallel colums the text of provisions of existing law which would be repealed and amended by the various provisions of the bill as reported.

EXISTING LAW

Title 37—United States Code

CHAPTER 5—SPECIAL AND INCENTIVE PAYS

§ 313. Special pay: medical officers who execute active duty agreements

(a) Under regulations prescribed by the Secretary of Defense or by the Secretary of Health, Education, and Welfare, as appropriate, and approved by the President, an officer of the Army or Navy in the Medical Corps, an

THE BILL AS REPORTED

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 313 of title 37, United States Code, is amended by adding the following new subsection at the end thereof:

"(f) Notwithstanding the provisions of clause (4) of subsection (a), a person in the Armed Forces who participated in the Berry Plan and who is serving an initial active-duty obligation of two years may, if otherwise eligible under this section, be paid an amount not to exceed $9,000 for each full year of his remaining active-duty obligation, and for periods of remaining active-duty obligation of less than a year, one-twelfth of that amount for each month or fraction thereof of his remaining active-duty obligation, if he executes a written active-duty agreement to remain on active duty for one or more years beyond such obligation."

Sec. 2. This Act becomes effective October 1, 1976.".

officer of the Air Force who is designated as a medical officer, or a medical officer of the Public Health Service, who—

(1) is below the pay grade of O–7;

(2) is designated as being qualified in a critical specialty by the Secretary concerned;

(3) is determined by a board composed of officers in the medical profession under criteria prescribed by the Secretary concerned to be qualified to enter into an active duty agreement for a specified number of years;

(4) is not serving an initial active duty obligation of four years or less or is not serving the first four years of an initial active duty obligation of more than four years;

(5) is not undergoing intern or initial residency training; and

(6) executes a written active duty agreement under which he will receive incentive pay for completing a specified number of years of continuous active duty subsequent to executing such an agreement;

may, upon acceptance of the written agreement by the Secretary concerned, or his designee, and in addition to any other pay or allowances to which he is entitled, be paid an amount not to exceed $13,500 for each year of the active duty agreement. Upon acceptance of the agreement by the Secretary concerned, or his designee, and subject to sub-

sections (b) and (c) of this section, the total amount payable becomes fixed and may be paid in annual, semiannual, or monthly installments, or in a lump sum after completion of the period of active duty specified in the agreement, as prescribed by the Secretary concerned.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary concerned, or his designee, may terminate, at any time, an officer's entitlement to the special pay authorized by this section. In that event, the officer is entitled to be paid only for the fractional part of the period of active duty that he served, and he may be required to refund any amount he received in excess of that entitlement.

(c) Under regulations prescribed by the Secretary of Defense or by the Secretary of Health, Education, and Welfare, as appropriate, an officer who has received payment under this section and who voluntarily, or because of his misconduct, fails to complete the total number of years of active duty specified in the written agreement shall be required to refund the amount received that exceeds his entitlement under those regulations. If an officer has received less incentive pay than he is entitled to under those regulations at the time of his separation from active duty, he shall be entitled to receive the additional amount due him.

(d) This section does not alter or modify any other service obligation of an officer. Completion of the agreed period of active duty, or other termination of an agreement,

EXISTING LAW

under this section does not entitle an officer to be separated from the service, if he has any other service obligation.

(e) The Secretary of Defense and the Secretary of Health, Education, and Welfare shall each submit a written report each year to the Committees on Armed Services of the Senate and House of Representatives regarding the operation of the special pay program authorized by this section. The report shall be on a fiscal year basis and shall contain—

(1) a review of the program for the fiscal year in which the report is submitted; and

(2) the plan for the program for the succeeding fiscal year.

This report shall be submitted not later than April 30 of each year, beginning in 1975.

THE BILL AS REPORTED

SUMMARY

Purpose

The purpose of the bill is to provide that physicians who entered the Armed Forces through the Berry Plan, who are presently not eligible for the physicians' bonus because they are serving under a two-year obligation, may receive a reduced bonus of up to $9,000 per year for their remaining obligated service, provided they sign an agreement to serve for one additional year beyond their obligation.

Fiscal Data

The estimated cost of the bill for fiscal year 1977 is between $3.3 million and $3.5 million.

Departmental Position

The Department of Defense opposes the enactment of H.R. 14772.

Committee Position

The Committee on Armed Services, on August 24, 1976, a quorum being present, approved H.R. 14772, as amended, by voice vote.

94TH CONGRESS
2D SESSION

H. R. 14772

[Report No. 94–1438, Part I]

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 1976

Mr. STRATTON (for himself and Mr. O'BRIEN) introduced the following bill; which was referred to the Committee on Armed Services

AUGUST 26, 1976

Reported with an amendment, referred to the Committee on Appropriations for a period not to exceed fifteen legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93–344

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend section 313 of title 37, United States Code, to pay variable incentive pay to medical officers who participated in the Berry Plan, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 313 of title 37, United States Code, is amended by adding the following new subsection at the end thereof:

"(f) Notwithstanding the provisions of clause (4) of subsection (a), a person in the Armed Forces who participated in the Berry Plan and who is serving an initial active-duty obligation of two years may, if otherwise eligible under

~~this section, be paid an amount not to exceed $9,000 for each year of his remaining active-duty obligation if he executes a written active duty agreement to remain on active duty for one or more years beyond such obligation."~~ *this section, be paid an amount not to exceed $9,000 for each full year of his remaining active-duty obligation, and for periods of remaining active-duty obligation of less than a year, one-twelfth of that amount for each month or fraction thereof of his remaining active-duty obligation, if he executes a written active-duty agreement to remain on active duty for one or more years beyond such obligation."*

SEC. 2. This Act becomes effective October 1, 1976.

Mr. MAHON. Any questions, Mr. Flood?

Mr. FLOOD. No questions.

Mr. MAHON. Mr. Burlison?

Mr. BURLISON. Mr. McKenzie, I am not familiar with the background and previous testimony which you and others may have given to other committees on this subject.

What agency of Government, if any, favors this proposal? Do you have any knowledge of that? It is my understanding you have testified that the Department of Defense is opposed to it. Are any agencies for it? I suppose we will find out later this afternoon.

Mr. MCKENZIE. I am not aware of any other agency of the executive branch which has taken a position on the bill, and I expect that that results simply from the fact that the bill, in its present form, would only affect the Department of Defense and would not affect any other element of the executive branch.

Mr. FLOOD. Mr. McKenzie, you speak of the Department's opposition. Obviously a key factor in the opposition of the Department to the enactment of H.R. 14772 was the need for a full and complete report on the matter of physician and dental pay comparability as required by Public Law 94–123. That was due to be completed by August 31, 1976.

What is the status of that report as of today?

Mr. MCKENZIE. Mr. Flood, technically the law in question imposed requirements of two separate reports, one on the part of OMB and one on the part of GAO. The GAO report has been completed, and I am advised it was submitted to the Congress on August 30.

The OMB report, however, has been delayed insofar as its completion is concerned. My information is that it probably will be October before it is completed and transmitted to the Congress.

Mr. FLOOD. You have been around here for awhile. In your view, will this report to be completed by the GAO or the one done by the Office of Management and Budget, will either or both cause the Department of Defense to change its position with reference to this particular piece of legislation?

Mr. MCKENZIE. I would have to qualify my answer, Mr. Flood.

Mr. FLOOD. I am sure of that.

Mr. MCKENZIE. On the basis of the fact that I have only seen drafts of the reports. I have not seen either report in its final form, but based on my perusal——

Mr. FLOOD. Has GAO filed its final report?

Mr. MCKENZIE. I am advised it has, but we have not seen a copy of it yet.

Mr. FLOOD. Have you seen a draft of the GAO report?

Mr. MCKENZIE. Yes, sir.

Mr. FLOOD. And the OMB report?

Mr. MCKENZIE. Yes, sir. I would answer your question negatively. I don't believe either one of them in draft form would affect our position on the bonus.

Mr. FLOOD. Do these early drafts that you are talking about indicate that the Department of Defense may require fewer doctors than the department or military services currently believe are needed?

Mr. MCKENZIE. No, Mr. Flood, neither report, again in draft form, addresses specifically the question of our requirements.

Mr. FLOOD. You previously testified before the House Armed Services Committee. In that testimony you indicated that the effect of the

variable incentive pay for medical doctors has already significantly increased the retention of Berry plan physicians. The increase has been from 1 or 2 percent to something on the order of 15 percent.

How accurate are those figures? Are they still accurate?

Mr. McKenzie. Mr. Flood, the figures are still accurate in that they related to a particular time period. More specifically the data related to our experience during the year beginning in October of 1974, which was about the time that we implemented the basic bonus law, and September of 1975, which did show a 14.1-percent retention rate into the third year for Berry planners completing their 2 years during that period. Those data are still accurate.

We do not have any hard data yet for the year ending September of 1976, but I do have some anecdotal information, so to speak, based upon discussions with hospital commanders.

Mr. Flood. Recite the anecdote.

Mr. McKenzie. It is a number of anecdotes, and it is to the effect that the delay in addressing the question of the bonus for the Berry plan participants has significantly impacted on the group, and it is my opinion at the moment that the retention rate data for this succeeding year will be considerably lower than the 14.1 percent.

Mr. Flood. Are you talking about physicians and dentists or just physicians?

Mr. McKenzie. No, sir, I am speaking at the moment only of participants in the Berry plan, that is, physicians. In other words, I think now their retention rate is declining, even though it went up markedly shortly after the bonus law was enacted, based upon an expectation that they were going to be included.

Now that it has become painfully aware to them that their prospects for inclusion are not good, I think that will adversely impact on their retention rate.

Mr. Flood. In your view has the variable incentive pay already increased physician retention up to the point where the proposed legislation is no longer necessary?

Mr. McKenzie. We do feel that our present retention rate overall for the total physician force is such that this particular legislation, which would affect only a fairly small number of that force, is not necessary.

Mr. Flood. What is the answer to the question?

Mr. McKenzie. The answer is that the Department does feel that this legislation is unnecessary, based upon the overall retention rates for physicians in the Armed Forces.

Mr. Flood. Retention is sufficiently high that you don't need this proposed law?

Mr. McKenzie. Well, this law would only impact on a fairly small number.

Mr. Flood. Specialists?

Mr. McKenzie. A small number of specialists on active duty in the Armed Forces, those who participated in the Berry plan.

Mr. Vander Schaaf. Mr. McKenzie, you indicated that in the past year the retention rate for Berry planners has now fallen off because of the uncertainty regarding this particular legislation.

Is it possible that failure to pass this legislation, if it were clearly dropped by one of the committees either here in the House or in the Senate, that such action could again cause an upturn in Berry plan

retention due simply to the fact that the uncertainty would be gone and Berry planners would make their decisions?

Mr. McKENZIE. No, Mr. Vander Schaaf, I don't believe that at this point in time the enactment or the failure to enact this legislation is going to have any great impact on the Berry planners. I think that the delay already has had its effect, and it is probably irreversible. For example, I have talked to some young Berry planners who indicated that this bill wouldn't satisfy them at all, that what would satisfy them is simply to get the $9,000 for each of the 2 years that the bill would do without any further obligated service. They feel that is their due.

FUTURE REQUIREMENTS FOR MEDICAL DOCTORS

Mr. FLOOD. Of course a key question in this matter has to be: Can the military services recruit the required number of physicians in terms of quantity and quality—by "quality" I mean specialties—that are required in the 1978 to 1981 time period? How does the best current thinking foresee the future?

Mr. McKENZIE. Mr. Flood, we think that if this bonus, this variable incentive pay plan that we now have, and which has been working very well for us, is extended overall next year when it comes up for further consideration in some form fairly close to what it is now, that we will be able, in the future years, to obtain and retain the number of physicians that we need not only in total numbers but essentially in the various specialties that we require.

Mr. FLOOD. Suppose you tell us a little more about your sources for obtaining these personnel. In terms of new physician input into the armed services for fiscal years 1977, 1978, and 1979, could you quantify this input by source? For example, do you estimate that in 1977, 15 percent of the new input will be Berry doctors extending, a certain percent will be Berry plan doctors coming on duty for the first time, a certain percent will be what you call "recruited off the street," a certain percent will come from the scholarship program, and a percent by 1980 from the newly created university we have?

You might want to comment on that generally, but because of the nature and type of that question you might want to extend some detail for the record.

Mr. McKENZIE. Yes, Mr. Flood, I will be happy to do that.

[The information follows:]

Identified DOD Medical Corps accession percentages by sources for fiscal year 1977, 1978, and 1979 are as follows:

[In percent]

	1977	1978	1979
Berry plan	26	12	1
Armed Forces health profession scholarship program	32	44	55
Volunteers	34	36	36
Other [1]	9	7	7

[1] Active duty scholarships, delayed ROTC program, senior medical student program.

Note: Percentages do not sum to 100 percent because of rounding.

Mr. FLOOD. This is just off the top of your head now.

Mr. McKenzie. When the decision was made to not seek any special legislation, to extend the doctor draft when the regular draft was being permitted to expire, it became clear to us that we should have to have some specific alternative plan, in order to gain physicians in significant numbers in the future, and the plan that we finally hit on was the one you mentioned, the scholarship plan. The Congress enacted legislation which enabled us to get that plan underway. In future years that will be the major source of our input into the Medical Corps of the Army, Navy, and Air Force.

We are beginning to have some input from it now. It still isn't the largest source, but it is rapidly becoming so. For example, for 1977 of our medical acquisitions on active duty, 32 percent will come in as a result of participation in the scholarship program, 26 percent that year would be Berry plan participants, the residual of the old doctor draft, and finally we estimate that approximately 35 percent would be pure volunteers.

Mr. Flood. I can see that that is an involved question and you will want to break that down for the record more specifically on those three or four points.

Mr. McKenzie. Yes, sir.

CURRENT PHYSICIAN SHORTAGE

Mr. Flood. There has always been, from a historical standpoint, a shortage of medical doctors in the armed services. Some people have contended that this shortage results primarily from the unrealistic requirements rather than from an actual shortage of physicians to handle the medical problems of military personnel and their dependents.

Is there currently a physician shortage in the armed services? If there is, how does this shortfall compare with shortfalls experienced in previous years?

Mr. McKenzie. There is a slight shortage at the moment, Mr. Flood, of approximately 300 physicians in the Armed Forces. We are authorized to have 11,600, and we have approximately 11,300.

Mr. Flood. Do you break down your specialists in a category or do you just call them specialists??

Mr. McKenzie. No, sir, we do have a breakout of specialists by each category and I would be happy to provide that.

Mr. Flood. How are you on specialists right now?

Mr. McKenzie. It varies. In some specialties we are somewhat over our requirements. In others we have somewhat of a shortage.

Mr. Flood. Supply that for the record.

Mr. McKenzie. Yes, sir.

[The information follows:]

DEPARTMENT OF DEFENSE

FULLY TRAINED PHYSICIANS SPECIALISTS

Specialty	Actual	Authorized	Shortage	Overage
Aerospace medicine/flight surgeon	550	925	375	
Family practice	280	414	134	
Preventive/occupational medicine	99	99		
Submarine medicine	33	61	28	
Allergy/clinical immunology	8	27	19	
Cardiology	113	134	21	
Dermatology	174	155		19
Gastroenterology	76	91	15	
Internal medicine	1,022	893		129
Internal medicine subspecialties	72	132	60	
Pulmonary Disease	14	29	15	
Neurology	112	109		3
Psychiatry	430	467	37	
Nuclear medicine	9	15	6	
Obstotrics/gynecology	595	498		97
Obstetrics/gynecology subspecialties	9	12	3	
Pathology	310	289		21
Pediatrics	656	630		26
Pediatrics subspecialties	20	22	2	
Physical medicine	15	8		7
Radiology	380	387	7	
Anesthesiology	273	248		25
General surgery	664	635		29
Neurosurgery	60	53		7
Ophthalmology	227	189		38
Orthopedic surgery	453	405		48
Otorhinolaryngology	190	196	6	
Plastic surgery	40	35		5
Thoracic surgery	72	62		10
Urology	156	138		18
Total	7,112	7,358	728	482

Mr. FLOOD. Does the Office of Management and Budget and the General Accounting Office fully support the Department of Defense requirements for medical doctors?

Mr. MCKENZIE. That is a difficult question.

Mr. FLOOD. That is why I asked it.

Mr. MCKENZIE. It is difficult for me to answer, Mr. Flood. Obviously I am not an authoritative source of information on either of those two agencies as to their attitudes or their opinions.

Mr. FLOOD. You have big ears.

Mr. MCKENZIE. My impression is that they don't fully support our requirements.

Mr. FLOOD. You talked a minute ago about a considerable shortfall. How does that shortfall compare with the shortfall in previous years?

Mr. MCKENZIE. The shortfall is considerably less than we have on many occasions in previous years.

CHANGING REQUIREMENTS FOR PHYSICIANS BY THE DOD

Mr. FLOOD. Is there some likelihood that a very significant change in the mission of military medicine will be made in the foreseeable future, such as changing the numbers of beneficiaries, which would greatly reduce the requirements for military medical doctors?

Mr. MCKENZIE. There is a possibility, Mr. Flood, of such a change occurring in the future, although I believe that if it does occur, it

would not have a tremendous influence on our requirements. It would lessen them somewhat, but I don't think it would lessen them by more than 1,000 or 2,000.

Mr. FLOOD. As you know, Berry plan doctors currently constitute a significant portion of the department's specialists as opposed to general medical practitioners.

Is there considerable likelihood that the department will in the foreseeable future find the ratio of specialists to general medical practitioners changing in favor of the latter group? Do any current studies suggest that such a change should be made, to give preference to the latter group?

Mr. MCKENZIE. The composition of our medical corps, to a considerable extent, reflects the desires and the practices, of course, in the profession in the private sector. As you know, there has been a tremendous increase in recent years in the desire on the part of young physicians to specialize, and that has had an impact on us. Ideally we would like to have about 15 percent of our medical corps made up of general practitioners, and about 85 percent made up of specialists, but we do have an imbalance in that regard now, with a shortage.

Mr. VANDER SCHAAF. Mr. McKenzie, in response to one of Mr. Flood's questions you indicated that yes, there was some possibility that there would be a substantial—I don't believe you used the word "substantial" but some—reduction in the number of doctors that the Department of Defense would require, something in the order of 1,000 to 2,000.

What changes are we talking about here? Are we talking about all retirees being required to use Champus? What is in the wind? Give us a little flavor of what the thinking is over there on this aspect of the problem?

Mr. MCKENZIE. What we are working on at the moment, Mr. Vander Schaaf, is the concept under which, in the future, we would limit the size of our military medical establishment to that size required to support a mobilization buildup, plus what would be needed to provide adequate professional education and training opportunities for health professionals, plus what would be necessary to provide support overseas, and finally plus what would be necessary to cover our dependent population and active duty population in so-called remote areas or underserved areas in the United States, and all of this with due regard as to whether it would be more economical in certain places to provide the care in our facilities or to purchase it from private sources.

This concept has not yet been fully implemented because we are having difficulties in determining the relative costs to the Department in some areas of providing care in our facilities versus buying it downtown. I would anticipate that the rate at which we are progressing on this at the moment, that it would probably be next summer before we finally fully implement this concept.

USEFULLNESS OF H.R. 14772 IN MEETING FUTURE PHYSICIAN REQUIREMENTS

Mr. FLOOD. When Vice Adm. D. L. Custis, the Chief of Bureau of Medicine and Surgery, Department of the Navy, testified before the

House Armed Services Committee, he supported this bill. He stated that it was necessary for the Navy to increase its "off the street" recruiting for doctors from 187 in 1976 to over 525 this year. He stated that he doubted if the Navy could accomplish this requirement since the Navy had to rely on large numbers of foreign-born/foreign-trained doctors in recruiting 187 volunteers last year.

Will this proposed legislation significantly help in overcoming this difficulty?

Mr. McKenzie. This legislation I don't believe would significantly impact on that problem this year. It could have a little impact next year, but very little this year. We think that the trends within the Navy's volunteer procurement efforts are improving.

I would like to point out one technicality. It is true that Vice Admiral Custis was the Chief of the Bureau of Medicine and Surgery when he testified. He has subsequently retired.

Mr. Flood. That has nothing to do with the case. At the same time that he testified on the bill, he was the Chief of the Bureau of Medicine.

At the same time, Admiral Custis indicated that certain administrative steps were taken by the Navy which made the job of recruiting doctors much more difficult. For example, he was not allowed to recruit at a rank higher than 04—lieutenant commander. The Navy increased the attrition of qualified doctors by reducing the promotion opportunity to commander, from 90 percent to 80 percent and the promotion opportunity to the grade of captain has been reduced to 75 percent. Also, the minimum commitment has been increased from 2 years to 3 years. Thus, many candidates who might have been willing to take a 2-year trial are hesitant about signing a 3-year commitment. Thus, these appear to be areas where the department could, through administrative changes and at little cost, improve its position with respect to the matter of obtaining and retaining qualified physicians. What is your comment?

Mr. McKenzie. That, too, is a difficult issue, Mr. Flood. For 6 or 7 years we certainly agreed with the concept of greater promotion opportunity for physicians in the Armed Forces. In fact, we went on the Hill and obtained legislation which enabled us to have a program of accelerated promotions for these people.

Mr. Flood. I remember very well.

Mr. McKenzie. And in fact we had a 100-percent selection rate for promotion through the grades of lieutenant colonel in the case of the Army and Air Force, and full commander in the case of the Navy, and a 90-percent selection rate in the case of captains in the Navy and colonels in the Army and Air Force.

However, after several years under that concept, the Congress apparently changed its mind about this issue of not having any restrictions on physicians in the Armed Forces, and approximately 2 years ago the Congress enacted new legislation, which didn't amend the old legislation, but which said you can only pay certain numbers of people in those higher grades, which meant that we were back where we were 7 or 8 years ago, and any beneficial thing that we obtained for physicians in the Armed Forces would be at the expense of someone in the line.

Mr. Flood. I know, but why is it necessary to limit promotion opportunity for a medical doctor to 75 percent? It would seem that we should

have nearly 100 percent retention of career oriented medical doctors, losing only a few if any for failure of promotion.

Mr. McKenzie. We did have that during that period, when we were able to do it at no one else's expense, but when the Congress changed the law, we felt we could no longer do that at other people's expense.

Mr. Vander Schaaf. Mr. McKenzie, this committee is probably partially to blame for the problem you are talking about. We refer to it as grade creep, and the Department of Defense has agreed that there has been grade creep or grade enhancement in both the military and civilian structure, and as a result we have put certain limitations on DOD as to how many people in each grade they can pay, but we didn't say you have so many medical officers as colonels and so many chemical officers as colonels and so many infantry officers, and so on. I fail to see why you don't continue to make an exception for doctors as you did in the past. That was not the committee's intent.

Mr. McKenzie. Mr. Vander Schaaf, we are still making exceptions for doctors, except I would have to concede that we are not making the exceptions to the same degree that we did before. For example, the promotion of physicians now to colonel is by a 75-percent selection rate. That is twice as much as the selection rate that prevails for the rest of the Armed Forces.

Mr. Vander Schaaf. I clipped something out of the Air Force Times that just arrived dated September 13. It is the same business in the Air Force that Admiral Custis talked about. The article is headlined "Medical Officers Face Hike Delays." Apparently there are some significant changes in how you are going to promote doctors. That may cause some of them to leave. It seems kind of silly to make things administratively more difficult to keep doctors and at the same time ask Congress to provide bonus legislation. I realize you are not asking for this particular legislation but providing bonus legislation to retain them.

Mr. McKenzie. Mr. Vander Schaaf, those people who represent the overall best interests of the entire officer corps were perfectly willing to let us have advantages, so to speak, when it was not at anyone else's expense, but when the law was changed, and it would mean in the future that any advantage to us was at someone else's expense, then we had to negotiate the present agreement, as opposed to the sort of blank check that we had before.

Mr. Vander Schaaf. It seems like your negotiating position would be pretty strong if the physician situation is as serious, and again you don't indicate it is as serious as some people tell us it is. If it is that serious, I would have a hard time believing that the services would want to take steps which would force doctors out of the armed services.

Mr. McKenzie. We thought that getting a selection rate that was twice as good as what the rest of the Armed Forces had was a pretty successful form of negotiation.

Mr. Edwards. Would you provide for the record the number of doctors (physicians) who left the medical service in each of the past 5 years after having completed more than 10 years of service but less than 20. Also, to the extent possible, indicate the reason for their departure, such as failure to be promoted.

[The information follows:]

The following table provides the number of physicians that left the armed services after completing 10 years of service but less than 20 years.

Fiscal year:	
1972	140
1973	132
1974	155
1975	97
1976	69

The most prevalent reasons for departure from the armed services by these physicians are:

1. Completion of the active duty obligation.
2. Financial considerations.
3. Greater professional opportunities perceived.
4. Desire to try private practice.
5. Stability in practice and family.

Uniform Services University of the Health Sciences

Mr. Edwards. What percentage of doctors are you going to get from the military medical university?

Mr. McKenzie. I don't have the precise percentage worked out. It is a very small percentage. The entering class, for example, next month I believe is 32. I believe the university has plans eventually that would get it up to 150 per year, but obviously this would be a very small input as far as our total input in any given year is concerned.

Mr. Edwards. And you are really not going to have any doctors coming out of that university by 1980, are you?

Mr. McKenzie. With an entering class in 1976, they would be graduating in 1980, but then presumably would be going into an internship or a first year of postgraduate medical education. Probably the vast majority upon the completion of that would go into specialty training of 3, 4, or 5 years in duration, so as far as a full 100-percent performer in the Active Force, that would be some years away, yes, sir.

Mr. Edwards. I really shouldn't belabor this, but it is one of my pet peeves.

Reason for not Paying Bonus to Berry Plan Doctors

The Berry plan doctors contend that they have been administratively excluded from the variable incentive pay law, Public Law 93–274. Is that correct, or does the law specifically exclude variable incentive bonus payments for initial obligated service?

Mr. McKenzie. The law does have a provision in it which excludes from eligibility under the bonus plan any person who is serving the first 4 years of any period of obligated service, or a lesser period of up to 4 years of obligated service.

Mr. Edwards. What does a Berry plan doctor make?

Mr. McKenzie. A Berry plan doctor under the present pay law makes—to be specific—$21,541 per year.

Mr. Edwards. And we are talking about giving another $9,000 on top of that.

Mr. McKenzie. Yes, sir.

Mr. Edwards. The Berry plan doctor claims that he is not receiving a bonus while his contemporaries do receive a bonus even though they

may have less education. However, it could be argued that the Berry doctor was paid a bonus in a number of other ways, although this would be difficult to quantify from a dollar standpoint. For one thing, he was permitted to complete his medical training without an interruption, he did not have to participate in the war in Vietnam, and he received while completing his education longevity/pay credit and thus entered active duty one grade ahead of his contemporaries and with more years of service for pay computation purposes. Is that correct?

Mr. McKenzie. That is correct, and that last part can be quantified.

Mr. Edwards. Can you put a value on?

Mr. McKenzie. Yes, sir. For example, if you were to take two young physicians who were completing an internship in 1972, and one of them at that point who was not in the Berry plan comes on Active duty, and at that point in time he would have received $16,675 per year. His classmate who went into the Berry plan, and who was permitted to come on active duty 3 years later when he finished his specialty training, as you pointed out, comes in one grade higher with additional longevity within that grade for pay purposes, and he is now being paid approximately $5,000 more per year than his contemporary who did not participate in the plan.

