

section (a), from participating in the annuities provided under this subchapter, the amount withheld from the elector's retired or retainer pay as a result of an election under this subchapter shall be refunded to the beneficiaries, less the amount of any annuities paid under this subchapter, and in either case without interest.

(Added Pub. L. 87-381, §6(1), Oct. 4, 1961, 75 Stat. 811; amended Pub. L. 90-485, §1(8), Aug. 13, 1968, 82 Stat. 754; Pub. L. 92-425, §1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

AMENDMENTS

1972—Pub. L. 92-425 substituted “subchapter” for “chapter” wherever appearing.

1968—Subsec. (a)(2). Pub. L. 90-485 substituted “19” for “18”.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-485 effective on first day of third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90-485, set out as a note under section 1431 of this title.

SUBCHAPTER II—SURVIVOR BENEFIT PLAN

Sec.

- 1447. Definitions.
- 1448. Application of Plan.
- 1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay.
- 1449. Mental incompetency of member.
- 1450. Payment of annuity: beneficiaries.
- 1451. Amount of annuity.
- 1452. Reduction in retired pay.
- 1453. Recovery of amounts erroneously paid.
- 1454. Correction of administrative errors.
- 1455. Regulations.

AMENDMENTS

1997—Pub. L. 105-85, div. A, title VI, §641(a)(2), Nov. 18, 1997, 111 Stat. 1798, added item 1448a.

1996—Pub. L. 104-201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2551, amended analysis generally, reenacting items 1447 to 1452, 1454, and 1455 without change and substituting “Recovery of amounts” for “Recovery of annuity” in item 1453.

1989—Pub. L. 101-189, div. A, title XIV, §1407(a)(10)(B), Nov. 29, 1989, 103 Stat. 1589, substituted “errors” for “deficiencies” in item 1454.

1985—Pub. L. 99-145, title VII, §719(8)(B), Nov. 8, 1985, 99 Stat. 676, struck out “or retainer” after “retired” in item 1452.

1972—Pub. L. 92-424, §1(3), Sept. 21, 1972, 86 Stat. 706, added subchapter II heading and items 1447 to 1455.

§ 1447. Definitions

In this subchapter:

(1) **PLAN.**—The term “Plan” means the Survivor Benefit Plan established by this subchapter.

(2) **STANDARD ANNUITY.**—The term “standard annuity” means an annuity provided by virtue of eligibility under section 1448(a)(1)(A) of this title.

(3) **RESERVE-COMPONENT ANNUITY.**—The term “reserve-component annuity” means an annuity provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

(4) **RETIRED PAY.**—The term “retired pay” includes retainer pay paid under section 6330 of this title.

(5) **RESERVE-COMPONENT RETIRED PAY.**—The term “reserve-component retired pay” means

retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(6) **BASE AMOUNT.**—The term “base amount” means the following:

(A) **FULL AMOUNT UNDER STANDARD ANNUITY.**—In the case of a person who dies after becoming entitled to retired pay, such term means the amount of monthly retired pay (determined without regard to any reduction under section 1409(b)(2) of this title) to which the 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.

(B) **FULL AMOUNT UNDER RESERVE-COMPONENT ANNUITY.**—In the case of a person who would have become eligible for reserve-component retired pay but for the fact that he died before becoming 60 years of age, such term means the amount of monthly retired pay for which the person would have been eligible—

(i) if he had been 60 years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title; or

(ii) upon becoming 60 years of age (if he had lived to that age), for purposes of an annuity to become effective on the 60th anniversary of his birth in accordance with a designation made under section 1448(e) of this title.

(C) **REDUCED AMOUNT.**—Such term means any amount less than the amount otherwise applicable under subparagraph (A) or (B) with respect to an annuity provided under the Plan but which is not less than \$300 and which is designated by the person (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) providing the annuity on or before—

(i) the first day for which he becomes eligible for retired pay, in the case of a person providing a standard annuity, or

(ii) the end of the 90-day period beginning on the date on which he receives the notification required by section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, in the case of a person providing a reserve-component annuity.

(7) **WIDOW.**—The term “widow” means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay—

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

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

(8) **WIDOWER.**—The term “widower” means the surviving husband of a person who, if not

married to the person at the time she became eligible for retired pay—

(A) was married to her for at least one year immediately before her death; or

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

(9) SURVIVING SPOUSE.—The term “surviving spouse” means a widow or widower.

(10) FORMER SPOUSE.—The term “former spouse” means the surviving former husband or wife of a person who is eligible to participate in the Plan.

(11) DEPENDENT CHILD.—

(A) IN GENERAL.—The term “dependent child” means a person who—

(i) is unmarried;

(ii) is (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 self support because of a mental or physical incapacity existing before the person's eighteenth birthday or incurred on or after that birthday, but before the person's twenty-second birthday, while pursuing such a full-time course of study or training; and

(iii) is 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.

(B) SPECIAL RULES FOR COLLEGE STUDENTS.—For the purpose of subparagraph (A), a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while 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 the child shows to the satisfaction of the Secretary of Defense that the child 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.

(C) FOSTER CHILDREN.—A foster child, to qualify under this paragraph 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 a student as described in this paragraph, shall not be considered to affect the residence of such a foster child.

(12) COURT.—The term “court” has the meaning given that term by section 1408(a)(1) of this title.

(13) COURT ORDER.—

(A) IN GENERAL.—The term “court order” means a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or of a court ordered, ratified, or approved property settlement agreement incident to such previously issued decree).

(B) FINAL DECREE.—The term “final decree” means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for the taking of such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(C) REGULAR ON ITS FACE.—The term “regular on its face”, when used in connection with a court order, means a court order that meets the conditions prescribed in section 1408(b)(2) of this title.

(Added Pub. L. 92-425, §1(3), Sept. 21, 1972, 86 Stat. 706; amended Pub. L. 94-496, §1(1), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, §201, Sept. 30, 1978, 92 Stat. 843; Pub. L. 96-402, §2, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97-252, title X, §1003(a), Sept. 8, 1982, 96 Stat. 735; Pub. L. 98-94, title IX, §941(c)(1), Sept. 24, 1983, 97 Stat. 653; Pub. L. 99-145, title VII, §§719(1), (2), 721(b), Nov. 8, 1985, 99 Stat. 675, 676; Pub. L. 99-348, title III, §301(a)(1), July 1, 1986, 100 Stat. 702; Pub. L. 99-661, div. A, title XIII, §1343(a)(8)(A), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100-180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101-189, div. A, title XIV, §1407(a)(1)-(3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 101-510, div. A, title XIV, §1484(l)(4)(C)(i), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103-337, div. A, title XVI, §1671(d), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104-201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2551.)

REFERENCES IN TEXT

Chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in par. (5), means chapter 67 (§1331 et seq.) of this title prior to its transfer to part II of subtitle E of this title, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103-337. A new chapter 67 (§1331) of this title was added by section 1662(j)(7) of Pub. L. 103-337. For effective date of the Reserve Officer Personnel Management Act (Pub. L. 103-337, title XVI, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

AMENDMENTS

1996—Pub. L. 104-201 amended section generally, making changes in the order, style, and substance of definitions of terms used in this subchapter and adding definition of “surviving spouse”.

1994—Par. (2)(C). Pub. L. 103-337, §1671(d)(2), substituted “12731(d)” for “1331(d)”.

Par. (14). Pub. L. 103-337, §1671(d)(1), substituted “chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)” for “chapter 67 of this title”.

1990—Par. (5). Pub. L. 101-510 made technical correction to directory language of Pub. L. 101-189, §1407(a)(1)(A), see 1989 Amendment note below.

1989—Par. (2)(B). Pub. L. 101-189, §1407(a)(2), substituted “reserve-component retired pay” for “retired pay under chapter 67 of this title”.

Par. (2)(C)(i). Pub. L. 101-189, §1407(a)(3), struck out “or retainer” after “eligible for retired”.

Par. (2)(C)(ii). Pub. L. 101-189, §1407(a)(2), substituted “reserve-component retired pay” for “retired pay under chapter 67 of this title”.

Pars. (3), (4). Pub. L. 101-189, §1407(a)(3), struck out “or retainer” after “eligible for retired”.

Par. (5). Pub. L. 101-189, §1407(a)(1)(A), as amended by Pub. L. 101-510, substituted “this paragraph” for “this clause” in three places in concluding provisions.

Par. (11). Pub. L. 101-189, §1407(a)(1)(B), inserted “paid under section 6330 of this title” after “retainer pay”.

Par. (14). Pub. L. 101-189, §1407(a)(1)(C), added par. (14).

1987—Pub. L. 100-180 inserted “The term” after each par. designation and revised first word in quotes in pars. (2) to (13) to make initial letter of such word lowercase.

1986—Par. (2)(A). Pub. L. 99-661 substituted “retired pay” for “retired or retainer pay” in two places in provisions preceding cl. (i).

Pub. L. 99-348 inserted “(determined without regard to any reduction under section 1409(b)(2) of this title)”.

1985—Par. (2)(C). Pub. L. 99-145, §721(b), inserted “(with the concurrence of the person’s spouse, if required under section 1448(a)(3) of this title)” after “designated by the person”.

Par. (2)(C)(i). Pub. L. 99-145, §719(2)(A), substituted “a standard annuity” for “an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title”.

Par. (2)(C)(ii). Pub. L. 99-145, §719(2)(B), substituted “a reserve-component annuity” for “an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title”.

Pars. (11) to (13). Pub. L. 99-145, §719(1), added pars. (11) to (13).

1983—Par. (8). Pub. L. 98-94 substituted “or annulment” for “annulment, or legal separation,” in two places.

1982—Pars. (6) to (10). Pub. L. 97-252 added pars. (6) to (10).

1980—Par. (2). Pub. L. 96-402 inserted in subpar. (C) “but which is not less than \$300” after “under the Plan”, substituted a period at end of subpar. (C) for “, but not less than \$300;”, and struck out following subpar. (C) “as increased from time to time under section 1401a of this title.”

1978—Par. (2). Pub. L. 95-397 inserted “in the case of a person who dies after becoming entitled to retired or retainer pay” before “the amount” and substituted “pay to which the person” for “pay to which a person” in subpar. (A), substituted “in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming 60 years of age, the amount of monthly retired pay for which the person would have been eligible—” for “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” in subpar. (B), and added subpars. (B)(i), (ii) and (C).

1976—Pars. (3)(A), (4)(A). Pub. L. 94-496 substituted “one year” for “two years”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1484(l)(4)(C) of Pub. L. 101-510 provided that the amendment made by that section is effective Nov. 29, 1989.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 731 of title VII of Pub. L. 99-145 provided that:

“(a) EFFECTIVE DATE.—Except as otherwise provided in this title, the amendments made by this title [see Short Title of 1985 Amendment note below] shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act [Nov. 8, 1985].

“(b) PROSPECTIVE BENEFITS ONLY.—No benefit shall accrue to any person by reason of the enactment of this title for any period before the effective date under subsection (a).”

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97-252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97-252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 7 of Pub. L. 96-402 provided that: “The amendments made by sections 2, 3, and 4 of this Act [amending this section and sections 1451 and 1452 of this title] and the provisions of section 5 of this Act [set out as a note under section 1448 of this title] shall be effective on the first day of the second calendar month following the month in which this Act is enacted [October 1980] and shall apply to annuities payable by virtue of such amendments and provisions for months beginning on or after such date. No benefits shall accrue to any person by virtue of the enactment of this Act [Pub. L. 96-402] for any period before the date of the enactment of this Act [Oct. 9, 1980].”

EFFECTIVE DATE OF 1978 AMENDMENT

Section 210 of title II of Pub. L. 95-397 provided that:

“(a) Except as provided in subsection (b), the provisions of this title [amending this section and sections 1331 [now 12731] and 1448 to 1452 of this title and enacting provisions set out as notes under this section and section 1448 of this title] and the amendments made by this title shall take effect on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later, and shall apply to annuities payable by virtue of such amendments for months beginning on or after such date.

“(b) The amendment made by section 206 [amending section 1331 [now 12731] of this title] shall apply to notifications under section 1331(d) [now 12731(d)] of title 10, United States Code, after the date of the enactment of this Act [Sept. 30, 1978].”

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of Pub. L. 94-496 provided that: “This Act [amending this section and sections 1448, 1450, 1451, and 1452 of this title, and amending provisions set out as a note under section 1448 of this title] shall be effective as of September 21, 1972. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.”

SHORT TITLE OF 1989 AMENDMENT

Section 1401 of title XIV of Pub. L. 101-189 provided that: “This title [enacting subchapter III of this chapter, amending this section and sections 1331 [now 12731], 1448 to 1452, and 1454 of this title and section 3101 [now 5301] of Title 38, Veterans’ Benefits, and enacting provisions set out as notes under sections 1448, 1451, 1452, 1456, and 12731 of this title] may be cited as the ‘Military Survivor Benefits Improvement Act of 1989.’”

SHORT TITLE OF 1985 AMENDMENT

Section 701 of title VII of Pub. L. 99-145 provided that: “This title [amending this section and sections 1448, 1450 to 1452, and 1455 of this title, enacting provisions set out as notes under this section and sections 1448 and 1452 of this title, and repealing a provision set out as a

note under section 1451 of this title] may be cited as the 'Survivor Benefit Plan Amendments of 1985'."

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96-402 provided: "That this Act [amending this section and sections 1451 and 1452 of this title, enacting provisions set out as notes under this section and section 1448 of this title, and amending provisions set out as a note under section 1448 of this title] may be cited as the 'Uniformed Services Survivor Benefits Amendments of 1980'."

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

Section 208 of Pub. L. 95-397, as amended by Pub. L. 96-107, title VIII, §816, Nov. 9, 1979, 93 Stat. 818, provided that the 90-day period referred to in former sections 1447(2)(C) and 1448(a)(2) and (4)(B) of this title was to be considered to end on Mar. 31, 1980, for an individual who would have been eligible for retired pay under former chapter 67 of this title on the effective date of title II of Pub. L. 95-397 (see Effective Date of 1978 Amendment note above), but for the fact such individual was under 60 years of age, or for an individual who received before Jan. 1, 1980, a notification that such individual had completed the years of service required for eligibility for such retired pay.

