

**Uniformed Services Survivor Benefits Amendments of 1980
- Sec. 5**

[Public Law 96-402]

【Currency: This publication is a compilation of the text of Public Law 96-402. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

SEC. 5. 【10 U.S.C. 1448 note】 (a)(1) The Secretary concerned shall pay an annuity to any individual who is the surviving spouse of a member of the uniformed services who—

(A) died before September 21, 1972;

(B) was serving on active duty in the uniformed services at the time of his death and had served on active duty for a period of not less than 20 years; and

(C) was at the time of his death entitled to retired or retainer pay or would have been entitled to that pay except that he had not applied for or been granted that pay.

(2) An annuity under paragraph (1) shall be paid under the provisions of subchapter II of chapter 73 of title 10, United States Code, in the same manner as if such member had died on or after September 21, 1972.

(b)(1) The amount of retired or retainer pay to be used as the basis for the computation of an annuity under subsection (a) is the amount of the retired or retainer pay to which the member would have been entitled if the member had been entitled to that pay based upon his years of active service when he died, adjusted by the overall percentage increase in retired and retainer pay under section 1401a of title 10, United States Code (or any prior comparable provision of law), during the period beginning on the date of the member's death and ending on the day before the effective date of this section.

(2) In addition to any reduction required under the provisions of subchapter II of chapter 73 of title 10, United States Code, the annuity pay to any surviving spouse under this section shall be reduced by any amount such surviving spouse is entitled to receive as an annuity under subchapter I of such chapter.

(c) If an individual entitled to an annuity under this section is also entitled to an annuity under subchapter II of chapter 73 of title 10, United States Code, based upon a subsequent marriage, the individual may not receive both annuities but must elect which to receive.

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(d) As used in this section:

(1) The term “uniformed services” means the Armed Forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration.

(2) The term “surviving spouse” has the meaning given the terms “widow” and “widower” in section 1447 of title 10, United States Code.

(3) The term “Secretary concerned” has the meaning, given such term in section 101(8) of title 10, United States Code, and includes the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration, and the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.