Deferred Berry Plan Doctors Who Could Be Called to Active Duty if Needed—

Mr. Garrity. Earlier you stated that you have so many doctors coming in in 1977 and 1978 from the Berry plan and this will finish off the program. As I understand it, a lot of the physicians who came under the Berry plan have been deferred from active duty and assigned to Reserve forces.

Do you have any idea of the numbers that are in the Reserve forces that participated in the Berry plan?

Mr. McKenzie. I don't at the moment, Mr. Garrity, but I would be happy to provide that for the record.

Mr. Garrity. Would you put that in the record?

[The information follows:]

Since the so called "doctor draft" terminated in June 1973 relatively few Berry plan participants have been deferred from call to active duty after residency training. Because time spent in residency as a Reserve officer is credited in satisfying the 6-year Reserve obligation most Berry plan physicians have less than 3-years obligation remaining at the conclusion of the civilian residency program. Reports from the military departments indicate that approximately 250 Berry plan physicians are still serving their 6-year obligation from the groups that were deferred from active duty and assigned to the Reserves after completion of residency training.

Mr. Garrity. And wouldn't they, if required, be eligible to fulfill your immediate needs, if you actually need more physicians in the Active Force?

Mr. McKenzie. They would be certainly generally eligible and available for that purpose, although there are no special provisions of law which would enable us to reach down into the Reserve to pull them out as a group.

Mr. Garrity. But they do have a 2-year commitment. I think the law also said if you didn't serve the 2 years you have to serve, what is it, 6 years?

Mr. McKENZIE. Yes, in the Reserve.

Mr. GARRITY. In the Reserves, but they still have that 2-year commitment. If the Armed Forces really were in a bind for medical doctors could you use them even though they are in the Reserve structure? Could you bring them on Active duty, because you are short of physicians in a particular field.

Mr. McKENZIE. There is one technical point there, Mr. Garrity, that I should mention, and that is the so-called reserve obligation. As I recall it was only imposed on people who become affiliated with the armed forces before reaching their 26th birthday. I believe a person who was enlisted or commissioned after that didn't incur that obligation, and of course many of the physicians were of such an age that they were not commissioned until they had reached that age, but again your point I think is a good one. There would be significant numbers who were under 26 at the time they were commissioned.

Mr. GARRITY. I would like to have that information put in the record on this point.

Mr. McKENZIE. Yes, sir.

[The information follows:]

In reference to the question as to whether it would be possible to call to active duty for 2 years those Berry plan doctors who have been assigned to participate in the Reserves. Such a proposal may be technically possible because Berry plan doctors did agree to serve 2 years on active duty. However, at least some present service regulations do not authorize calling a Berry plan physician to active duty (other than during an emergency) after he has been assigned to participate in the Reserves. If the Department of Defense were to decide to order such physicians to active duty, it would require at a minimum revisions to DOD directives and service regulations to authorize such an order to active duty. Furthermore, the Berry plan physician concerned might consider an order to active duty under those circumstances a breach of faith on the part of the service concerned, since he would view his assignment to a Reserve status as a promise that he would no longer be liable for an order to active duty except during an emergency.

There is also the group of Berry plan physicians who did not receive their commission until after reaching their 26th birthday. The law which imposes a statutory military obligation of 6 years applies only to a male person who joins an Armed Force before reaching his 26th birthday (10 U.S.C. 651). For such persons, there would be no statutory authority to enforce an order to active duty and we would have to rely on the agreement alone to enforce such an order.

REASON FOR DOD OPPOSITION TO THE LEGISLATION

Mr. BURLISON. Mr. McKenzie, as I understand it, you have given as one reason for your opposition to the legislation that this bill will not increase extensions because doctors will not stay in service merely for this incentive.

Isn't that a fair resumé of one of your conclusions? In other words, it is going to take more incentive than this to keep these doctors in.

Mr. McKENZIE. Yes; I would say that is a fair statement, that it would take for this group, which has become increasingly disenchanted in the past year, more than this bill to significantly impact on their retention rate.

Mr. BURLISON. That is the ones who are going to get out.

Mr. McKENZIE. That is correct, but the plan overall is working very well for physicians generally.

Mr. BURLISON. Following up on that conclusion, let me ask if you haven't also concluded that those who will get benefits under this bill will be those that will be extending anyway. In other words, you have got some of these people in here now under the Berry plan. They are going to extend whether you pass this bill or not, and therefore if we pass this bill, we are going to be paying those people some benefits that are not necessary to keep them in, because they are going to extend anyway.

Mr. MCKENZIE. Yes; I believe that is correct.

Mr. BURLISON. Those two conclusions make a lot of sense to me. I am wondering what empirical evidence if any do you have that those conclusions are accurate.

Mr. MCKENZIE. It is difficult to support the conclusions with hard data.

Mr. BURLISON. Without perhaps having interviewed the doctors directly.

Mr. MCKENZIE. We did have, as I mentioned earlier, for last year a 14-percent retention rate without this bill for Berry planners. I am convinced, as a result of discussions with a cross section of Berry planners, that we will not have that kind of a rate this year, although I do think we will have some retention within the group. Before there was any kind of a bonus plan we were retaining about 1 percent of them.

COST OF PROPOSED LEGISLATION

Mr. BURLISON. Mr. McKenzie, in your earlier testimony before the House Armed Services Committee you indicated that it would be possible under this bill to pay a $30,000 bonus for 1 additional year of medical service. This would be about 2½ times the amount of the bonus that is now paid for additional year of service. Could you explain how those figures are derived?

Mr. MCKENZIE. Yes. The example from which I derived those dollar figures would be a young Berry plan participant who is coming on active duty now, just starting out his 2 years. If he wanted to take advantage of this bill, assuming it were enacted, he could sign for 3 years, in other words, 1 additional year instead of the 2 years that he is now obliged to provide us, and if he did that under the terms of the bill he could get the $9,000 for each of his 2 presently obligated years, which would be $18,000 and then I assume that he would, like most of the young physicians, only sign for 1 year at a time, for which he could get $12,000. So for that third year, the 1 year that we would get from him that we wouldn't have had anyway without the bill, by taking his two $9,000 increments and adding that to the 12, I came up with $30,000 for the 1 additional year of service.

At the present time we cannot pay anyone else more than $13,500 for additional years of service.

Mr. BURLISON. It would seem that there must be some legitimacy to the claims of the Berry plan physician that he is being financially discriminated against and that a morale problem exists. Otherwise, there would be no reason for the Armed Services Committee to recommend passage of this legislation. Is there a real problem, Mr. McKenzie, and is there any way of correcting it short of legislation?

Mr. McKenzie. There is a problem, and again I think it goes back to the expectations that the young men had shortly after the bonus plan was originally enacted that they were going to be added to it. As time went by and they were not added to it, they became more demoralized than they were before. Now many of them are disgruntled.

You say is there any way of correcting it short of legislation? I don't think now that even with the legislation it would totally correct it. I think that they are so disgruntled now that, as I mentioned, even this legislation in its present form wouldn't correct the situation. Some of the Berry planners have indicated that the only thing that would make them feel that they had gotten a fair shake in the military would be simply to give them the $18,000 for the 2 obligated years, without any commitment for any further service.

Mr. Burlison. Proponents of this legislation indicate that about 30 percent of Berry plan doctors currently on active duty and those to enter active duty in 1977 and 1978 will execute agreements to extend their active duty obligations for at least 1 more year. Does the Department believe that the 30-percent estimate is reasonable?

Mr. McKenzie. No, we do not believe that it is reasonable, for the reasons that I generally indicated in responding to the previous question. We think that the group is so disgruntled that you couldn't possibly obtain that result.

Mr. Burlison. This 30-percent figure is based on a survey conducted by the Navy. However, a similar survey—letter of intent—sent to 413 medical officers in the fall of 1975, some 24 percent of those written indicated that they would remain on active duty if the variable incentive pay were given them. Eventually, only 45 physicians, or 11 percent, accepted the variable incentive pay and extended their active duty obligations. Has any survey been conducted of Berry plan doctors which takes into consideration the precise bonus provisions of H.R. 14772?

Mr. McKenzie. No, we have not conducted such a survey.

Mr. Burlison. While there seems to be some difference of opinion as to whether or not failure to pass this bill will mean a shortage of physicians in future years, it is also possible that failure to pass this bill could mean a gap in the quality of military medical care. In other words, the skilled specialists participating under the Berry plan would have to be replaced by physcians who do not have equal specialty capabilities. Is that correct?

Mr. McKenzie. As I indicated earlier, we do have significant differences in our staffing within the various medical specialties. I think that in some cases without this legislation undoubtedly there will be shortages in particular specialties. I don't think though that overall these shortages will be significant.

Mr. Burlison. The committee has been told that the proposed legislation (H.R. 14772) represents a compromise in that the Berry plan doctors feel that they should be entitled to the $9,000 bonus for each of their 2 obligated years, free of any stipulations with respect to their extending tours of active duty. They further believe that an additional $4,000 should be added for each year of obligated service along with the regular bonus if a decision is made to extend for 1 additional year (3-year tour). Since this compromise is apparently not acceptable to

the Department of Defense, is there a further compromise which would be made which would not incur the department's opposition?

Mr. McKenzie. No, Mr. Burlison, there is no compromise at the present time which would not incur the department's opposition.

Mr. Edwards. Will you yield?

Mr. Burlison. Surely. I yield back to the gentleman.

Mr. Edwards. I am perfectly willing for you to go on, since you are almost through, but I thought you said in your earlier statement that the Department had proposed a 1-year extension. I am not quite sure I understood what you were talking about, and I was going to ask you later, but this may be a point to ask.

Mr. McKenzie. What we proposed, and which the Congress accepted, was a 1-year extension to the basic bonus legislation as opposed to this legislation, which would only affect one small segment of the total military physician population, namely, the Berry planners. We did seek, and we did obtain, an overall 1-year extension to pay military physicians generally the bonus.

Mr. Edwards. I see, not just Berry plan but any doctor in the military.

Mr. McKenzie. Yes, sir.

Mr. Edwards. And how much will that cost?

Mr. McKenzie. I believe the cost of that was about $56 million.

Mr. Edwards. How do you compare that with the $9,000?

Mr. McKenzie. The law simply specifies a maximum of $13,500 for a year of additional service. In implementing that we have established a graduated scale. The only person who can get the maximum is one who will sign for 4 years. For example, a person who only signs for one would generally get $12,000.

Mr. Burlison. The Congressional Budget Office estimates the cost of this proposed legislation to be $3,560,000 in fiscal year 1977 if the number of medical officers who agree to extend is increased from the current 15 percent to 20 percent as a result of this legislation. Can you tell us what the cost estimates are for 15, 20, 25, 30, 35, and 40 percent extensions?

Supply that for the record.

Mr. McKenzie. Yes, I will be happy to do that, Mr. Burlison.

[The information follows:]

It has been proposed that Berry planners be granted VIP at the $9,000 level during their initial commitment, in return for an agreement to remain on active duty beyond their commitment for a time equal to the years they draw VIP during their commitment. The justification for such a proposal is twofold: first, on equity grounds, Berry planners are the only group now serving with a VIP disqualifying initial commitment who have received no educational subsidy from DOD; second, the proposed change would provide DOD with physician man-years they would not otherwise obtain. Essentially, the second argument states that DOD should make every effort to maximize the time served by the remainder of this traditional accession source, since its replacement (the Armed Forces health professions scholarship program) will not have its full effect until the mid-1980's.

A number of issues are relevant to whether such a change should be made. Three will be addressed here: first, how many physicians would be affected by this change; second, how many extra man-years DOD might obtain; and third, what the impact on the budget would be. The discussions of the latter two issues show their sensitivity to alternative assumptions about the response to the change.

It is unlikely that the change could be implemented prior to the start of fiscal year 1977. Assuming implementation on October 1, 1976, there are three groups of Berry planners who would be eligible in fiscal year 1977. The first group are the

1,437 Berry planners who entered in fiscal year 1976 (the summer of calendar 1975), who would have almost 1 full year left of their initial commitment. The second group are the 991 who will enter in fiscal year 197T, and have almost 2 years left. The third group are the 511 who will enter in the last quarter of fiscal year 1977. The first group (the 1,437 fiscal year 1975 accessions) could sign for 1 year of commitment and 1 additional year, at $9,000 per year. The latter two groups could sign for 2 years of commitment and 2 additional years, also at $9,000 per year. Subsequent eligibles would include the 219 in fiscal year 1978, the 25 in fiscal year 1979, and the 2 in fiscal year 1980. All of these later groups would be eligible for 2 years of commitment and the 2 additional years. Thus 1,437 physicians would be eligible for a "1 plus 1" agreement, and 1,748 for a "2 plus 2" agreement.

The effect on the number of extra man-years due to this change obviously depends on how many accept it and how many would have stayed anyway. To illustrate the range of possibilities, analysis has been performed based on the following assumptions:

1. 15 percent of Berry planners would stay beyond their initial commitment without the change.
2. Either 15 percent, 20 percent, 25 percent, 30 percent, 35 percent, or 40 percent will stay beyond their initial commitment with the change.
3. Retention experience after the first decision to accept or reject VIP is identical whether or not the change occurs.
4. 50 percent of those who accept VIP the first time will do so a second time (for a two year contract).
5. 90 percent of those who accept VIP the second time will do so at the third and for all subsequent opportunities, (for 2-year contracts).

Under these assumptions table 1 shows the extra number of Berry plan man-years which DOD would obtain in future fiscal years.

The effect on the budget of this change also depends on how many accept it. However, the budget presumably assumes that full authorized end strength will be met. Thus, the extra man-years from the change should already be allowed for in the budget, presumably under the assumption that volunteers will be recruited to fill these vacancies. The effect of the change on the budget is then only the difference caused by differing rates for VIP of the force size presumed to be on board. However, the actual effect on how much is spent will be different, and is much more difficult to estimate. If the extra man-years could not actually be filled through recruiting DOD would actually have a larger physician force as a result of the change. This would increase personnel expenditures, but save a more-than-compensating amount in Champus expenditures. Attempting to calculate the effects on actual outlays would be extremely difficult to predict.

Returning to the narrower issue of the effect on the planned budget, the calculations are straightforward. During initial commitments, those accepting change get $9,000 annually that they would not otherwise receive. Afterwards, they receive $9,000 annually at a time when their presumed voluntary replacements would be drawing a higher amount ($12,000 for a 1-year contract and $12,500 for a 2-year contract). The effect of this process on the planned budget is shown in table 2.

TABLE 1.—ADDITIONAL BERRY PLAN MAN-YEARS FROM PROPOSED VIP CHANGE

Initial retention rate	Fiscal year—								
	1977	1978	1979	1980	1981	1982	1983	1984	1985
15 percent	0	0	0	0	0	0	0	0	0
20 percent	0	72	122	82	77	69	68	62	62
25 percent	0	144	222	244	164	153	138	137	124
30 percent	0	216	333	366	246	230	207	205	186
35 percent	2,939	2,224	1,021	881	577	537	484	479	435
40 percent	2,939	2,296	1,132	1,003	659	614	553	548	497

TABLE 2.—EFFECT ON BUDGET OF PROPOSED VIP CHANGE

[In thousands of dollars]

Initial retention rate	Fiscal year—								
	1977	1978	1979	1980	1981	1982	1983	1984	1985
15 percent	3,968	1,677	−459	−867	−125	−14	−1	0	0
20 percent	5,290	3,098	776	369	859	940	862	856	777
25 percent	6,613	7,106	6,174	6,178	4,921	4,711	4,317	4,281	3,884
30 percent	7,935	8,527	7,409	7,414	5,905	5,725	5,180	5,137	4,661
35 percent	9,258	9,948	8,643	8,650	6,890	6,679	6,043	5,994	5,438
40 percent	9,258	7,361	4,480	4,076	3,812	3,802	3,452	3,425	3,107

Mr. BURLISON. Also, place in the record the additional cost per medical doctor man-year obtained for these same percentages expecting to extend for 1 additional year.

Mr. MCKENZIE. Yes, sir.

[The information follows:]

Cost per physician man-year at same percentages as the previous table:

Percentage:	*Cost*
20	$24,500
25	20,000
30	18,500
35	17,700
40	17,300

Mr. BURLISON. Is it true that the cost of this legislation in terms of cost per man-year declines sharply as the percentage agreeing to extend increases?

Mr. MCKENZIE. It wouldn't if they simply extend say for the 1 year. To the extent that some would extend for 2, 3, or 4 years, yes; it would have that effect.

Mr. BURLISON. Finally, can you provide the committee with data which compares the cost to the Department of Defense of obtaining 1 additional physician man-year via the plan proposed in this bill versus the cost of obtaining the additional physician man-years through other volunteer programs and the scholarship program? For this purpose, assume both a 20- and a 25-percent extension rate.

Mr. MCKENZIE. Yes, sir, I will provide that for the record.

[The information follows:]

COST OF OBTAINING 1 ADDITIONAL MAN-YEAR UNDER VARIOUS PROGRAMS

	Proposed plan	Volunteer [1]	Scholarship program
20 percent	24.5	12.5	19.7
25 percent	20.0	12.5	19.7

[1] Plus a prorated initial accession cost which will vary with the level of recruitment effort.

Mr. BURLISON. Thank you very much, Mr. McKenzie, for your testimony.

Mr. MCKENZIE. Yes, sir.

Mr. MAHON. You are always very cooperative, Mr. Secretary. We are pleased to have you before us, and we will undertake to pursue the right course with respect to the subject matter.

Mr. MCKENZIE. Thank you, Mr. Chairman.

RECALCULATION OF RETIRED PAY (H.R. 4105)

Mr. MAHON. Colonel Gasper, the bill referred to the committee for review permits a retired member of the armed services who was recalled to active duty for 2 or more years to recalculate his retirement pay on the pay rates in effect when released from active duty.

The retirement laws now provide that a retired member of the Armed Forces recalled to active duty may recalculate his retired pay on the rates of basic pay in effect at the time of his latest release from active duty only if he has been on active duty continuously for 2 years and only if he has been entitled to that basic pay for a continuous period of at least 2 years. Since 1963, there has been an increase in basic pay at least once in each year. Therefore, retirees could not be entitled to the basic pay in effect at the time of their release because they could not have been entitled to that rate for a continuous 2-year period.

Presenting the Department of Defense position on this bill is Lt. Col. John M. Gasper, Jr. Colonel Gasper is the Assistant Director of Compensation within the Office of the Assistant Secretary of Defense (Manpower and Reserve Officers). We welcome you, Colonel Gasper.

Colonel GASPER. Thank you, Mr. Chairman.

I have with me today Mr. Robert K. Cox.

Mr. Chairman and members of the committee:

I am Lt. Col. John M. Gasper, Jr., Assistant Director of Compensation for Military Personnel Policy. I am pleased to have this opportunity to appear before you today for the purpose of presenting the views of the Department of Defense on H.R. 4105, a bill to amend section 1402(a) of title 10, United States Code, to revise the rule for entitlement to retired or retainer pay to reflect later active duty.

The Department of Defense presented its views on this bill on August 14, 1976. As written at that time, H.R. 4105 would have authorized any retired member who is recalled to active duty for 2 or more years after October 1, 1963 to have his retired pay calculated using basic pay rates in effect upon his release from that active duty. The Department of Defense did not favor that bill because of other equity considerations in the military retirement compensation system which compete for limited retired pay appropriations and the desirability of reviewing the entire matter of recalculating the retired pay of recallees in conjunction with deliberations on the Defense-sponsored proposed Retirement Modernization Act.

The Committee on Armed Services amended H.R. 4105 to limit its application to those members recalled to active duty for 2 or more years after October 1, 1963 and before October 1, 1973, and make any increase in entitlements prospective from date of enactment.

Consequently, the bill before us today would authorize any member who was recalled to active duty for 2 or more years after October 1, 1963 and before October 1, 1973 to have his retired or retainer pay cal-

culated using basic pay rates in effect upon his release from that active duty. Since the bill has an effective date of October 1, 1976, the increase would not apply to retired or retainer pay which accrued before that date. Provisions are also included in the bill which preclude any member from receiving less retired or retainer pay because of the enactment of this legislation. This is necessary to protect certain members reverting to the retired rolls during the periods October 1, 1967 through June 30, 1968 and October 1, 1971 through December 31, 1971. During these periods it was more advantageous for members retiring or reverting to the retired rolls to have their retired pay computed on the basic pay rates in effect immediately before the current rates.

Currently, a retired member recalled to active duty for 2 or more years must be paid under the same basic pay rates for 2 years in order to have his retired or retainer pay calculated under the rates in effect at the time of reverting to the retired rolls. In the instance where this condition is not met, a member is entitled to have his retired or retainer pay recalculated on the basis of pay rates that were in effect immediately preceding the current rates, increased by cost-of-living adjustment if appropriate. The current law also contains a save-pay provision which precludes any member recalled to active duty from experiencing a loss in retired or retainer pay because of that recall. Therefore, if it would be to his advantage, his retired pay could be recalculated on the basis of the retired or retainer pay to which he was entitled upon recall to active duty adjusted by cost-of-living increases from that point until reentry into retired status.

Since 1963, no basic pay rates have remained in effect for as long as 2 years. As a result, the retired or retainer pay of a member recalled to active duty for 2 or more years was calculated on the basis of pay rates that were in effect immediately preceding the current active duty rates. For example, a member who retired for the second time on August 1, 1969 would have had his active duty pay computed on July 1, 1969 pay rates but his retired pay would be based on July 1, 1968 rates. Additionally, his retired pay would be increased by cost-of-living adjustments after July 1, 1968. It should be noted that in recalculating his retired pay, additional retired pay multipliers, longevity step increases, and any promotion that might result from his recall to active duty are taken into account.

An example may serve to illuminate. A member in pay grade E–6, who retired on July 1, 1959 after 22 years of service, was recalled to active duty, commencing a 2-year period, on August 1, 1967. Two years later, on August 1, 1969, his retired pay upon release from active duty would be recalculated to yield a monthly annuity of $267.95. Had he not been recalled to active duty, his monthly retired pay on the same date would have been $195.93, for a difference of $72.02. Carried forward to the present, with intervening CPI adjustments, the former figure would become $461.49, the latter $337.42 or a difference of $124.07. Thus, in spite of not having his retired pay recalculated on the pay scale in effect at the time of reentry onto the retired rolls, recall during the period in question was advantageous to this member.

If enacted, H.R. 4105 would authorize this member to have his retired pay calculated on the basis of retired pay rates in effect upon his release from active duty for reentry onto the retired rolls and would

yield an additional monthly retirement pay advantage of $26.29. Although different examples will yield different results, I believe this one to be typical.

Active duty pay increased at a greater rate than retired pay during the period October 1963 to October 1973, therefore anyone recalled to active duty and subsequently retired during that period (except for the two periods previously mentioned) was disadvantaged on the average of about $20 per month at the time of his second retirement.

In its report on H.R. 4105, the Department of Defense indicated that although it would be reasonable and proper to correct the disparity in the retired pay of this group, there are other equity considerations in the military retirement compensation system which compete with H.R. 4105 for limited retired pay appropriations. Further, the Department's report stated that several of these, to include remedy of the objectionable provisions of the military survivor benefit plan, are of higher priority than the correction proposed in H.R. 4105.

For this reason, the Department of Defense does not favor enactment of H.R. 4105 at this time. The amount of benefit could vary substantially from case to case depending on such factors as the member's grade, his length of service, the basic pay rate under which his present retired or retainer pay is computed, and the interaction of cost-of-living increases to retired pay. A completely accurate determination of cost could be obtained only through identification of each affected member and an individual calculation in each case. The Department of Defense estimates that approximately 2,800 individuals would be affected by this bill and it would cost the Department about $700,000 for fiscal year 1977 which has not been included in the administration's budget.

Mr. Chairman, this concludes my prepared statement.

Mr. MAHON. Thank you, Colonel Gasper. We will now insert in the record at this time the documents referred from the Armed Services Committee.

[The documents follow:]

94TH CONGRESS } HOUSE OF REPRESENTATIVES { Rept. 94–
2d Session } { 1435, Part I

RECALCULATION OF RETIRED OR RETAINER PAY TO REFLECT LATER ACTIVE DUTY

AUGUST 25, 1976.—Ordered to be printed

Mr. STRATTON, from the Committee on Armed Services, submitted the following

REPORT

[To accompany H.R. 4105]

The Committee on Armed Services, to whom was referred the bill (H.R. 4105) to amend section 1402(a) of title 10, United States Code, to revise the rule for computation of retired or retainer pay to reflect later active duty, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following in place thereof:

"That section 1402(a) of title 10, United States Code, is amended by amending footnote 1 of the table therein as follows:

(A) Amend the second sentence of the footnote to read as follows: "Except as provided in the last sentence of this footnote, for a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty.".

(B) Insert the following new sentence at the end of the footnote: "For a member who, having been called to active duty after October 1, 1963, was released from active duty before October 1, 1973, after having served on active duty for a continuous period of at least two years, compute under the rates of basic pay in effect upon that release from active duty.".

SEC. 2. No person shall receive less retired or retainer pay by reason of enactment of this Act.

SEC. 3. The amendment made by section 1 of this Act is effective on October 1, 1976."

EXPLANATION OF THE AMENDMENT

The amendment is in the nature of a substitute which strikes all after the enacting clause and inserts new language. The amendment has the effect of limiting the bill to the period from October 1, 1963, to October 1, 1973; of changing the effective date to October 1, 1976, thus prohibiting retroactive pay; and of incorporating a savings clause so

that no one would suffer a reduction in retired or retainer pay as a result of the legislation.

PURPOSE

The purpose of the bill, as amended, is to permit military retirees who were recalled to active duty for two years or more during the period October 1, 1963, to October 1, 1973, to recalculate their retired pay on the basic-pay rates in effect at the time they reverted to the retired list.

BACKGROUND

The retirement laws now provide that a retired member of the Armed Forces recalled to active duty may recalculate his retired pay on the rates of basic pay in effect at the time of his later release from duty only if he has been on active duty for a continuous period of at least two years and only if he has been entitled to that basic pay for a continuous period of at least two years.

At the time of the 1958 pay act, a provision was placed in law requiring a minimum of one year's active duty in order to recalculate retired pay on the higher scales for those who had been recalled. In the pay act of 1963 the requirement was extended to two years. The purpose of this legislative restriction was to prevent the gaining of a new retired-pay rate on the basis of a very short tour of active duty.

The wording of the law is such that the basic pay would have to be without change for a period of at least two years in order for a recalled retiree to be able to recalculate on the later scales. Since 1963 there has been an increase in basic pay at least every year. Therefore, a recalled retiree could serve as many as five or more years after being recalled to active duty but under the restrictions could not recalculate his retirement pay on the basis of his last pay rate.

During the Vietnam War there were a number of critical skills which were in short supply in the active force. In order to fill those shortages persons on the retired rolls or in the Fleet Reserve who possessed those skills were invited to apply for recall to active duty. At least some of those recalled were assured by the Department of the Navy that if they accepted recall to active duty, they would, when released, be entitled to recalculate their retired pay on the basic-pay rates in effect at the time of their release. As explained above, these assurances could not be fulfilled since basic-pay rates have, since 1963, been changed at least once a year.

The bill as introduced would permanently change the law to permit a retired member who serves on active duty for two or more years to recalculate his retired pay on the pay rates in effect when released from duty.