§ 1448. Application of Plan

(a) GENERAL RULES FOR PARTICIPATION IN THE PLAN.—

(1) NAME OF PLAN; ELIGIBLE PARTICIPANTS.—The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired pay.

(B) Persons who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.

(2) PARTICIPANTS IN THE PLAN.—The Plan applies to the following persons, who shall be participants in the Plan:

(A) STANDARD ANNUITY PARTICIPANTS.—A person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

(B) RESERVE-COMPONENT ANNUITY PARTICIPANTS.—A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification.

A person who elects under subparagraph (B) not to participate in the Plan remains eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

(3) ELECTIONS.—

(A) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING STANDARD ANNUITY.—A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse.

(B) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING RESERVE-COMPONENT ANNUITY.—A married person who is eligible to provide a reserve-component annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to designate under subsection (e)(2) the effective date for commencement of annuity payments under the Plan in the event that the member dies before becoming 60 years of age to be the 60th anniversary of the member's birth (rather than the day after the date of the member's death);

(iii) to provide an annuity for the person's spouse at less than the maximum level; or

(iv) to provide an annuity for a dependent child but not for the person's spouse.

(C) EXCEPTION WHEN SPOUSE UNAVAILABLE.—A person may make an election described in subparagraph (A) or (B) without the concurrence of the person's spouse if the person establishes to the satisfaction of the Secretary concerned—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(D) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2).

(E) NOTICE TO SPOUSE OF ELECTION TO PROVIDE FORMER SPOUSE ANNUITY.—If a married person who is eligible to provide a standard annuity elects to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2), that person's spouse shall be notified of that election.

(4) IRREVOCABILITY OF ELECTIONS.—

(A) STANDARD ANNUITY.—An election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

(B) RESERVE-COMPONENT ANNUITY.—An election under paragraph (2)(B) is irrevocable if not revoked before the end of the 90-day period referred to in that paragraph.

(5) PARTICIPATION BY PERSON MARRYING AFTER RETIREMENT, ETC.—

(A) ELECTION TO PARTICIPATE IN PLAN.—A person who is not married and has no de-

pendent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan.

(B) MANNER AND TIME OF ELECTION.—Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

(C) LIMITATION ON REVOCATION OF ELECTION.—Such an election may not be revoked except in accordance with subsection (b)(3).

(D) EFFECTIVE DATE OF ELECTION.—The election is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(E) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(6) ELECTION OUT OF PLAN BY PERSON WITH SPOUSE COVERAGE WHO REMARRIES.—

(A) GENERAL RULE.—A person—

- (i) who is a participant in the Plan and is providing coverage under the Plan for a spouse (or a spouse and child);
- (ii) who does not have an eligible spouse beneficiary under the Plan; and
- (iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.

(B) EFFECT OF ELECTION ON RETIRED PAY.—If such an election is made, reductions in the retired pay of that person under section 1452 of this title shall not be made.

(C) TERMS AND CONDITIONS OF ELECTION.—An election under this paragraph—

- (i) is irrevocable;
- (ii) shall be made within one year after the person's remarriage; and
- (iii) shall be made in such form and manner as may be prescribed in regulations under section 1455 of this title.

(D) NOTICE TO SPOUSE.—If a person makes an election under this paragraph—

- (i) not to participate in the Plan;
- (ii) to provide an annuity for the person's spouse at less than the maximum level; or
- (iii) to provide an annuity for a dependent child but not for the person's spouse,

the person's spouse shall be notified of that election.

(E) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity to a former spouse under subsection (b).

(b) INSURABLE INTEREST AND FORMER SPOUSE COVERAGE.—

(1) COVERAGE FOR PERSON WITH INSURABLE INTEREST.—

(A) GENERAL RULE.—A person who is not married and does not have a dependent child upon becoming eligible to participate in the Plan may elect to provide an annuity under the Plan to a natural person with an insur-

able interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(B) TERMINATION OF COVERAGE.—An election under subparagraph (A) for a beneficiary who is not the former spouse of the person providing the annuity may be terminated. Any such termination shall be made by a participant by the submission to the Secretary concerned of a request to discontinue participation in the Plan, and such participation in the Plan shall be discontinued effective on the first day of the first month following the month in which the request is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) FORM FOR DISCONTINUATION.—A request under subparagraph (B) to discontinue participation in the Plan shall be in such form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(D) WITHDRAWAL OF REQUEST FOR DISCONTINUATION.—The Secretary concerned shall furnish promptly to each person who submits a request under subparagraph (B) to discontinue participation in the Plan a written statement of the advantages and disadvantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw the request to discontinue participation if withdrawn within 30 days after having been submitted to the Secretary concerned.

(E) CONSEQUENCES OF DISCONTINUATION.—Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the Plan and premiums paid may not be refunded. Participation in the Plan may not later be resumed except through a qualified election under paragraph (5) of subsection (a) or under subparagraph (G) of this paragraph.

(F) VITIATION OF ELECTION BY DISABILITY RETIREE WHO DIES OF DISABILITY-RELATED CAUSE.—If a member retired after November 23, 2003, under chapter 61 of this title dies within one year after the date on which the member is so retired and the cause of death is related to a disability for which the member was retired under that chapter (as determined under regulations prescribed by the Secretary of Defense)—

- (i) an election made by the member under paragraph (1) to provide an annuity under the Plan to any person other than a dependent of that member (as defined in section 1072(2) of this title) is vitiated; and
- (ii) the amounts by which the member's retired pay was reduced under section 1452 of this title shall be refunded and paid to the person to whom the annuity under the

Plan would have been paid pursuant to such election.

(G) ELECTION OF NEW BENEFICIARY UPON DEATH OF PREVIOUS BENEFICIARY.—

(i) AUTHORITY FOR ELECTION.—If the reason for discontinuation in the Plan is the death of the beneficiary, the participant in the Plan may elect a new beneficiary. Any such beneficiary must be a natural person with an insurable interest in the participant. Such an election may be made only during the 180-day period beginning on the date of the death of the previous beneficiary.

(ii) PROCEDURES.—Such an election shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe. Such an election shall be effective the first day of the first month following the month in which the election is received by the Secretary.

(iii) VITIATION OF ELECTION BY PARTICIPANT WHO DIES WITHIN TWO YEARS OF ELECTION.—If a person providing an annuity under a election under clause (i) dies before the end of the two-year period beginning on the effective date of the election—

(I) the election is vitiated; and

(II) the amount by which the person's retired pay was reduced under section 1452 of this title that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the vitiated election if the deceased person had died after the end of such two-year period.

(2) FORMER SPOUSE COVERAGE UPON BECOMING A PARTICIPANT IN THE PLAN.—

(A) GENERAL RULE.—A person who has a former spouse upon becoming eligible to participate in the Plan may elect to provide an annuity to that former spouse.

(B) EFFECT OF FORMER SPOUSE ELECTION ON SPOUSE OR DEPENDENT CHILD.—In the case of a person with a spouse or a dependent child, such an election prevents payment of an annuity to that spouse or child (other than a child who is a beneficiary under an election under paragraph (4)), including payment under subsection (d).

(C) DESIGNATION IF MORE THAN ONE FORMER SPOUSE.—If there is more than one former spouse, the person shall designate which former spouse is to be provided the annuity.

(D) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(3) FORMER SPOUSE COVERAGE BY PERSONS ALREADY PARTICIPATING IN PLAN.—

(A) ELECTION OF COVERAGE.—

(i) AUTHORITY FOR ELECTION.—A person—

(I) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage), and

(II) who has a former spouse who was not that person's former spouse when

that person became eligible to participate in the Plan,

may (subject to subparagraph (B)) elect to provide an annuity to that former spouse.

(ii) TERMINATION OF PREVIOUS COVERAGE.—Any such election terminates any previous coverage under the Plan.

(iii) MANNER AND TIME OF ELECTION.—Any such election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(B) LIMITATION ON ELECTION.—A person may not make an election under subparagraph (A) to provide an annuity to a former spouse who that person married after becoming eligible for retired pay unless—

(i) the person was married to that former spouse for at least one year, or

(ii) that former spouse is the parent of issue by that marriage.

(C) IRREVOCABILITY, ETC.—An election under this paragraph may not be revoked except in accordance with section 1450(f) of this title. This paragraph does not provide the authority to change a designation previously made under subsection (e).

(D) NOTICE TO SPOUSE.—If a person who is married makes an election to provide an annuity to a former spouse under this paragraph, that person's spouse shall be notified of the election.

(E) EFFECTIVE DATE OF ELECTION.—An election under this paragraph is effective as of—

(i) the first day of the first month following the month in which the election is received by the Secretary concerned; or

(ii) in the case of a person required (as described in section 1450(f)(3)(B) of this title) to make the election by reason of a court order or filing the date of which is after October 16, 1998, the first day of the first month which begins after the date of that court order or filing.

(4) FORMER SPOUSE AND CHILD COVERAGE.—A person who elects to provide an annuity for a former spouse under paragraph (2) or (3) may, at the time of the election, elect to provide coverage under that annuity for both the former spouse and a dependent child, if the child resulted from the person's marriage to that former spouse.

(5) DISCLOSURE OF WHETHER ELECTION OF FORMER SPOUSE COVERAGE IS REQUIRED.—A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and the former spouse) setting forth—

(A) whether the election is being made pursuant to the requirements of a court order; or

(B) whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of, or incident to, a proceeding of di-

voiced, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(c) **PERSONS ON TEMPORARY DISABILITY RETIRED LIST.**—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 disability retired pay.

(d) **COVERAGE FOR SURVIVORS OF MEMBERS WHO DIE ON ACTIVE DUTY.**—

(1) **SURVIVING SPOUSE ANNUITY.**—Except as provided in paragraph (2)(B), the Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of—

(A) a member who dies while on active duty after—

(i) becoming eligible to receive retired pay;

(ii) qualifying for retired pay except that the member has not applied for or been granted that pay; or

(iii) completing 20 years of active service but before the member is eligible to retire as a commissioned officer because the member has not completed 10 years of active commissioned service; or

(B) a member not described in subparagraph (A) who dies in line of duty while on active duty.

(2) **DEPENDENT CHILDREN.**—

(A) **ANNUITY WHEN NO ELIGIBLE SURVIVING SPOUSE.**—In the case of a member described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the member's dependent children under section 1450(a)(2) of this title as applicable.

(B) **OPTIONAL ANNUITY WHEN THERE IS AN ELIGIBLE SURVIVING SPOUSE.**—In the case of a member described in paragraph (1) who dies after October 7, 2001, and for whom there is a surviving spouse eligible for an annuity under paragraph (1), the Secretary may pay an annuity under this subchapter to the member's dependent children under section 1450(a)(3) of this title, if applicable, instead of paying an annuity to the surviving spouse under paragraph (1), if the Secretary concerned, in consultation with the surviving spouse, determines it appropriate to provide an annuity for the dependent children under this paragraph instead of an annuity for the surviving spouse under paragraph (1).

(3) **MANDATORY FORMER SPOUSE ANNUITY.**—If a member described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the member had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with

that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) **PRIORITY.**—An annuity that may be provided under this subsection shall be provided in preference to an annuity that may be provided under any other provision of this subchapter on account of service of the same member.

(5) **COMPUTATION.**—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(6) **DEEMED ELECTION.**—

(A) **ANNUITY FOR DEPENDENT.**—In the case of a member described in paragraph (1) who dies after November 23, 2003, the Secretary concerned may, if no other annuity is payable on behalf of the member under this subchapter, pay an annuity to a natural person who has an insurable interest in such member as if the annuity were elected by the member under subsection (b)(1). The Secretary concerned may pay such an annuity under this paragraph only in the case of a person who is a dependent of that member (as defined in section 1072(2) of this title).

(B) **COMPUTATION OF ANNUITY.**—An annuity under this subparagraph shall be computed under section 1451(b) of this title as if the member had retired for total disability on the date of death with reductions as specified under section 1452(c) of this title, as applicable to the ages of the member and the natural person with an insurable interest.

(e) **DESIGNATION FOR COMMENCEMENT OF RESERVE-COMPONENT ANNUITY.**—In any case in which a person is required to make a designation under this subsection, the person shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on—

(1) the day after the date of his death; or

(2) the 60th anniversary of his birth.

(f) **COVERAGE OF SURVIVORS OF PERSONS DYING WHEN OR BEFORE ELIGIBLE TO ELECT RESERVE-COMPONENT ANNUITY.**—

(1) **SURVIVING SPOUSE ANNUITY.**—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who—

(A) is eligible to provide a reserve-component annuity and dies—

(i) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

(ii) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan; or

(B) is a member of a reserve component not described in subparagraph (A) and dies

from an injury or illness incurred or aggravated in the line of duty during inactive-duty training.

(2) **DEPENDENT CHILD ANNUITY.**—The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a person described in paragraph (1) if there is no surviving spouse or if the person's surviving spouse subsequently dies.

(3) **MANDATORY FORMER SPOUSE ANNUITY.**—If a person described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the person had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) **COMPUTATION.**—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(g) **ELECTION TO INCREASE COVERAGE UPON REMARRIAGE.**—

(1) **ELECTION.**—A person—

(A) who is a participant in the Plan and is providing coverage under subsection (a) for a spouse or a spouse and child, but at less than the maximum level; and

(B) who remarries,

may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person.

(2) **PAYMENT REQUIRED.**—Such an election shall be contingent on the person paying to the United States the amount determined under paragraph (3) plus interest on such amount at a rate determined under regulations prescribed by the Secretary of Defense.

(3) **AMOUNT TO BE PAID.**—The amount referred to in paragraph (2) is the amount equal to the difference between—

(A) the amount that would have been withheld from such person's retired pay under section 1452 of this title if the higher level of coverage had been in effect from the time the person became a participant in the Plan; and

(B) the amount of such person's retired pay actually withheld.

(4) **MANNER OF MAKING ELECTION.**—An election under paragraph (1) shall be made in such manner as the Secretary shall prescribe and shall become effective upon receipt of the payment required by paragraph (2).

(5) **DISPOSITION OF PAYMENTS.**—A payment received under this subsection by the Sec-

retary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other payment received under this subsection shall be deposited in the Treasury as miscellaneous receipts.

