

Public Law 92-425

September 21, 1972
[H. R. 10670]

AN ACT

To amend chapter 73 of title 10, United States Code, to establish a Survivor Benefit Plan, and for other purposes.

Armed Forces.
Survivor Bene-
fit Plan, estab-
lishment.
10 USC 1431.

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:

(1) The title of the chapter is amended by adding “; **SURVIVOR BENEFIT PLAN**” after “**PAY**”, and by inserting the following after the revised title:

“Subchapter	Sec.
“I. Retired Serviceman’s Family Protection Plan	1431
“II. Survivor Benefit Plan	1447

“Subchapter I.—Retired Serviceman’s Family Protection Plan”.

(2) Subchapter I is amended as follows:

(A) Sections 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1444 (a) and (c), 1445, and 1446 are each amended by striking out “chapter” wherever it appears and inserting in place thereof “subchapter”.

(B) Section 1443 is repealed and the corresponding item in the subchapter analysis for that section is stricken.

(C) Section 1444(b) is repealed and the catchline and subchapter analysis item for section 1444 are each amended by striking out “reports to Congress;”.

(3) The following new subchapter is added after section 1446:

“Subchapter II.—Survivor Benefit Plan

“Sec.

“1447. Definitions.

“1448. Application of Plan.

“1449. Mental incompetency of member.

“1450. Payment of annuity: beneficiaries.

“1451. Amount of annuity.

“1452. Reduction in retired or retainer pay.

“1453. Recovery of annuity erroneously paid.

“1454. Correction of administrative deficiencies.

“1455. Regulations.

“§ 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

“(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

70A Stat. 110;
82 Stat. 752.Repeals.
70A Stat. 111.

75 Stat. 811.

81 Stat. 652;
83 Stat. 837.

“(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, 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.

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.

Effective date.

“(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 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.

85 Stat. 660.

“§ 1449. Mental incompetency of member

“If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Veterans' Administration, or by a court of competent jurisdiction, any election described in the first sentence of subsection (a), or subsection (b), of section 1448 of this title may be made on behalf of that person by the Secretary concerned. If the person for whom the Secretary has made an election is later determined to be mentally competent by an authority named in the first sentence, he may, within 180 days after that determination revoke that election. Any deductions made from retired or retainer pay by reason of such an election will not be refunded.

“§ 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

“(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).

Termination.

“(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 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.

Retired or re-
tainer pay waiver.

80 Stat. 564.
5 USC 8331.

Ante, p. 144.

“(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.

Refunds.

“(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.

“(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.

Restriction.

“(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.

“§ 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(1)(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 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(1)(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

Ante, p. 416.

70 Stat. 870;
74 Stat. 937.

though that benefit has been offset by deductions under section 403 of title 42 on account of work.

53 Stat. 1367;
Ante, pp. 410-415.
Monthly annuity.

“(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.

Annuity in-
crease.
81 Stat. 652;
83 Stat. 837.

“(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.

“§ 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.

Limitation.

“(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.

“(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.

Waiver.

80 Stat. 564.
5 USC 8331.
Ante, p. 144.

“(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.

Refunds, re-
striction.

“(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.

“§ 1453. Recovery of annuity erroneously paid

“In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this subchapter. However, recovery is not required if, in the judgment

of the Secretary concerned and the Comptroller General, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.

“§ 1454. Correction of administrative deficiencies

“The Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.

“§ 1455. Regulations

“The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service. Those regulations shall—

“(1) provide that, when the notification referred to in section 1448(a) of this title is required, the member and his spouse shall, before the date the member becomes entitled to retired or retainer pay, be informed of the elections available and the effects of such elections; and

“(2) establish procedures for depositing the amounts referred to in section 1452(d) of this title.”

SEC. 2. The chapter analysis of subtitle A and the analysis of part II of subtitle A of title 10, United States Code, are each amended by amending the item relating to chapter 73 by adding “; Survivor Benefit Plan” after “Pay”.

SEC. 3. (a) The Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act applies to any person who initially becomes entitled to retired or retainer pay on or after the effective date of this Act. An election made before that date by such a person under section 1431 of title 10, United States Code, is canceled. However, a person who initially becomes entitled to retired or retainer pay within 180 days after the effective date of this Act may, within 180 days after becoming so entitled, elect—

(1) not to participate in such Survivor Benefit Plan if he is married or has a dependent child; or

(2) to participate in that Plan, if he is a person covered by section 1448(b) of title 10, United States Code.