As amended by the committee, the bill would be limited to only those persons who were recalled to active duty during the period of October 1, 1963, to October 1, 1973. The purpose of this change is to limit the applicability to those who were recalled to active duty during the Vietnam War and to avoid providing an open-ended law for the future whose impact and cost implications could not be precisely determined.

As amended by the committee, the bill also contains a provision to ensure that no person would suffer a reduction in retired pay or retainer pay by reason of enactment of the bill. Through a combination

of factors involving the date a member is released from active duty and the increases in rates of basic pay and increases in retired pay, it is possible that some recalled individuals would receive less retired pay or retainer pay by recalculating their retired pay on the basis of rates in effect when they were released.

As amended by the committee, the bill would be effective October 1, 1976, and there would be no retroactive pay and no increase in entitlements for periods before October 1, 1976.

Departmental Data

The Department of Defense, during the 93d Congress, favored enactment of legislation similar to H.R. 4105. However, in a report dated August 3, 1976, the Department of Defense stated:

> Although it would seem reasonable and proper to correct the disparity in retired pay of this group, there are other inequity corrections in the military retirement compensation system which vie with H.R. 4105 for limited retired pay appropriations.

For that reason and others as cited in the following letter, which is hereby made a part of this report, the Department of Defense opposes enactment of H.R. 4105 at this time.

General Counsel of the Department of Defense,
Washington, D.C., August 3, 1976.

Hon. Melvin Price,
Chairman, Committee on Armed Services,
House of Representatives, Washington, D.C.

Dear Mr. Chairman: In accordance with your request, we have reviewed the provisions of H.R. 4105, 94th Congress, a bill to amend section 1402(a) of title 10, United States Code, to revise the rule for computation of retired pay or retainer pay to reflect later active duty. Mr. Broyhill has also introduced a bill, H.R. 277, 94th Congress, which is virtually identical to H.R. 4105.

H.R. 4105 would amend footnote 1 of the table contained in section 1402(a) of title 10, United States Code, by providing that any member of an armed force who has become entitled to retired or retainer pay and who thereafter serves on active duty for two or more years would be entitled to retired or retainer pay based on the rates of basic pay in effect upon his release from that active duty. For any member who has become entitled to retired or retainer pay and who thereafter serves on active duty for less than two years, such pay would be computed on the basis of the rates of basic pay under which his retired or retainer pay was computed when he entered on that active duty, increased by any intervening cost-of-living increases authorized by section 1401a of title 10, United States Code. Although the language relative to cost-of-living increases is not currently contained in footnote 1 of the table in section 1402(a), the retired or retainer pay of a member who served less than two years of active duty on recall is adjusted by applicable cost-of-living increases in accordance with section 1401a of title 10, United States Code. Therefore, when a retired member has served on active duty for less than two years, H.R. 4105 would not change the existing

statutes regarding the computation of his pay when he reverts to the retired rolls.

The footnote in question relating to the recalculation of retired or retainer pay for members who have served on active duty for at least two years now provides as follows: "For a member who has been entitled, for a continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty."

Since 1963, no basic pay rates have remained in effect for as long as two years. Consequently, the retired pay of a retired member recalled to active duty for at least two years has been recalculated on the basis of pay rates that were in effect immediately preceding the current active duty basic pay rate. For example, a member who reverted to the retired rolls on August 1, 1970 after serving on active duty for two years, had his active duty pay computed under rates that were in effect on January 1, 1970, but his retired pay is computed on the rates that became effective on July 1, 1969. His retired pay was then increased by CPI adjustments that became effective between July 1, 1969 and the date of reverting back to the retired rolls. Under these circumstances a retired member recalled to active duty for at least two years would always have his subsequent retired pay based on one pay scale behind the rates in effect at the time he reverts to the retired rolls. However, section 1402(e) of title 10, United States Code, provides that the member may elect to have his retired pay recalculated on the basis of the basic pay rate used compute his retired pay at the time of recall to active duty.

H.R. 4105 would change the present law to provide that the current active duty basic pay rate, instead of the rate that was in effect immediately before the current rate, may be used to recalculate the retired pay of a member reverting to the retired rolls after serving on active duty for at least two years. This legislation is proposed to cover those retired members who were recalled to active duty during the Vietnam Conflict who were under the impression that their retired pay would be recalculated on the basic pay rates in effect at the time they reverted to the retired rolls.

During the period from October 1, 1963 until October 1, 1973 active duty pay increased at a greater rate than retired pay, except for a few general officers. Thus, during this period anyone recalled to active duty from retired status and having served on active duty for two or more years incurred a loss in retired pay averaging about $20 per month by reason of computing this pay based on the pay scales effective just prior to reverting to the retired rolls. In recent years, however, retired pay has increased through the adjustment process at a greater rate than active duty pay. Because of this, those who initially retired before October 1, 1972 and reenter the retired rolls on or after October 1, 1973 find it to their advantage to have their retired pay computed on the previous pay scale adjusted forward for cost of living increases. In that H.R. 4105 would become effective on October 1, 1963 and would continue to be applicable to those recalled and sepa-

rated after enactment, it would work to the advantage of those recalled and separated between October 1, 1963 and October 1, 1973 whereas it would be disadvantageous to those recalled and reentered into retired status after that date with few execptions. In both cases of course, the recall to active duty would have to be for a period of two or more years. Overpayments to those recalled and again retired on or after October 1, 1973 would be subject to collection action. It may be possible to waive collection action under the provisions of section 2774 of title 10 or section 714 of title 32, United States Code, as applicable. Nevertheless, it would appear more appropriate to include specific language in H.R. 4105 authorizing the Military Departments not to collect such overpayments. However, their retired pay on and after the date of enactment would be adjusted downward in accordance with the provisions of H.R. 4105. That bill would not have any adverse effect on members who initially became entitled to retired pay that was computed on basic pay rates in effect on October 1, 1972 or subsequent years, since such rates would be used, as authorized by subsection 1402(e), to recalculate their retired pay.

H.R. 4105 could be amended to apply only to those retirees recalled for two or more years on active duty between October 1, 1963 and October 1, 1973. Although it would seem reasonable and proper to correct the disparity in retired pay of this group, there are other inequity corrections in the military retirement compensation system which we vie with H.R. 4105 for limited retired pay appropriations. Several of these, to include remedy of the objectionable provisions of the military Survivor Benefit Plan, are of higher priority than the correction proposed in H.R. 4105, none of which have been specifically provided for in the Defense budget for fiscal year 1977.

Further, it would appear most appropriate to review the entire matter of recalculating the retired pay of recallees in conjunction with deliberations on the Defense sponsored Retirement Modernization Act. One provision of this Act, that which would require computing retired pay based on the average of basic pay over the last 12 months of service, would impact on the computation of the retired pay of those recalled from retired status for two or more years of active duty. Cost savings, providing these result from the retirement modernization initiatives, could be used to offset the additional costs incurred through retroactive correction of the problem addressed in H.R. 4105.

For reasons cited above, the Department of Defense does not favor enactment of H.R. 4105 at this time. The exact number of persons who would benefit by enactment of H.R. 4105 can not accurately be determined without a prohibitively expensive manual analysis of retired pay records. The amount of benefit could vary markedly from case to case depending on such factors as the member's grade, his length of service, the basic pay rate under which his present retired pay is computed, and the interaction of cost-of-living increases to retired pay. A completely accurate determination of cost could be obtained only through identification of each affected member and an individual calculation in each case. The following is an estimate of the number of persons who would benefit by enactment of H.R. 4105 and the cost for fiscal year 1977.

Estimated number of persons affected	2,800
Estimated cost	$5,000,000

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on H.R. 4105 for the consideration of the Committee.

Sincerely,

RICHARD A. WILEY.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill amends the footnote numbered "1" to the table in subsection (a) of section 1402 of title 10, United States Code, (relating to recomputation of retired pay to reflect later active duty) as follows:

Clause (A) amends the second sentence of that footnote by adding the words "Except as provided in the last sentence of this footnote" at the beginning of that sentence, so as to exempt from the rule in that sentence, the category of persons covered by the new language added at the end of the footnote by clause (B) of this section.

Clause (B) adds a new sentence to the footnote "1" to the table in subsection 1402(a) of title 10, United States Code, which recites that persons recalled to active duty after October 1, 1963, who are released from active duty before October 1, 1973, after having served continuously on active duty for at least two years are entitled to use the rates of basic pay in effect at the time of that release from active duty in recomputing their retired pay.

Section 2 of the bill is a savings provision which specifies that no person will receive less retired or retainer pay because of enactment of this act.

Section 3 of the bill specifies that the amendment made by section 1 is effective from October 1, 1976. The effect of this section is to provide that any increase in monthly retired or retainer pay as authorized by section 1 of the act will be payable only for retired or retainer pay payable on and after October 1, 1976.

COMMITTEE POSITION

The Committee on Armed Services, on August 24, 1976, a quorum being present, approved H.R. 4105, as amended, by voice vote.

FISCAL DATA

There are approximately 2,800 retired members of the Armed Forces who were recalled to active duty during the period October 1, 1963, to October 1, 1973.

The estimated cost of the bill for these retirees is $1.7 million in fiscal year 1977.

EXECUTIVE BRANCH ESTIMATE

The Department of Defense, as indicated in the Departmental Data, estimated the fiscal year 1977 cost of the bill at $5 million. The Defense Department estimate, however, was based on the original bill and assumed a retroactive catchup payment for the retirees concerned. As

amended by the committee, the bill provides no retroactive payments; and this change reduces the fiscal year 1977 cost to $1.7 million.

Congressional Budget Office Estimate

In compliance with clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget Act of 1974 is included hereafter:

August 23, 1976.

Congressional Budget Office Cost Estimate

1. Bill number: H.R. 4105 (as amended).
2. Bill title: Computation of Retired Pay to Reflect Later Active Duty.
3. Purpose of the bill: This bill of March 3, 1975 (as subsequently revised by an undated change) amends Section 1402(a) of Title 10, United States Code, to revise the rule for computation of retired or retainer pay to reflect later active duty.

Under current law, an individual who is recalled to active duty from retirement for at least two continuous years can have his retired pay recomputed using basic pay rates in effect at the time of his release from recall. However, recomputation is based on basic pay rates at the time of release from recall only if the rates have been in effect for two continuous years. Since 1963, no basic pay rates have remained in effect for two continuous years. Consequently, the retired pay of those recalled for at least two continuous years is now recomputed using basic pay rates that exclude the latest pay raise. The individual does receive Consumer Price Index (CPI) adjustments after the effective date of the basic pay rates upon which his retirement is based.

H.R. 4105, as revised, allows recomputation based on the latest basic pay rates, regardless of how long they have been in effect, for any recalled retiree who has served for at least two continuous years. H.R. 4105 would apply to all persons who are recalled in the future and to those recalled to active duty after October 1, 1963 and released from active duty before October 1, 1973. The bill provides that no person's retired pay will be reduced by the change, but increases due to H.R. 4105 are payable only after October 1, 1976, and are not retroactive.

4. Budget impact: Estimates below indicate how H.R. 4105 will affect the military retired pay appropriation:

Fiscal year:	*(Dollar amounts in millions)*
1977	+1.7
1978	+1.8
1979	+1.9
1980	+2.0
1981	+2.1

5. Basis for estimate: DOD estimates that between 1963 and 1973 a total of 2,800 individuals were recalled to active duty from retire-

ment, served at least two continuous years, and were released. No information is available on the paygrade, longevity, or exact time of retirement of these individuals. Therefore, in order to estimate the increased cost of recomputing retired pay for these 2,800 individuals under H.R. 4105, several assumptions were made in accounting for the major factors that affect costs: (1) an equal number of the 2,800 individuals were assumed to be released from active duty in each of the years 1965 to 1973; (2) the grade mix of those released from active duty was assumed equal to the grade mix of all officers and enlisted currently on active duty who have 22 or more years of service; (3) for purposes of estimating deaths, the average person released from active duty was assumed to be 45 years old; (4) no attempt was made to reflect effects of the exact timing of release.

Estimates reflect past wage and CPI growth and also assume the following future percentage increases in wages (and CPI): fiscal year 1977, 4.7 (5.6); fiscal year 1978, 6.3 (5.6); fiscal year 1979, 6.2 (5.4); fiscal year 1980, 6.5 (5.6); fiscal year 1981, 6.8 (5.8). Estimates assume that current retirement adjustment laws (including the one-percent kicker) continue in effect.

In addition to the costs of these 2,800 individuals recalled between 1963 and 1973, there may be increased costs associated with individuals recalled after 1 October 1976. However, no costs are included for this group because the large retired CPI increases in fiscal year 1972–75, plus future CPI increases including the one-percent kicker, will make it advantageous for most retirees recalled and released in fiscal year 1977–81 to compute their retired pay using basic pay rates in effect at the time of their first retirement, rather than using the provisions of H.R. 4105.

6. Estimate comparison: In its letter of 3 August 1976 accompanying H.R. 4105, DOD estimated that H.R. 4105 would increase fiscal year 1977 costs by $5 mililon. This estimate assumed that retirees recalled since 1963 received a catch-up payment to make up for retired pay lost between 1963 and 1976. The revised version of H.R. 4105 would be effective 1 October 1976, rather than 1 October 1963. Hence, the fiscal year 1977 costs do not include this catch-up and so are lower than DOD's estimates.

DOD has not estimated costs beyond fiscal year 1977.

Inflation-Impact Statement

The enactment of this legislation will not have an inflationary impact on the economy of the United States.

Oversight Findings

With reference to clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

In compliance with clause 3 of the rule XIII of the Rules of the House of Representatives, there is herewith printed in parallel columns the text of existing law which would be repealed or amended by the various provisions of the bill as reported.

EXISTING LAW

TITLE 10—ARMED FORCES

Chapter 71.—COMPUTATION OF RETIRED PAY

Sec.
1401. Computation of retired pay.
1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index.
1402. Recomputation of retainer pay to reflect later active duty.
1403. Disability retired pay: treatment under title 26.
1404. Applicability of section 8302 of title 5.
1405. Years of service.
1406. Limitations on revocation of retired pay.

§ 1402. Recomputation of retired or retainer pay to reflect later active duty.

(a) A member of an armed force who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty as follows:

THE BILL AS REPORTED

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1402(a) of title 10, United States Code, is amended by amending footnote 1 of the table therein as follows:

(A) Amend the second sentence of the footnote to read as follows: "Except as provided in the last sentence of this footnote, for a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty.".

(B) Insert the following new sentence at the end of the footnote: "For a member who, having been called to active duty after October 1, 1963, was released from active duty before October 1, 1973, after having served on active duty for a continuous period of at lease two years, compute under the rates of basic pay in effect upon that release from active duty.".

SEC. 2. No person shall receive less retired or retainer pay by reason of enactment of this Act.

SEC. 3. The amendment made by section 1 of this Act is effective on October 1, 1976."

EXISTING LAW

Col. 1, take—	Col. 2, multiply by—	Col. 3, subtract—
Monthly basic pay[1] of the grade in which he would be eligible— (1) to retire if he were retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he were transferring to either upon that release from active duty.	21½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.[2]	Excess over 75 percent of pay upon which computation is based.

[1] For a member who has been entitled, for a continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member, compute under the rates of basic-pay under which the member's retired pay or retainer pay was computed when he entered on that active duty.

[2] Before applying the percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months.

THE BILL AS REPORTED

However, an officer who was ordered to active duty (other than for training) in the grade that he holds on the retired list under former section 6150 of this title, or under any other law that authorized advancement on the retired list based upon a special commendation for the performance of duty in actual combat, may have his retired pay recomputed under this subsection on the basis of the rate of basic pay applicable to that grade upon his release from that active duty only if he has been entitled, for a continuous period of at least three years, to basic pay at that rate. If upon his release from that active duty, he has been entitled to the basic pay of that grade for a continuous period of at least three years, but he does not qualify under the preceding sentence, he may have his retired pay recomputed under this subsection on the basis of the rate of basic pay prescribed for that grade by the rates of basic pay replaced by those in effect upon his release from that duty.

Summary

PURPOSE

The purpose of the bill is to permit military retirees recalled to active duty for two years or more during the period October 1, 1963, to October 1, 1973, to recalculate their retired pay on the basic-pay rates in effect at the time they reverted to retired status.

FISCAL DATA

The estimated cost of H.R. 4105 for fiscal year 1977 is $1.7 million.

DEPARTMENTAL POSITION

The Department of Defense, although it supported a similar bill in the 93d Congress, opposes H.R. 4105 at the present time.

COMMITTEE POSITION

The Committee on Armed Services, on August 24, 1976, a quorum being present, approved H.R. 4105, as amended, by voice vote.

○

94TH CONGRESS
2D SESSION

H. R. 4105

[Report No. 94–1435, Part I]

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1975

Mr. SISK introduced the following bill; which was referred to the Committee on Armed Services

AUGUST 25, 1976

Reported with an amendment, referred to the Committee on Appropriations for a period not to exceed fifteen legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93–344

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend section 1402(a) of title 10, United States Code, to revise the rule for computation of retired or retainer pay to reflect later active duty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That section 1402(a) of title 10, United States Code, is amended by amending footnote 1 of the table therein to read as follows:~~

~~"For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, compute under the rates of basic pay in effect upon that release from active duty. For any other member, compute under the rates of basic pay under which the mem-~~

~~ber's retired pay or retainer pay was computed when he entered on that active duty, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.".~~

~~SEC. 2. The amendment made by section 1 of this Act is effective on October 1, 1963.~~

That section 1402(a) of title 10, United States Code, is amended by amending footnote 1 of the table therein as follows:

(A) Amend the second sentence of the footnote to read as follows: "Except as provided in the last sentence of this footnote, for a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active.".

(B) Insert the following new sentence at the end of the footnote: "For a member who, having been called to active duty after October 1, 1963, was released from active duty before October 1, 1973, after having served on active duty for a continuous period of at least two years, compute under the rates of basic pay in effect upon that release from active duty.".

SEC. 2. No person shall receive less retired or retainer pay by reason of enactment of this Act.

SEC. 3. The amendment made by section 1 of this Act is effective on October 1, 1976.

Mr. BURLISON. In a letter to the chairman of the House Armed Services Committee dated August 3, 1976, the Department of Defense went on record as opposed to this legislation. However, at that time it was understood that the proposed legislation assumed a retroactive catchup payment for all retirees covered by the bill. Thus, the estimated cost to the Department of Defense was about $5 million. The revised cost estimated for fiscal year 1977 contained in the report supporting this legislation is $1.7 million. Your statement shows an even smaller cost estimate of only $700,000. In view of this, why does the Department continue to object to passage at this time?

Colonel GASPER. Mr. Burlison, this is just one of several inequities that are present within the military compensation structure.

In attempting to attack these inequities, the Department has assigned priorities. We feel that when compared to other priorities that the recallee's priority is of a lower case and, as a result, we do not favor it at this time.

Mr. BURLISON. In a sense, this is a recomputation bill, although a limited one. This is a subject which is considered extremely controversial. In your view, will this bill act as a catalyst and cause the whole question of recomputation to be brought up again? You are aware of the fact that various general recomputation proposals have passed the Senate after being tacked onto other legislation?

Colonel GASPER. Yes, sir, the Department does not believe this will kick up the controversy of recomputation. It is essentially a recalculation for a particular group of people.

We are talking here about retirees recalled to active duty. It is a recalculation of their pay based upon later active service. We do not feel that this will kick up the controversy on recomputation which would attempt to tie retired pay to the active duty scales for everybody across the board.

Mr. BURLISON. In view of the fact that the cost estimate for this bill has been reduced to $700,000, how can the Department continue to object to its passage on grounds "that there are other equity considerations in the military retirement system which compete with H.R. 4105 for limited retired pay appropriations." The amount of money involved is now considerably less than your ability to accurately estimate the amounts required for retired pay.

Colonel GASPER. Yes, sir, I think what is easily overlooked in this instance is the fact that these retirees when they were recalled to active duty and subsequently retired bettered their position substantially, vis-a-vis their retired pay before active duty and after their current tour or their tour of service.

As a result, the disadvantage to them I think averaged in the neighborhood of approximately $20 a month.

Mr. VANDER SCHAAF. What I understand you to be saying is that the Department of Defense is not objecting necessarily to the total cost of this package, but is objecting to the fact you do not feel we ought to adjust the retired pay laws every time someone figures out he can make $20 or $30 more simply by having a minor adjustment, that these people have in fact benefited substantially by being called to active

duty for more than 2 years, and the fact that they can benefit by an additional $20 is relatively immaterial; is that what you are saying?

Colonel GASPER. That is generally correct.

If you review the bidding, this is one reason why this bill fell on a lower priority on our scale of priorities. We felt if there are inequities to be solved this one is of a lesser priority than the others.

Mr. BURLISON. If Section 2 had not been added to the bill which states that "no person shall receive less retired or retainer pay by reason of enactment of this act," but the effective date of October 1, 1976, remained unchanged, how many personnel would have had their retired pay reduced?

Colonel GASPER. Without reviewing all of the records involved, we have no way of knowing how many might have their retired pay reduced without the save pay clause. In all probability there would be a few.

Mr. EDWARDS. But if it is an inequity and you do find yourself here with a bill and you do admit it is an inequity, why would you oppose it?

It may not have been the bill you would have proposed to Congress to bring up first in solving inequities, but if you admit there is some inequity, why would you oppose the bill since it is here?

Colonel GASPER. There are other bills that are about ready to be brought before the committee, sir, and we feel that we should do nothing to jeopardize those bills; we feel that we have a priority list that we would like to go ahead and press on to solve, without doing anything to jeopardize these.

Additionally, if we take a few dollars here, a few dollars there, these all tend to add up cumulatively and we soon find ourselves jeopardizing legislation that we would favor over the current legislation.

Mr. EDWARDS. Finally, would it concern you, if we pass this, that the next move might be to propose legislation for the retroactive catchup payment for all retirees covered by this kind of a bill?

Colonel GASPER. No, sir, I do not believe that the success of this legislation would affect a retroactive payment. I do not believe we would have any fear that that would happen or there would be a move for that.

Mr. EDWARDS. You do not think that would be a necessary follow-on having gotten the foot in the door, so to speak, and then come back with that?

Colonel GASPER. I do not, sir.

Mr. EDWARDS. Thank you.

MAKING CERTAIN ANNUITY ENTITLEMENT PROVISIONS FOR SURVIVORS OF NON-REGULAR RETIRED PERSONNEL RETROACTIVE TO NOVEMBER 1, 1953 (S. 2090)

Mr. BURLISON. We will move now to the next bill, making certain new entitlement provisions for provisions of non-regular retired personnel retroactive to November 1, 1953.

This particular bill (S. 2090) has been recommended by both Armed Services Committees and the Department of Defense has interposed no objection to its enactment. Thus, it is hoped that the Committee can quickly dispense with this bill. Lieutenant Colonel Gasper, I understand that you are also qualified to state the Department of Defense position with respect to this bill. Before you do that, briefly tell us what the bill provides. We will also insert a copy of the appropriate reports and bill in the record at this point.

[The documents follow:]

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 94–
2d Session } { 1436 Part 1

AUTHORIZING BENEFITS UNDER THE RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN TO WIDOWS OF CERTAIN DECEASED RESERVISTS

AUGUST 25, 1976.—Ordered to be printed

Mr. STRATTON, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 2090]

The Committee on Armed Services, to whom was referred the bill (S. 2090) to make the provisions of section 1331(e) of title 10, United States Code, retroactive to November 1, 1953, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the bill is to allow for the payment of widow's annuity under the Retired Serviceman's Family Protection Plan (RSFPP) in the case of a reservist who died before August 13, 1968, and whose death occurred after his 60th birthday but before the first day of the next month. (The problem would not occur in the case of a reservist who died after August 13, 1968, because the law was changed on that date to provide eligibility for benefits on the date the reservist reaches age 60, rather than the first day of the next month.)

BACKGROUND

Under the current provisions of subsection 1331(e) of title 10, United States Code (which were enacted effective August 13, 1968), a reservist who has completed the necessary years of service to qualify for retired pay is, on application, entitled to receive that pay on his 60th birthday. If such a reservist has elected to participate in the Retired Serviceman's Family Protection Plan (or the successor Survivor Benefit Plan), his survivors would be entitled to a survivor annuity if he dies at any time after he attains age 60.

Before August 13, 1968, a reservist who was otherwise qualified for retired pay was entitled to retired pay only from the first day of the month after he attained age 60. If such a reservist died after attaining

age 60 but before the first day of the next month, his survivors would not be entitled to a survivor annuity even though he had elected participation in the Retired Serviceman's Family Protection Plan.

S. 2090, by specifying that for the purposes of survivor annuities authorized by subchapter I of chapter 73 of title 10, United States Code, and predecessor laws, the provisions of subsection 1331(e) of title 10 would be effective from November 1, 1953, would have the effect of providing survivor annuities to eligible survivors in those rare instances in which a reservist who, having completed the years of service required to qualify for Reserve retired pay, and having elected to participate in the Retired Serviceman's Family Protection Plan, died after age 60 but before the first day of the following month.

Departmental Data

The Department of Defense has no objection to the enactment of S. 2090, as is indicated by the following letter which is hereby made a part of this report:

General Counsel of the Department of Defense,
Washington, D.C., August 3, 1976.

Hon. Melvin Price,
Chairman, Committee on Armed Services,
House of Representatives, Washington, D.C.

Dear Mr. Chairman: In accordance with your request, the provisions of S. 2090, 94th Congress, a bill "To make the provisions of section 1331(e) of title 10, United States Code, retroactive to November 1, 1953," have been reviewed.

Before August 13, 1968, a member of a reserve component who was otherwise qualified for retired pay under chapter 67 of title 10, United States Code, and had applied therefor, would begin to receive that pay on the first day of the month following the month in which he attained age 60. If such a member who had elected participation in the Retired Serviceman's Family Protection Plan (RSFPP), died after he attained age 60 but before the first day of the month following the month in which he attained the age, his survivors would not be eligible for benefits under the RSFPP.

Public Law 90–485 amended section 1331 of chapter 67 of title 10, United States Code, by adding subsection (e), effective August 13, 1968, which had the effect of providing that thereafter a member or former member of a reserve component who was otherwise qualified for retired pay would be entitled to that pay effective from the date he attained age 60. Accordingly, the designated survivor of such a person who had elected to participate in the RSFPP and died after attaining age 60 but before the first day of the following month would be eligible for benefits under the RSFPP.

The apparent purpose of S. 2090 is to provide survivor benefit coverage under the RSFPP for a designated eligible beneficiary of a member of a reserve component who, on or before August 13, 1968 was qualified for retired pay under chapter 73 of title 10, United States Code, but who died on or before the first day of the month following the month in which he attained age 60.

The Department of Defense has no objection to enactment of S. 2090.

Cost and Budget Data

The number of survivors who would be eligible for benefits under this legislation is not known. It is believed that the legislation would result in negligible costs to the Department of Defense.

Sincerely,

Richard A. Wiley.

Committee Position

The Committee on Armed Services, on August 24, 1976, a quorum being present, approved S. 2090 by a rollcall vote of 25 to 0, with 1 voting present.

Fiscal Data

Only one potential beneficiary has been brought to the attention of the committee. While there may be a few other potential beneficiaries, the number would be extremely small and the cost negligible.

Executive Branch Estimate

The Department of Defense states that the bill would result in negligible costs to the Department.