(Added Pub. L. 92-425, §1(3), Sept. 21, 1972, 86 Stat. 707; amended Pub. L. 94-496, §1(2), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, §202, Sept. 30, 1978, 92 Stat. 844; Pub. L. 97-252, title X, §1003(b), Sept. 8, 1982, 96 Stat. 735; Pub. L. 97-295, §1(18), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98-94, title IX, §941(a)(1), (2), (c)(2), Sept. 24, 1983, 97 Stat. 652, 653; Pub. L. 99-145, title V, §513(b), title VII, §§712(a), 713(a), 715, 716(a), 719(3), (8)(A), 721(a), Nov. 8, 1985, 99 Stat. 628, 670, 671, 673-676; Pub. L. 99-661, div. A, title VI, §§641(b)(1), 642(a), title XIII, §1343(a)(8)(B), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 101-189, div. A, title XIV, §1407(a)(2), (3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 103-337, div. A, title VI, §638, title XVI, §1671(d)(2), Oct. 5, 1994, 108 Stat. 2791, 3015; Pub. L. 104-201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2553; Pub. L. 105-85, div. A, title X, §1073(a)(27), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105-261, div. A, title VI, §643(a), Oct. 17, 1998, 112 Stat. 2047; Pub. L. 106-65, div. A, title X, §1066(a)(12), Oct. 5, 1999, 113 Stat. 771; Pub. L. 106-398, §1 [[div. A], title VI, §655(a)-(c)(3), title X, §1087(a)(10)], Oct. 30, 2000, 114 Stat. 1654, 1654A-165, 1654A-166, 1654A-290; Pub. L. 107-107, div. A, title VI, §642(a), (c)(1), Dec. 28, 2001, 115 Stat. 1151, 1152; Pub. L. 108-136, div. A, title VI, §§644(a), (b), 645(a), (b)(1), (c), Nov. 24, 2003, 117 Stat. 1517-1519; Pub. L. 108-375, div. A, title X, §1084(d)(10), Oct. 28, 2004, 118 Stat. 2061; Pub. L. 109-364, div. A, title VI, §§643(a), 644(a), title X, §1071(a)(8), Oct. 17, 2006, 120 Stat. 2260, 2261, 2398.)

AMENDMENTS

2006—Subsec. (b)(1)(E). Pub. L. 109-364, §643(a)(1), inserted “or under subparagraph (G) of this paragraph” before period at end.

Subsec. (b)(1)(G). Pub. L. 109-364, §643(a)(2), added subpar. (G).

Subsec. (d)(2)(B). Pub. L. 109-364, §644(a), substituted “October 7, 2001” for “November 23, 2003”.

Subsec. (d)(6)(A). Pub. L. 109-364, §1071(a)(8), struck out second comma after “November 23, 2003”.

2004—Subsecs. (b)(1)(F), (d)(2)(B), (6)(A). Pub. L. 108-375 substituted “after November 23, 2003,” for “on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004”.

2003—Subsec. (b)(1)(F). Pub. L. 108-136, §645(b)(1), added subpar. (F).

Subsec. (d)(1). Pub. L. 108-136, §645(a)(2), substituted “Except as provided in paragraph (2)(B), the Secretary concerned” for “The Secretary concerned” in introductory provisions.

Subsec. (d)(2). Pub. L. 108-136, §645(a)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a member described in paragraph (1) if there is no surviving spouse or if the member's surviving spouse subsequently dies.”

Subsec. (d)(6). Pub. L. 108-136, §645(c), added par. (6).

Subsec. (f). Pub. L. 108-136, §644(b), inserted “or Before” after “Dying When” in heading.

Subsec. (f)(1). Pub. L. 108-136, §644(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who is eligible to provide a reserve-component annuity and who dies—

“(A) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

“(B) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan.”

2001—Subsec. (d). Pub. L. 107-107 struck out “Retirement-Eligible” before “Members” in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows:

“(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a member who dies on active duty after—

“(A) becoming eligible to receive retired pay;

“(B) qualifying for retired pay except that he has not applied for or been granted that pay; or

“(C) completing 20 years of active service but before he is eligible to retire as a commissioned officer because he has not completed 10 years of active commissioned service.”

2000—Subsec. (a)(2). Pub. L. 106-398, §1 [[div. A], title VI, §655(c)(1)], substituted “who elects under subparagraph (B) not to participate in the Plan” for “described in clauses (i) and (ii) of subparagraph (B) who does not elect to participate in the Plan before the end of the 90-day period referred to in that clause” in concluding provisions.

Subsec. (a)(2)(B). Pub. L. 106-398, §1 [[div. A], title VI, §655(a)], amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “A person who (i) is eligible to participate in the Plan under paragraph (1)(B), (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, and (iii) elects to participate in the Plan (and makes a designation under subsection (e)) before the end of the 90-day period beginning on the date he receives such notification.”

Subsec. (a)(3)(B). Pub. L. 106-398, §1 [[div. A], title VI, §655(b)], substituted “who is eligible to provide” for “who elects to provide” in introductory provisions, added cls. (i) and (ii), and redesignated former cls. (i) and (ii) as (iii) and (iv), respectively.

Subsec. (a)(4)(A). Pub. L. 106-398, §1 [[div. A], title VI, §655(c)(2)(A)], struck out “not to participate in the Plan” after “election under paragraph (2)(A)”.

Subsec. (a)(4)(B). Pub. L. 106-398, §1 [[div. A], title VI, §655(c)(2)(B)], struck out “to participate in the Plan” after “under paragraph (2)(B)”.

Subsec. (b)(3)(E)(ii). Pub. L. 106-398, §1 [[div. A], title X, §1087(a)(10)], struck out second comma after “October 16, 1998”.

Subsec. (e). Pub. L. 106-398, §1 [[div. A], title VI, §655(c)(3)], substituted “a person is required to make a designation under this subsection, the person” for “a person electing to participate in the Plan is required to make a designation under this subsection, the person making such election” in introductory provisions.

1999—Subsec. (b)(3)(E)(ii). Pub. L. 106-65 substituted “after October 16, 1998,” for “on or after the date of the enactment of the subparagraph”.

1998—Subsec. (b)(3)(C). Pub. L. 105-261, §643(a)(1), struck out “EFFECTIVE DATE,” after “IRREVOCABILITY,” in heading and “Such an election is effective as of the first day of the first calendar month following the month in which it is received by the Secretary concerned.” after “section 1450(f) of this title.” in text.

Subsec. (b)(3)(E). Pub. L. 105-261, §643(a)(2), added subpar. (E).

1997—Pub. L. 105-85 substituted “Plan” for “plan” in section catchline.

1996—Pub. L. 104-201 amended section generally, revising and restating provisions relating to application of the Plan and inserting subsec., par., and subpar. headings.

1994—Subsec. (a)(2)(B). Pub. L. 103-337, §1671(d)(2), substituted “12731(d)” for “1331(d)”.

Subsec. (b)(1). Pub. L. 103-337, §638, designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (f)(1). Pub. L. 103-337, §1671(d)(2), substituted “12731(d)” for “1331(d)” in subpars. (A) and (B).

1989—Subsec. (a)(1)(B), (2)(B). Pub. L. 101-189, §1407(a)(2), substituted “reserve-component retired pay” for “retired pay under chapter 67 of this title”.

Subsec. (a)(4)(A). Pub. L. 101-189, §1407(a)(3), struck out “or retainer” after “entitled to retired”.

Subsec. (f)(1)(A), (B). Pub. L. 101-189, §1407(a)(2), substituted “reserve-component retired pay” for “retired pay under chapter 67 of this title”.

1986—Subsec. (a)(5). Pub. L. 99-661, §1343(a)(8)(B), substituted “a reserve-component annuity” for “an annuity by virtue of eligibility under paragraph (1)(B)”.

Subsec. (b)(5). Pub. L. 99-661, §641(b)(1), inserted “(A) whether the election is being made pursuant to the requirements of a court order, or (B)”.

Subsec. (d)(2). Pub. L. 99-661, §642(a)(1), substituted “if there is no surviving spouse or if the member’s surviving spouse subsequently dies” for “if the member and the member’s spouse die as a result of a common accident”.

Subsec. (f)(2). Pub. L. 99-661, §642(a)(2), substituted “if there is no surviving spouse or if the person’s surviving spouse subsequently dies” for “if the person and the person’s spouse die as a result of a common accident”.

1985—Subsec. (a)(1)(A). Pub. L. 99-145, §719(8)(A), substituted “retired pay” for “retired or retainer pay”.

Subsec. (a)(2)(A). Pub. L. 99-145, §721(a)(1), inserted “(with his spouse’s concurrence, if required under paragraph (3))” after “unless he elects”.

Pub. L. 99-145, §719(8)(A), substituted “retired pay” for “retired or retainer pay”.

Subsec. (a)(3). Pub. L. 99-145, §721(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

“(A) If a person who is eligible under paragraph (1)(A) to participate in the Plan and who is married elects not to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person’s spouse shall be notified of that election.

“(B) If a person who is eligible under paragraph (1)(B) to participate in the Plan and who is married does not elect to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person’s spouse shall be notified of that action.”

Subsec. (a)(6). Pub. L. 99-149, §715(a), added par. (6).

Subsec. (b)(1). Pub. L. 99-145, §719(3), substituted “a reserve-component annuity” for “an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)”.

Subsec. (b)(2). Pub. L. 99-145, §719(3), substituted “a reserve-component annuity” for “an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)”.

Pub. L. 99-145, §716(a)(1), inserted “(other than a child who is a beneficiary under an election under paragraph (4))” after “that spouse or child” in second sentence.

Subsec. (b)(3)(B). Pub. L. 99-145, §719(8)(A), substituted “retired pay” for “retired or retainer pay”.

Subsec. (b)(4), (5). Pub. L. 99-145, §716(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 99-145, §513(b), inserted “disability” before “retired pay”.

Subsec. (d). Pub. L. 99-145, §712(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “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.”

Subsec. (f). Pub. L. 99-145, § 713(a), added subsec. (f).

Subsec. (g). Pub. L. 99-145, § 715(b), added subsec. (g).
1983—Subsec. (a)(3). Pub. L. 98-94, § 941(c)(2), substituted “provide an annuity for a former spouse under subsection (b)(2),” for “provide an annuity under subsection (b)(2) of this section,” in subpars. (A) and (B).

Subsec. (a)(5). Pub. L. 98-94, § 941(a)(1), inserted “except in accordance with subsection (b)(3)”.

Subsec. (b). Pub. L. 98-94, § 941(a)(2), amended subsec. (b) generally. Prior to amendment subsec. (b) read as follows:

“(1) A person who is not married and does not have a dependent child when he becomes eligible to participate in the Plan may elect to provide an annuity to a natural person with an insurable interest in that person or to provide an annuity to a former spouse.

“(2) A person who is married, or has a dependent child may elect to provide an annuity to a former spouse instead of providing an annuity to a spouse or dependent child if the election is made in order to carry out the terms of a written agreement entered into voluntarily with the former spouse (without regard to whether such agreement is included in or approved by a court order).

“(3) In the case of a person electing to provide an annuity under paragraph (1) or (2) of this subsection by virtue of eligibility under subsection (a)(1)(B), the election shall include a designation under subsection (e).

“(4) Any person who elects under paragraph (1) or (2) to provide an annuity to a former spouse shall, at the time of making such election, provide the Secretary concerned with a written statement, in a form to be prescribed by that Secretary, signed by such person and the former spouse setting forth whether the election is being made pursuant to a voluntary written agreement previously entered into by such person as a part of or incident to a proceeding of divorce, dissolution, annulment, or legal separation, and if so, whether such voluntary written agreement has been incorporated in or ratified or approved by a court order.”

1982—Pub. L. 97-295, § 1(18), substituted “Plan” for “plan” in section catchline.

Subsec. (a)(3). Pub. L. 97-252, § 1003(b)(1), inserted in subpars. (A) and (B) identical text “or elects to provide an annuity under subsection (b)(2) of this section,” after “for his spouse,”.

Subsec. (b). Pub. L. 97-252, § 1003(b)(2), designated existing first sentence as par. (1), authorized an election to provide an annuity to a former spouse, added pars. (2) and (4), designated existing second sentence as par. (3), and substituted “person electing to provide an annuity under paragraph (1) or (2) of this subsection” for “person providing an annuity under this subsection” and “the election” for “such an election”.

1978—Subsec. (a). Pub. L. 95-397, § 202(a), amended subsec. (a) generally, primarily inserting provision that this subchapter shall be known as the Survivor Benefit Plan and provisions of pars. (1)(B), (2)(B) and concluding sentence, (3)(B), (4)(B), and last sentence of (5).

Subsec. (b). Pub. L. 95-397, § 202(b), substituted “entitled to retired or retainer pay” for “eligible to participate in the Plan” and inserted provisions relating to the inclusion in an election a designation under subsection (e) by persons providing an annuity under this subsection by virtue of eligibility under subsection (a)(1)(B).

Subsec. (e). Pub. L. 95-397, § 202(c), added subsec. (e).

1976—Subsec. (a). Pub. L. 94-496 inserted “or elects to provide an annuity for a dependent child but not for his spouse” after “maximum level”.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title VI, § 644(b), Oct. 17, 2006, 120 Stat. 2261, provided that: “Any annuity payable to a dependent child under subchapter II of chapter 73 of title 10, United States Code, by reason of the amendment made by subsection (a) [amending this section] shall be payable only for months beginning on or after the date of the enactment of this Act [Oct. 17, 2006].”

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title VI, § 644(c), Nov. 24, 2003, 117 Stat. 1518, provided that: “Subparagraph (B) of section 1448(f)(1) of title 10, United States Code, as added by subsection (a), shall take effect as of September 10, 2001, and shall apply with respect to performance of inactive-duty training (as defined in section 101(d) of title 10, United States Code) on or after that date.”