(b) Any person who is entitled to retired or retainer pay on the effective date of this Act may elect to participate in the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act before the first anniversary of that date. However, such a person who is receiving retired or retainer pay reduced under section 1436(a) of title 10, United States Code, or who is depositing amounts under section 1438 of that title, may elect before the first anniversary of the effective date of this Act—

(1) to participate in the Plan and continue his participation under chapter 73 of that title as in effect on the day before the effective date of this Act, except that the total of the annuities elected may not exceed 100 percent of his retired or retainer pay; or

(2) to participate in the Plan and, notwithstanding section 1436(b) of that title, terminate his participation under chapter 73 of that title as in effect on the day before the effective date of this Act.

Ante, p. 706.

75 Stat. 810;
82 Stat. 751.

Ante, p. 706.

Ante, p. 706.

A person who elects under clause (2) of this subsection is not entitled to a refund of amounts previously deducted from his retired or retainer pay under chapter 73 of title 10, United States Code, as in effect on the day before the effective date of this Act, or any payments made thereunder on his behalf. A person who is not married or does not have a dependent child on the first anniversary of the effective date of this Act, but who later marries or acquires a dependent child, may elect to participate in the Plan under the fourth sentence of section 1448(a) of that title.

(c) Notwithstanding the provisions of the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act, and except as otherwise provided in this section, subchapter I of chapter 73 of title 10, United States Code (other than the last two sentences of section 1436(a), section 1443, and section 1444(b)), as in effect on the day before the effective date of this Act, shall continue to apply in the case of persons, and their beneficiaries, who have elected annuities under section 1431 or 1432 of that title and who have not elected under subsection (b) (2) of this section to participate in that Plan.

"Base amount."

(d) In this section, "base amount" means—

(1) the monthly retired or retainer pay to which a person—

(A) is entitled on the effective date of this Act; or

(B) later becomes 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

(2) any amount less than that described in clause (1) designated by that person at the time he makes an election under subsection (a) (2) or (b) of this section, but not less than \$300; as increased from time to time under section 1401a of title 10, United States Code.

81 Stat. 652;
83 Stat. 837.
Effective date.

76 Stat. 451;
82 Stat. 1314.

Ante, pp. 708,
710, 711.

Annuity pay-
ments, eligibility.

(e) An election made under subsection (a) or (b) of this section is effective on the date it is received by the Secretary concerned, as defined in section 101(5) of title 37, United States Code.

(f) Sections 1449, 1453, and 1454 of title 10, United States Code, as added by clause (3) of the first section of this Act, are applicable to persons covered by this section.

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;

(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

72 Stat. 1137;
81 Stat. 180.
38 USC 531.
38 USC 521
note.

72 Stat. 1108;
84 Stat. 1864.

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 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.

Ante, p. 706.

72 Stat. 1137;
81 Stat. 180.
38 USC 531.
84 Stat. 1864.
70A Stat. 619;
73 Stat. 358.

SEC. 5. Section 3(a) (4) of the Act of August 10, 1956, chapter 1041, as amended (38 U.S.C. 857a(a) (5)), and section 221(a) (5) of the Public Health Service Act, as amended (42 U.S.C. 213a(a) (5)), are each amended to read as follows:

"Chapter 73, Retired Serviceman's Family Protection Plan; Survivor Benefit Plan."

SEC. 6. Title 38, United States Code, is amended as follows:

84 Stat. 1584.

(1) Section 415(g) (M) is amended to read as follows:

"(M) payments of annuities elected under subchapter I of chapter 73 of title 10."

(2) Section 503(17) is amended to read as follows:

"(17) payments of annuities elected under subchapter I of chapter 73 of title 10."

Approved September 21, 1972.

Public Law 92-426

AN ACT

September 21, 1972
[H. R. 2]

To establish a Uniformed Services University of the Health Sciences and to provide scholarships to selected persons for education in medicine, dentistry, and other health professions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniformed Services Health Professions Revitalization Act of 1972".

Uniformed Services Health Professions Revitalization Act of 1972.

SEC. 2. (a) Title 10, United States Code, is amended by adding the following new chapters after chapter 103:

78 Stat. 1064.
10 USC 2101.

"Chapter 104.—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

"Sec.

"2112. Establishment.

"2113. Board of regents.

"2114. Students: selection; status; obligation.

"2115. Graduates: limitation on number electing to perform civilian Federal duty.

"2116. Reports to Congress.

"2117. Authorization for appropriations.

"§ 2112. Establishment

"(a) There is hereby authorized to be established within 25 miles of