Congressional Budget Office Estimate

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget Act of 1974 is included hereafter:

August 23, 1976.

Congressional Budget Office Cost Estimate

1. Bill No.: S. 2090.
2. Bill title: Survivor pay for certain survivors of Reserve retirees.
3. Purpose of the bill: This bill makes the provisions of Section 1331(e) of Title 10, United States Code, retroactive to 1 November 1953.

Before August 1968, a member of a reserve component who was otherwise qualified for retired pay, and had applied for retired pay, would begin to receive that pay on the first day of the month following the month in which he attained age 60. If such a member had elected participation in the Retired Serviceman's Family Protection Plan (RSFPP), and died after he attained age 60 but before the first day of the following month, his survivors would not be eligible for benefits under the RSFPP.

Under a change in the law effective after August 1968, survivors of those retired reserves who elected coverage under RSFPP received survivor's benefits even if the reservist died between the day he reached

age 60 and the first day of the following month. This bill makes this provision of the August 1968 law retroactive to 1 November 1953.

4. Budget impact: It is estimated that this bill would increase costs in the military retired pay appropriation by less than $25,000 per year.

5. Basis of estimate: Costs of S. 2090 are small because the bill would only affect survivors of reserves who both reached age 60 between 1953 and 1968 and died between their 60th birthday and the first day of the following month. In addition, costs are reduced by deaths among survivors, because not all reserves participated in RSFPP, and because RSFPP survivors do not receive CPI adjustments.

Estimates are based on actuarial reconstructions since no data was available.

6. Estimate comparison: DOD did not estimate the costs of this bill, but indicated they felt they were negligible.

Inflation-Impact Statement

Because it affects only a relatively small group of people, this legislation will not have a significant impact on the national economy.

Oversight Findings

With reference to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

76-977 O - 76 - 5

Changes in Existing Law

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, there is herewith printed in parallel columns the text of existing law which would be repealed or amended by the various provisions of the bill as reported.

EXISTING LAW

TITLE 10, UNITED STATES CODE

Chapter 67.—RETIRED PAY FOR NON-REGULAR SERVICE

Sec.

§ 1331. Age and service requirements.

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 1401 of this title, if—

(1) he is at least 60 years of age;

(2) he has performed at least 20 years of service computed under section 1332 of this title;

THE BILL AS REPORTED

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

(3) he performed the last eight years of qualifying service while a member of any category named in section 1332(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve; and

(4) he is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of the Treasury, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

(c) No person who, before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 1332(a)(1) of this title except a regular component, is eligible for retired pay under this chapter, unless he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947, or unless he performed active duty (other than for training) after June 26, 1950, and before July 28, 1953.

(d) The Secretary concerned shall provide for notifying each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice must be sent, in writing, to the person concerned within one year after he has completed that service.

(e) Notwithstanding section 8301 of title 5, United States Code, the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed. (Aug. 10, 1956, ch. 1041, 70A Stat. 102; Aug. 21, 1958, Pub. L. 85–704, 72 Stat, 702; Sept. 2, 1958, Pub. L. 85–861, § 3(a)(8), 72 Stat. 1564; Oct. 14, 1966, Pub. L. 89–652, § 1, 80 Stat. 902; Aug 13, 1968, Pub. L. 90–485, § 2, 82 Stat. 754.)

That for the purposes of survivor annuities under subchapter I of chapter 73 of title 10, United States Code, and under prior corresponding provisions of law, the provisions of section 1331(e) of such title 10, relating to the date of entitlement to retired pay under chapter 67 of such title 10, shall be effective as of November 1, 1953.

SEC. 2. No benefits shall be paid to any person for any period prior to the date of enactment of this Act as a result of the enactment of this Act.

SUMMARY

PURPOSE

The purpose of the bill is to allow for payment of a widow's annuity under the Retired Serviceman's Family Protection Plan (RSFPP) in the case of a reservist who died before August 13, 1968, and whose death occurred after his 60th birthday but before the first day of the next month.

FISCAL DATA

There will be, at most, only a small number of beneficiaries and, therefore, the cost of the bill will be negligible.

DEPARTMENTAL POSITION

The Department of Defense has no objection to the enactment of S. 2090.

COMMITTEE POSITION

The Committee on Armed Services, on August 24, 1976, a quorum being present, approved S. 2090 by a rollcall vote of 25 to 0, with 1 voting present.

94TH CONGRESS
2D SESSION

S. 2090

[Report No. 94–1436, Part I]

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 1975

Referred to the Committee on Armed Services

AUGUST 25, 1976

Reported without amendment, referred to the Committee on Appropriations for a period not to exceed fifteen legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93–344

AN ACT

To make the provisions of section 1331(e) of title 10, United States Code, retroactive to November 1, 1953.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of survivor annuities under subchapter I of chapter 73 of title 10, United States Code, and under prior corresponding provisions of law, the provisions of section 1331(e) of such title 10, relating to the date of entitlement to retired pay under chapter 67 of such title 10, shall be effective as of November 1, 1953.

SEC. 2. No benefits shall be paid to any person for any period prior to the date of enactment of this Act as a result of the enactment of this Act.

Passed the Senate December 17 (legislative day, December 15), 1975.

Attest: FRANCIS R. VALEO,

Secretary.

Calendar No. 536

94TH CONGRESS, 1st Session | SENATE | REPORT No. 94-560

MAKING CERTAIN ANNUITY ENTITLEMENT PROVISIONS FOR SURVIVORS OF NON-REGULAR RETIRED PERSONNEL RETROACTIVE TO NOVEMBER 1, 1953

DECEMBER 15, 1975.—Ordered to be printed

Mr. NUNN, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 2090]

The Committee on Armed Services, to which was referred the bill (S. 2090) to make the provisions of section 1331(e) of title 10, United States Code, retroactive to November 1, 1953, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

WHAT THE BILL DOES

The bill would make survivor benefits payable to survivors of retired non-Regular personnel who had elected the survivor benefit plan and who died before 1968 after they became eligible for retirement but before the first day of the month following the date of eligibility, on which day they would have become entitled to retired pay. Under existing law, non-Regular personnel who retired before August 13, 1968 were entitled to retired pay on the first day of the month following the date of retirement. If such a member had elected participation in the Retired Serviceman's Family Protection Plan (RSFPP) and had retired and died before August 13, 1968 and before the first day of the month following the month in which he became entitled to retired pay, his survivors are not eligible for benefits under the RSFPP. The bill would correct an inequity in the law by making the survivors of non-Regular personnel in this category eligible for RSFPP benefits. Survivors of non-Regular retired personnel who retired after August 13, 1968 are currently eligible for RSFPP benefits as of the date of the member's retirement eligibility.

No benefits paid under the authority of S. 2090 would be paid for any period prior to the enactment of the legislation.

Background

Prior to August 13, 1968, any member of a reserve component who was qualified (under chapter 67, title 10, U.S. Code) and had applied for retired pay would begin to receive that pay on the first day of the month following the month in which he became eligible. Under the Retired Serviceman's Family Protection Plan (RSFPP), survivors of retired non-Regular personnel became eligible for RSFPP benefits only if the member they survived elected to receive such benefits and died after the date of retired pay entitlement, i.e., after the first day of the month following the date of retirement eligibility. Thus, the survivors of an otherwise qualified retired reservist who died during the period of time between the date on which he met all the requirements for retired pay (10 U.S.C. 1331) and the date of entitlement to such pay were denied RSFPP survivor annuities.

In 1968, Congress passed legislation (Public Law 90–485) to disentangle the non-Regular retired military benefits structure from the Uniform Retirement Act of 1930. In so doing, section 1331 title 10, United States Code was amended by adding subsection (e) to provide that a retired reservist would become entitled to retired pay effective from the date on which he became qualified for such pay. Accordingly, the survivors of retired reservists who had elected to participate in the RSFPP and died after qualifying for retired pay but before the first day of the following month would henceforth be eligible for RSFPP benefits. This has been the case since August 13, 1968, the date of enactment of Public Law 90–485.

However, in 1968 Congress failed to take into account those instances in which retired reservists in the RSFPP program died during the time period between retired pay eligibility and entitlement prior to August 13, 1968. S. 2090 would take such cases into account by making the provision of section 1331(e), title 10, U.S. Code, retroactive to November 1, 1953, the effective date of the Retired Serviceman's Family Protection Plan program.

The number of survivors who would be affected by this bill is expected to be small.

Departmental Position

General Counsel of the Department of Defense,
Washington, D.C., November 17, 1975.

Hon. John C. Stennis,
Chairman, Committee on Armed Services, U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: In accordance with your request, the provisions of S. 2090, 94th Congress, a bill "To make the provisions of section 1331(e) of title 10, United States Code, retroactive to November 1, 1953," have been reviewed.

Before August 13, 1968, a member of a reserve component who was otherwise qualified for retired pay under chapter 67 of title 10, United States Code, and had applied therefor, would begin to receive that pay on the first day of the month following the month in which he attained age 60. If such a member who had elected participation in the Retired Serviceman's Family Protection Plan (RSFPP), died after he at-

tained age 60 but before the first day of the month following the month in which he attained that age, his survivors would not be eligible for benefits under the RSFPP.

Public Law 90–485 amended section 1331 of chapter 67 of title 10, United States Code, by adding subsection (e), effective August 13, 1968, which had the effect of providing that thereafter a member or former member of a reserve component who was otherwise qualified for retired pay would be entitled to that pay effective from the date he attained age 60. Accordingly, the designated survivor of such a person who had elected to participate in the RSFPP and died after attaining age 60 but before the first day of the following month would be eligible for benefits under the RSFPP.

The apparent purpose of S. 2090 is to provide survivor benefit coverage under the RSFPP for a designated eligible beneficiary of a member of a reserve component who, on or before August 13, 1968 was qualified for retired pay under chapter 73 of title 10, United States Code, but who died on or before the first day of the month following the month in which he attained age 60.

The Department of Defense has no objection to enactment of S. 2090.

Cost and Budget

The number of survivors who would be eligible for benefits under this legislation is not known. It is believed that the legislation would result in negligible costs to the Department of Defense.

Sincerely,

L. Niederlehner,
Acting General Counsel.

Fiscal Data

The Department of Defense believes that the enactment of this legislation would result in negligible costs to the Department. The number of survivors who would be eligible for benefits under the legislation is not known.

○

Colonel GASPER. The bill would provide survivor benefit coverage under the retired serviceman's family protection plan or RSFPP as it is generally known, to an eligible beneficiary of a reservist who, on or before August 13, 1968 was qualified for retired pay, but who died on or before the first day of the month following the month in which he attained age 60.

Prior to August 13, 1968, a reservist who was otherwise qualified for retired pay and had applied for such pay, would begin to receive retired pay on the first day of the month following the month in which he reached age 60. If such a member elected to participate in RSFPP died after he became age 60, but before the first day of the month following the month of his birthday, his survivors would not be eligible for benefits under RSFPP.

Public Law 90–435 amended RSFPP on August 13, 1968 by adding section 1331(e). This subsection had the effect of entitling a reservist to retired pay from the date he reached age 60. This law precluded future cases of survivor ineligibility to RSFPP benefits when the reservist died after age 60 but before the first day of the following month. However, it did not correct cases which occurred prior to August 13, 1968.

By making this feature retroactive to November 1, 1953, S. 2090 would provide the same survivor coverage to eligible beneficiaries of those reservists who, before August 13, 1968, died after attaining age 60 but prior to receipt of retired pay. November 1, 1953 is the date that the first plan for survivors became effective. If enacted, no benefits would be paid to any person for any period prior to the date of enactment of this bill.

While the number of survivors who would be eligible for benefits under this legislation is not known, it is believed that the number would undoubtedly be small. For example, we do not believe it would amount to more than 50 survivors. If we multiply the average RSFPP annuity of approximately $1,600 by that number, the first year cost would be approximately $80,000. In any event, we feel that this legisislation would result in negligible costs to the Department of Defense.

Mr. Chairman, this concludes my prepared statement.

Mr. BURLISON. We have two questions we would like to submit for you to answer for the record as well.

Colonel GASPER. All right, sir.

Mr. BURLISON. The cost estimates state that enactment of this bill would result in negligible costs to the Department of Defense. What in your view constitutes negligible costs? In other words, can you provide the committee a more exact estimate?

Colonel GASPER. Yes, sir. We estimate the first year costs to be no more than $80,000, if that much.

Mr. BURLISON. The report of the House Armed Services Committee—H. Rept. 94–560—does not indicate how many survivors would be affected by this bill. Do you have an estimate?

The House report indicates that only one potential beneficiary has been identified to date. What is the maximum number of beneficiaries that you would expect this legislation to affect?

Colonel GASPER. We do not expect the legislation to apply to more than 50 beneficiaries at most.

Mr. BURLISON. Does the gentleman from Alabama have any questions of the witness?

Mr. EDWARDS. How many people are covered by this?

Colonel GASPER. At the maximum, we would estimate approximately 50 widows that might be affected by this bill.

Mr. VANDER SCHAAF. How many have you actually identified.

Colonel GASPER. The only one that has been brought to our attention was the one case that came before the Armed Services Committee, sir.

Mr. EDWARDS. Off the record.

[Discussion off the record.]

Mr. EDWARDS. I do not have any further questions.

Mr. BURLISON. Thank you very much, Colonel Gasper, for your testimony.

The committee will now be adjourned.

TUESDAY, SEPTEMBER 14, 1976.

IMPROVEMENTS IN THE SURVIVOR-BENEFIT PROGRAM FOR RETIRED MILITARY PERSONNEL

WITNESSES

VICE ADMIRAL JOHN G. FINNERAN, DEPUTY ASSISTANT SECRETAY OF DEFENSE (MILITARY PERSONNEL POLICY), OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (MANPOWER AND RESERVE AFFAIRS)

ROBERT K. COX, ASSISTANT DIRECTOR, COMPENSATION, OFFICE OF THE DEPUTY ASSISTANT SECRETARY OF DEFENSE (MILITARY PERSONNEL POLICY), OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (MANPOWER AND RESERVE AFFAIRS)

INTRODUCTION

Mr. SIKES. Admiral, will you have a seat?

You are accompanied by Mr. Robert K. Cox.

This morning the Committee will review the fourth bill which has been referred to the Committee under Section 401(b) of the Budget Impoundment and Control Act of 1974. The bills have been referred to the Committee because they contain entitlement authority (NOA) in excess of the amount allocated to the authorizing committee under the budget resolution. The Appropriations Committee has 15 legislative days in which to take action on these bills.

The bill under review this morning (H.R. 14773) and the accompanying report (H. Rept. 94–1458) has been approved by the House Armed Services Committee. As the bill currently stands it contains 10 changes to the Retired Serviceman's Family Protection Plan (RSFPP) and its replacement plan, the Survivor Benefit plan (SBP).

Presenting to the Committee the Department of Defense's position with respect to H.R. 14773 is Vice Admiral John G. Finneran, USN, Deputy Assistant Secretary of Defense (Military Personnel Policy). Admiral Finneran has appeared before this committee many times. Admiral, it is a pleasure to have you before us one again.

H.R. 14773

We will insert a copy of H.R. 14773 and the accompanying report 94–1458 in the record at this point.

[The documents follow:]

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 94–
2d Session } { 1458 Part 1

MAKING IMPROVEMENTS IN THE SURVIVOR-BENEFIT PROGRAM FOR RETIRED MILITARY PERSONNEL

SEPTEMBER 1, 1976.—Ordered to be printed

Mr. STRATTON, from the Committee on Armed Services, submitted the following

REPORT

[Including Congressional Budget Office cost estimate]

[To accompany H.R. 14773]

The Committee on Armed Services, to whom was referred the bill (H.R. 14773) to amend title 10, United States Code, to authorize cost-of-living adjustments of annuities under the Retired Serviceman's Family Protection Plan, to suspend retired-pay deductions under the Survivor Benefit Plan when there is no eligible spouse beneficiary, to reduce the duration-of-marriage requirement under the Survivor Benefit Plan from two year to one year, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 2, lines 13–19, strike the present subsection "(d)" and insert the following in place thereof:

(d) Section 1450 is amended as follows:

(A) Subsection (a) is amended by striking out "or" at the end of clause (2), renumbering clause (3) as clause (4), and inserting the following new clause (3):

(3) the dependent children in equal shares if the person to whom section 1448 of this title applies elected to provide an annuity for dependent children but not for the spouse; or".

(B) by adding the following new subsection "(j)" at the end thereof:

(j) Where the annuity has been adjusted under subsection (c) of this section and there is no entitlement to compensation under section 411(a) of title 38, due to remarriage of the spouse after reaching age 60, annuity shall be readjusted to the rate of entitlement existing prior to the adjustment under

subsection (c) of this section, if any amounts refunded under subsection (e) of this section are repaid.

On page 2, lines 23–25, and page 3, lines 1–6, strike the present subsections "(f)" and "(g)" and insert the following in place thereof:

(f) Section 1451(a) of title 10, United States Code, is amended to read as follows:

(a) If the widow or widower is under age 62, the monthly annuity payable to the widow, widower, or dependent child under section 1450 of this title shall be equal to 55 percent of the base amount. When the widow or widower reaches age 62, the monthly amount shall be reduced by an amount equal to 50 percent of the amount of any survivor benefit which the widow or widower receives under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 401(*l*)(1) of title 42 and calculated assuming that the person concerned lived to age 65. The reduction prescribed by the second sentence of this subsection shall not be made if the only service by the person concerned as described in section 410(*l*)(1) of title 42 involved periods of service of less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of title 26 of the social security tax which he had paid.

(g) Section 1452 of title 10 United States Code is amended by—

(A) further amending subsection (a) by—

(i) striking out the first word and inserting the following in place thereof: "Except as provided in subsection (b), the"; and

(ii) adding the following new sentence at the end thereof: "The reduction in retired or retainer pay prescribed by the first sentence of this subsection shall not be applicable during any month in which there is no eligible spouse beneficiary";

(B) amending subsection (b) by inserting "or who has a spouse but has elected to provide an annuity for dependent children only," after "spouse,"; and

(C) further amending subsection (c) by adding the following sentence at the end thereof: "The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(3) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f)."

On page 3, Sections 2 and 3 of the bill are renumbered Sections 4 and 5 respectively and the following new Sections 2 and 3 are inserted between lines 6 and 7:

SEC. 2. Section 4 of Public Law 92–425, September 21, 1972, 86 Stat. 712, is amended as follows:

(a) Subsection (a)(3) is amended by striking "$1,400" and inserting "$2,100" in place thereof.

(b) The first sentence of subsection (b) is amended by striking "$1,400" and inserting "$2,100" in place thereof.

(c) Subsection (c) is added as follows:

"(c) Subsection 1450(i) and section 1453 as added to title 10, United States Code by clause 3 of the first section of this Act, are applicable to persons covered by this section."

SEC. 3. Notwithstanding any other law, any person who is entitled to retired or retainer pay on the effective date of this Act and who did not elect to participate in the Survivor Benefit Plan as prescribed by subchapter II of chapter 73 of title 10, United States Code, may, within 270 days after the effective date of this Act, elect to participate in such Plan and continue his participation under subchapter I of that chapter, except that the total of the annuities elected may not exceed 100 percent of his retired or retainer pay.

On page 3, line 7, section 3 as renumbered is amended to read as follows:

SEC. 4. Except for subsections (a) and (f), section 1 is effective from September 21, 1972. Subsections (a) and (f) of section 1 and section 2 are effective October 1, 1976. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.

On page 3, lines 10–13 are amended to read as follows:

of chapter 73 of title 10, United States Code, on October 1, 1976, to a spouse or a child of a member who died on or before March 20, 1974, shall be increased effective October 1, 1976 by.

Amend the title of the bill to read:

To amend title 10, United States Code, to make certain changes in the Retired Serviceman's Family Protection Plan and the Survivor Benefit Plan as authorized by Chapter 73 of that title, and for other purposes.

EXPLANATION OF AMENDMENTS

The committee amendments would:

(a) Reduce the social security offset against widows' benefits under the Survivor Benefit Plan from 100 percent to 50 percent of the social security survivorship benefit attributable to military service and eliminate that offset completely in some cases.

(b) Assure that the discontinuance of deductions from retired pay when there is no eligible spouse is extended to cases where a designated insurable-interest beneficiary dies. Restoration of the full annuity under these conditions is appropriate for the same reason as applies in cases where there is no eligible spouse.

(c) Make the provisions of 10 USC 1450(i) and 10 USC 1453 relating to garnishment and collection of erroneous payments applicable to minimum-income benefits payable under section 4 of Public Law 92–425.

(d) Increase the minimum-income guaranteed payment from the Department of Defense to certain widows of retired members from $1,400 to $2,100 annually.

(e) Change the effective date of accrual of benefits under the bill from the date of enactment to October 1, 1976.

(f) Provide a 270-day new enrollment period during which currently retired members who previously declined to participate in the Survivor Benefit Plan may elect to participate in that plan.

These amendments are discussed in detail under the appropriate headings further on in this report. Other changes made by the amendments are technical.

Purpose

The purpose of H.R. 14773 as reported is as follows:

to extend to annuitants under the Retired Serviceman's Family Protection Plan whose military retiree sponsor died on or before March 20, 1974, a cost-of-living escalator similar to that authorized for annuitants under the Survivor Benefit Plan enacted by Public Law 92–425;

to update the military Survivor Benefit Plan by making a number of changes to conform with recent changes in the civil service plan on which it is patterned;

to clarify an ambiguity in the Survivor Benefit Plan by clearly authorizing designation of "children only" as beneficiaries even though there is an otherwise eligible spouse;

to permit payment of full benefits under the Suvivor Benefit Plan to a spouse who remarries after age 60 if she had been eligible for Dependency and Indemnity Compensation and consequently had received reimbursement of all or part of the deductions from the retired member's pay, contingent on the repayment of the amount of that reimbursement;

to reduce the so-called social security offset against Survivor Benefit Plan payments from 100 percent of the amount attributable to military service to 50 percent of that amount and to eliminate that offset when (a) there is a dependent child, (b) the only military service involves periods of active service of less than 30 days, (c) no social security benefits are payable because the beneficiary is employed in social security covered employment, or has postponed receipt of benefits until age 65, or (d) the beneficiary is entitled to a greater benefit based on her own employment.

In addition, the bill will increase the minimum-income payment from $1,400 to $2,100 and make sections 1450(i) and 1453 of title 10, United States Code, barring garnishment of benefit payments and collection of erroneous payments respectively applicable to minimum-income payments under section 4, Public Law 92–425.

In view of these changes, the bill affords a 270-day new enrollment period within which persons on the retired rolls who previously declined coverage may elect into the Survivor Benefit Plan established by subchapter II, Chapter 73, of title 10, United States Code.

Discussion

Cost-of-living increases of annuities under the Retired Serviceman's Family Protection Plan

The Retired Serviceman's Family Protection Plan (RSFPP) was established by law in 1953. The plan was designed to fill an urgent need to enable a retired member of the uniformed services to share his retired pay with his wife and children if he predeceased them. The plan was (and still is) an actuarial-equivalent plan; that is, the deductions from the retired pay of participants, plus interest, will pay the benefits authorized. The benefit payments to widows and children are specific dollar amounts which are fixed at the time the member retires. The high rate of inflation experienced in recent years has seriously eroded the purchasing power of those benefits.

The RSFPP was replaced by the Survivor Benefit Plan (SBP), which was established by Public Law 92–425 on September 21, 1972. Members retiring after that date could not participate in the RSFPP. Persons on the retired rolls on September 21, 1972, who were participating in the RSFPP were authorized until March 20, 1974, to elect to participate in the new SBP and either continue in, or drop out of, the RSFPP.

One of the most attractive features of the SBP is that the benefit amounts are automatically adjusted at the same time and by the same percentage amounts as military retired pay. Living retired members who were participating in the RSFPP were given an 18-month period in which to elect into the SBP and thereby provide their survivors an annuity with a cost-of-living escalator. On the other hand, those retired members who died before enactment of the Survivor Benefit Plan never had an opportunity to provide their survivors with an inflation-proof annuity.

In recognition of the serious erosion of purchasing power of RSFPP annuities which has occurred in recent years, H.R. 14773 would authorize increases in RSFPP annuities in cases of retired members who died on or before March 20, 1974—the last date on which retired members could elect to participate in the SBP. In addition to providing future increases, the bill authorizes annuities to be increased effective October 1, 1976, by the percentage by which retired pay has been increased since September 21, 1972, the date of establishment of the Survivor Benefit Plan.

Elimination of the "pay forever" requirement and reduction in the duration-of-marriage requirement from 2 years to 1

Under the present Survivors Benefit Plan law, the deductions from the retired pay of a member who elects an annuity for his spouse, or for a person with an insurable interest, continues throughout his life—even though his intended beneficiary predeceases him or otherwise becomes ineligible. This provision was patterned on a provision in the civil service plan. The civil service plan was subsequently changed to provide that when there is no eligible surviving spouse, the deductions from the member's retired pay will be suspended. H.R. 14773 would amend the military plan to provide for similar suspension of deductions from retired pay when there is no eligible beneficiary.

Under the SBP a widow who was not married to the military member at the time he became entitled to retired pay is not eligible for benefits under the plan unless they had been married for at least two years on the date of the member's death. The civil service plan which had a similar requirement has been changed to reduce this duration-of-marriage requirement to one year. H.R. 14773 would make a similar change in the military plan.

Clarification of the authority to designate "children only" as beneficiaries when there is an otherwise eligible spouse

Under the RSFPP which the Survivor Benefit Plan replaced a military member could elect to provide an annuity for "children only" even though there was an eligible spouse. The Department of Defense directive which implemented the SBP provided procedures for such elections under that plan. The Comptroller General ruled that the language of Public Law 92–425 did not clearly authorize such elections but advised the Department of Defense that no objections would be interposed to continuing such elections pending submission of appropriate clarifying legislation to the Congress. H.R. 14773 contains appropriate language clearly authorizing such elections.

Reinstatement of SBP payments to widows whose Dependency and Indemnity Compensation benefits are terminated on remarriage after age 60

Under present law, SBP payments to widows who remarry before age 60 are terminated. If remarriage is after age 60 these payments continue.

A problem area exists in the case of a retiree whose death is service connected. Under those conditions, the widow receives Dependency and Indemnity Compensation (DIC) from the Veterans Administration and, if that compensation exceeds the SBP payments to which she is entitled, she can receive DIC payments only and receives a refund of all of the deductions from her deceased husband's retired pay. In the DIC is less than the Survivor Benefit Plan payment, she receives the full DIC payment and, in addition, an amount of SBP benefits which exceeds the DIC payment. In this latter situation she receives a refund of a proportionate amount of the deductions from her husband's retired pay.

Unlike the Survivor Benefit Plan, the law governing payment of DIC does not permit continued payment to the widow who remarries after age 60. Accordingly, the DIC payments terminate with remarriage after age 60. Having received a refund of either all, or part of, the deductions from her husband's retired pay, she is not entitled to the full SBP payment to which she would have been entitled if her husband's death had not been service connected. H.R. 14773 would authorize reinstatement of the full SBP payment to which she would otherwise be entitled subject to repayment of the refund which she received of the deductions from her deceased husband's retired pay.

Reduction from 100 percent to 50 percent in the social security offset

Under the current Survivor Benefit Plan, the payments by the Department of Defense to widows are reduced at age 62 by an amount equal to 100 percent of the amount of social security benefits to which

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she is entitled based on her husband's military service. Inasmuch as the military member and the government make equal contributions under the social security law, the Committee concluded that the 100 percent offset was excessive and should be reduced to 50 percent.