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title VI, § 642(d), Dec. 28, 2001, 115 Stat. 1152, provided that: “The amendments made by this section [amending this section and section 1451 of this title] shall take effect as of September 10, 2001, and shall apply with respect to deaths of members of the Armed Forces occurring on or after that date.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, § 1 [[div. A], title VI, § 655(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A-166, provided that: “The amendments made by this section [amending this section and section 1450 of this title] apply only with respect to a notification under section 12731(d) of title 10, United States Code, made after January 1, 2001, that a member of a reserve component has completed the years of service required for eligibility for reserve-component retired pay.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(d)(2) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 641 of Pub. L. 99-661 applicable to court orders issued on or after Nov. 14, 1986, see section 641(c) of Pub. L. 99-661, set out as a note under section 1450 of this title.

Section 642(c) of Pub. L. 99-661 provided that: “The amendments made by subsection (a) [amending this section] shall apply only to claims arising on or after March 1, 1986. The amendments made by subsection (b) [amending section 1451 of this title] shall apply to payments for periods after February 28, 1986.”

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99-145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99-145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 941(b) of Pub. L. 98-94 provided that: “In the case of a person who on the date of the enactment of this Act [Sept. 24, 1983] is a person described in subparagraph (A) of subsection (b)(3) of section 1448 of title 10, United States Code (as amended by subsection (a)(2)), such subsection shall apply to that person as if the one-year period provided for in subparagraph (A) of such subsection began on the date of the enactment of this Act.”

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97-252 effective Feb. 1, 1983, and applicable to persons becoming eligible to partici-

pate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97-252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95-397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-496 effective Sept. 21, 1972, see section 3 of Pub. L. 94-496, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS BY SECTION 645 OF PUB. L. 105-85

Section 645(c) of Pub. L. 105-85 provided that: “The amendments made by this section [amending section 4(e)(1) of Pub. L. 92-425 and section 653(d) of Pub. L. 100-456, set out below] take effect on the first day of the first month beginning after the date of the enactment of this Act [Nov. 18, 1997] and shall apply with respect to payments of benefits for months beginning on or after that date, except that the Secretary of Veterans Affairs may provide, if necessary for administrative implementation, that such amendments shall apply beginning with a later month, not later than the first month beginning more than 180 days after the date of the enactment of this Act.”

TRANSITION

Pub. L. 109-364, div. A, title VI, §643(c), Oct. 17, 2006, 120 Stat. 2261, provided that:

“(1) TRANSITION PERIOD.—In the case of a participant in the Survivor Benefit Plan who made a covered insurable-interest election (as defined in paragraph (2)) and whose designated beneficiary under that election dies before the date of the enactment of this Act [Oct. 17, 2006] or during the 18-month period beginning on such date, the time period applicable for purposes of the limitation in the third sentence of subparagraph (G)(i) of section 1448(b)(1) of title 10, United States Code, as added by subsection (a), shall be the two-year period beginning on the date of the enactment of this Act (rather than the 180-day period specified in that sentence).

“(2) COVERED INSURABLE-INTEREST ELECTIONS.—For purposes of paragraph (1), a covered insurable-interest election is an election under section 1448(b)(1) of title 10, United States Code, made before the date of the enactment of this Act [Oct. 17, 2006], or during the 18-month period beginning on such date, by a participant in the Survivor Benefit Plan to provide an annuity under that plan to a natural person with an insurable interest in that person.

“(3) SURVIVOR BENEFIT PLAN.—For purposes of this subsection, the term ‘Survivor Benefit Plan’ means the program under subchapter II of chapter 73 of title 10, United States Code.”

ONE-YEAR OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING OCTOBER 1, 2005

Pub. L. 108-375, div. A, title VI, §645, Oct. 28, 2004, 118 Stat. 1962, as amended by Pub. L. 109-364, div. A, title X, §1071(g)(5), Oct. 17, 2006, 120 Stat. 2402, provided that:

“(a) PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.—

“(1) ELECTION OF SBP COVERAGE.—An eligible retired or former member may elect to participate in the Survivor Benefit Plan during the open enrollment period specified in subsection (f).

“(2) ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

“(3) ELIGIBLE RETIRED OR FORMER MEMBER.—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

“(A) is entitled to retired pay; or

“(B) would be entitled to retired pay under chapter 1223 of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

“(4) STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.—

“(A) STANDARD ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

“(B) RESERVE-COMPONENT ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

“(b) ELECTION TO INCREASE COVERAGE UNDER SBP.—A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period, elect to—

“(1) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

“(2) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

“(c) ELECTION FOR CURRENT SBP PARTICIPANTS TO PARTICIPATE IN SUPPLEMENTAL SBP.—

“(1) ELECTION.—A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

“(2) PERSONS ELIGIBLE.—Except as provided in paragraph (3), a person is eligible to make an election under paragraph (1) if on the day before the first day of the open enrollment period the person is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under subsection (b) of this section, and under that Plan is providing annuity coverage for the person's spouse or a former spouse.

“(3) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under paragraph (1) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan is to be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section 1451(e). Any such election is irrevocable. A person making such a waiver may make an election under paragraph (1) as in the case of any other participant in the Survivor Benefit Plan.

“(d) MANNER OF MAKING ELECTIONS.—An election under this section shall be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

“(e) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

“(f) OPEN ENROLLMENT PERIOD.—The open enrollment period under this section is the one-year period beginning on October 1, 2005.

“(g) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—If a person making an election under this section dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such two-year period.

“(h) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

“(i) PREMIUM FOR OPEN ENROLLMENT ELECTION.—

“(1) PREMIUMS TO BE CHARGED.—The Secretary of Defense shall prescribe in regulations premiums which a person electing under this section shall be required to pay for participating in the Survivor Benefit Plan pursuant to the election. The total amount of the premiums to be paid by a person under the regulations shall be equal to the sum of—

“(A) the total amount by which the retired pay of the person would have been reduced before the effective date of the election if the person had elected to participate in the Survivor Benefit Plan (for the same base amount specified in the election) at the first opportunity that was afforded the member to participate under chapter 73 of title 10, United States Code;

“(B) interest on the amounts by which the retired pay of the person would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable; and

“(C) any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

“(2) PREMIUMS TO BE CREDITED TO RETIREMENT FUND.—Premiums paid under the regulations under paragraph (1) shall be credited to the Department of Defense Military Retirement Fund.

“(j) DEFINITIONS.—In this section:

“(1) The term ‘Survivor Benefit Plan’ means the program established under subchapter II of chapter 73 of title 10, United States Code.

“(2) The term ‘Supplemental Survivor Benefit Plan’ means the program established under subchapter III of chapter 73 of title 10, United States Code.

“(3) The term ‘retired pay’ includes retainer pay paid under section 6330 of title 10, United States Code.

“(4) The terms ‘uniformed services’ and ‘Secretary concerned’ have the meanings given those terms in section 101 of title 37, United States Code.

“(5) The term ‘Department of Defense Military Retirement Fund’ means the Department of Defense Military Retirement Fund established under section 1461(a) of title 10, United States Code.”

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING MARCH 1, 1999

Pub. L. 105-261, div. A, title VI, § 642, Oct. 17, 1998, 112 Stat. 2045, as amended by Pub. L. 106-65, div. A, title VI, § 654, Oct. 5, 1999, 113 Stat. 667, provided for a one-year open enrollment period beginning on Mar. 1, 1999, during which an eligible retired or former member who

was not participating in the Survivor Benefit Plan could elect to participate in the Plan and also elect to participate in the Supplemental Survivor Benefit Plan.

ANNUITIES FOR CERTAIN MILITARY SURVIVING SPOUSES

Pub. L. 105-85, div. A, title VI, § 644, Nov. 18, 1997, 111 Stat. 1800, as amended by Pub. L. 106-65, div. A, title VI, § 656(a), (b), title X, § 1066(c)(3), Oct. 5, 1999, 113 Stat. 668, 773; Pub. L. 107-314, div. A, title VI, § 634, Dec. 2, 2002, 116 Stat. 2573, provided that:

“(a) SURVIVOR ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

“(A) became entitled to retired or retainer pay before September 21, 1972, died before March 21, 1974, and was entitled to retired or retainer pay on the date of death; or

“(B) died before October 1, 1978, and at the time of his death would have been entitled to retired pay under chapter 67 [now 1223] of title 10, United States Code (as in effect before December 1, 1994), but for the fact that he was under 60 years of age.

“(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried.

“(b) AMOUNT OF ANNUITY.—(1) An annuity under this section shall be paid at the rate of \$185.58 per month, as adjusted from time to time under paragraph (3).

“(2) The amount of an annuity to which a surviving spouse is entitled under this section for any period shall be reduced (but not below zero) by any amount paid to that surviving spouse for the same period under any of the following provisions of law:

“(A) Section 1311(a) of title 38, United States Code (relating to dependency and indemnity compensation payable by the Secretary of Veterans Affairs).

“(B) Chapter 73 of title 10, United States Code.

“(C) Section 4 of Public Law 92-425 (10 U.S.C. 1448 note).

“(3) Whenever after May 1, 2002, retired or retainer pay is increased under section 1401a(b)(2) of title 10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent.

“(c) APPLICATION REQUIRED.—No benefit shall be paid to any person under this section unless an application for such benefit is filed with the Secretary concerned by or on behalf of such person.

“(d) DEFINITIONS.—For purposes of this section:

“(1) The terms ‘uniformed services’ and ‘Secretary concerned’ have the meanings given such terms in section 101 of title 37, United States Code.

“(2) The term ‘surviving spouse’ has the meaning given such term in paragraph (9) of section 1447 of title 10, United States Code.

“(e) PROSPECTIVE APPLICABILITY.—(1) Annuities under this section shall be paid for months beginning after November 1997.

“(2) No benefit shall accrue to any person by reason of the enactment of this section for any period before December 1997.”

[Pub. L. 106-65, div. A, title VI, § 656(c), Oct. 5, 1999, 113 Stat. 668, provided that: “The amendment made by subsection (a) [amending section 644 of Pub. L. 105-85, set out above] shall apply with respect to annuities payable for months beginning after September 30, 1999.”]

AUTHORITY FOR RELIEF FROM PREVIOUS OVERPAYMENTS UNDER MINIMUM INCOME WIDOWS PROGRAM

Pub. L. 104-106, div. A, title VI, § 635, Feb. 10, 1996, 110 Stat. 366, authorized the Secretary of Defense to waive recovery by the United States of any overpayment by the United States that had been made before Feb. 10, 1996, under section 4 of Public Law 92-425, set out below, and that was attributable to failure by the Department of Defense to apply the eligibility provisions of subsection (a) of such section in the case of the person to whom the overpayment had been made.

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING APRIL 1, 1992

Pub. L. 101-189, div. A, title XIV, § 1405, Nov. 29, 1989, 103 Stat. 1586, as amended by Pub. L. 101-510, div. A,

title VI, § 631(2), title XIV, § 1484(l)(4)(B), Nov. 5, 1990, 104 Stat. 1580, 1720; Pub. L. 102-190, div. A, title VI, § 653(a)(1), (c)(2), Dec. 5, 1991, 105 Stat. 1388, 1389; Pub. L. 102-484, div. A, title VI, § 643, Oct. 23, 1992, 106 Stat. 2425, provided for a one-year open enrollment period beginning on Apr. 1, 1992, during which: (1) an eligible retired or former member who was not participating in the Survivor Benefit Plan could elect to participate in the Plan and also elect to participate in the Supplemental Survivor Benefit Plan, (2) a current participant in the Survivor Benefit Plan who was not participating at the maximum base amount could elect to participate in the Plan at a higher base amount or provide coverage for a previously uncovered spouse or former spouse, and (3) a participant in the Survivor Benefit Plan at the maximum level who was providing annuity coverage for a spouse or former spouse could elect to participate in the Supplemental Survivor Benefit Plan, and directed the Secretary of Defense to submit to committees of Congress a report on the open season not later than June 1, 1990.

DEFINITIONS FOR 1989 AMENDMENTS

Section 1406 of title XIV of div. A of Pub. L. 101-189, as amended by Pub. L. 102-190, div. A, title VI, § 653(a)(2), Dec. 5, 1991, 105 Stat. 1388, provided that: "For the purpose of this title [see Short Title of 1989 Amendment note set out under section 1447 of this title]:

"(1) The term 'Survivor Benefit Plan' means the program established under subchapter II of chapter 73 of title 10, United States Code.

"(2) The term 'retired pay' includes retainer pay paid under section 6330 of title 10, United States Code.

"(3) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

"(4) The term 'SBP premium' means the reduction in retired pay required as a condition of providing an annuity under the Survivor Benefit Plan.

"(5) The term 'base amount' has the meaning given that term in section 1447(2) [see 1447(6)] of title 10, United States Code."

ANNUITY FOR SURVIVING SPOUSES OF MEMBERS WHO DIED BEFORE NOVEMBER 1, 1953, AND WHO WERE ENTITLED TO RETIRED OR RETAINER PAY ON DATE OF DEATH

Pub. L. 100-456, div. A, title VI, § 653, Sept. 29, 1988, 102 Stat. 1991, as amended by Pub. L. 103-337, div. A, title X, § 1070(d)(3), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 105-85, div. A, title VI, § 645(a), Nov. 18, 1997, 111 Stat. 1801, provided that:

"(a) ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

"(A) died before November 1, 1953; and

"(B) was entitled to retired or retainer pay on the date of death.

"(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried and who is eligible for an annuity under section 4 of Public Law 92-425 (10 U.S.C. 1448 note).

"(b) AMOUNT OF ANNUITY.—(1) An annuity payable under this section shall be paid at the rate of \$165 per month, as adjusted from time to time under subsection (c).

"(2) An annuity paid to a surviving spouse under this section shall be reduced by the amount of dependency and indemnity compensation (DIC) to which the surviving spouse is entitled under section 1311(a) of title 38, United States Code.

"(c) COST-OF-LIVING INCREASES.—Whenever retired or retainer pay is increased under section 1401a(b)(2) of title 10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent. The amount of the increase shall be based on the monthly annuity payable before any reduction under this section.

"(d) RELATIONSHIP TO OTHER PROGRAMS.—(1) An annuity paid to a surviving spouse under this section is in addition to any pension to which the surviving spouse is entitled under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 (38 U.S.C. 1521 note), and any payment made under the provisions of section 4 of Public Law 92-425. An annuity paid under this section shall not be considered as income for the purposes of eligibility for any such pension.

"(2) Payment of annuities under this section shall be made by the Secretary of Veterans Affairs. In making such payments, the Secretary shall combine the payment under this section with the payment of any amount due the same person under section 4 of Public Law 92-425 (10 U.S.C. 1448 note), as provided in subsection (e)(1) of that section. The Secretary concerned shall transfer amounts for payments under this section to the Secretary of Veterans Affairs in the same manner as is provided under subsection (e)(2) of section 4 of Public Law 92-425 for payments under that section.

"(e) DEFINITIONS.—For purposes of this section:

"(1) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

"(2) The term 'surviving spouse' has the meaning given the terms 'widow' and 'widower' in paragraphs (3) and (4), respectively, of section 1447 [see 1447(7), (8)] of title 10, United States Code.

"(f) EFFECTIVE DATE.—Annuities under this section shall be paid for months beginning after the month in which this Act is enacted [September 1988]. No benefit shall accrue to any person by reason of the enactment of this section for any period before the first month referred to in the preceding sentence. No benefit shall be paid to any person under this section unless an application for such benefit has been filed with the Secretary concerned by or on behalf of such person."

AUTHORITY FOR CERTAIN REMARRIED SURVIVOR BENEFIT PLAN PARTICIPANTS TO WITHDRAW FROM PLAN

Pub. L. 100-180, div. A, title VI, § 631, Dec. 4, 1987, 101 Stat. 1104, provided that:

"(a) AUTHORITY TO WITHDRAW.—(1) An individual who is a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, and is described in paragraph (2) may, with the consent of such individual's spouse, withdraw from participation in the Plan.

"(2) An individual referred to in paragraph (1) is an individual who—

"(A) is providing coverage for a spouse or for a spouse and child under the Plan; and

"(B) remarried before March 1, 1986, and at a time when such individual was a participant in the Plan but did not have an eligible spouse beneficiary under the Plan.

"(b) APPLICABLE PROVISIONS.—An election under subsection (a) shall be subject to subparagraphs (B) and (D) [see (E)] of section 1448(a)(6) of title 10, United States Code, except that in applying such subparagraph (B) to subsection (a), the one-year period referred to in clause (ii) of such subparagraph shall extend until the end of the one-year period beginning 90 days after the date of the enactment of this Act [Dec. 4, 1987].

"(c) TREATMENT OF PRIOR CONTRIBUTIONS.—No refund of amounts by which the retired pay of a participant in the Survivor Benefit Plan has been reduced by reason of section 1452 of title 10, United States Code, may be made to an individual who withdraws from the Survivor Benefit Plan under subsection (a)."

OPTION FOR CERTAIN PARTICIPANTS TO WITHDRAW FROM SURVIVOR BENEFIT PLAN

Section 711(c) of Pub. L. 99-145 provided that person who during period Oct. 19, 1984, to Nov. 8, 1985, became participant in Survivor Benefit Plan under this subchapter could withdraw from Plan before end of one-year period beginning on Nov. 8, 1985, and receive refund of contributions plus interest.

PERSONS COVERED UNDER SUBSECTIONS (d) AND (f)

Section 712(b) of Pub. L. 99-145 provided that:

“(1) Section 1448(d) of title 10, United States Code, as amended by subsection (a), applies to the surviving spouse and dependent children of a person who dies on active duty after September 20, 1972, and the former spouse of a person who dies after September 7, 1982.

“(2) In the case of the surviving spouse and children of a person who dies during the period beginning on September 21, 1972, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(d) of title 10, United States Code, as amended by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application.”

Section 713(c) of Pub. L. 99-145 provided that:

“(1) Section 1448(f) of title 10, United States Code, as added by subsection (a), shall apply to the surviving spouse and dependent children of any person who dies after September 30, 1978, and the former spouse of a person who dies after September 7, 1982.

“(2) In the case of the surviving spouse and dependents of a person who dies during the period beginning on September 30, 1978, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(f) of title 10, United States Code, as added by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application.”

REVISION FOR FORMER SPOUSE COVERAGE ALREADY IN EFFECT

Section 716(b) of Pub. L. 99-145, as amended by Pub. L. 99-661, div. A, title VI, § 645, Nov. 14, 1986, 100 Stat. 3887, provided that person who before Mar. 1, 1986, made election under subsec. (b) of this section to provide annuity for former spouse could change that election to provide annuity for former spouse and dependent children, even though former spouse had died, but such election had to be made not later than Mar. 1, 1987, in case of person who made election before Nov. 8, 1985, and not later than end of one-year period beginning on Nov. 14, 1986, in case of person who made election during period of Nov. 8, 1985, to Feb. 28, 1986.

ONE-YEAR OPEN PERIOD TO SWITCH COMPUTATION OF SBP ANNUITY

Section 723(c) of Pub. L. 99-145 provided that person who, before effective date of title VII of Pub. L. 99-145 (see Effective Date of 1985 Amendment note set out under section 1447 of this title) participated in Survivor Benefit Plan under this subchapter, and had elected to provide annuity to former spouse could, with concurrence of such former spouse, elect to terminate such annuity and provide annuity to such former spouse under section 1450(a)(1) of this title, and any such election was to be made before end of 12-month period beginning on Nov. 8, 1985.

ONE-YEAR OPEN PERIOD FOR NEW FORMER SPOUSE COVERAGE

Section 723(d) of Pub. L. 99-145 provided that person who before effective date of part B of title VII of Pub. L. 99-145 (see Effective Date of 1985 Amendment note set out under section 1447 of this title) was participant in Survivor Benefit Plan and did not elect to provide annuity to former spouse could elect to provide annuity to former spouse under Plan, and that any such election was to be made before end of 12-month period beginning on Nov. 8, 1985.

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN

Pub. L. 97-35, title II, § 212, Aug. 13, 1981, 95 Stat. 383, as amended by Pub. L. 97-252, title XI, § 1119, Sept. 8, 1982, 96 Stat. 753, provided that certain members or former members of the uniformed services who, on Aug. 13, 1981, were not participants in the Survivor Benefit Plan established under this subchapter or were not participants in the Plan at the maximum level, could elect to participate in the Plan or to participate in the Plan at a higher level, during an open enrollment period beginning Oct. 1, 1981, and ending Sept. 30, 1982, for members and former members entitled to retired or retainer pay on Aug. 13, 1981, or beginning on Oct. 1, 1982, and ending on Sept. 30, 1983, for members or former members who on Aug. 13, 1981, would have been entitled to retired pay, but for the fact they were under 60 years of age on that date.

SURVIVING SPOUSE; ANNUITY PAYMENT AND REDUCTION PROVISIONS; ELECTION OF ANNUITY; DEFINITIONS; EFFECTIVE DATE

Pub. L. 96-402, § 5, Oct. 9, 1980, 94 Stat. 1707, provided that:

“(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 paid 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.

“(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.”

Provision effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such

date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96-402, set out as a note under section 1447 of this title.

ELECTION TO PARTICIPATE IN THE SURVIVOR BENEFIT PLAN AND WITHDRAW FROM THE RETIRED SERVICE-MAN'S FAMILY PROTECTION PLAN

Section 3 of Pub. L. 92-425, as amended by Pub. L. 93-155, title VIII, § 804, Nov. 16, 1973, 87 Stat. 615, provided that:

“(a) The Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter] applies to any person who initially becomes entitled to retired or retainer pay on or after the effective date of this Act [Sept. 21, 1972]. 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 [Sept. 21, 1972] 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 [Sept. 21, 1972] may elect to participate in the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter] at any time within eighteen months after such 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 at any time within eighteen months after the effective date of this Act [Sept. 21, 1972]—

“(1) to participate in the Plan and continue his participation under chapter 73 of that title [this chapter] as in effect on the day before the effective date of this Act [Sept. 21, 1972], 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 [this chapter] as in effect on the day before the effective date of this Act [Sept. 21, 1972].

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 [this chapter], as in effect on the day before the effective date of this Act [Sept. 21, 1972], 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 [Sept. 21, 1972], 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 [former subsec. (a) of this section].

“(c) Notwithstanding the provisions of the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter], and except as otherwise provided in this section, subchapter I of chapter 73 of title 10, United States Code [subchapter I of this chapter] (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 [Sept. 21, 1972], 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.

“(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 [Sept. 21, 1972]; 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.

“(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 [as part of this subchapter], are applicable to persons covered by this section.”

INCOME SUPPLEMENT FOR CERTAIN WIDOWS OF RETIRED MEMBERS OF THE UNIFORMED FORCES; SPECIAL ANNUITY FOR WIDOWS OF COMMISSIONED PERSONNEL OF THE PUBLIC HEALTH SERVICE AND NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION IN LIEU OF VA PENSION

Section 4 of Pub. L. 92-425, as amended by Pub. L. 94-496, § 2, Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, § 209, Sept. 30, 1978, 92 Stat. 848; Pub. L. 96-402, § 6, Oct. 9, 1980, 94 Stat. 1708; Pub. L. 98-94, title IX, § 942(a), Sept. 24, 1983, 97 Stat. 654; Pub. L. 102-40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 103-337, div. A, title X, § 1070(d)(4), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 104-201, div. A, title VI, § 638(a)-(c), Sept. 23, 1996, 110 Stat. 2581; Pub. L. 105-85, div. A, title VI, § 645(b), Nov. 18, 1997, 111 Stat. 1801, provided that:

“(a) A person—

“(1) who, on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974, became, 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 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [set out as note under section 1521 of Title 38]; and

“(3) whose annual income, as determined in establishing that eligibility, is less than the maximum annual rate of pension in effect under section 1541(b) of title 38, United States Code;

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 [this subchapter]. 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 the maximum annual rate of pension in effect under section 1541(b) of title 38, United States Code. 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.

“(c) The amount of an annuity payable under this section, although counted as income in determining the amount of any pension described in subsection (a)(2) of this section, shall not be considered to affect the

eligibility [sic] of the recipient of such annuity for such pension, even though, as a result of including the amount of the annuity as income, no amount of such pension is due.

“(d) 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.

“(e)(1) Payment of annuities under this section shall be made by the Secretary of Veterans Affairs. In making such payments, the Secretary shall combine with the payment under this section payment of any amount due the same person under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989 [Pub. L. 100-456] (10 U.S.C. 1448 note). If appropriate for administrative convenience (or otherwise determined appropriate by the Secretary of Veterans Affairs), that Secretary may combine a payment to any person for any month under this section (and, if applicable, under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989) with any other payment for that month under laws administered by the Secretary so as to provide that person with a single payment for that month.

“(2) The Secretary concerned shall annually transfer to the Secretary of Veterans Affairs such amounts as may be necessary for payments by the Secretary of Veterans Affairs under this section and for costs of the Secretary of Veterans Affairs in administering this section. Such transfers shall be made from amounts that would otherwise be used for payment of annuities by the Secretary concerned under this section. The authority to make such a transfer is in addition to any other authority of the Secretary concerned to transfer funds for a purpose other than the purpose for which the funds were originally made available. In the case of a transfer by the Secretary of a military department, the provisions of section 2215 of title 10, United States Code, do not apply.

“(3) The Secretary concerned shall promptly notify the Secretary of Veterans Affairs of any change in beneficiaries under this section.”

[Section 638(d) of Pub. L. 104-201 provided that: “The amendments made by this section [amending section 4 of Pub. L. 92-425, set out above] take effect on July 1, 1997, and apply with respect to payments of benefits for any month after June 1997.”]

[Section 942(b) of Pub. L. 98-94 provided that: “Any annuity payable by reason of subsection (a) [amending section 4(a)(1) of Pub. L. 92-425, set out above] shall be payable only for months after September 1983.”]

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

The 90-day period, referred to in subsec. (a)(2), (4)(B), with respect to certain individuals shall be considered to end on Mar. 31, 1980, see section 208 of Pub. L. 95-397, set out as a note under section 1447 of this title.

§ 1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay

(a) **AUTHORITY.**—A participant in the Plan may, subject to the provisions of this section, elect to discontinue participation in the Plan at any time during the one-year period beginning on the second anniversary of the date on which payment of retired pay to the participant commences.

(b) **CONCURRENCE OF SPOUSE.**—

(1) **CONCURRENCE REQUIRED.**—A married participant may not (except as provided in paragraph (2)) make an election under subsection (a) without the concurrence of the participant's spouse.

(2) **EXCEPTIONS.**—A participant may make such an election without the concurrence of

the participant's spouse by establishing to the satisfaction of the Secretary concerned that one of the conditions specified in section 1448(a)(3)(C) of this title exists.

(3) **FORM OF CONCURRENCE.**—The concurrence of a spouse under paragraph (1) shall be made in such written form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(c) **LIMITATION ON ELECTION WHEN FORMER SPOUSE COVERAGE IN EFFECT.**—The limitation set forth in section 1450(f)(2) of this title applies to an election to discontinue participation in the Plan under subsection (a).

(d) **WITHDRAWAL OF ELECTION TO DISCONTINUE.**—Section 1448(b)(1)(D) of this title applies to an election under subsection (a).

(e) **CONSEQUENCES OF DISCONTINUATION.**—Section 1448(b)(1)(E) of this title applies to an election under subsection (a).

(f) **NOTICE TO AFFECTED BENEFICIARIES.**—The Secretary concerned shall notify any former spouse or other natural person previously designated under section 1448(b) of this title of an election to discontinue participation under subsection (a).

(g) **EFFECTIVE DATE OF ELECTION.**—An election under subsection (a) is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(h) **INAPPLICABILITY OF IRREVOCABILITY PROVISIONS.**—Paragraphs (4)(B) and (5)(C) of section 1448(a) of this title do not apply to prevent an election under subsection (a).

(Added Pub. L. 105-85, div. A, title VI, § 641(a)(1), Nov. 18, 1997, 111 Stat. 1797.)

EFFECTIVE DATE

Section 641(c) of Pub. L. 105-85 provided that: “Section 1448a of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].”

TRANSITION PROVISION FOR CURRENT PARTICIPANTS

Section 641(b) of Pub. L. 105-85 provided that: “Notwithstanding the limitation on the time for making an election under section 1448a of title 10, United States Code (as added by subsection (a)), that is specified in subsection (a) of such section, a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of such title may make an election in accordance with that section within one year after the effective date of that section under subsection (c) [set out as an Effective Date note above] if the second anniversary of the commencement of payment of retired pay to the participant precedes that effective date.”