Eliminating the social security offset when there is a dependent child

When a military retiree dies leaving a widow and one or more children, a social security benefit is payable to the mother and to each dependent child. Under the Survivor Benefit Plan, if there is only one child, an amount equal to the amount of social security "mother's benefit payable based solely on the member's military service is "offset" against the Survivor Benefit Plan payment. If there is more than one dependent child, there is no offset. The Committee concluded that the reduction in the Survivor Benefit Plan payment to the widow when there is only one child is not warranted. H.R. 14773 will eliminate that reduction.

Elimination of the social security offset when the spouse beneficiary is not receiving social security benefits based on the deceased retiree's military service

The Survivor Benefit Plan currently requires an offset or reduction in payments under the Survivor Benefit Plan when the spouse beneficiary attains age 62 even though the beneficiary is not receiving a social security benefit because of employment, deferral to age 65 to receive 100 percent of husband's benefits, or because of entitlement to a greater social security benefit based on her own employment. The Committee concluded that to require a reduction under those circumstances when in fact there is no social security payable because of the deceased retiree's military service was inequitable and unwarranted.

H.R. 14773 eliminates the offset when the widow is not receiving a social security benefit based in whole or in part on her husband's military service.

Elimination of the social security offset when the only military service involved were periods of active duty of less than 30 continuous days and the member concerned reecived a refund of social security taxes withheld for those periods

Reservists who are called to annual training duty are, during those periods of training, covered under social security and both the Reservists and the government pay the appropriate social security tax for those periods of duty. It is possible for a Reservist to accrue an insured status under the social security law based solely on these short periods of active duty.

Assuming that the Reservist, having retired at age 60, had elected participation in the Survivor Benefit Plan and later died, there would be an offset at age 62 against Survivor Benefit Plan payments equal to the amount of a hypothetical social security benefit based on those short periods of active duty. That offset is required even though the Reservist in his civilian employment had paid social security taxes at the maximum rate and had received a refund of the taxes paid based on his military service. The Committee concluded that this was an unconscionable situation. H.R. 14773 will eliminate the offset when

the retiree's active military service involved only periods of active duty of less than 30 continuous days.

Increase in the "minimum-income payment" from $1,400 to $2,100

When enacting Public Law 92–425, the Congress recognized that there were some widows of retired military personnel who were in a different financial situation. In order to provide some measure of assistance to such widows, section 4 of Public Law 92–425 authorized payment by the Department of Defense to assure a minimum-income level for those widows of military personnel who died before September 21, 1973. Widows who are eligible receive a payment from the Defense Department which, when added to other income, as defined by the Veterans Administration means test, totals $1,400 annually. Under the Veterans Administration pension system in effect in 1972, that supplementary payment, together with the VA death pension, would assure her an annual income of slightly in excess of $2,100. Because of increases in Veterans Administration pension rates since 1972, such widows are currently assured an annual income of approximately $2,420.

The committee was concerned because these widows, although near the lowest rung of the economic ladder, do not have the benefit of any cost-of-living adjustments in the Defense Department portion of their income.

The committee concluded that to provide a current income comparable to that provided by section 4 of Public Law 92–425, the guaranteed minimum-income payment (exclusive of the Veterans Administration pension) should be increased from $1,400 to $2,100. The effect of this action would be to provide a minimum annual income of $2,712 to these needy widows.

Need for additional data on widows

Members of the committee expressed considerable concern over the plight of pre-Survivor Benefit Plan widows during their deliberations on this legislation. The committee amendment provides a cost-of-living increase for minimum income widows, but contains no future escalator clause. One of the primary problems has been the lack of hard data on the number of individuals involved and the long-term costs of providing increased assistance to these widows. The committee suggests that the Defense Department develop concrete data on the pre-Survivor Benefit Plan widows and make recommendations to the committee for future refinements in the minimum-income widows' formula.

A 270-day new enrollment period for current retirees to elect into the plan

The undesirable features in the Survivor Benefit Plan which have been eliminated by H.R. 14773 undoubtedly contributed to the low participation rate in that Plan, particularly on the part of enlisted men. Accordingly, the Committee has included a new enrollment provision in H.R. 14773.

Under the new provision persons now on the retired rolls who are not participating in the Survivor Benefit Plan may, within 270 days, elect to participate. However, if such a person is participating in the

Retired Serviceman's Family Protection Plan, the combined annuities under the two plans may not exceed 100 percent of his retired pay.

Effective date

The effective date for authorizing payments under H.R. 14773 is specified as October 1, 1976.

Departmental Data

The Department of Defense, in a letter dated July 28, 1976, supported H.R. 14773 as introduced. In a letter dated August 30, 1976, the Department of Defense deferred taking a formal position at this time on some of the amendments to the bill, in favor of awaiting the outcome of a thorough review of the entire Survivor Benefit Plan. The August 30 letter addressed itself to H.R. 6643, which incorporated the substance of the committee amendments to: reduce the social security offset from 100 percent to 50 percent, eliminate the offset for a widow with one child, eliminate the offset when the spouse beneficiary is not receiving social security benefits based on the deceased retiree's military service, eliminate the offset for reservists who only serve for periods of active duty of less than 30 days, and create a new 270-day enrollment period.

The letters cited above follow:

General Counsel of the Department of Defense,
Washington, D.C., July 28, 1976.

Hon. Melvin Price,
Chairman, Committee on Armed Services,
House of Representatives, Washington, D.C.

Dear Mr. Chairman: In accordance with your request, we have reviewed the provisions of H.R. 14773, 94th Congress, a bill "To amend title 10, United States Code, to authorize cost-of-living adjustments of annuities under the Retired Serviceman's Family Protection Plan, to suspend retired pay deductions under the Survivor Benefit Pay when there is no eligible spouse beneficiary, to reduce the duration-of-marriage requirement under the Survivor Benefit Plan from two years to one year, and for other purposes."

The Department of Defense has previously sponsored legislation in support of the essential features of H.R. 14773. Most recently the provisions affecting the military Survivor Benefit Plan are included in Defense's proposed Retirement Modernization Act. We recognize that the Committee schedule to date has been full and has precluded an in-depth review of military nondisability retirement to this point in time. We are pleased that this Committee has identified the issues included in H.R. 14773 for special attention.

The Department of Defense strongly supports H.R. 14773, the main features of which would:

1. Provide cost-of-living increases to widows and children receiving benefits under the Retired Serviceman's Family Protection Plan (RSFPP);

2. Eliminate the reduction in retired pay of a retired military member whose marriage has been dissolved by divorce or by death of the spouse;

3. Provide coverage under the Survivor Benefit Plan to a surviving spouse after one year (now two years) of marriage when the retired member was not married to that spouse on the date of retirement; and

4. Clarify existing provisions of the Survivor Benefit Plan to specifically allow a member who is retiring to elect coverage for a dependent child or children when there is a surviving spouse.

With regard to the first feature of H.R. 14773, the Administration has under active consideration Defense sponsored legislation which would provide cost-of-living increases to annuities payable under the Retired Serviceman's Family Protection Plan. Either that proposal or H.R. 14773 would protect such annuities from erosion in purchasing power as the result of inflation. There is presently no statutory authority to increase RSFPP annuities.

This plan was originally enacted in 1953 and was replaced by the Survivor Benefit Plan on September 21, 1972. However, widows and dependent children of retired members who were participants in RSFPP and died before they had an opportunity to make elections under the Survivor Benefit Plan are only entitled to benefits under the RSFPP. Under the RSFPP, a retired military member could elect to receive a reduced retired pay in order to provide an annuity, following his death, for his surviving wife and children. The amount of the deductions from the retired member's pay and the potential benefit to the survivor were established as of the date the member retired and could not be changed thereafter. Therefore, unlike the Survivor Benefit Plan, no cost-of-living increases are authorized in RSFPP annuities.

Annuities payable under the Survivor Benefit Plan are increased each time and by the same percentage that retired pay is adjusted under the Consumer Price Index formula. H.R. 14773 would authorize RSFPP annuities payable to widows or dependent children of retired members who died before March 20, 1974 to be increased on the same basis as annuities that are paid to widows or dependent children under the Survivor Benefit Plan. March 20, 1974 was the end of the grace period for making an election under the Survivor Benefit Plan for a member who was retired when that plan was approved on September 21, 1972.

If H.R. 14773 is enacted, RSFPP annuities of the widows or dependent children involved would be increased by the cumulative total percentage (41.43 percent) of cost-of-living increases since September 21, 1972. However, no retroactive adjustments would be authorized. As indicated above, future adjustments would be made each time retired pay is adjusted under the Consumer Price Index formula.

It is the view of the Department of Defense that RSFPP annuitants are in need and deserving of having their annuities adjusted as provided for in H.R. 14773. This would provide for equity in the treatment of these survivors in comparison with that accorded a survivor of a retiree participant in the Survivor Benefit Plan. The average annual RSFPP annuity is currently about $1,600. Since 1972, this average annuity has decreased about 38 percent in purchasing power due to inflation, which though slowed, still continues.

With respect to the second and third features of H.R. 14773, the Department submitted to the Congress on February 13, 1976 an amendment to the proposed Uniformed Services Retirement Modernization

Act (H.R. 7769, 94th Congress) which would amend Chapter 73 of title 10, United States Code. That amendment is identical to the provisions of the second and third features mentioned above, and as contained in subsections (b) and (f) of Section 1 of H.R. 14773.

Under the provisions of the Survivor Benefit Plan enacted by Public Law 94–425 and incorporated in Chapter 73 of title 10, United States Code, a retired military member may elect to accept a reduction in his retired pay in order to provide an annuity for his spouse in the event he predeceases her. That reduction in his retired pay continues for the remainder of his life even though his spouse predeceases him or the marriage is terminated by divorce. In the event of remarriage, coverage is provided for the new spouse. However, the benefits of the Plan are available to the new spouse only if the retired member's death is at least two years after the marriage or a child is born of that marriage.

The Survivor Benefit Plan was patterned in many respects on a plan available to retired civil service employees. In particular, the provisions for continuation of the deductions from the member's retired pay for the remainder of his life and the two year delay in the coverage for the new spouse were adopted from the Civil Service Survivorship Plan.

Legislation was enacted by the 93rd Congress which amended the statutes relative to civil service annuitants to discontinue reductions in retired pay when there is no surviving spouse and to reduce the two year marriage requirement before coverage of a new spouse. Public Law 93–474, enacted on October 26, 1974, amended chapter 83 of title 5, United States Code, to eliminate the annuity reduction made when the annuitant has no surviving spouse. Public Law 93–260, enacted on April 9, 1974, amended section 8341(a) of title 5, United States Code, by reducing the marriage duration requirement for civil service annuitants from two years to one year.

The fact that these provisions remain uncorrected in the military Survivor Benefit Plan constitutes an unwarranted inequity that has an extremely adverse impact on the morale of retirees and those nearing retirement. Many entering the retired rolls decline participation in the plan due to the resultant disadvantage of these provisions.

Provisions of H.R. 14773 would bring the military Survivor Benefit Plan in consonance with the Civil Service Survivor's Plan as discussed above. Therefore, the enactment of these provisions is highly desirable and is strongly recommended by the Department of Defense.

As presently written, H.R. 14773 does not clearly indicate when the Survivor Benefit Plan annuity commences for a widow who was married for at least one year, but less than two years, to a retired member who died before the enactment date of this legislation. Therefore, to clarify this matter, a recommended amendment to H.R. 14773 is enclosed. This amendment would prohibit the payment of the Survivor Benefit Plan annuity to such a widow for any period before the date of enactment of the Act.

The fourth feature of H.R. 14773 would clarify provisions relating to annuities for dependent children. Specifically, it would allow a member who is retiring to elect coverage under the Survivor Benefit Plan for only a dependent child or children even though the member has a spouse.

It is the desire and intent of the Department of Defense to authorize a retired member of the uniformed services to provide an annuity for his surviving spouse, his surviving spouse and dependent children, or to provide an annuity for a surviving dependent child or children whether or not there is a surviving spouse. It was the understanding of the Department of Defense that Public Law 92–425 authorized the retired member to provide such annuities and the Department of Defense implementing regulation so provides. However, the Comptroller General in decision B–177471, January 19, 1973 ruled that Public Law 92–425 does not authorize the retired member to provide an annuity for a dependent child if he has a spouse. However, the Comptroller General has advised that his office would delay questioning such elections pending the early submission of remedial legislation to the Congress. Such legislation was proposed by the Department of Defense and was most recently introduced as H.R. 8608, 94th Congress.

It is the view of the Department of Defense that this deficiency should be corrected so as to clearly authorize the retired member to provide an annuity for a dependent child when there is a spouse.

For reasons cited herein, the Department of Defense strongly favors enactment of H.R. 14773, with the minor technical amendment as recommended, at the earliest practicable date.

The estimated costs of H.R. 14773 are as follows:

Fiscal year:	*Millions*
1977	$10.253
1978	11.715
1979	13.150
1980	14.657
1981	16.130

It is anticipated that the first year costs of this proposal could be accommodated from within amounts budgeted for retired pay for fiscal year 1977. The Office of Management and 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,

RICHARD A. WILEY.

Enclosure.

PROPOSED AMENDMENT TO H.R. 14773

Section 4. Each annuity that is payable under subchapter II of chapter 73 of title 10, United States Code, as a result of subsection (b) of section 1, shall not accrue for any period before the date of enactment of this Act.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., August 30, 1976.

Hon. MELVIN PRICE,
Chairman, Committee on Armed Services, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with your request, we have reviewed the provisions of H.R. 6643, 94th Congress, a bill "To amend section 1451 of title 10, United States Code, to change the offset for social security under the survivor benefit plan from 100 percent to 50

percent, and for other purposes." Senator Beall has also introduced a bill, S. 3739, 94th Congress, which is identical to H.R. 6643.

In addition to reducing the social security offset from 100 percent to 50 percent, H.R. 6643 would eliminate the offset for widows with one dependent child and make determination of the offset a function of actual benefits received by the widow as a result of the deceased's military service rather than her entitlement to such benefits. This latter provision would have the effect of eliminating all of the offset for widows not receiving benefits based on their husbands' military service. Also, a widow who received social security payments based on her earnings would be subject to the offset only on that portion of any additional benefits that may accrue because of her husband's military earnings. In addition, widows of reservists who had annually obtained maximum coverage as a result of their civilian employment would not have their SBP annuities offset. Section 2 of the bill provides for an open period of 270 days in which to opt into the revised Plan.

It should be noted that the Department of Defense supported, during consideration of the initial Survivor Benefit legislation, a 50 percent offset as opposed to a 100 percent offset. We continue to believe that the 100 percent offset feature acts as a deterrent to greater participation by our members.

Several legislative proposals have been introduced which would modify a number of provisions of the current Plan. There are other features of the plan for which there have not been legislative initiatives proposed but that also merit consideration. For example, it appears that over time, inflation will cause the cost to the SBP participant to become increasingly out of balance with the cost to his or her counterpart participating in the comparable plan for Federal civil servants. It is apparent to the Department that the program warrants a careful reexamination. Therefore, the Department is undertaking such a review and plans to report its findings to the Congress early in the next session.

For the reasons cited herein the Department of Defense prefers to defer, at this time, taking a formal position on H.R. 6643 in favor of awaiting the outcome of a thorough review of the entire Survivor Benefit Plan. This should not be construed to mean the Department does not favor a timely correction of the pay-forever clause and the two-year remarriage requirement as contained in H.R. 14773. Rectification of these deficiencies, already an accomplished fact for the Civil Service Survivorship Plan, should continue as a priority concern of the Congress.

The estimated costs of H.R. 6643 are as follows:

Fiscal year:	*(Millions)*
1977	$2.5
1978	3.4
1979	4.6
1980	6.2
1981	8.7

These costs include estimates of the effect of reducing the offset from 100 percent to 50 percent and the elimination of the offset for widows who are not receiving benefits based on their husbands military service or are receiving benefits resulting from their own employment. Due to a lack of pertinent data, the Department was unable to

develop firm estimates for the cost impact of eliminating the offset for widows with one dependent child and the widow of a reservist who had obtained maximum coverage from his civilian employment. However, their impact is not believed to be significant. Likewise, the Department was unable to produce reliable estimates of the number of retirees or their characteristics, who might opt to participate in the plan during a 270 day open period. However, it is reasonable to expect, as in the case of the initial start up of any like program, the new participants would generate more in contributions than disbursements for several years. At some point in the future, the open period could be expected to cost the Government in the sense of increasing the rate of disbursements above current anticipated levels.

The Office of Management and 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,

LEONARD NIEDERLEHNER,
(For Richard A. Wiley).

SECTION-BY-SECTION ANALYSIS

Section 1(a) amends 10 USC 1434 (relating to Annuities under the Retired Serviceman's Family Protection Plan) to provide that annuities payable under the Retired Serviceman's Family Protection Plan to the surviving spouse or child of a member who died on or before March 20, 1974 shall be increased at the same time and by the same percent as retired or retainer pay is increased under 10 USC 1401a.

Section 1(b) amends 10 USC 1447 by striking the words "two years" in Clauses (3)(A) and (4)(A) and inserting "one year" in place thereof. The effect of the amendment is to reduce from two years to one year the duration-of-marriage requirement for eligibility for benefits under the Survivor Benefit Plan. This change is consistent with a recent change in the civil service survivor benefit law.

Section 1(c) amends 10 USC 1448(a) (relating to the applicability of the Survivor Benefit Plan) to clearly establish that a military member who has a spouse and child at the time of retirement has the option to elect to provide coverage under the Plan for the child only, and not for the spouse. This is the current practice, but the Comptroller General ruled that the language of the law does not clearly authorize the practice and clarifying legislation is needed.

Section 1(d) amends 10 USC 1450 (relating to payment of annuities under the Survivor Benefit Plan) as follows:

Clause (A) amends subsection (a) by renumbering clause (3) as clause (4) and inserting a new clause (3) which specifies that if a member elects to provide an annuity for children but not for the spouse, the annuity shall be divided equally among the children. This amendment in connection with the amendment in (c) above is designed to clarify the intent of the Plan to permit a retired member to provide an annuity for children even though there is a spouse.

Clause (B) adds a new subsection (j) to section 1450. The new subsection relates to the widow beneficiary under the Survivor

Benefit Plan who was entitled to Dependency and Indemnity Compensation under 38 USC 411(a). The Survivor Benefit Plan payment is reduced by the amount of that Compensation. Under 10 USC 1450(e) the widow beneficiary is entitled to a refund of all or part of the deductions from her husband's retired pay. If after age 60, she remarries, she is no longer eligible for Dependency and Indemnity Compensation. If she had not been receiving Dependency and Indemnity Compensation, she could have continued to receive benefits under the Survivor Benefit Plan. However, because she was formerly eligible for Dependency and Indemnity Compensation and consequently had received a refund of her husband's deductions under the Survivor Benefit Plan, the Comptroller General ruled she cannot receive Survivor Benefit Plan payments. The proposed new subsection (j) will authorize payment of Survivor Benefit Plan benefits provided any refund she received is repaid.

Section 1(e) is a technical amendment to substitute a reference to "(a)(4)" for the current reference to "(a)(3)" in sections 1450(f), 1451(b), 1452(a) and 1452(e) in view of the renumbering of the clause by section 1(d)(A) above.

Section 1(f) amends and restates 10 USC 1451(a) relating to the amount of the annuity under the Survivor Benefit Plan. The amendments relate to current provisions in subsection (a) which require a reduction in the payment under the Survivor Benefit Plan to the spouse beneficiary when there is only one dependent child or when the spouse attains age 62.

Under current law, the Survivor Benefit Plan payments to the widow with only one dependent child are reduced by an amount equal to 100 percent of the amount of a hypothetical social security benefit computed solely on the basis of the deceased retiree's military service. Under the amendment of 10 USC 1451(a) that reduction will no longer be required.

Under the current provision of 10 USC 1451(a) benefits under the Survivor Benefit Plan to a widow or widower who attains age 62 are reduced by an amount equal to 100 percent of the amount of a hypothetical social security benefit computed solely on the basis of the deceased retiree's military service. Under the amended 10 USC 1451(a) that reduction is reduced to 50 percent.

Under the social security law, a person who is otherwise entitled to a social security survivorship benefit who is employed and earning pay in social security covered employment has that benefit reduced or eliminated based on the amount of those employment earnings. Under current 10 USC 1451(a), benefits under the Survivor Benefit Plan payment are reduced by the amount of the hypothetical social security benefit to which the beneficiary is "entitled" even though the beneficiary is not receiving any social security benefit by reason of being employed or deferring benefits until age 65. The amendment of 10 USC 1451(a) by this subsection will eliminate the reduction in these cases.

The Social Security law does not permit a widow to receive concurrently a social security benefit based on her own employment and in addition a social security survivorship benefit based on her deceased

husband's employment. If her social security benefits based on her own earnings are greater, she receives that benefit. However, under the current 10 USC 1451(a) her benefits under the Survivor Benefit Plan are reduced based on her deceased husband's social-security-covered military service even though she receives no social security benefits based on her husband's service. The amendment of 10 USC 1451(a) will eliminate the offset in those cases where she does not receive any social security benefits based on her deceased husband's military service.

Active duty for training performed by Reservists is covered employment under the Social Security Act. The Reservists and the government each pay the appropriate tax. Most Reservists are covered under social security in their civilian employment and in many cases their civilian earnings equal or exceed the maximum covered earnings under social security and accordingly the military service does not add to their potential social security benefits. Nonetheless, under current 10 USC 1451(a), if their Reserve service was sufficient to confer an "insured" status for social security survivor benefit purposes, the amount of Survivor Benefit Plan payments are reduced by the amount of the hypothetical social security benefit even though that military service did not contribute to the amount of the social security benefit. 10 USC 1451(a), as amended, will eliminate the offset if the only military service performed was active duty for training for periods of less than 30 continuous days and the Reservist is entitled to receive a refund of the social security taxes he paid because of that active duty employment.

Section 1(g) amends 10 USC 1452 (relating to reductions in retired or retainer pay).

Clause (A) further amends subsection (a) by—

(i) substituting the words "Except as provided in subsection (b), the" for the first word of the subsection. The purpose of this amendment is to provide a reference to subsection (b) which, as hereinafter amended includes a reference to the situation of a retired member who has a spouse but elects to provide coverage under the Survivor Benefit Plan for a child only; and

(ii) specifying that when a retired member had elected an annuity for his spouse, deductions from retired or retainer pay would be made only when there is potentially eligible spouse beneficiary. When the potential spouse beneficiary dies, or is divorced, the deductions from the retired member's pay to provide benefits for a spouse would be suspended. If the member remarries, the deductions would thereafter be resumed at the appropriate level.

Clause (B) amends 10 USC 1452(b) (relating to deductions from retired or retainer pay to provide coverage for a dependent child) to provide that deductions from retired or retainer pay to provide an annuity for a child when the member had a spouse, but had elected to provide coverage for the child only, will be the same as when there is no spouse. This language is to clarify the intent of the Plan that a retired member can cover a "child only" even though there is a spouse (See *Section 1(c)* above).

Clause (C) further amends 10 USC 1452(c) (relating to the deductions from the retired or retainer pay of a member who elected to receive a reduced retired or retainer pay to provide an annuity for a person with an insurable interest in the life of that member). Under present law, the deductions from such a member's retired pay continue for life, even though the intended beneficiary dies. This clause amends 10 USC 1452(c) by adding a new sentence which provides that the reduction in a member's retired or retainer pay to provide an annuity for a person with an insurable interest will continue during the lifetime of the designated beneficiary. The effect of the amendment will be to terminate the deduction if the intended beneficiary predeceases the member receiving retired or retainer pay.

Section 2 amends section 4 of Public Law 92–425. Section 4 of that Public Law established the so-called minimum income guarantee provision of the Survivor Benefit Plan. Under the current provision of Section 4, widows of retired members who died on or before March 20, 1974 who are receiving a pension from the Veterans Administration, whose income (other than the Veterans Administration pension) is less than $1,400 annually are entitled to a supplementary payment from the Department of Defense which assures such a widow an income of at least $1,400 annually exclusive of that pension. Section 2 of the bill would increase the guaranteed income (from other than the pension) from $1,400 to $2,100 annually. In addition, subsection (c) of section 2 amends section 4 of Public Law 92–425 to add a new subsection (c) which provides that the provisions of 10 USC 1450(i) (which exempts benefits under the SBP from legal process) and 10 USC 1453 (relating to recovery of erroneous payments) will be applicable to the minimum-income guarantee payments.

Section 3 of H.R. 14773 will authorize a person who, on the date of enactment of the bill are entitled to receive retired or retainer pay, who did not elect to participate in the Survivor Benefit Plan established by subchapter II of chapter 73 of title 10 United States Code. to elect, within 270 days after enactment of the bill, to participate in that Plan. Any such person who is participating in the Retired Serviceman's Family Protection Plan can elect to participate in the Survivor Benefit Plan but the total annuities elected may not exceed 100 percent of his retired or retainer pay.

Section 4 specifies the effective date of the several provisions of the bill as follows:

Section 1(a) which provides for increasing annuities under the Retired Serviceman's Family Protection Plan at the same time and by the same percent as retired or retainer pay, becomes effective October 1, 1976.

Section 1(b) which reduces from two years to one, the duration-of-marriage eligibility requirement for entitlement to a "spouse benefit" as effective from September 21, 1972.

Section 1(c), 1(d)(A), 1(e), 1(g)(B) which relate to clarifying the intent of the Plan to permit a retired member to designate a child as beneficiary even though there is a spouse, are effective from September 21, 1972. These provisions are to clarify the law

and confirm the manner in which the Plan is currently being administered.

Section 1(d)(B) which relates to reinstatement of benefits under the Survivor Benefit Plan for a spouse whose eligibility for Dependency and Indemnity Compensation terminates because she remarried after age 60, is effective from September 21, 1972.

Section 1(g)(A) and (C) which provides for suspension of deductions from retired pay (1) when there is no potentially eligible spouse; or (2) on the death of the designated person with an insurable interest, as the case may be, are effective from September 21, 1972.

Section 1(f) which relates to the reduction or elimination of the social security offset is effective from October 1, 1976.

Section 2 of the bill which provides for increases in the guaranteed minimum income provisions of Section 4, Public Law 92–425 is effective from October 1, 1976.

Section 3 is effective from the date of enactment and authorizes a new enrollment period of 270 days thereafter for former retirees to participate in the Survivor Benefit Plan.

Section 5 specifies that persons receiving benefits under the Retired Serviceman's Family Protection Plan based on the death of a military member on or before March 20, 1974 shall, effective October 1, 1976 be entitled to a percentage increase in their annuities equal to the percent by which retired pay has been increased since September 21, 1972.

Committee Position

The Committee on Armed Services, on August 31, 1976, a quorum being present, approved H.R. 14773, as amended, by voice vote.

Fiscal Data

The Department of Defense estimated that H.R. 14773 as introduced would have an estimated cost in fiscal year 1977 of $10.2 million. The cost of increasing the minimum-income guarantee for widows under section 4 of Public Law 92–425 is estimated to be $3.4 million in fiscal year 1977 for the Defense budget. However, there will be some offsetting savings in government costs because of decreased Veterans Administration pensions to those eligible for the supplementary payment. The additional amendments approved by the committee are estimated to add $2.5 million to the fiscal year 1977 cost of the bill, according to the Department of Defense. Thus total first year cost, according to Defense Department estimates would by $16.1 million.