§ 1449. Mental incompetency of member

(a) **ELECTION BY SECRETARY CONCERNED ON BEHALF OF MENTALLY INCOMPETENT 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 Department of Veterans Affairs, or by a court of competent jurisdiction, an election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned.

(b) **REVOCATION OF ELECTION BY MEMBER.**—

(1) **AUTHORITY UPON SUBSEQUENT DETERMINATION OF MENTAL COMPETENCE.**—If a person for

whom the Secretary has made an election under subsection (a) is later determined to be mentally competent by an authority named in that subsection, that person may, within 180 days after that determination, revoke that election.

(2) DEDUCTIONS FROM RETIRED PAY NOT TO BE REFUNDED.—Any deduction made from retired pay by reason of such an election may not be refunded.

(Added Pub. L. 92-425, §1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 95-397, title II, §207(a), Sept. 30, 1978, 92 Stat. 848; Pub. L. 101-189, div. A, title XIV, §1407(a)(3), title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 104-201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2560.)

AMENDMENTS

1996—Pub. L. 104-201 amended section generally. Prior to amendment, section read as follows: “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 Department of Veterans Affairs, or by a court of competent jurisdiction, any election described in subsection (a)(2) or (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 pay by reason of such an election will not be refunded.”

1989—Pub. L. 101-189 substituted “Department of Veterans Affairs” for “Veterans’ Administration” and struck out “or retainer” after “made from retired”.

1978—Pub. L. 95-397 substituted “subsection (a)(2) or (b)” for “the first sentence of subsection (a), or subsection (b)”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95-397, set out as a note under section 1447 of this title.

§ 1450. Payment of annuity: beneficiaries

(a) IN GENERAL.—Effective as of the first day after the death of a person to whom section 1448 of this title applies (or on such other day as that person may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to the person’s beneficiaries under the Plan, as follows:

(1) SURVIVING SPOUSE OR FORMER SPOUSE.—The eligible surviving spouse or the eligible former spouse.

(2) SURVIVING CHILDREN.—The surviving dependent children in equal shares, if the eligible surviving spouse or the eligible former spouse is dead, dies, or otherwise becomes ineligible under this section.

(3) DEPENDENT CHILDREN.—The dependent children in equal shares if the person to whom section 1448 of this title applies (with the concurrence of the person’s spouse, if required under section 1448(a)(3) of this title) elected to provide an annuity for dependent children but not for the spouse or former spouse.

(4) NATURAL PERSON DESIGNATED UNDER “INSURABLE INTEREST” COVERAGE.—The natural

person designated under section 1448(b)(1) of this title, unless the election to provide an annuity to the natural person has been changed as provided in subsection (f).

(b) TERMINATION OF ANNUITY FOR DEATH, REMARRIAGE BEFORE AGE 55, ETC.—

(1) GENERAL RULE.—An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost.

(2) TERMINATION OF SPOUSE ANNUITY UPON DEATH OR REMARRIAGE BEFORE AGE 55.—An annuity for a surviving spouse or former spouse shall be paid to the surviving spouse or former spouse while the surviving spouse or former spouse is living or, if the surviving spouse or former spouse remarries before reaching age 55, until the surviving spouse or former spouse remarries.

(3) EFFECT OF TERMINATION OF SUBSEQUENT MARRIAGE BEFORE AGE 55.—If the surviving spouse or former spouse remarries before reaching age 55 and that marriage is terminated by death, annulment, or divorce, payment of the annuity shall be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the surviving spouse or former spouse is also entitled to an annuity under the Plan based upon the marriage so terminated, the surviving spouse or former spouse may not receive both annuities but must elect which to receive.

(c) OFFSET FOR AMOUNT OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) REQUIRED OFFSET.—If, upon the death of a person to whom section 1448 of this title applies, the surviving spouse or former spouse of that person is also entitled to dependency and indemnity compensation under section 1311(a) of title 38, the surviving spouse or former spouse 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.

(2) EFFECTIVE DATE OF OFFSET.—A reduction in an annuity under this section required by paragraph (1) shall be effective on the date of the commencement of the period of payment of such dependency and indemnity compensation under title 38.

(3) LIMITATION ON RECOUPMENT OF OFFSET AMOUNT.—Any amount subject to offset under this subsection that was previously paid to the surviving spouse or former spouse shall be recouped only to the extent that the amount paid exceeds any amount to be refunded under subsection (e). In notifying a surviving spouse or former spouse of the recoupment requirement, the Secretary shall provide the spouse or former spouse—

(A) a single notice of the net amount to be recouped or the net amount to be refunded, as applicable, under this subsection or subsection (e);

(B) a written explanation of the statutory requirements for recoupment of the offset amount and for refund of any applicable amount deducted from retired pay;

(C) a detailed accounting of how the offset amount being recouped and retired pay de-

duction amount being refunded were calculated; and

(D) contact information for a person who can provide information about the offset recoupment and retired pay deduction refund processes and answer questions the surviving spouse or former spouse may have about the requirements, processes, or amounts.

(d) **LIMITATION ON PAYMENT OF ANNUITIES WHEN COVERAGE UNDER CIVIL SERVICE RETIREMENT ELECTED.**—If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of that person's retired 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(j) of title 5, that person notified the Office of Personnel Management that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title.

(e) **REFUND OF AMOUNTS DEDUCTED FROM RETIRED PAY WHEN DIC OFFSET IS APPLICABLE.**—

(1) **FULL REFUND WHEN DIC GREATER THAN SBP ANNUITY.**—If an annuity under this section is not payable because of subsection (c), any amount deducted from the retired pay of the deceased under section 1452 of this title shall be refunded to the surviving spouse or former spouse.

(2) **PARTIAL REFUND WHEN SBP ANNUITY REDUCED BY DIC.**—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 pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted before 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 surviving spouse or former spouse.

(f) **CHANGE IN ELECTION OF INSURABLE INTEREST OR FORMER SPOUSE BENEFICIARY.**—

(1) **AUTHORIZED CHANGES.**—

(A) **ELECTION IN FAVOR OF SPOUSE OR CHILD.**—A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2), change that election and provide an annuity to his spouse or dependent child.

(B) **NOTICE.**—The Secretary concerned shall notify the former spouse or other natural person previously designated under section 1448(b) of this title of any change of election under subparagraph (A).

(C) **PROCEDURES, EFFECTIVE DATE, ETC.**—Any such change of election is subject to the same rules with respect to execution, revocation, and effectiveness as are set forth in section 1448(a)(5) of this title (without regard to the eligibility of the person making the change of election to make such an election under that section). Notwithstanding the preceding sentence, a change of election

under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.

(2) **LIMITATION ON CHANGE IN BENEFICIARY WHEN FORMER SPOUSE COVERAGE IN EFFECT.**—A person who, incident to a proceeding of divorce, dissolution, or annulment, is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement, may not change that election under paragraph (1) unless, of the following requirements, whichever are applicable in a particular case are satisfied:

(A) In a case in which the election is required by a court order, or in which an agreement to make the election has been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a certified copy of a court order which is regular on its face and which modifies the provisions of all previous court orders relating to such election, or the agreement to make such election, so as to permit the person to change the election; and

(ii) certifies to the Secretary concerned that the court order is valid and in effect.

(B) In a case of a written agreement that has not been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a statement, in such form as the Secretary concerned may prescribe, signed by the former spouse and evidencing the former spouse's agreement to a change in the election under paragraph (1); and

(ii) certifies to the Secretary concerned that the statement is current and in effect.

(3) **REQUIRED FORMER SPOUSE ELECTION TO BE DEEMED TO HAVE BEEN MADE.**—

(A) **DEEMED ELECTION UPON REQUEST BY FORMER SPOUSE.**—If a person described in paragraph (2) or (3) of section 1448(b) of this title is required (as described in subparagraph (B)) to elect under section 1448(b) of this title to provide an annuity to a former spouse and such person then fails or refuses to make such an election, such person shall be deemed to have made such an election if the Secretary concerned receives the following:

(i) **REQUEST FROM FORMER SPOUSE.**—A written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made.

(ii) **COPY OF COURT ORDER OR OTHER OFFICIAL STATEMENT.**—Either—

(I) a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement of such person; or

(II) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(B) PERSONS REQUIRED TO MAKE ELECTION.—A person shall be considered for purposes of subparagraph (A) to be required to elect under section 1448(b) of this title to provide an annuity to a former spouse if—

(i) the person enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to make such an election and the agreement (I) has been incorporated in or ratified or approved by a court order, or (II) has been filed with the court of appropriate jurisdiction in accordance with applicable State law; or

(ii) the person is required by a court order to make such an election.

(C) TIME LIMIT FOR REQUEST BY FORMER SPOUSE.—An election may not be deemed to have been made under subparagraph (A) in the case of any person unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.

(D) EFFECTIVE DATE OF DEEMED ELECTION.—An election deemed to have been made under subparagraph (A) shall become effective on the day referred to in section 1448(b)(3)(E)(ii) of this title.

(4) FORMER SPOUSE COVERAGE MAY BE REQUIRED BY COURT ORDER.—A court order may require a person to elect (or to enter into an agreement to elect) under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child).

(g) LIMITATION ON CHANGING OR REVOKING ELECTIONS.—

(1) IN GENERAL.—An election under this section may not be changed or revoked.

(2) EXCEPTIONS.—Paragraph (1) does not apply to—

(A) a revocation of an election under section 1449(b) of this title; or

(B) a change in an election under subsection (f).

(h) TREATMENT OF ANNUITIES UNDER OTHER LAWS.—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 Secretary of Veterans Affairs.

(i) ANNUITIES EXEMPT FROM CERTAIN LEGAL PROCESS.—Except as provided in subsection (l)(3)(B), an annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(j) EFFECTIVE DATE OF RESERVE-COMPONENT ANNUITIES.—

(1) PERSONS MAKING SECTION 1448(e) DESIGNATION.—A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.

(2) PERSONS DYING BEFORE MAKING SECTION 1448(e) DESIGNATION.—An annuity payable under section 1448(f) of this title shall be effective on the day after the date of the death of the person upon whose service the right to the annuity is based.

(k) ADJUSTMENT OF SPOUSE OR FORMER SPOUSE ANNUITY UPON LOSS OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) READJUSTMENT IF BENEFICIARY 55 YEARS OF AGE OR MORE.—If a surviving spouse or former spouse whose annuity has been adjusted under subsection (c) subsequently loses entitlement to dependency and indemnity compensation under section 1311(a) of title 38 because of the remarriage of the surviving spouse, or former spouse, and if at the time of such remarriage the surviving spouse or former spouse is 55 years of age or more, the amount of the annuity of the surviving spouse or former spouse shall be readjusted, effective on the effective date of such loss of dependency and indemnity compensation, to the amount of the annuity which would be in effect with respect to the surviving spouse or former spouse if the adjustment under subsection (c) had never been made.

(2) REPAYMENT OF AMOUNTS PREVIOUSLY REFUNDED.—

(A) GENERAL RULE.—A surviving spouse or former spouse whose annuity is readjusted under paragraph (1) shall repay any amount refunded under subsection (e) by reason of the adjustment under subsection (c).

(B) INTEREST REQUIRED IF REPAYMENT NOT A LUMP SUM.—If the repayment is not made in a lump sum, the surviving spouse or former spouse shall pay interest on the amount to be repaid. Such interest shall commence on the date on which the first such payment is due and shall be applied over the period during which any part of the repayment remains to be paid.

(C) MANNER OF REPAYMENT; RATE OF INTEREST.—The manner in which such repayment shall be made, and the rate of any such interest, shall be prescribed in regulations under section 1455 of this title.

(D) DEPOSIT OF AMOUNTS REPAID.—An amount repaid under this paragraph (including any such interest) received by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other amount repaid under this paragraph shall be deposited into the Treasury as miscellaneous receipts.

(l) PARTICIPANTS IN THE PLAN WHO ARE MISSING.—

(1) AUTHORITY TO PRESUME DEATH OF MISSING PARTICIPANT.—

(A) IN GENERAL.—Upon application of the beneficiary of a participant in the Plan who is missing, the Secretary concerned may determine for purposes of this subchapter that the participant is presumed dead.

(B) PARTICIPANT WHO IS MISSING.—A participant in the Plan is considered to be missing for purposes of this subsection if—

(i) the retired pay of the participant has been suspended on the basis that the participant is missing; or

(ii) in the case of a participant in the Plan who would be eligible for reserve-component retired pay but for the fact that he is under 60 years of age, his retired pay, if he were entitled to retired pay, would be suspended on the basis that he is missing.

(C) REQUIREMENTS APPLICABLE TO PRESUMPTION OF DEATH.—Any such determination shall be made in accordance with regulations prescribed under section 1455 of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a participant who is missing is presumed dead unless the Secretary finds that—

(i) the participant has been missing for at least 30 days; and

(ii) the circumstances under which the participant is missing would lead a reasonably prudent person to conclude that the participant is dead.

(2) COMMENCEMENT OF ANNUITY.—Upon a determination under paragraph (1) with respect to a participant in the Plan, an annuity otherwise payable under this subchapter shall be paid as if the participant died on the date as of which the retired pay of the participant was suspended.

(3) EFFECT OF PERSON NOT BEING DEAD.—

(A) TERMINATION OF ANNUITY.—If, after a determination under paragraph (1), the Secretary concerned determines that the participant is alive—

(i) any annuity being paid under this subchapter by reason of this subsection shall be terminated; and

(ii) the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States.

(B) COLLECTION FROM PARTICIPANT OF ANNUITY AMOUNTS ERRONEOUSLY PAID.—A debt under subparagraph (A)(ii) may be collected or offset—

(i) from any retired pay otherwise payable to the participant;

(ii) if the participant is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the participant is entitled to any other payment from the United States, from that payment.