The committee would point out, however, that the Defense Department estimate did not include reductions in budgetary requirements that might result initially from increased participation allowed by the new enrollment period. By eliminating objectionable features of present law, the bill will undoubtedly encourage increased enrollments. The committee notes that according to the Congressional Budget Office (CBO) estimates, the impact of increased enrollments will be such as to require no additional cost, but rather a budget saving, through fiscal year 1980. CBO estimates a $5.9 million reduction in budgetary requirements for fiscal year 1977.

Executive Branch Estimate

The Defense Department estimate of the cost of the legislation, as introduced, for the next five fiscal years is as follows:

Fiscal year:	(*Millions*)
1977	$10.253
1978	11.715
1979	13.150
1980	14.657
1981	16.130

The Defense Department estimate of the cost of the committee amendments, except for the increase in payments to widows under the minimum-income program, for the next five fiscal years is as follows:

Fiscal year:	(*Millions*)
1977	$2.5
1978	3.4
1979	4.6
1980	6.2
1981	8.7

Congressional Budget Office Estimate

In compliance with clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget Act of 1974 is included hereafter:

Congressional Budget Office

COST ESTIMATE

August 31, 1976.

1. Bill number: H.R. 14773 (as amended).
2. Bill title and purpose: To amend Title 10, United States Code.

1. To authorize cost-of-living adjustments of annuities under the Retired Servicemen's Family Protection Plan (RSFPP);

2. To suspend retired pay deductions under the Survivor Benefit Plan (SBP) when there is no eligible beneficiary;

3. To reduce the duration-of-marriage requirement under the SBP from two years to one year;

4. To increase the income supplement for certain widows of retired members;

5. To provide for reinstatement of SBP benefits to the widow of a retired member who had elected VA benefits upon the death of the retired member and who had subsequently remarried after age 60. The reinstatement of benefits would be effective upon the termination of the subsequent marriage;

6. To reduce the offset for Social Security benefits for beneficiaries of SBP from 100 percent to 50 percent for those Social Security benefits attributable to military service;

7. To eliminate the reduction in SBP benefits of a widow who is entitled to Social Security benefits based on her husbands military service, but who is not receiving those benefits;

8. To elminate the offset of SBP benefits for Social Security benefits for a widow with one child;

9. To eliminate the offset of SBP benefits for Social Security benefits for the widow of Reserve retirees whose only active service after 1956 consisted of active duty for training for periods of less than 30 days, and

10. To reopen the enrollment period for the Survivor Benefits Plan for 270 days.

3. Budget impact:

[Millions of dollars]

	Fiscal year—				
	1977	1978	1979	1980	1981
Budget function 050:					
Authorization amounts and estimated costs (Items 1 to 5)--	14.9	16.1	17.4	18.5	19.7
Authorization amounts and estimated costs (Items 6 to 9)--	3.2	4.5	6.0	7.5	9.8
Authorization amounts and estimated costs (Item 10)-----	−24.0	−24.7	−25.3	−26.0	−26.5
Total----------	−5.9	−4.1	−1.9	0	+3.0
Budget function 700: Estimated savings----------	2.0	2.0	2.0	2.0	2.0

4. Basis for estimate: The provision of a cost of living adjustment under RSFPP estimate is based on 9,686 widows receiving an average benefit of $1,600 per year in FY 1976. Subsequent year estimates are based on expected mortality and projections of the Consumer Price Index.

The estimated cost of the suspensions of retired pay deductions when there is no eligible beneficiary is based on an actuarial estimate of 7,800 SBP participants that no longer have a beneficiary, and an average annual deduction from retired pay for SBP of $450 in fiscal year 1975.

The cost of changing the duration of marriage requirement under SBP from 2 years to one year was determined by estimating the number of military retirees that die between the first and second anniversary of marriage and who participate in SBP, and multiplying by the average SBP widow benefit.

The increase in the income supplement was estimated by determining the number of widows currently receiving the income supplement and estimating the additional widows that would become eligible as a result of this legislation. No data is available on the number of widows with an income of more than $1400 per year but less than $2100 per year. Based on data of the income of non-married women over 62 it was estimated that the number of women eligible for the income supplement would increase by 50 percent. The average additional benefit was estimated to be $700 per year for current recipients and $350 per year for those becoming eligible as a result of this legislation. The savings in Veterans Administration pension costs were estimated based on the income increases resulting from this legislation which result in reductions in VA pensions.

The number of widows eligible for the fifth provision of the bill is believed to be very small, 50 or less. In order for a woman to benefit from this provision she must:

1. Have been widowed by a retired member who participated in SBP.

2. Widowed by a retired member who died of a service connected disability.

3. Chosen benefits from the VA instead of SBP upon her husband's death.

4. Have remarried after her sixtieth birthday.

5. Have her marriage terminated by death or divorce.

The annual pension for a widow under SBP is $4,500 per year. Accordingly, it is estimated that the FY 1977 costs would be less than $228,000.

The costs of provisions 6 through 9 of the bill are based on 1976 actual data on Social Security offsets for all recipients of SBP benefits, The 1976 data was projected using Department of Defense actuarial estimates of the number of widows receiving benefits, a constant proportion having their benefits offset, and an average benefit growing at about 55 percent per year. Based on Social Security Administration data it was estimated that 3 percent of the widows have entitlement to Social Security benefits but are not receiving them. Also using Social Security Administration data it was estimated that 15 percent of the widows have one child. There is no good data base for estimating the number of widows affected by provision 9. The number must be very small because reserve retirees amount to about 4 percent of the retired pay base, and only a small fraction of those would satisfy the requirement of paying full Social Security taxes as a result of civilian employment. A figure of 1 percent of the widow population has been used.

The cost of provision 10 has been estimated by projecting forward the 1975 actual experience. In 1975 deductions for the plan totaled $189 million and benefits paid totaled $36 million. The actual cost will depend upon how many retirees decide to participate in SBP as a result of the changes in the plan and as a result of the second opportunity to enroll. Currently about 50 percent participate. If this were to increase by 25 percent, to a participation of 62.5 percent, the cost would be—$61 million in 1977. A 10 percent increase in the participation rate would cost—$24 million in 1977. For this estimate a 10 percent increase in the participation rate was used. The out year increase results from a growing retired population.

At some point beyond the five year time frame, the benefits paid will exceed the deductions for the SBP program. The deductions for the SBP program are not sufficient to finance the expected cost of the future benefits. Thus by reopening enrollment, the future net cost of the program, benefits paid less deductions, will be larger than if the enrollment were not reopened.

5. Estimate comparison: The CBO estimate differs from the DOD estimate in that it includes an estimate for provisions which were not estimated by DOD. In addition CBO has used different assumptions about future Consumer Price Index changes.

6. Previous CBO estimate: CBO prepared an estimate for this bill on August 23, 1976 for this bill as amended by the subcommittee. That estimate included items 1–5 as described in Purpose of the bill. This estimate includes amendments made in full committee which added items 6–10.

INFLATION-IMPACT STATEMENT

It is the belief of the committee that the legislation will not have a significant effect on the national economy.

OVERSIGHT FINDINGS

With reference to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

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Changes in Existing Law

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, there is herewith printed in parallel columns the text of existing law which would be repealed or amended by the various provisions of the bill as reported.

EXISTING LAW

THE BILL AS REPORTED

TITLE 10.—ARMED FORCES

Chapter 73.—ANNUITIES BASED ON RETIRED OR RETAINER PAY; SURVIVOR BENEFIT PLAN

SUBCHAPTER I.—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

EXISTING LAW

§ 1434. Kinds of annuities that may be elected.

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 per centum nor less than 12½ per centum of his retired or retainer pay, in no case less than $25. He may make the annuity payable—

(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or remarries;

(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

(3) to, or on behalf of, the surviving spouse, and after the death or remarriage of that spouse, in equal

THE BILL AS REPORTED

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 73 of title 10, United States Code, is amended as follows:

(a) Section 1434 of title 10, United States Code, is amended by adding the following new subsection at the end thereof:

shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of subsection (a), but the combined amount of the annuities may not be more than 50 per centum nor less than 12½ per centum of his retired or retainer pay but in no case less than $25.

(c) An election of any annuity under clause (1) or (2) of subsection (a), or any combination of annuities under subsection (b), shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died. For the purposes of the preceding sentence, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age, and who is not pursuing a course of study or training defined in section 1435 of this title, shall be considered an eligible beneficiary unless the Secretary concerned approves an application submitted by the member under section 1436(b)(4) of this title. An election of an annuity under clause (3) of subsection (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no eligible spouse because of death or divorce.

EXISTING LAW

(d) Under regulations prescribed under section 1444(a) of this title, a person may, before or after the first day for which retired or retainer pay is granted, provided for allocating, during the period of the surviving spouse's eligibility, a part of the annuity under subsection (a)(3) for payment to those of his surviving children who are not children of that spouse. (Aug. 10, 1956, ch. 1041, 70A Stat. 109; Oct. 4, 1961, Pub. L. 87-381, § 3, 75 Stat. 811; Aug. 13, 1968, Pub. L. 90-485, § 1(3), 82 Stat. 751.)

SUBCHAPTER II.—SURVIVOR BENEFIT PLAN

§ 1447. Definitions.

In this subchapter:

(1) "Plan" means the Survivor Benefit Plan established by this subchapter.

(2) "Base amount" means—

(A) the amount of monthly retired or retainer pay to which a person—

(i) was entitled when he became eligible for that pay; or

THE BILL AS REPORTED

"(e) Whenever retired or retainer pay is increased under section 1401a of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or a child of a member who died on or before March 20, 1974, shall be increased at the same time by the same total percent."

(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list; or

(B) any amount less than that described by clause (A) designated by that person on or before the first day for which he became eligible for retired or retainer pay, but not less than $300;

as increased from time to time under section 1401a of this title.

(3) "Widow" means the surviving wife of a person who, if not married to the person at the time he became eligible for retired or retainer pay—

(A) was married to him for at least two years immediately before his death; or

(B) is the mother of issue by that marriage.

(4) "Widower" means the surviving husband of a person who, if not married to the person at the time she became eligible for retired or retainer pay—

(A) was married to her for at least two years immediately before her death; or

(B) is the father of issue by that marriage.

(5) "Dependent child" means a person who is—

(A) unmarried;

(B) (i) under 18 years of age; (ii) at least 18, but under 22, years of age and pursuing a full-time course of study or training in a high school, trade school,

(b) Clauses (3) (A) and (4) (A) of section 1447 are each amended by striking out "two years" and inserting in place thereof "one year".

technical or vocational institute, junior college, college, university, or comparable recognized educational institution; or (iii) incapable of supporting himself because of a mental or physical incapacity existing before his eighteenth birthday or incurred on or after that birthday, but before his twenty-second birthday, while pursuing such a full-time course of study or training; and

(C) the child of a person to whom the Plan applies, including (i) an adopted child, and (ii) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship.

For the purpose of this clause, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday. A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if he shows to the satisfaction of the Secretary of Defense that he has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim. Under this clause, a foster child, to qualify as the dependent child of a person to whom the Plan applies, must, at the time of the death of that person, also reside with, and receive over one-half of his support from, that

person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while he is a student as described in this clause, will not be considered to affect the residence of such a foster child.

§ 1448. Application of Plan.

(a) The Plan applies to a person who is married or has a dependent child when he becomes entitled to retired or retainer pay unless he elects not to participate in the Plan before the first day for which he is eligible for that pay. If a person who is married elects not to participate in the Plan at the maximum level, that person's spouse shall be notified of the decision. An election not to participate in the Plan is irrevocable if not revoked before the date on which the person first becomes entitled to retired or retainer pay. However, a person who is not married when he becomes entitled to retired or retainer pay but who later marries, or acquires a dependent child, may elect to participate in the Plan but his election must be written, signed by him, and received by the Secretary concerned within one year after he marries, or acquires that dependent child. Such an election may not be revoked. His election is effective as of the first day of the month after his election is received by the Secretary concerned.

(b) A person who is not married and does not have a dependent child when he becomes entitled to retired or retainer pay may elect to provide an annuity to a natural person with an insurable interest in that person.

(c) The second sentence of section 1448(a) is amended by inserting ", or elects to provide an annuity for a dependent child but not for his spouse" after "maximum level".

EXISTING LAW

(c) The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to retired pay.

(d) If a member of an armed force dies on active duty after he has become entitled to retired or retainer pay, or after he has qualified for that pay except that he has not applied for or been granted that pay, and his spouse is eligible for dependency and indemnity compensation under section 411(a) of title 38 in an amount that is less than the annuity the spouse would have received under this subchapter if it had applied to the member when he died, the Secretary concerned shall pay to the spouse an annuity equal to the difference between that amount of compensation and 55 percent of the retired or retainer pay to which the otherwise eligible spouse described in section 1450(a)(1) of this title would have been entitled if the member had been entitled to that pay based upon his years of active service when he died. (Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 707.)

§ 1450. Payment of annuity: beneficiaries.

(a) Effective as of the first day after the death of a person to whom section 1448 of this title applies, a monthly annuity under section 1451 of this title shall be paid to—

(1) the eligible widow or widower;

(2) the surviving dependent children in equal shares, if the eligible widow or widower is dead, dies, or otherwise becomes ineligible under this section; or

THE BILL AS REPORTED

(d) Section 1450 is amended as follows:

(A) Subsection (a) is amended by striking out "or" at the end of clause (2), renumbering clause (3) as clause (4), and inserting the following new clause (3):

"(3) the dependent children in equal shares if the person to whom section 1448 of this title applies elected to provide an annuity for dependent children but not for the spouse; or".

(3) the natural person designated under section 1448(b) of this title at the time the person to whom section 1448 applies became entitled to retired or retainer pay, if there is no eligible beneficiary under clause (1) or (2).

(b) An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost. An annuity for a widow or widower shall be paid to the widow or widower while the widow or widower is living or, if the widow or widower remarries before reaching age 60, until the widow or widower remarries. If the widow or widower remarries before reaching age 60 and that marriage is terminated by death, annulment, or divorce, payment of the annuity will be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the widow or widower is also entitled to an annuity under this section based upon the marriage so terminated, the widow or widower may not receive both annuities but must elect which to receive.

(c) If, upon the death of a person to whom section 1448 of this title applies, the widow or widower of that person is also entitled to compensation under section 411(a) of title 38, the widow or widower may be paid an annuity under this section, but only in the amount that the annuity otherwise payable under this section would exceed that compensation.

(d) If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of his

EXISTING LAW

retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(i) of title 5, he notified the Civil Service Commission that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title.

(e) If no annuity under this section is payable because of subsection (c), any amounts deducted from the retired or retainer pay of the deceased under section 1452 of this title shall be refunded to the widow or widower. If, because of subsection (c), the annuity payable is less than the amount established under section 1451 of this title, the annuity payable shall be recalculated under that section. The amount of the reduction in the retired or retainer pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted prior to the computation of that recalculated annuity and the amount that would have been deducted on the basis of that recalculated annuity shall be refunded to the widow or widower.

(f) An unmarried person who elects to provide an annuity to a person designated by him under subsection (a)(3), but who later marries or acquires a dependent child, may change that election and provide an annuity to his spouse or dependent child. A change of election under this subsection is subject to the rules with respect to execution, revocation, and effectiveness set forth in the last three sentences of section 1448(a) of this title.

THE BILL AS REPORTED

(g) Except as provided in section 1449 of this title or in subsection (f) of this section, an election under this section may not be changed or revoked.

(h) Except as provided in section 1451 of this title, an annuity under this section is in addition to any other payment to which a person is entitled under any other provision of law. Such annuity shall be considered as income under laws administered by the Veterans' Administration.

(i) An annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process. (Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 708.)

§ 1451. Amount of annuity

(a) If the widow or widower is under age 62 or there is a dependent child, the monthly annuity payable to the widow, widower, or dependent child, under section 1450 of this title shall be equal to 55 percent of the base amount. However, when the widow has one dependent child, the monthly annuity shall be reduced by an amount equal to the mother's benefit, if any, to which the widow would be entitled under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(*l*)(1) of title 42 and calculated assuming that the person concerned lived to age 65. When the widow or widower reaches age 62, or there is no longer a dependent child, whichever occurs later, the monthly annuity shall be reduced by an amount equal to the amount of the survivor benefit, if any, to which the widow or widower

(B) by adding the following new subsection "(j)" at the end thereof:

"(j) Where the annuity has been adjusted under subsection (c) of this section and there is no entitlement to compensation under section 411(a) of title 38, due to remarriage of the spouse after reaching age 60, annuity shall be readjusted to the rate of entitlement existing prior to the adjustment under subsection (c) of this section, if any amounts refunded under subsection (e) of this section are repaid."

(e) Sections 1450(f), 1451(b), 1452(a), and 1452(c) are each amended by striking out "(a)(3)" and inserting in place thereof "(a)(4)".

(f) Section 1451(a) of title 10, United States Code, is amended to read as follows:

"(a) If the widow or widower is under age 62, the monthly annuity payable to the widow, widower, or dependent child under section 1450 of this title shall be equal to 55 percent of the base amount. When the widow or widower reaches age 62, the monthly amount shall be reduced by an amount equal to 50 percent of the amount of any survivor benefit which the widow or widower receives under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(*l*)(1) of title 42 and calculated assuming that

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would be entitled under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(*l*)(1) of title 42 and calculated assuming that the person concerned lived to age 65. For the purpose of the preceding sentence, a widow or widower shall be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 even though that benefit has been offset by deductions under section 403 of title 42 on account of work.

(b) The monthly annuity payable under section 1450 (a)(3) of this title shall be 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in that retired or retainer pay in accordance with section 1452(c) of this title.

(c) Whenever retired or retainer pay is increased under section 1401a of this title, each annuity that is payable under this section, or section 1448(d) of this title, on the day before the effective day of that increase shall be increased at the same time by the same total percent. The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1448 (d) or 1450(c) of this title, or subsection (a) of this section. (Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 709).

THE BILL AS REPORTED

the person concerned lived to age 65. The reduction prescribed by the second sentence of this subsection shall not be made if the only service by the person concerned as described in section 410(*l*)(1) of title 42 involved periods of service less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of title 26 of the social security tax which he had paid.".

"(g) Section 1452 of title 10 United States Code is amended by—

(A) further amending subsection (a) by—

(i) striking out the first word and inserting the following in place thereof: "Except as provided in subsection (b), the"; and

(ii) adding the following new sentence at the end thereof: "The reduction in retired or retainer pay prescribed by the first sentence of this subsection shall not be applicable during any month in which there is no eligible spouse beneficiary";

(B) amending subsection (b) by inserting "or who has a spouse but has elected to provide an annuity for dependent children only," after "spouse,"; and

(C) further amending subsection (c) by adding the following sentence at the end thereof: "The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(3) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f).".

§ 1452. Reduction in retired or retainer pay.

(a) The retired or retainer pay of a person to whom section 1448 of this title applies who has a spouse, or who has a spouse and a dependent child, and who has not elected to provide an annuity to a person designated by him under section 1450(a)(3) of this title, or who had elected to provide such an annuity to such a person but has changed his election in favor of his spouse under section 1450(f) of this title, shall be reduced each month by an amount equal to 2½ percent of the first $300 of the base amount plus 10 percent of the remainder of the base amount. As long as there is an eligible spouse and a dependent child, that amount shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(b) The retired or retainer pay of a person to whom section 1448 of this title applies who has a dependent child but does not have an eligible spouse, shall, as long as he has an eligible dependent child, be reduced by an amount prescribed under regulations of the Secretary of Defense.

(c) The retired or retainer pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(3) of this title shall be reduced by 10 percent plus 5 percent for each full 5 years the individual designated is younger than that person. However, the total reduction may not exceed 40 percent.

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(d) If a person who has elected to participate in the Plan has been awarded retired or retainer pay and is not entitled to that pay for any period, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period, except when he is called or ordered to active duty for a period of more than 30 days.

(e) When a person who has elected to participate in the Plan waives his retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, he shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(i) of title 5, he has notified the Civil Service Commission that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of title 5.

(f) Except as provided in section 1450(e) of this title, a person is not entitled to any refunds of amounts deducted from retired or retainer pay under this section unless the amounts were deducted through administrative error. (Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 710.)

PUBLIC LAW 92–425—SEPT. 21, 1972 [86 STAT.]

SEC. 4. (a) A person—

(1) who, on the effective date of this Act is, or within one calendar year after that date becomes, a widow of a person who was entitled to retired or retainer pay when he died;

THE BILL AS REPORTED

SEC. 2. Section 4 of Public Law 92–425, September 21, 1972, 86 Stat. 712 is amended as follows:

(a) Subsection (a)(3) is amended by striking "$1,400" and inserting "$2,100" in place thereof.

(2) who is eligible for a pension under subchapter III of chapter 15 of title 38, United States Code, or section 9(b) of the Veterans' Pension Act of 1959 (73 Stat. 436); and

(3) whose annual income, as determined in establishing that eligibility, is less than $1,400;

shall be paid an annuity by the Secretary concerned unless she is eligible to receive an annuity under the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act. However, such a person who is the widow of a retired officer of the Public Health Service or the National Oceanic and Atmospheric Administration, and who would otherwise be eligible for an annuity under this section except that she does not qualify for the pension described in clause (2) of this subsection because the service of her deceased spouse is not considered active duty under section 101(21) of title 38, United States Code, is entitled to an annuity under this section.

(b) The annuity under subsection (a) of this section shall be in an amount which when added to the widow's income determined under subsection (a)(3) of this section, plus the amount of any annuity being received under sections 1431–1436 of title 10, United States Code, but exclusive of a pension described in subsection (a)(2) of this section, equals $1,400 a year. In addition, the Secretary concerned shall pay to the widow, described in the last sentence of subsection (a) of this section, an amount equal to the pension she would otherwise have been eligible to

(b) The first sentence of subsection (b) is amended by striking "$1,400" and inserting "$2,100" in place thereof."

(c) Subsection (c) is added as follows:

"(c) Subsection 1450(i) and section 1453 as added by clause 3 of the first section of this Act, are applicable to persons covered by this section."

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receive under subchapter III of chapter 15 of title 38, United States Code, if the service of her deceased spouse was considered active duty under section 101(21) of that title.

THE BILL AS REPORTED

SEC. 3. Notwithstanding any other law, any person who is entitled to retired or retainer pay on the effective date of this Act and who did not elect to participate in the survivor benefit plan as prescribed by subchapter II of chapter 73 of title 10, United States Code, may, within 270 days after the effective date of this Act, elect to participate in such plan and continue his participation under subchapter I of that chapter, except that the total of the annuities elected may not exceed 100 percent of his retired or retainer pay.

SEC. 4. Except for subsections (a) and (f), section 1 is effective from September 21, 1972. Subsections (a) and (f) of section 1 and section 2 are effective October 1, 1976. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.

SEC. 5. Each annuity that is payable under subchapter I of chapter 73 of title 10, United States Code, on October 1, 1976 , to a spouse or a child of a member who died on or before March 20, 1974, shall be increased effective October 1, 1976 by the total percent that retired or retainer pay has been increased under section 1401a of that title since September 21, 1972.

Summary

PURPOSE

The purpose of the bill is to provide cost-of-living increases for widows under the Retired Servicemen's Family Protection Plan and to make improvements in the Survivor Benefit Plan for retired military personnel.

FISCAL DATA

The Department of Defense estimates that the additional cost of the bill to the Department for fiscal year 1977 is approximately $16.1 million. However, the Congressional Budget Office estimates that because of the increased participation, and therefore increased deuctions from retired pay, which would result from the bill, the estimated fiscal impact in fiscal year 1977 would be a reduction in budgetary requirements of $5.9 million.

DEPARTMENTAL POSITION

The Department of Defense supports the provision of H.R. 14773 as introduced but deferred taking a formal position on the committee amendments.

COMMITTEE POSITION

The Committee on Armed Services, on August 31, 1976, a quorum being present, approved H.R. 14773, as amended, by voice vote.

76-977 O - 76 - 8

94TH CONGRESS
2D SESSION

H. R. 14773

[Report No. 94–1458, Part I]

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 1976

Mr. STRATTON (for himself and Mr. O'BRIEN) introduced the following bill; which was referred to the Committee on Armed Services

SEPTEMBER 1, 1976

Reported with amendments, referred to the Committee on Appropriations for a period not to exceed fifteen legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93–344

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 10, United States Code, to authorize cost-of-living adjustments of annuities under the Retired Serviceman's Family Protection Plan, to suspend retired-pay deductions under the Survivor Benefit Plan when there is no eligible spouse beneficiary, to reduce the duration-of-marriage requirement under the Survivor Benefit Plan from two years to one year, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 73 of title 10, United States Code, is amended as follows:

(a) Section 1434 of title 10, United States Code, is

amended by adding the following new subsection at the end thereof:

"(e) Whenever retired or retainer pay is increased under section 1401a of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or a child of a member who died on or before March 20, 1974, shall be increased at the same time by the same total percent."

(b) Clauses (3) (A) and (4) (A) of section 1447 are each amended by striking out "two years" and inserting in place thereof "one year".

(c) The second sentence of section 1448 (a) is amended by inserting ", or elects to provide an annuity for a dependent child but not for his spouse" after "maximum level".

~~(d) Section 1450(a) is amended by striking out "or" at the end of clause (2), renumbering clause (3) as clause (4), and inserting the following new clause (3):~~

~~"(3) the dependent children in equal shares if the person to whom section 1448 of this title applies elected to provide an annuity for dependent children but not for the spouse; or"~~

(d) Section 1450 is amended as follows:

(A) Subsection (a) is amended by striking out "or" at the end of clause (2), renumbering clause (3) as clause (4), and inserting the following new clause (3):

"(3) the dependent children in equal shares if the person to whom section 1448 of this title applies elected to provide an annuity for dependent children but not for the spouse; or".

(B) by adding the following new subsection "(j)" at the end thereof:

"(j) Where the annuity has been adjusted under subsection (c) of this section and there is no entitlement to compensation under section 411(a) of title 38, due to remarriage of the spouse after reaching age sixty, annuity shall be readjusted to the rate of entitlement existing prior to the adjustment under subsection (c) of this section, if any amounts refunded under subsection (e) of this section are repaid.".

(e) Sections 1450(f), 1451(b), 1452(a), and 1452(c) are each amended by striking out "(a)(3)" and inserting in place thereof "(a)(4)".

~~(f) Subsection (a) of section 1452 is further amended by adding the following new sentence at the end thereof: "The reduction in retired or retainer pay prescribed by the first sentence of this subsection shall not be applicable during any month in which there is no eligible spouse beneficiary."~~

~~(g) Section 1452(b) is amended by inserting "or who has a spouse but has elected to provide an annuity for dependent children only," after "spouse,".~~

(f) Section 1451(a) of title 10, United States Code, is amended to read as follows:

"(a) If the widow or widower is under age sixty-two, the monthly annuity payable to the widow, widower, or dependent child under section 1450 of this title shall be equal to 55 percent of the base amount. When the widow or widower reaches age sixty-two, the monthly amount shall be reduced by an amount equal to 50 percent of the amount of any survivor benefit which the widow or widower receives under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(l)(1) of title 42 and calculated assuming that the person concerned lived to age sixty-five. The reduction prescribed by the second sentence of this subsection shall not be made if the only service by the person concerned as described in section 410(l)(1) of title 42 involved periods of service of less than thirty continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of title 26 of the social security tax which he had paid.".