(C) COLLECTION FROM BENEFICIARY.—If the participant dies before the full recovery of the amount of annuity payments described in subparagraph (A)(ii) has been made by the United States, the remaining amount of such annuity payments may be collected from the participant's beneficiary under the Plan if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(m) SPECIAL SURVIVOR INDEMNITY ALLOWANCE.—

(1) PROVISION OF ALLOWANCE.—The Secretary concerned shall pay a monthly special survivor indemnity allowance under this subsection to the surviving spouse or former

spouse of a member of the uniformed services to whom section 1448 of this title applies if—

(A) the surviving spouse or former spouse is entitled to dependency and indemnity compensation under section 1311(a) of title 38;

(B) except for subsection (c) of this section, the surviving spouse or former spouse is eligible for an annuity by reason of a participant in the Plan under subsection (a)(1) of section 1448 of this title or by reason of coverage under subsection (d) of such section; and

(C) the eligibility of the surviving spouse or former spouse for an annuity as described in subparagraph (B) is affected by subsection (c) of this section.

(2) AMOUNT OF PAYMENT.—Subject to paragraph (3), the amount of the allowance paid to an eligible survivor under paragraph (1) for a month shall be equal to—

(A) for months during fiscal year 2009, \$50;

(B) for months during fiscal year 2010, \$60;

(C) for months during fiscal year 2011, \$70;

(D) for months during fiscal year 2012, \$80;

(E) for months during fiscal year 2013, \$90;

(F) for months during fiscal year 2014, \$150;

(G) for months during fiscal year 2015, \$200;

(H) for months during fiscal year 2016, \$275;

and

(I) for months during fiscal year 2017, \$310.

(3) LIMITATION.—The amount of the allowance paid to an eligible survivor under paragraph (1) for any month may not exceed the amount of the annuity for that month that is subject to offset under subsection (c).

(4) STATUS OF PAYMENTS.—An allowance paid under this subsection does not constitute an annuity, and amounts so paid are not subject to adjustment under any other provision of law.

(5) SOURCE OF FUNDS.—The special survivor indemnity allowance shall be paid from amounts in the Department of Defense Military Retirement Fund established under section 1461 of this title.

(6) EFFECTIVE DATE AND DURATION.—This subsection shall only apply with respect to the month beginning on October 1, 2008, and subsequent months through the month ending on September 30, 2017. Effective on October 1, 2017, the authority provided by this subsection shall terminate. No special survivor indemnity allowance may be paid to any person by reason of this subsection for any period before October 1, 2008, or beginning on or after October 1, 2017.

(Added Pub. L. 92-425, §1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 94-496, §1(3), (4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, §§203, 207(b), (c), Sept. 30, 1978, 92 Stat. 845, 848; Pub. L. 97-22, §11(a)(3), July 10, 1981, 95 Stat. 137; Pub. L. 97-252, title X, §1003(c), (d), Sept. 8, 1982, 96 Stat. 736; Pub. L. 98-94, title IX, §941(a)(3), (c)(3), Sept. 24, 1983, 97 Stat. 653; Pub. L. 98-525, title VI, §§642(b), 644, Oct. 19, 1984, 98 Stat. 2546, 2548; Pub. L. 99-145, title VII, §§713(b), 717, 718, 719(4)-(6), (8)(A), 722, 723(a), (b)(1), title XIII, §1303(a)(11), Nov. 8, 1985, 99 Stat. 672, 674-677, 739; Pub. L. 99-661, div. A, title VI, §§641(a), (b)(2), (3),

643(a), title XIII, §1343(a)(8)(C), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 100-26, §3(3), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-180, div. A, title VI, §636(a), Dec. 4, 1987, 101 Stat. 1106; Pub. L. 100-224, §5(b)(1), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 101-189, div. A, title XIV, §1407(a)(2)-(4), title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 103-337, div. A, title X, §1070(e)(3), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104-201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2561; Pub. L. 105-85, div. A, title VI, §642(a), Nov. 18, 1997, 111 Stat. 1799; Pub. L. 105-261, div. A, title VI, §643(b), Oct. 17, 1998, 112 Stat. 2048; Pub. L. 106-398, §1 [div. A], title VI, §655(c)(4), Oct. 30, 2000, 114 Stat. 1654, 1654A-166; Pub. L. 110-181, div. A, title VI, §§643(a), 644, Jan. 28, 2008, 122 Stat. 157, 158; Pub. L. 110-417, [div. A], title VI, §631(a), Oct. 14, 2008, 122 Stat. 4492; Pub. L. 111-31, div. B, title II, §201, June 22, 2009, 123 Stat. 1857.)

AMENDMENTS

2009—Subsec. (m)(2)(F) to (I). Pub. L. 111-31, §201(a), added subpars. (F) to (I) and struck out former subpar. (F) which read as follows: “for months after fiscal year 2013, \$100.”

Subsec. (m)(6). Pub. L. 111-31, §201(b), substituted “September 30, 2017” for “February 28, 2016” and substituted “October 1, 2017” for “March 1, 2016” in two places.

2008—Subsec. (c)(3). Pub. L. 110-181, §643(a), added par. (3).

Subsec. (m). Pub. L. 110-181, §644, added subsec. (m).

Subsec. (m)(1)(B). Pub. L. 110-417 substituted “subsection (a)(1) of section 1448 of this title or by reason of coverage under subsection (d) of such section” for “section 1448(a)(1) of this title”.

2000—Subsec. (j)(1). Pub. L. 106-398 substituted “A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.” for “An annuity elected by a person providing a reserve-component annuity shall be effective in accordance with the designation made by such person under section 1448(e) of this title.”

1998—Subsec. (f)(3)(D). Pub. L. 105-261 substituted “the day referred to in section 1448(b)(3)(E)(ii) of this title” for “the first day of the first month which begins after the date of the court order or filing involved”.

1997—Subsec. (f)(1)(C). Pub. L. 105-85 inserted at end “Notwithstanding the preceding sentence, a change of election under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.”

1996—Pub. L. 104-201 amended section generally, revising and restating provisions relating to payment of annuities and beneficiaries and inserting subsec., par., and subpar. headings.

1994—Subsecs. (c), (k)(1). Pub. L. 103-337 substituted “section 1311(a) of title 38” for “section 411(a) of title 38”.

1989—Subsec. (f)(3)(B). Pub. L. 101-189, §1407(a)(4), substituted “within one year of the date of the court order or filing involved” for “before October 1, 1985, or within one year of the date of the court order or filing involved, whichever is later”.

Subsec. (h). Pub. L. 101-189, §1621(a)(1), substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

Subsec. (l)(1). Pub. L. 101-189, §1407(a)(2), substituted “reserve-component retired pay” for “retired pay under chapter 67 of this title”.

Subsec. (l)(2). Pub. L. 101-189, §1407(a)(3), struck out “or retainer” after “of which the retired”.

1987—Subsec. (b). Pub. L. 100-26, §3(3), made technical amendment to directory language of Pub. L. 99-661, §643(a). See 1986 Amendment note below.

Subsec. (f)(3)(A). Pub. L. 100-224 struck out second of two commas after “required by a court order to make such an election”.

Subsec. (k)(1). Pub. L. 100-180 substituted “55 years of age” for “60 years of age”.

1986—Subsec. (b). Pub. L. 99-661, §643(a), as amended by Pub. L. 100-26, §3(3), substituted “age 55” for “age 60” in two places.

Subsec. (c). Pub. L. 99-661, §1343(a)(8)(C), substituted “entitled to dependency and indemnity compensation” for “entitled to compensation”.

Subsec. (f)(2). Pub. L. 99-661, §641(b)(2)(A), substituted “is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement,” for “enters into a voluntary written agreement to elect under section 1448(b) of this title to provide an annuity to a former spouse and who makes an election pursuant to such agreement”.

Subsec. (f)(2)(A). Pub. L. 99-661, §641(b)(2)(B), substituted “in a case in which the election is required by a court order, or in which an agreement to make the election” for “in a case in which such agreement”.

Subsec. (f)(2)(A)(i). Pub. L. 99-661, §641(b)(2)(C), substituted “relating to such election, or the agreement to make such election,” for “relating to the agreement to make such election”.

Subsec. (f)(2)(B). Pub. L. 99-661, §641(b)(2)(D), substituted “of a written agreement that” for “in which such agreement”.

Subsec. (f)(3)(A). Pub. L. 99-661, §641(b)(3), struck out “voluntary” before “written agreement” in two places, inserted “or if such person is required by a court order to make such an election,” after “applicable” and inserted “requires such election or” after “on its face, which”.

Subsec. (f)(4). Pub. L. 99-661, §641(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Nothing in this chapter authorizes any court to order any person to elect under section 1448(b) of this title to provide an annuity to a former spouse unless such person has voluntarily agreed in writing to make such election.”

1985—Subsec. (a)(1), (2). Pub. L. 99-145, §723(a)(1), inserted “or the eligible former spouse” after “widow or widower”.

Subsec. (a)(3). Pub. L. 99-145, §723(a)(2), inserted “(with the concurrence of the person’s spouse, if required under section 1448(a)(3) of this title)” after “title applies”, and “or former spouse” after “the spouse”.

Subsec. (a)(4). Pub. L. 99-145, §723(a)(3), struck out “former spouse or other” before “natural person” in two places.

Subsec. (b). Pub. L. 99-145, §723(b)(1), substituted “widow, widower, or former spouse” for “widow or widower” in eight places.

Pub. L. 99-145, §719(4), substituted “under the Plan” for “under this section”.

Subsec. (c). Pub. L. 99-145, §723(b)(1), substituted “widow, widower, or former spouse” for “widow or widower” in two places.

Pub. L. 99-145, §718, inserted provision respecting the effective date of the dependency and indemnity compensation offset.

Subsec. (d). Pub. L. 99-145, §719(8)(A), substituted “retired pay” for “retired or retainer pay”.

Subsec. (e). Pub. L. 99-145, §719(8)(A), substituted “retired pay” for “retired or retainer pay” in two places.

Pub. L. 99-145, §723(b)(1), substituted “widow, widower, or former spouse” for “widow or widower” in two places.

Subsec. (f)(3)(A). Pub. L. 99-145, §722(1), inserted “or has been filed with the court of appropriate jurisdiction in accordance with applicable State law” after “by a court order” and “or receives a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accord-

ance with applicable State law” after “voluntary written agreement of such person”.

Subsec. (f)(3)(B), (C). Pub. L. 99-145, § 722(2), inserted “or filing” after “court order”.

Subsec. (i). Pub. L. 99-145, § 1303(a)(11)(A), substituted “subsection (i)(3)(B)” for “subsection (i)”.

Subsec. (j). Pub. L. 99-145, § 719(5), substituted “a person providing a reserve-component annuity” for “any person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title”.

Pub. L. 99-145, § 713(b), inserted provision respecting the effective date of an annuity payable under section 1448(f) of this title.

Subsec. (k). Pub. L. 99-145, § 723(b)(1), substituted “widow, widower, or former spouse” for “widow or widower” wherever appearing.

Subsec. (k)(1). Pub. L. 99-145, § 717(1), (2), designated existing provisions as par. (1) and substituted “had never been made.” for “had never been made, but such readjustment may not be made until the widow or widower repays any amount refunded under subsection (e) by reason of the adjustment under subsection (c).”

Subsec. (k)(2). Pub. L. 99-145, § 717(3), added par. (2).

Subsec. (l)(1). Pub. L. 99-145, § 719(6)(A), (8)(A), substituted in first sentence “the Plan” for “the plan” in two places, and substituted “retired pay” for “retired or retainer pay” before “has been suspended”.

Subsec. (l)(2). Pub. L. 99-145, § 719(6)(B), struck out “the provision of” before “this subchapter”.

Subsec. (l)(3)(A). Pub. L. 99-145, § 1303(a)(11)(B), struck out “(notwithstanding subsection (h))” before “may be collected”.

Subsec. (l)(3)(A)(i). Pub. L. 99-145, § 719(8)(A), substituted “retired pay” for “retired or retainer pay”.

1984—Subsec. (f)(3), (4). Pub. L. 98-525, § 644, added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 98-525, § 642(b)(1), substituted “Except as provided in subsection (l), an” for “An”.

Subsec. (l). Pub. L. 98-525, § 642(b)(2), added subsec. (l). 1983—Subsec. (a)(4). Pub. L. 98-94, § 941(a)(3)(A), struck out “at the time the person to whom section 1448 applies became entitled to retired or retainer pay” after “section 1448(b) of this title”.

Subsec. (f)(1). Pub. L. 98-94, § 941(a)(3)(B), inserted “(without regard to the eligibility of the person making the change of election to make an election under such section)” after “section 1448(a)(5) of this title”.

Pub. L. 98-94, § 941(c)(3)(A), struck out “of this subsection” after “subject to paragraph (2)”.

Subsec. (f)(2). Pub. L. 98-94, § 941(c)(3)(B), substituted “or annulment,” for “annulment, or legal separation,”.

1982—Subsec. (a)(4). Pub. L. 97-252, § 1003(c), substituted “former spouse or other natural person” for “natural person” and “unless the election to provide an annuity to the former spouse or other natural person has been changed as provided in subsection (f)” for “if there is no eligible beneficiary under clause (1) or clause (2)”.

Subsec. (f). Pub. L. 97-252, § 1003(d), designated existing provisions as par. (1), substituted “A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2) of this subsection,” for “An unmarried person who elects to provide an annuity to a person designated by him under subsection (a)(4), but who later marries or acquires a dependent child,” inserted provision that the Secretary concerned notify the former spouse or such other natural person previously designated under section 1448(b) of any such change in election, and added pars. (2) and (3).

1981—Subsec. (d). Pub. L. 97-22 substituted “Office of Personnel Management” for “Civil Service Commission”.

1978—Subsec. (a). Pub. L. 95-397, § 203(1), inserted “(or on such other day as he may provide under subsection (j))” after “death of a person to whom section 1448 of this title applies”.

Subsec. (d). Pub. L. 95-397, § 207(b), substituted “section 8339(j)” for “section 8339(i)”.

Subsec. (f). Pub. L. 95-397, § 207(c), substituted “section 1448(a)(5)” for “the last three sentences of section 1448(a)”.

Subsecs. (j), (k). Pub. L. 95-397, § 203(2), added subsecs. (j) and (k).