(g) Section 1452 of title 10, United States Code, is amended by—

(A) further amending subsection (a) by—

(i) striking out the first word and inserting the following in place thereof: "Except as provided in subsection (b), the"; and

(ii) adding the following new sentence at the end thereof: "The reduction in retired or retainer pay prescribed by the first sentence of this subsection shall not be applicable during any month in which there is no eligible spouse beneficiary";

(B) amending subsection (b) by inserting "or who has a spouse but has elected to provide an annuity for dependent children only," after "spouse,"; and

(C) further amending subsection (c) by adding the following sentence at the end thereof: "The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(3) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f).".

SEC. 2. Section 4 of Public Law 92–425, September 21, 1972 (86 Stat. 712), is amended as follows:

(a) Subsection (a)(3) is amended by striking "$1,400" and inserting "$2,100" in place thereof.

(b) The first sentence of subsection (b) is amended by striking "$1,400" and inserting "$2,100" in place thereof.

(c) Subsection (c) is added as follows:

"(c) Subsection 1450(i) and section 1453 as added to

title 10, United States Code, by clause 3 of the first section of this Act, are applicable to persons covered by this section.".

SEC. 3. Notwithstanding any other law, any person who is entitled to retired or retainer pay on the date of enactment of this Act and who did not elect to participate in the Survivor Benefit Plan as prescribed by subchapter II of chapter 73 of title 10, United States Code, may, within two hundred and seventy days after the enactment of this Act elect to participate in such plan and continue his participation under subchapter I of that chapter, except that the total of the annuities elected may not exceed 100 percent of his retired or retainer pay.

~~SEC. 2. Subsections (c), (d), (e), and (g) of section 1 are effective from September 21, 1972.~~

SEC. 4. Except for subsections (a) and (f), section 1 is effective from September 21, 1972. Subsections (a) and (f) of section 1 and section 2 are effective October 1, 1976. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.

SEC. ~~3.~~ *5.* Each annuity that is payable under subchapter I ~~of chapter 73 of title 10, United States Code, on the day before the effective date of this Act, to a spouse or a child of a member who died on or before March 20, 1974, shall be increased effective as of the date of enactment of this Act by~~ *of chapter 73 of title 10, United States Code, on October 1,*

1976, to a spouse or a child of a member who died on or before March 20, 1974, shall be increased effective October 1, 1976, by the total percent that retired or retainer pay has been increased under section 1401a of that title since September 21, 1972.

Amend the title so as to read: "A bill to amend title 10, United States Code, to make certain changes in the Retired Serviceman's Family Protection Plan and the Survivor Benefit Plan as authorized by chapter 73 of that title, and for other purposes.".

STATEMENT OF VICE ADMIRAL FINNERAN

Mr. SIKES. We respect your counsel admiral. You may present your statement as you wish. I think it would be well for you to give us your statement in its entirety.

Will you proceed?

Admiral FINNERAN. Very well, Mr. Chairman.

It is a pleasure to be with you here this morning, sir.

I am Vice Adm. John G. Finneran, Deputy Assistant Secretary of Defense for Military Personnel Policy. I am pleased to have this opportunity to appear before you today for the purpose of presenting the views of the Department of Defense on H.R. 14773, a bill to amend title 10, United States Code, to make certain changes in the retired serviceman's family protection plan and the survivor benefit plan as authorized by chapter 73 of that title, and for other purposes.

The Department of Defense fully supported enactment of H.R. 14773 as originally introduced, subject to a minor technical correction. At that time, the bill encompassed only four provisons:

First, to provide cost-of-living increases to a certain group of survivors receiving benefits under the retired serviceman's family protection plan, or as referred to hearafter, RSFPP.

Second, to eliminate the irrevocable election provision of the survivor benefit plan, or SBP, which requires continuous deductions from the retired pay of participating member on behalf of a spouse even if that spouse predeceases him.

Third, to reduce from 2 years to 1 year the duration-of-marriage requirement for a new spouse of a miltary retiree to be eligible for benefits under the SBP.

Fourth, to clarify provisons of the SBP to allow a retiree to designate a dependent child or children as beneficiaries when there is a spouse.

These provisions continue to appear in H.R. 14773 as amended and are still fully supported by the Department and the administration.

In regard to cost-of-living increases for RSFPP annuitants, it should be noted that the bill would only apply to those RSFPP survivors whose retired spouses or parents died before the SBP was enacted. Consequently, they were denied the opportunity to gain coverage under the SBP which was the successor survivor plan to RSFPP. Under RSFPP, a retired military member could elect to receive less retired pay in order to provide an annuity of up to 50 percent of his retired pay to his survivors upon his death. The amount selected was fixed over the life of the annuity. In contrast, the SBP provides up to 55 percent of retired pay as an annuity and protects that annuity with a cost-of-living escalator. As a result, inflation has seriously eroded the fixed amounts reecived by RSFPP annuitants. For example, the average annual RSFPP annuity is currently about $1,600. Since 1972, this average annuity has decreased about 38 percent in purchasing power due to inflation, which though slowed, still continues. For theese reasons, the Department of Defense views as fully justified the proposal to provide cost-of-living adjustments since September 21, 1972 to these RSFPP annuitants.

The Department of Defense submitted to Congress a legislative proposal as an amendment to the proposed Uniformed Services Retire-

ment Modernization Act. That proposal, like H.R. 14773, would eliminate deductions from retired pay when there is no eligible spouse and reduce the duration-of-marriage requirement from 2 years to 1 year. These provisions became law because the military survivor benefit program was modeled after that of the civil service. The Congress amended the civil service program to eliminate the pay forever clause by Public Law 93–474, October 26, 1974; and to reduce the duration-of-marriage requirement from 2 years to 1 year by Public Law 93–260, April 9, 1974. The Department of Defense is very much aware that these two provisions are a source of considerable irritation to retired personnel and tend to detract from the advantages of the SBP for those members nearing retirement. To illustrate, the percentage of new retirees who elected to participate in SBP dropped from 61 percent in fiscal year 1974 to 55 percent in fiscal year 1975. Overall participation in the plan is approximately 45 percent. The enactment of H.R. 14773 would correct these deficiencies and restore consistency between the military and civil service survivor programs in these areas. The Department totally supports the prompt remedy of these unnecessary, unwarranted and inequitable detractors from the survivor benefit plan.

H.R. 14773 would also clarify the provisions relating to specifying annuities for a dependent child or children when there is a spouse. In Decision B–177471, January 19, 1973, the Comptroller General ruled that the SBP did not clearly authorize a retired member to provide an annuity for a dependent child or children if he has a spouse. It is the desire and intent of the Department of Defense to authorize a retired member to provide such annuities; therefore we favor enactment of this provision of H.R. 14773.

In my statement before the Military Compensation Subcommittee of the House Armed Services Committee, I indicated the first year cost of these four provisions of H.R. 14773 to be $10.2 million, rising to $16.1 million in fiscal year 1981. I also indicated that the first year cost could, in all probability, be accommodated from within amounts budgeted for retired pay for fiscal year 1977.

Subsequent to the hearing on H.R. 14773, the Subcommittee on Military Compensation added three additional features to the bill. These would accomplish the following:

1. Increase the minimum income widow's annuity under SBP from $1,500 to $2,100 a year.
2. Suspend SBP deductions when the beneficiary is an insurable interest and that person predeceases the plan holder, and
3. Reinstate SBP to widows who opted for dependency indemnity compensation, or DIC, in lieu of SBP who remarry after age 60, thereby losing DIC entitlement.

These three features are estimated to cost an additional $4.5 million for the first year in operation. Raising the minimum income widows' annuity accounts for approximately $3.4 million of the increase. This annuity is not adjusted for cost-of-living increases although the VA widows' pension, to which it is linked, is periodically increased. To be eligible for such annuity, a person must be widowed before September 21, 1973, be the unremarried widow of a member who retired before September 21, 1972, be eligible for a VA widows' pension and have an annual income, excluding the VA pension, of less than $1,400.

Under current law, the minimum income widows' annuity is a supplement, sufficient to bring her annual income up to $1,400. This, added to the VA widows' pension, currently brings her annual income up to $2,420. This is below the poverty level threshold for a female head of household under 65 years old which is $2,680 per year. The proposal to raise the minimum income supplement from $1,400 to $2,100 would increase annual income by approximately $300 due to the reduction in the VA widows' pension brought about by the higher income level.

This provision, as well as the one to suspend SBP deductions when there is no longer an insurable interest and the one to reinstate SBP to widows who remarry after age 60 and lose DIC entitlements, appear fully deserving of support. However, I am not authorized to state this as a position of the administration today in that time constraints precluded gaining such clearance.

Mr. SIKES. What does that mean, Admiral?

Admiral FINNERAN. Mr. Chairman, that means that the Department of Defense is fully supportive of these provisions but has not yet had the opportunity to fully justify them through the administration and therefore we are in the awkward position, with respect to those three features, of not being able to give you a resounding vote of confidence.

Mr. SIKES. It is still pending in OMB?

Admiral FINNERAN. Yes, sir.

Mr. SIKES. All right, go ahead.

Admiral FINNERAN. H.R. 14773 was further amended when it came before the full Committee on Armed Services. The salient features would accomplish the following:

1. Reduce the social security offset against SBP payments from 100 percent of the amount attributable to military service to 50 percent of that amount;

2. Eliminate the social security offset when—

(*a*) There is a dependent child,

(*b*) The only military service involves periods of active duty of less than 30 days, and the FICA tax is fully met through civilian covered earnings,

(c) No social security benefits are payable because the beneficiary is employed in social security covered employment, or has postponed receipt of benefits until age 65, and

(*d*) The beneficiary is entitled to a greater benefit based upon her own employment, and

3. The last added provision would accord a new enrollment period of 270 days within which persons on the retired rolls, who previously declined coverage, could elect into the survivor benefit plan.

The Department estimates the additional cost of these features, less the one to reopen the plan for 270 days, at approximately $3.2 million for the first year in operation. Reopening the plan for new enrollment would, as in the case of the initial start up of any like program, generate more in contributions than disbursements for several years. The amount as well as the length of this period would depend on the number to opt for entrance into the plan and their characteristics.

In its report on H.R. 6643, which bill includes these provisions as added to H.R. 14773, the Department noted that it supported, during

consideration of the initial survivor benefit legislation, a 50-percent offset as opposed to a 100-percent offset. As was the case then, we continue to believe that the 100-percent offset acts as a deterrent to greater participation in the plan and should be corrected.

In our report on these provisions we also noted that there are other features of the SBP for which there have not been legislative initiatives proposed but that also merit consideration. Cited as an example was the fact that over time, inflation will cause the cost to the SBP participant to become increasingly out of balance with the cost to a counterpart participating in the comparable plan for civil servants. It was because of these considerations that the Department deferred taking a formal position on these provisions, preferring instead to wait the outcome of a reexamination of the plan in its entirety, which the Department committed itself to undertake. This position is unchanged as I appear before you today.

As amended, the first year costs of H.R. 14773 are estimated at approximately $18 million. For fiscal year 1978 the costs would increase to about $20.5 million and by fiscal year 1981 they would be on the order of $28 million.

In conclusion Mr. Chairman, may I again express my appreciation to you and the other members for allowing me to express the views of the Department of Defense on this very important piece of legislation. This concludes my prepared statement Mr. Chairman.

Mr. SIKES. Do I understand that the Department does favor the legislation, but is somewhat limited in its endorsement because of the fact that OMB has not concluded its consideration of the proposal?

Admiral FINNERAN. That is correct, sir.

Mr. SIKES. Are there any other statements or any witnesses?

Admiral FINNERAN. I have no other witnesses in my behalf, sir.

Mr. SIKES. The committee has some questions. The Chair notes the presence of a larger than usual number of attractive ladies this morning.

Are you here as witnesses, in support of the bill, want to make a speech, or just want to see what Congress is doing to the taxpayer's dollar?

Mrs. ALBRIGHT. We are interest in the cost of living for the RSFPP widows.

Mr. SIKES. Glad to have you here.

STATEMENT OF CONGRESSMAN BOB WILSON

The Chair notes the presence of our distinguished colleague from California, the ranking minority member of the House Armed Services Committee, Congressman Bob Wilson. We consider ourselves privileged to have you appear, and will be glad to have your statement.

Mr. WILSON. Thank you, Mr. Chairman and members of the committee.

I am personally interested in this matter because I was on the Personnel Subcommittee when the RSFPP was first written and also had great interest in creation of the survivor benefit plan. There was an understanding at that time, as is still apparent, that this is very complicated legislation. It is hard to figure, and it takes actuaries. One actuary says one thing while another actuary says something else, but,

generally speaking, when you do have complicated legislation like this, after it is enacted you find some errors and some inequities that are created, and that is what has happened in this case, sir.

Over the past 4 years that this bill has been in effect, a number of obvious inequities have developed that have made the plan not as workable as we had hoped it would be, and that is what this legislation is attempting to correct.

Now it is easy to say, let's stall it for a few more years, and so forth, but I think even with these changes there may still be some inequities that will develop that will be clear for any reasonable person to see and understand and perhaps want to change.

I just feel that this is an opportunity to finally, after 4 years, make these changes that are so important, and to improve the participation in the program. In effect this increased enrollment will, over a long period of time, if you had 100-percent participation, and no one anticipates that, but if you had 100-percent participation, it would defer in the immediate future, up to the year 2000, a considerable sum of money to be appropriated.

No one can accurately predict what the actuarial determination will be on this matter, but I think Admiral Finneran's testimony makes a very important point, when he points out that "The percentage of new retirees who elected to participate in the Survivor Benefit Plan dropped from 61 percent in fiscal year 1974 to 55 percent in fiscal year 1975."

The fact that we are not getting a better participation, indicates that there is something wrong with the system.

This legislation is intended, as all of you know, to protect the widow so that, if her husband predeceases her, she has some means of support rather than being way down below the poverty level. Even with some of the retirement programs, they are still barely brought to the poverty level. The idea is to take a reduced annuity, with the understanding that over the years the couple will have a reduced annuity. Then if the husband predeceases, she will still have a reduced annuity, but not a complete loss of that retired pay income.

What we are trying to do is to improve the participation, and part of the program does call for a 270-day opportunity to enroll, as we have had in our own insurace programs here in Congress. Every once in awhile we have a program where we can look at it and see if we want to opt for a new program.

It just seems to me that we need a one-time reopening up to those past retirees who didn't elect, and perhaps we will get a few of them to change and to protect their widows.

I don't really understand why there isn't a better participation, because under the law today this retirement plan is automatically applied to a man when he retires, and he has to elect out of it. In addition, he is counseled that it is a bad thing to not do this, and his wife is notified. That is a lot of pressure on him, but despite all that pressure, we are still only getting 55-percent participation from new retirees.

I had the Congressional Budget Office estimate the cost. I have passed to each of you a sheet which shows what would happen in the next 5 years.

If we get an increase of only 10 percent from 50-percent participation to 55-percent participation, with the additional revenue because

there will be reduced annuities paid to the retirees, as shown here, there will be a net reduction of $5.9 million for 1977, $4.1 million in 1978, $1.9 million in 1979, no change in 1980, perhaps a $3 million increase looking to 1981. That is only with a 10-percent increase in participation, but if you got a 25-percent increase in participation, and it is reasonable to assume that we would get that, because this legislation does correct a lot of these inequities, like the offset and the other things that everyone including the Defense Department says are bad, if we get that 25-percent increase in participation, the actual costs will be reduced in fiscal year 1977 to minus $42 million, and to a minus $31 million in 1981.

Mr. Chairman, on the basis of reasonable anticipation of these changes going into effect, I would hope that the Appropriations Committee can support the Armed Services Committee in attempting to make this bill a law this year. The Senate is actively considering the bill at this time, and I think they are waiting for us to take the lead on it. I just would hope that the Appropriations Committee can see going along with this because it doesn't entail any outlay in the budget in the next few years. We can always refine it again if it looks like it is out of line at a later period.

I don't want to get corny on this thing, but you know the Bible speaks of the widow's mite and we are talking about widows' mites in this case. This is a very small amount of money when it is spread over the entire structure of the retirement system, but it does go directly to those widows who will otherwise be paid as a part of the veteran's military pension program, which amounts to practically nothing. I would hope that this committee can see fit to support the legislation.

Mr. SIKES. Thank you very much, Mr. Wilson. Your table will appear in the record.

[The table follows:]

CONGRESSIONAL BUDGET OFFICE

AUGUST 31, 1976.

COST ESTIMATES, H.R. 14773

I. Assuming a 10-percent increase in participation in the Survivor Benefit Plan (from 50 percent to 55 percent participation), additional revenues would be received from reduction in retired pay to offset the costs of H.R. 14773, as follows:

[In millions of dollars]

	Fiscal year —				
	1977	1978	1979	1980	1981
Cost (H.R. 14773)	18.1	20.6	23.4	26	29.5
Additional revenue	−24.0	−24.7	−25.3	−26	−26.5
Actual cost	−5.9	−4.1	−1.9	0	+3.0

In other words, there is no cost to the Government until fiscal year 1981.

II. CBO also estimated that a 25-percent increase in participation (to 62.5 percent from the current 50 percent), a figure which is not at all unrealistic based on the changes envisioned in H.R. 14773, would bring $61 million in additional revenues into the fund in fiscal year 1977. Using this $61 million figure in additional revenue over the next few years, the savings are far more dramatic.

[In millions of dollars]

	Fiscal year—				
	1977	1978	1979	1980	1981
Cost (H.R. 14773)	18.1	20.6	23.4	26	29.5
Additional revenue	−61.0	−61.0	−61.0	−61	−61.0
Actual cost	−42.9	−40.4	−37.6	−35	−31.5

Mr. SIKES. This committee knows of your contributions to and your great interest in this program, and we commend you for your efforts.

Are there questions?

If not, thank you very much.

Mr. WILSON. Thank you, Mr. Chairman.

THE 270-DAY OPEN ENROLLMENT PERIOD

Mr. SIKES. Admiral Finneran it seems the most costly aspect of this bill is the provision to reopen the option to enroll for 270 days. Your statement doesn't give much information on the need for the 270-day open period.

Is it possible that this provision alone could cost hundreds of millions of dollars in later years?

Admiral FINNERAN. Mr. Chairman, with all due respect I think there is an exaggeration there in the cost estimate. As Mr. Wilson pointed out, what we are talking about is the potential for a group of people who are now retired to opt to enter the plan at this point in time, having first declined that option when they initially retired. As Mr. Wilson pointed out, the education process that we provide respective retirees in the military overwhelmingly encourages them to stay in the plan, and not to take action to remove themselves from it, so I do not anticipate that there will be some great windfall kind of a response to a reopening period that would bankrupt the plan in a multihundred-million-dollar sense.

To the extent that there is a response, my concern would be that that response come from the lower income primarily exenlisted personnel now on the retired list and the fleet reserve list who for whatever reasons had expectations that they had other alternatives to take care of their survivors, and since that time have been disillusioned by whatever those expectations were, and now are in a position where those survivors are not provided for, and will become a liability to this country in future years.

Therefore I would suggest that, from a social point of view, a modest reopening period of the extent provided in this bill is sound.

Mr. SIKES. Do you think 270 days is the proper period?

Admiral FINNERAN. From an administrative point of view 270 days is sufficient for us to have reasonable confidence that we can get the word to all potential applicants, and to provide them the opportunity for minimal consideration and turnaround——

Mr. SIKES. We are not arguing the merits of this. I can see there is a lot of merit in what you are trying to do but we are trying to

establish costs. As I take it, you are not able to give us a very accurate estimate of cost.

Admiral FINNERAN. No, sir.

Mr. SIKES. In the outyears.

Admiral FINNERAN. Because it is particularly dependent on the characterization of the people who opt for it.

Mr. SIKES. Does the Department of Defense fully support the 270-day open period?

Admiral FINNERAN. Yes, sir.

Mr. SIKES. Is it correct that military personnel who are contemplating retirement must, under current law, sign papers clearly stating that he does not want to participate in the survivor's benefit program, that he is fully aware of the fact that this decision is irrevocable?

Admiral FINNERAN.. Yes, sir.

Mr. SIKES. Is it also true that if the serviceman does not participate in the plan and he has a spouse, his spouse is also notified in writing that the person has failed to elect participation in the plan?

Admiral FINNERAN. That is also true, sir.

Mr. SIKES. It seems obvious that anyone who is not currently participating in the survivor's benefit plan was made fully aware of the benefits available under the plan.

What is the basic reason that the Government now wants to incur the additional cost of reopening the participation to people who have already declined? It is purely a humanitarian interest? Do you feel that it is a matter of need on the part of the individual?

Admiral FINNERAN. I believe that it is a matter of future need, if not recognized immediate need, to satisfy the health and welfare of the survivors of people who may or may not be capable at the present time, or have not been capable at the point in time they retired, of responding to the advantages and benefits that this plan offers to them. I think that that predominantly applies to a number of our enlisted personnel who are in fact going onto the retired rolls with a relatively modest annuity, and who have expectations about great opportunities for second career employment when they do retire that is going to provide a better alternative to them in terms of providing for their survivors.

Mr. SIKES. Suppose that a proviso were added to the 270-day open enrollment requiring those selecting the survivor's benefit plan at this time to pay an amount equal to the amount they would have contributed had they selected the plan initially? Has that been considered?

Admiral FINNERAN. It has not been considered actuarially, sir. Judgmentally it has been considered.

Mr. SIKES. What is your conclusion?

Admiral FINNERAN. My conclusion is that that would act as such a severe deterrent that we would not in fact meet the principal objective of reopening the plan, which is to encourage the low income annuitant to provide for his survivors, and that would represent such a significant financial deterrent to them that they would continue to say no to the opportunity to join the plan. We therefore would not meet the moral and social objectives of making this kind of opportunity available to them.

Mr. VANDER SCHAAF. Admiral Finneran, if I could pursue that just a little bit, I think you stated earlier that military personnel who are about to retire are well schooled in these options with respect to pro-

viding annuities to their dependents. In fact, they have to be under the law. It requires such?

Admiral FINNERAN. That is correct, sir.

Mr. VANDER SCHAAF. We at one time had a plan called the retired serviceman's family protection plan, which was actuarially sound. In other words, over a long period of years the funds subtracted from individuals retired pay funds would equal the amounts paid out to the annuitants over the long run. We had very little participation in that program and had to replace it with a nonactuarially sound program called the survivor's benefit plan. The Congress did this four years ago as Congressman Wilson testified.

The proposal before us makes that current plan even more actuarially unsound. It adds additional benefits to it. In view of this fact, why do you continue to say you still believe that service members will refuse to accept this thing when they can get a plan which is just so much better than any life insurance policy they could possibly buy? Life insurance policies by their very nature have to be sound. The money coming in plus interest must equal the outflow over the long run. Here you have a situation where the Government is contributing, and contributing a lot of money. Yet you say that these people who passed this up, if they had to pay all or even a portion of the pay that should have been withheld if they had selected the SBP when they retired still won't join. Why do you believe the Department will be unable to convince people, that they ought to join? It is hard for me to understand that.

Admiral FINNERAN. My personal judgment is that there are two features of the present survivor benefit plan which were addressed in this legislation, which act as principal deterrents to joining. One is the 100-percent offset feature with respect to social security, and its effects, and the prospective that our people have about the undesirable aspects of that total integration concept.

The other is the pay forever clause, in the event that the beneficiary predeceases the retiree. The combination of those two features in my personal judgment are the principal deterrents.

To answer another part of your question, the option to elect private life insurance policy options to individuals are very significantly dependent on physicial health and well being of the prospective retiree. All of our retirees are not in that position, not just because of combat-related disabilities, but for the simple fact that they are of an age where wear and tear on the human body has taken place to the point where their ability to gain economically advantageous private coverage is not always there, so they are therefore faced with super premium costs to get coverage, or the nonavailability of any coverage.

Mr. VANDER SCHAAF. Admiral, I completely agree with the second portion of your answer and that is even more reason to believe they would be willing to participate at some cost to them. It is the first part that still bothers me. The fact is that this legislation will take out those two detrimental provisions you spoke to earlier, the 100-percent offset, reduce it to 50 percent, and the pay forever provision even if the widow predeceases the member.

In view of that, and you tell your members that these objectionable provisions have been eliminated, why wouldn't they now accept the plan even knowing that they would have to pay back that portion that should have been withheld from their pay earlier, if those are really

and truly the reasons why they objected to the plan in the first place.

Admiral FINNERAN. I think a good number of them would, and I would hope that the ones that would are those who have had minimal opportunities for other income sources since they retired, and whose prospects for alternatives to take care of their survivors are negligible or close to zero.

On the other end of the spectrum is the individual who has been completely successful in that transition to civilian life, and the probability in my judgment that he would join the survivor benefit plan is limited. Therefore I don't see an overwhelming response on the order of 35- or 40-percent additional contributors to the survivor benefit plan coming from this change, and I think that we would defeat our purpose if we made the penalty for joining too severe.

Mr. SIKES. Currently less than 50 percent of the retired servicemen participate in the survivor benefit program. If as a result of this open enrollment period the percent of participation is increase to 80 percent, can you give us the cost to the Government over the next 10-year period?

Admiral FINNERAN. I don't believe I have those costs, sir, but Mr. Wilson submitted a statement which represents a Congressional Budget Office estimate for the next 5 years, and if we in fact achieved 80-percent participation overall, the income that would come in through contributions to the plan from the annuitants would far exceed the budget outlays that would be generated within the next 5 years from these changes. Our estimates indicate that if all of these changes were made as proposed in H.R. 14773, including the 270-day feature, that the income generated from retired pay held to support the cost of the plan from annuitants would defer the point in time at which the Government would have to directly appropriate funds in excess of those contributions to well out into the 21st century, sir.

Mr. SIKES. The committee is trying to establish what the cost is going to be. We feel a responsibility to the Congress to do that. The figures provided by Mr. Wilson are for the next 5 years. If you are able to give us additional cost estimates over a 10-year period, provide those for the record—a 10-year period or longer.

[The information follows:]

In an effort to measure the effect on disbursements, the Department of Defense undertook computer analyses of the plan under differing assumed participation rates. The models' output revealed that a higher participation rate, such as 80 percent, will decrease net disbursements. Assuming an 80-percent overall participating rate, 10-year estimates of the changes in net disbursements under a 50 percent social security offset provision are detailed below:

Change in net disbursements

Fiscal year:	*(Dollars in millions)**
1977	—$168.4
1978	—169.0
1979	—169.3
1980	—168.8
1981	—167.5
1982	—164.9
1983	—162.0
1984	—157.1
1985	—150.3
1986	—141.3

*Negative sign indicates saving.

(Clerk's Note: The estimated net decrease in disbursements shown above is about $100 million greater annually than the estimates prepared by the Congressional Budget Office and inserted earlier in these hearings by Congressman Wilson. This difference is partially accounted for by the fact that the CBO estimates of a 25 percent increase equates to a total participation rate of 62.5 percent. The DOD information does not indicate that payouts from the program will also be considerably higher in latter years if the above estimate proves to be more accurate than CBO's since total payments by the Government greatly exceed the amounts withheld from retired pay over the long run.)

Admiral FINNERAN. Very well, sir.

Mr. SIKES. The Congress should know what the cost is going to be before we embark on the program.

Would you say that this situation is analogous to the 1-percent kicker which Congress originally provided as a small benefit to offset the delay in implementing retired pay increases?

Admiral FINNERAN. Similar to the 1-percent kicker? First of all, to the extent that the cost of living adjustment formula applies to the survivor benefit plan annuitants, the prospective elimination of the 1-percent kicker would apply in that survivor benefit plan as well as to the retiree pay. I find it difficult to draw a parallel between the two in the sense of the question, Mr. Chairman.

Mr. EDWARDS. Will you yield?

Mr. SIKES. Yes.

Mr. EDWARDS. I don't think it is a question of drawing a parallel so much as it is one where we tried to do good with the 1-percent kicker by giving a little something to take care of the delay in the increased benefits.

Admiral FINNERAN. Yes, sir.

Mr. EDWARDS. Only to find when the cost of living increase went up 56 percent, the 1-percent kicker carried it up to 72 percent in benefits.

I am not trying to equate that so much with what we are now talking about. The question is, do we know enough about what we are doing so that it is likely we are going to find ourselves in a similar type situation down the road, where we have provided more than we think we are providing? We don't really know what we are getting into, by your own statement—if I understand your statement.

Admiral FINNERAN. I think we know what we are getting into within reasonable bounds, Mr. Edwards, but as has been pointed out before, we are dealing with projections, and to the extent that people react in the same way that you make actuarial assumptions, your estimates are sound. To the extent that they don't react that way, then you raise the possibility of differences between your actuarial projection and the real world.

With respect to the survivor benefit plan, we have had 4 years of experience with this plan as it is presently enacted, and all of the features that are identified in this bill have been identified as deficiencies and/or corrections that are appropriate in order for it to keep pace with its counterpart in the civil service system, and in that context, I regard those features as an effort to modernize the plan with that 4 years of experience behind us.

By the same token, I would not necessarily suggest that this is the last time that the Congress will have to address adjustments to the military survivor benefit plan. I would fully expect that changes in the future will generate a requirement for further consideration of other changes that may in fact require some adjustment in the economic values and costs and benefits associated with it.

It is very possible, for example, that at some future point it might be necessary to make some adjustment in the formula for the costs of the plan to the annuitant, but I think it would take more experience than we have today to make an absolute judgment as to what those changes need to be.

Mr. WILSON. Mr. Chairman, if I might supplement Admiral Finneran's answer, the real bugaboo in this survivor benefit plan and the major reason that current retirees in decreasing numbers are subscribing to it has been the offset. In other words, when Congress has voted an increase in social security, and these retired servicemen as you know are also under social security, we automatically have a 100 percent reduction in the survivor annuity of the widow. Let's look at the men who weren't in the service, the civil service people shall we say, who also have social security or maybe their wife has social security because she worked, and they don't get this offset. They get the full social security and the full civil service retirement annuity. We in effect are penalizing a guy who risks his life, and his widow, by this offset. The major thrust of this legislation is to reduce that offset from 100 percent to 50 percent on the basis that the Government contributed 50 percent of the original, and therefore is shouldn't be a complete offset. It is only a 50-percent offset. That is reasonable and fair.

I don't think that we ought to get hung up on this 270-day extension, because I agree with Admiral Finneran that after these fellows have been in this program a long time, and they went through the whole procedure, and had an opportunity to change from the RSFPP over to the survivor benefit plan, and they didn't change, then they are not going to change this time, but there will be some that change. It isn't going to be, in my opinion, that much of an increase.

It isn't a windfall in any event, and if we do get an increase in participation such as you suggested, where we get up to say 75 percent of the people I will agree with Admiral Finneran in looking at the figures ahead, it is going to be the year 2000 or 2010 before it actually costs the Government any more than we are paying out right now in the retirement. There will be a reserve built up over that period of time, and no one knows what the situation is going to be like in 2,010. I know I am not going to be around here and neither are any of us here at this table.

Mr. SIKES. Careful now.

Mr. WILSON. It may seem like it but we really won't be. There will be other programs. There will be increases in social security or increases in retirement, where the Federal Government will have recognized that you just can't let people starve.

Mr. SIKES. Staff has a question.

Mr. VANDER SCHAAF. Mr. Wilson, with all respect, be it the year 2,010 or whatever year you select, I think there is some concern here that those people who will select this if you open it up again are not the people who are 45 years old and who have just recently retired. You will go back and find people who are now very old, and whose wives are still alive or who have remarried, who will make this selection, and this will become very costly much earlier than the years you are speaking of. There will be a far greater propensity on the part of people

who are 70 or maybe in the 80's if you open this thing up than those in their 40's to now join the plan.

Mr. WILSON. By amending it, we will have to admit to ourselves that we made a mistake 4 years ago in not anticipating the problem. There would have been better participation if we had anticipated it, so we have a little obligation to those people I think as legislators.

Mr. VANDER SCHAAF. You gave them an opportunity, sir. We gave them an opportunity of 18 months to join, and if I recall correctly, we did it so expensively that this committee questioned the whole thing. We sent annuitant a certified letter. It cost the Government $10 apiece administratively to send them. In fact the Air Force came up here and proposed sending out the letters another time and we said no, that is enough. If people can't accept this program even when you send them a certified letter and they sign for it and return the forms saying they do not want to join, then the Government has done enough.

Mr. WILSON. You know we might as well recognize in the trend of Government there is more and more governmental concern about people and their retirement, and there are all sorts of Government programs to see that people don't live below the poverty level. I believe the Federal Government is going to have the responsibility down the pike—15, 20, or 30 years from now in one way or the other. I would prefer they do it legally and with a choice, rather than have people go on welfare and receive that kind of support from the Federal Government or from the local government.

Mr. SIKES. Mr. Edwards?

Mr. EDWARDS. Putting the extension or the reopening aside for just a moment, it is fair to say, I think, that everything proposed in this bill is going to make the plan more attractive; is that a fair statement?

Mr. WILSON. Right, that is a very fair statement.

Mr. EDWARDS. What you are saying is that you are going to make the plan more attractive, then it is your view that those who turned it down because it was less attractive before should now be given another chance after it has become more attractive to get involved in it.

Is that basically what you are saying?

Mr. WILSON. That is basically what I am saying. I don't think you are going to see all that many, but as Admiral Finneran said, I think there are those who were caught in a trap and thought they were going to get some additional retirement. Many of them went and supplemented their retirement pay with life insurance, because they knew that the life insurance wouldn't have an offset against it for social security. You don't have that with a private life insurance plan. That is why the actuaries can figure a little more accurately what the pay off is going to be, and I don't think you are going to see a great big group. I just want to see fair treatment for those people.

We admitted when we put these amendments in that the legislation had errors in it. Let's go back and admit that those errors should be retroactively corrected and give them an opportunity to come in. This should be the only opportunity they will ever have as far as Congress is concerned for another choice. If they don't make the choice this time, they have had it.

Mr. VANDER SCHAAF. That is what we said last time.

Mr. SIKES. We can't bind future Congresses.

Mr. EDWARDS. Let me follow up just briefly. If a person should choose to take advantage of the reopening period, what would such a person be required to do financially in order to take advantage of the plan? What would be required of that person who wants to get in the plan?

Mr. WILSON. Here is an old couple living on his retirement pay. Say, he is 75 years old and she is 65 years old. They are living on his retirement pay. I don't know what the average is.

Admiral, you could probably tell me, but let's say it is $300 a month. They would have to reduce that right now at the time the cost of living is going up. How much of a reduction would it amount to?

Mr. COX. From $300? It would cost $7.50 a month for the first $300, 2½ percent for the first $300.

Mr. WILSON. It probably would be a pretty tough decision for them to make, since if she survives him, then she will get a further reduction in the total amount of annuity. We are not talking about any 1-percent kicker or windfall or anything else. Really, when you get down to the figures, you wonder how anybody can live on the amount that is set aside in these pensions for the E–7's and the E–6's, who have 45 percent of the total participation in this program.

Mr. EDWARDS. What you really conclude is that we can't afford any more wars.

Mr. WILSON. That is right. War is costly, but we also have an obligation, as Abraham Lincoln said, to bind up the wounds and care for the widow and orphan, and that is what we are trying to do in this legislation.

Mr. SIKES. Further questions, Mr. Edwards?

On my left?

Mr. ROBINSON. Yes, Mr. Chairman.

Admiral, how many people are we talking about with regard to, No. 1, present participants and, No. 2, those that you visualize might participate under this plan? We have talked about money and percentages, but how about the number of retirees involved?

Admiral FINNERAN. We have approximately 500,000 participants in the plan now, sir. If we got a 10-percent increase in participation we would be picking up 50,000 under that 270-day provision.

Mr. ROBINSON. How many are eligible, however, that are not participating at the present time?

Admiral FINNERAN. A little over 500,000, close to 600,000, sir.

Mr. ROBINSON. What percentage of retirees fall into the category that would not logically participate because they do find satisfactory civilian employment, a second career, so to speak? Do you have any figures on that?

Admiral FINNERAN. I don't have any accurate figures to respond to that question, sir. It would be pure judgment on my part. My guess would be that there are somewhere in the neighborhood of 20 percent of our retirees who, for a variety of reasons, are not able to find satisfactory employment of one kind or another.

Mr. ROBINSON. And they of course represent the highest potential for additional participation that we are talking about?

Admiral FINNERAN. From a social need point of view, in my judgment they represent the hard core group that are the target for this kind of a provision, yes, sir.

Mr. ROBINSON. To what extent does that reduce the potential in terms of numbers? You say 20 percent. Can you relate that? Is it 20 percent of the 600,000 or 20 percent of the total?

Admiral FINNERAN. Twenty percent of the 600,000 so we are talking 120,000 potential annuitants that from a social need point of view should seriously look at an option such as is proposed in this bill.

Mr. ROBINSON. Are there any other significant arguments against the participation in the plan as it presently exists, except for the 100-percent offset, and the fact that you must participate beyond the death of the prospective beneficiary?

Admiral FINNERAN. Yes, sir. Compared to those two, they tend to be relatively minor in terms of their numerical significance, but it is a very significant factor to some people, depending on their circumstances, that the present law constrains eligibility for a new spouse to a 2-year waiting time compared to the civil service plan which has been reduced by congressional action in 1974 to a 1-year waiting time rule.

Other features that relate to the technical application of the offset mechanism are that regardless of the basis on which a widow receives her social security, for example, if she actually receives her social security entitlement as a result of her own earnings, she is subject to an offset in the survivor benefit plan annuity for her husband's military earnings, regardless of the fact that she doesn't use that benefit in determining her own social security entitlement. Those are two examples that would also be corrected by provisions in this bill, sir.

Mr. ROBINSON. Admiral, we all know that the social security trust fund is in rather dire straits, that there is a day not far down the road where we are going to have to be paying these benefits, as it appears now, out of general revenues.

What happens to these funds when they are accumulated from the retirees, in terms of the way they are handled is then actually a fund being built up?

Admiral FINNERAN. To the best of my knowledge, sir, those funds are accounted for within Department of Defense's retirement appropriation account, and they are taken up as credits which are applied against that account, and they are offset, of course, by the disbursements from the account, so that what you see as a net appropriation requirement is the difference between the contributions from those sources and the outlay.

Mr. ROBINSON. So then there is not a fund as such.

Admiral FINNERAN. Not to my knowledge, sir.

PARTICIPATION IN SURVIVORSHIP PLAN

Mr. SIKES. What is the current participation rate in the civil service plan? Do you know?

Admiral FINNERAN. No, sir, I do not have that available. I will provide that for the record though.

[The information follows:]

During fiscal year 1975, 99,767 persons retired and 68,093—68 percent participated in the survivorship plan.

Mr. SIKES. What reasons have you been able to assign to the fact that many servicemen have been unwilling to provide an annuity for their

dependents under the existing plans? Have you explored this, to set out the reasons?

Admiral FINNERAN. Yes, sir.

Mr. SIKES. Do you want to list those for the record insofar as you are able to determine them?

Admiral FINNERAN. I think I have cited the two principal reasons that I am aware of, sir, the effect of the 100-percent offset and the pay forever clause.

Mr. SIKES. Mr. Robinson, do you have further questions?

Mr. ROBINSON. Thank you, Mr. Chairman. No further questions.

COST OF LIVING ADJUSTMENT FOR RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN (RSFPP)

Mr. SIKES. Let me ask a few questions under "Cost of Living Adjustment for Retired Serviceman's Family Protection Plan."

The retired serviceman's family protection plan which was established in 1953 was replaced by the survivor benefit plan on September 21, 1972. Retired persons who had previously joined the RSFPP were given an 18-month period until March 20, 1974, to participate in the new survivor benefit plan (SBP) or to drop out of RSFPP. The retired serviceman's family protection plan never contained a cost-of-living feature. This bill contains a provision which will permit the payment of cost-of-living adjustments to beneficiaries whose sponsor died on or before March 20, 1974. What does the Department of Defense estimate the cost of this provision to be?

Admiral FINNERAN. Approximately $6.7 million, sir. There are 9,000 prospective beneficiaries.

Mr. SIKES. The RSFPP was always considered to be an actuarially sound plan in that deductions from the retired pay of participants plus interest would over a period of years equal benefits paid. Will providing cost-of-living increases destroy the actuarial soundness of this plan?

Admiral FINNERAN. Mr. Chairman, I believe "destroy" is a little strong. It will obviously affect it. The reason that we proposed the survivor benefit plan, and that it was enacted by the Congress, was principally driven by the fact that the retired serviceman's family protection plan was not well supported by the members. We only had, as Mr. Vander Schaaf pointed out earlier, a 16-percent participation, and it was obvious to the Congress at the time that they considered the survivor benefit plan that something needed to be done in order to properly provide a balanced plan, and therefore the design of the survivor benefit plan superseded RSFPP. At the time of the transition as you pointed out in your question, there was a transition period which provided for the member to make a transition from the old plan to the new plan.

Mr. SIKES. Complete your answer for the record if you wish.

How many widows did you say will receive this cost of living increase?

Admiral FINNERAN. 9,000.

Mr. VANDER SCHAAF. Admiral, in response to the previous answer, I think you indicated there would be some effect upon the actuarial soundness of the plan. However, it is also possible that the plan could still be actuarially sound, since interest rates have increased substantially from the estimates that I understand were used when the plan

was put together in the 1950's. You could borrow money at average rates of 3 or 4 percent then. Today for the Government to borrow money it has to pay 7 or 8 percent or in that neighborhood.

Admiral FINNERAN. That is very possible.

Mr. VANDER SCHAAF. I believe you will find that even though the Government incurs this additional cost, this plan as it was originally envisioned will remain reasonably actuarially sound. It isn't a give-away program.

Admiral FINNERAN. I appreciate that comment. I think it is very valid.

COMPARISON WITH CIVIL SERVICE LAWS

Mr. SIKES. Mr. Edwards?

Mr. EDWARDS. Admiral, I want to ask you a few questions in order to get a better perspective of this bill and what it will do vis-a-vis civil service law. I realize some of the questions I ask you may not have an applicable corresponding provision in the civil service law but let's hurriedly go through your statement and see if we can draw some comparisons.

At page 4 at the top of the page, where we are talking about annuities for dependent children; is there an applicable or corresponding civil service provision?

Admiral FINNERAN. Yes, sir, at least in part, in that children are automatically covered in the civil service plan.

Mr. EDWARDS. Down at the bottom of the page, where you list three, is there a corresponding civil service provision having to do with the increase from $1,400 to $2,100 a year?

Admiral FINNERAN. No, sir, I don't believe there is. If there is, it is a different provision.

Mr. EDWARDS. How about No. 2?

Admiral FINNERAN. No. 2 parallels the provisions for eliminating the pay forever clause problem with respect to the principal spouse, and to that extent it parallels legislation pending in this Congress for the civil service plan as I understand it, sir.

Mr. EDWARDS. How about No. 3?

Admiral FINNERAN. This is not a comparable feature, sir, because civil servants are not generally eligible for the dependent indemnity compensation, which is a VA benefit for active service in the military.

Mr. EDWARDS. Turn to page 6 if you will.

No. 1 would reduce the offset from 100 percent to 50 percent.

Is there a corresponding provision?

Admiral FINNERAN. No, sir. The Federal civil service does not derive a benefit from the social security system like the military.

Mr. EDWARDS. How about No. 2?

Admiral FINNERAN. It is the same problem, sir. There is no parallelism with the civil service plan because of the nonexistence of social security for civil servants.

Mr. EDWARDS. That is true of all of the subparts of No. 2?

Admiral FINNERAN. Yes, sir.

Mr. EDWARDS. And has there been any corresponding provision under civil service law for reopening a new enrollment period such as proposed in No. 2 on page 6?

Admiral FINNERAN. I don't know the answer to that. I will have to provide that for the record.

[The information follows:]

No, this plan has not been reopened for retired civil servants.

Mr. WILSON. Mr. Chairman, I might add in further answer to the question of Mr. Edwards regarding civil service, 58 percent of the retirees in civil service also draw social security, and there is no offset for those civil servants who draw social security. Either they got into it before they went into civil service, after they retired from civil service, or moonlighted, but if the statistics are correct, 58 percent of current civil service retirees draw social security without any offset.

Mr. SIKES. Very well.

There are additional questions which will be submitted for the record, and to be answered by you, Admiral Finneran, or another responsible witness.

SUSPENSION OF PAY DEDUCTIONS UNDER SURVIVOR BENEFIT PLAN

Mr. SIKES. Under the present survivor's benefit plan, the deductions from the retired serviceman's pay, who elects to provide this annuity for his spouse or children continues throughout his life, even though his intended beneficiary dies before him or otherwise becomes ineligible. The proposed bill would eliminate this feature of the plan. Will the elimination of this feature also destroy or further degrade the actuarial soundness of the survivor's benefit plan?

Admiral FINNERAN. Since the current survivor benefit plan is partially subsidized by the Federal Government, it is not actuarially self-sufficient. Eliminating the requirement for a retiree to continue payments in the event his intended beneficiary predeceases him will decrease the level of contributions relative to benefit payments.

Mr. SIKES. The report indicates that the reason for making this particular change is because the civil service plan, upon which the survivor's benefit plan was modeled, was recently so changed. Why was the change made in the civil service plan in the first place?

Admiral FINNERAN. To make the plan more attractive and to remove an inequity.

Mr. SIKES. What is the Defense Department's estimate cost for this particular feature and how many retired personnel are expected to stop paying for the survivor's benefit plan as a result?

Admiral FINNERAN. Elimination of the pay forever clause in the SBP is estimated to cost $3.5 million in fiscal year 1977. It is further estimated that about 7,780 retired personnel will be initially affected by this feature.

REDUCTION IN DURATION-OF-MARRIAGE REQUIREMENT

Mr. SIKES. Under the survivor's benefit plan, a widow who was not married to the military member at the time he became entitled to retired pay is not eligible for benefits unless she has been married to him for at least 2 years on the date of the retired serviceman's death. This requirement is being reduced to 1 year on the basis that a similar

change was made in the civil service plan. Again, what is the reason for the change in the civil service plan?

Admiral FINNERAN. The 2-year marriage requirement stems from Public Law 80–426, approved February 28, 1948. The legislative history of that statute shows that the Senate version of the bill, which eventually became Public Law 80–426, contained a 5-year marriage requirement. However, in conference, the 2-year marriage requirement was substituted for the 5-year requirement. The purpose of such marriage reqiurement was to protect the civil service retirement system against so-called deathbed marriages. The trend with respect to other benefit systems operated by the Government has been to liberalize similar marriage requirements. Prior to 1967, the Veterans' Administration required a marriage of 5 years' duration for the payment of benefits to otherwise qualified widows. This requirement was changed to 1 year in 1967. In 1968, the marriage requirement under the social security system was reduced from 1 year to 9 months (3 months in the case of accidental death or death in line of duty in the Armed Forces). The Social Security Amendments of 1972 (Public Law 92–603) further liberalized this requirement by providing for the waiver of either the 3-month or 9-month requirement under certain circumstances.

INCOME SUPPLEMENT FOR CERTAIN WIDOWS

Mr. SIKES. Two additional features of the bill provide an income supplement for certain widows who have income of less than $1,400 annually. The minimum income would be increased to $2,100 per year. The other item involves a very small number of widows who have: (1) Been widowed by a retired member who participated in SBP, (2) widowed by a retired member who died of a service connected disability, (3) chosen benefits from the VA instead of SBP upon her husband's death, (4) have remarried after her 60th birthday, (5) have this last marriage terminated by death or divorce. The committee would like to have the Defense Department's views on these provisions.

Admiral FINNERAN. Under current law, the minimum income widow's annuity is a supplement, sufficient to bring her annual income up to $1,400. This added to the VA widow's pension, currently brings her annual income up to $2,420. This is below the poverty level threshold for a female head of household under 65 years old which is $2,680 per year. Although a position of the administration has not been established, it appears fully deserving to increase the present amount of $1,400 to $2,100.

With regard to widows who remarry after age 60 and their SBP annuities were reduced or terminated because of VA payments, it is believed that as a matter of equity, the SBP annuities should be restored to the full value. Generally, a widow is entitled to the VA payment when her husband died from a diseases or injury incurred or aggravated in line of duty while on active duty. Had such a widow not applied for the VA payment, her entitlement to the SBP annuity would have continued after her marriage at age 60. To provide equitable treatment to the widows involved, it would appear that they should be permitted to have their SBP annuities restored to full value upon remarriage after age 60. However, a position of the administration regarding this matter has not been established.

Upon termination of the last marriage, the widow may reapply for VA benefits. Therefore, the fifth condition enumerated is not applicable to the widows involved.

Reduction in Social Security Offset

Mr. Sikes. Four separate provisions of this bill eliminate or reduce the amount by which payments under the survivors benefit program are offset when the widow is also drawing social security payments or is entitled to social security payments even if she is not actually drawing them. The largest and most costly aspect of this bill would reduce at age 62 the amount of the offset for payments from social security from 100 percent to 50 percent. What is the justification for providing this additional benefit and how much would it cost in fiscal year 1977?

Admiral Finneran. As evidenced in the relatively low participation rate in the military plan, our retirees resent the 100 percent offset for social security. This makes the amount contributed per $100 of coverage very high. From all indications, they also resent the fact that a widow is subject to the offset when she is entitled to but not drawing social security payment or is fully covered under social security as a result of her own earnings. Many view these provisions as being sufficiently disadvantageous so as to opt not to enter the plan, just as was the case for retirees already on the rolls at the time the act was passed. The Department supported during consideration of the initial survivor benefit legislation, a 50-percent offset as being reasonable, in view of the ratio of member/Government contributions toward social security. The cost of reducing the offset to 50 percent, to include the other offset provisions of H.R. 19773, would cost approximately $3.2 million in fiscal year 1977. This does not take into consideration the effect of additional contributions into the plan as a result of probable increased participation should the objectionable provisions be removed.

Mr. Sikes. It would seem that this particular portion of the bill could become extremely expensive in 10 years. Have you attempted to predict the cost implications of this aspect of the bill in 1987? If so, what does the cost trend look like for the next 10 years?

Admiral Finneran. The Department has prepared preliminary estimates of the changes occurring in costs as a result of reducing the offset from 100 percent to 50 percent. The estimates indicate benefit payments will increase in each of the next 10 years. I will place this in the record.

[The information follows:]

Change in SBP benefit payments as a result of reducing offset from 100 percent to 50 percent

Fiscal year:	(*Dollars in millions*)
1977	$1.79
1978	2.46
1979	3.44
1980	4.76
1981	7.01
1982	9.99
1983	14.02
1984	19.51
1985	28.16
1986	28.52

These estimates do not allow for increased participation in the plan by future retirees or the impact of the 270-day open period proposed for opting into the plan. In either case, contributions into the plan would continue to exceed outlays for a number of years.

Mr. SIKES. The report on this bill—report No. 94–1458)—states that—

> Inasmuch as the military member and the Government make equal contributions under the social security law, the committee concluded that the 100-percent offset was excessive and should be reduced to 50 percent.

Do you believe that the offset is excessive in view of the fact that military personnel do not contribute to their retirement system?

Admiral FINNERAN. In my judgment, the fact that the military retirement system is noncontributory bears no relationship as to whether or not the 100-percent offset provision is excessive. I view these as separate and independent issues. The SBP participant receives a reduced annuity in order to provide protection for his family and he also contributes 50 percent for social security protection. The 100-percent offset would thus appear irregular and inconsistent as applied to the SBP annuity and I can easily see why this feature is objectionable to our retirees.

Mr. SIKES. It would also seem that this provision may be "out of touch" with current thinking with respect to federal retirement programs. This proposal will increase the cost of an already out of control situation and will perpetuate the problem of beneficiaries receiving retired pay from more than one federal program at the same time. What is your comment to this rationale?

Admiral FINNERAN. We do not foresee the cost of SBP as eventually resulting in a situation which is out of control as to costs. Further, when and if the annual outlays exceed contributions, a good case could be made for offsetting these costs for a number of years, for purposes of justification, by the cumulative amounts by which contributions have exceeded outlays over the years.

In my judgment, reducing the social security offset in SBP annuities by the percent contributed by the military does not necessarily aggrevate the problem of beneficiaries receiving retired pay from more than one Federal program at the same time. In my opinion, the issue of integration of social security into the military retirement system is separate and apart from the SBP and its relationship to social security. It is noted, however, that the Department of Defense has sponsored legislation for the modernization of the military retirement system, which includes provisions for integration of social security at 50 percent of the military covered earnings. For consistency, it would appear appropriate that the offset in the SBP parallel that proposed for the military retirement system.

Mr. SIKES. The remaining three provisions of the bill with respect to social security offsets are relatively minor. However, one of the proposals would eliminate the social security offset when there is a dependent child. Currently, there is no offset if the widow has two dependent children but the full 100-percent offset applies with only one child. Does the social security system provide an additional benefit to a widow who has one or more dependent children?

Admiral FINNERAN. Yes; she is entitled to a mother's benefit, if under age 60, and she is caring for the deceased retirees child under age 18 (or disabled) who is getting a disabled benefit based on the earnings of the deceased worker. The amount of the benefit is a fixed percentage of the member's primary insurance amount. With regard to this offset, a point of equity could be made in that widows with two or more children receive no offset whereas those with one child have the full offset.

Mr. SIKES. Would the dependent widow also be eligible for aid to dependent children?

Admiral FINNERAN. Social security survivors' annuities are (as well an SBP annuity) included as countable income by the States in determining eligibility to financial assistance under the aid to families with dependent children program. If the widows' total countable income is less than the limit specified by her State of residence, she would be eligible to receive such aid.

Mr. SIKES. Thank you very much for your presence and your testimony and I thank all of you who are interested in the subject.

The committee will act quickly upon it. We will move on to another matter.

Admiral FINNERAN. Thank you, Mr. Chairman.

Mr. FLOOD. Mr. Chairman, I move that the committee go into executive session.

Mr. SIKES. The motion requires a rollcall vote.

The Clerk will call the roll.

(The Clerk proceeded to call the roll.)

Mr. SIKES. Mr. Reporter, let the record show that on this vote Mr. Mahon, Mr. Sikes, Mr. Flood, Mr. McFall, Mr. Edwards, Mr. Robinson, and Mr. Cederberg voted aye. There were no noes. Therefore, the motion was agreed to.

(Whereupon, at 11:20 a.m., the committee proceeded into executive session.)

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