1976—Subsec. (a)(3), (4). Pub. L. 94-496, § 1(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f). Pub. L. 94-496, § 1(4), substituted “(a)(4)” for “(a)(3)”.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-417, [div. A], title VI, § 631(b), Oct. 14, 2008, 122 Stat. 4492, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to the month beginning on October 1, 2008, and subsequent months as provided by paragraph (6) of subsection (m) of section 1450 of title 10, United States Code, as added by section 644 of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110-181].”

Pub. L. 110-181, div. A, title VI, § 643(b), Jan. 28, 2008, 122 Stat. 157, provided that: “Paragraph (3) of subsection (c) of section 1450 of title 10, United States Code, as added by subsection (a), shall apply with respect to the recoupment on or after April 1, 2008, of amounts subject to offset under such subsection.”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 642(b) of Pub. L. 105-85 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to marriages occurring before, on, or after the date of the enactment of this Act [Nov. 18, 1997].”

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 636(b) of Pub. L. 100-180 provided that: “The amendment made by subsection (a) [amending this section] shall apply as if included in the amendments made by section 643(a) of the National Defense Authorization Act for Fiscal Year 1987 [Public Law 99-661; 100 Stat. 3886] [amending this section].”

Amendment by Pub. L. 100-26 applicable as if included in Pub. L. 99-661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100-26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 641(c) of Pub. L. 99-661 provided that: “The amendments made by this section [amending this section and section 1448 of this title] apply to court orders issued on or after the date of the enactment of this Act [Nov. 14, 1986].”

Section 643(b) of Pub. L. 99-661 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to remarriages that occur on or after the date of the enactment of this Act [Nov. 14, 1986], but only with respect to payments for periods after the date of the enactment of this Act.”

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99-145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99-145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97-252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97-252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95-397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-496 effective Sept. 21, 1972, see section 3 of Pub. L. 94-496, set out as a note under section 1447 of this title.

RECOMPUTATION OF ANNUITIES

Pub. L. 108-375, div. A, title VI, § 644(c), Oct. 28, 2004, 118 Stat. 1961, as amended by Pub. L. 110-417, [div. A], title VI, § 632, Oct. 14, 2008, 122 Stat. 4493, provided that:

“(1) PERIODIC RECOMPUTATION REQUIRED.—Effective on the first day of each month specified in paragraph (2)—

“(A) each annuity under section 1450 of title 10, United States Code, that commenced before that month, is computed under a provision of section 1451 of that title amended by subsection (a), and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that provision, as so amended, had been used for the initial computation of the annuity; and

“(B) each supplemental survivor annuity under [former] section 1457 of such title that commenced before that month and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that section, as amended by this section, had been used for the initial computation of the supplemental survivor annuity.

“(2) TIME FOR RECOMPUTATION.—The requirement under paragraph (1) for recomputation of certain annuities applies with respect to the following months:

“(A) October 2005.

“(B) April 2006.

“(C) April 2007.

“(D) April 2008.

“(3) SAVINGS PROVISION.—If, as a result of the recomputation of annuities under section 1450 of title 10, United States Code, and supplemental survivor annuities under [former] section 1457 of such title, as required by paragraph (1), the total amount of both annuities to be paid to an annuitant for a month would be less (because of the offset required by section 1450(c) of such title for dependency and indemnity compensation) than the amount that would be paid to the annuitant in the absence of recomputation, the Secretary of Defense shall take such actions as are necessary to adjust the annuity amounts to eliminate the reduction.”

[Pub. L. 110-417, [div. A], title VI, § 632, Oct. 14, 2008, 122 Stat. 4493, provided that the amendment made by that section to section 644(c) of Pub. L. 108-375, set out above, is effective as of Oct. 28, 2004, and as if included in section 644(c) of Pub. L. 108-375 as enacted.]

EFFECTUATION OF INTENDED SBP ANNUITY FOR FORMER SPOUSE WHEN NOT ELECTED BY REASON OF UNTIMELY DEATH OF RETIREE

Pub. L. 106-65, div. A, title VI, § 657, Oct. 5, 1999, 113 Stat. 668, as amended by Pub. L. 106-398, § 1 [[div. A], title X, § 1087(c)(1)(D)], Oct. 30, 2000, 114 Stat. 1654, 1654A-292, provided that:

“(a) CASES NOT COVERED BY EXISTING AUTHORITY.—Paragraph (3) of section 1450(f) of title 10, United States Code, as in effect on the date of the enactment of this Act [Oct. 5, 1999], shall apply in the case of a former spouse of any person referred to in that paragraph who—

“(1) incident to a proceeding of divorce, dissolution, or annulment—

“(A) entered into a written agreement on or after August 19, 1983, to make an election under section 1448(b) of such title to provide an annuity to the former spouse (the agreement thereafter having been incorporated in or ratified or approved by a court order or filed with the court of appropriate jurisdiction in accordance with applicable State law); or

“(B) was required by a court order dated on or after such date to make such an election for the former spouse; and

“(2) before making the election, died within 21 days after the date of the agreement referred to in paragraph (1)(A) or the court order referred to in paragraph (1)(B), as the case may be.

“(b) ADJUSTED TIME LIMIT FOR REQUEST BY FORMER SPOUSE.—For the purposes of paragraph (3)(C) of section 1450(f) of title 10, United States Code, a court order or filing referred to in subsection (a)(1) of this section that is dated before October 19, 1984, shall be deemed to be dated on the date of the enactment of this Act [Oct. 5, 1999].”

[Pub. L. 106-398, § 1 [[div. A], title X, § 1087(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-292, provided that: “In the case of any former spouse to whom paragraph (3) of section 1450(f) of title 10, United States Code, applies by reason of the amendment made by paragraph (1)(D) [amending section 657 of Pub. L. 106-65, set out above], the provisions of subsection (b) of section 657 of the National Defense Authorization Act for Fiscal Year 2000 [Pub. L. 106-65, set out above] shall be applied by using the date of the enactment of this Act [Oct. 30, 2000], rather than the date of the enactment of that Act [Oct. 5, 1999].”]

§ 1451. Amount of annuity

(a) COMPUTATION OF ANNUITY FOR A SPOUSE, FORMER SPOUSE, OR CHILD.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 55 percent of the base amount.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to the product of the base amount and the percent applicable to the month, as follows:

(I) For a month before October 2005, the applicable percent is 35 percent.

(II) For months after September 2005 and before April 2006, the applicable percent is 40 percent.

(III) For months after March 2006 and before April 2007, the applicable percent is 45 percent.

(IV) For months after March 2007 and before April 2008, the applicable percent is 50 percent.

(V) For months after March 2008, the applicable percent is 55 percent.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided

to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—

If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

- (i) is less than 55 percent; and
- (ii) is determined under subsection (f).

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

- (I) is less than the percent specified under subsection (a)(1)(B)(i) as being applicable for the month; and
- (II) is determined under subsection (f).

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(b) INSURABLE INTEREST BENEFICIARY.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to 55 percent of the retired pay of the person who elected to provide the annuity after the reduction in that pay in accordance with section 1452(c) of this title.

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to a percentage of the retired pay of the person who elected to provide the annuity after the reduction in such pay in accordance with section 1452(c) of this title that—

- (A) is less than 55 percent; and
- (B) is determined under subsection (f).

(3) COMPUTATION OF RESERVE-COMPONENT ANNUITY WHEN PARTICIPANT DIES BEFORE AGE 60.—For the purposes of paragraph (2), a person—

- (A) who provides an annuity that is determined in accordance with that paragraph;
- (B) who dies before becoming 60 years of age; and
- (C) who at the time of death is otherwise entitled to retired pay,

shall be considered to have been entitled to retired pay at the time of death. The retired pay of such person for the purposes of such paragraph shall be computed on the basis of the

rates of basic pay in effect on the date on which the annuity provided by such person is to become effective in accordance with the designation of such person under section 1448(e) of this title.

(c) ANNUITIES FOR SURVIVORS OF CERTAIN PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—

(1) IN GENERAL.—In the case of an annuity provided under section 1448(d) or 1448(f) of this title, the amount of the annuity shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—

If the person receiving the annuity is under 62 years of age or is a dependent child when the member or former member dies, the monthly annuity shall be the amount equal to 55 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay when he died determined as follows:

(i) In the case of an annuity provided under section 1448(d) of this title (other than in a case covered by clause (ii)), such retired pay shall be computed as if the member had been retired under section 1201 of this title on the date of the member's death with a disability rated as total.

(ii) In the case of an annuity provided under section 1448(d)(1)(A) of this title by reason of the death of a member not in line of duty, such retired pay shall be computed based upon the member's years of active service when he died.

(iii) In the case of an annuity provided under section 1448(f) of this title, such retired pay shall be computed based upon the member or former member's years of active service when he died computed under section 12733 of this title.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the person receiving the annuity (other than a dependent child) is 62 years of age or older when the member or former member dies, the monthly annuity shall be the amount equal to the applicable percent of the retired pay to which the member or former member would have been entitled as determined under subparagraph (A). The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) DIC OFFSET.—An annuity computed under paragraph (1) that is paid to a surviving spouse shall be reduced by the amount of dependency and indemnity compensation to which the surviving spouse is entitled under section 1311(a)

of title 38. Any such reduction shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(3) **SERVICEMEMBERS NOT YET GRANTED RETIRED PAY.**—In the case of an annuity provided by reason of the service of a member described in clause (ii) or (iii) of section 1448(d)(1)(A) of this title who first became a member of a uniformed service before September 8, 1980, the retired pay to which the member would have been entitled when he died shall be determined for purposes of paragraph (1) based upon the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death, unless (as determined by the Secretary concerned) the member would have been entitled to be retired in a higher grade.

(4) **RATE OF PAY TO BE USED IN COMPUTING ANNUITY.**—In the case of an annuity paid under section 1448(f) of this title by reason of the service of a person who first became a member of a uniformed service before September 8, 1980, the retired pay of the person providing the annuity shall for the purposes of paragraph (1) be computed on the basis of the rates of basic pay in effect on the effective date of the annuity.

(d) **REDUCTION OF ANNUITIES AT AGE 62.**—

(1) **REDUCTION REQUIRED.**—The annuity of a person whose annuity is computed under subparagraph (A) of subsection (a)(1), (a)(2), or (c)(1) shall be reduced on the first day of the month after the month in which the person becomes 62 years of age.

(2) **AMOUNT OF ANNUITY AS REDUCED.**—

(A) **COMPUTATION OF ANNUITY.**—Except as provided in subparagraph (B), the reduced amount of the annuity shall be the amount of the annuity that the person would be receiving on that date if the annuity had initially been computed under subparagraph (B) of that subsection.

(B) **SAVINGS PROVISION FOR BENEFICIARIES ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.**—In the case of a person eligible to have an annuity computed under subsection (e) and for whom, at the time the person becomes 62 years of age, the annuity computed with a reduction under subsection (e)(3) is more favorable than the annuity with a reduction described in subparagraph (A), the reduction in the annuity shall be computed in the same manner as a reduction under subsection (e)(3).

(e) **SAVINGS PROVISION FOR CERTAIN BENEFICIARIES.**—

(1) **PERSONS COVERED.**—The following beneficiaries under the Plan are eligible to have an annuity under the Plan computed under this subsection:

(A) A beneficiary receiving an annuity under the Plan on October 1, 1985, as the surviving spouse or former spouse of the person providing the annuity.

(B) A spouse or former spouse beneficiary of a person who on October 1, 1985—

- (i) was a participant in the Plan;
- (ii) was entitled to retired pay or was qualified for that pay except that he had

not applied for and been granted that pay; or

(iii) would have been eligible for reserve-component retired pay but for the fact that he was under 60 years of age.

(2) **AMOUNT OF ANNUITY.**—Subject to paragraph (3), an annuity computed under this subsection is determined as follows:

(A) **STANDARD ANNUITY.**—In the case of the beneficiary of a standard annuity, the annuity shall be the amount equal to 55 percent of the base amount.

(B) **RESERVE-COMPONENT ANNUITY.**—In the case of the beneficiary of a reserve-component annuity, the annuity shall be the percentage of the base amount that—

- (i) is less than 55 percent; and
- (ii) is determined under subsection (f).

(C) **BENEFICIARIES OF PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.**—In the case of the beneficiary of an annuity under section 1448(d) or 1448(f) of this title, the annuity shall be the amount equal to 55 percent of the retired pay of the person providing the annuity (as that pay is determined under subsection (c)).

(3) **SOCIAL SECURITY OFFSET.**—An annuity computed under this subsection shall be reduced by the lesser of the following:

(A) **SOCIAL SECURITY COMPUTATION.**—The amount of the survivor benefit, if any, to which the surviving spouse (or the former spouse, in the case of a former spouse beneficiary who became a former spouse under a divorce that became final after November 29, 1989) would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(l)(1) of such Act (42 U.S.C. 410(l)(1)) and calculated assuming that the person concerned lives to age 65.

(B) **MAXIMUM AMOUNT OF REDUCTION.**—40 percent of the amount of the monthly annuity as determined under paragraph (2).

(4) **SPECIAL RULES FOR SOCIAL SECURITY OFFSET COMPUTATION.**—

(A) **TREATMENT OF DEDUCTIONS MADE ON ACCOUNT OF WORK.**—For the purpose of paragraph (3), a surviving spouse (or a former spouse, in the case of a person who becomes a former spouse under a divorce that becomes final after November 29, 1989) shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

(B) **TREATMENT OF CERTAIN PERIODS FOR WHICH SOCIAL SECURITY REFUNDS ARE MADE.**—In the computation of any reduction made under paragraph (3), there shall be excluded any period of service described in section 210(l)(1) of the Social Security Act (42 U.S.C. 410(l)(1))—

- (i) which was performed after December 1, 1980; and
- (ii) which 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 the Internal Revenue Code of 1986 of the social security tax which the person had paid.

(f) DETERMINATION OF PERCENTAGES APPLICABLE TO COMPUTATION OF RESERVE-COMPONENT ANNUITIES.—The percentage to be applied in determining the amount of an annuity computed under subsection (a)(2), (b)(2), or (e)(2)(B) shall be determined under regulations prescribed by the Secretary of Defense. Such regulations shall be prescribed taking into consideration the following:

(1) The age of the person electing to provide the annuity at the time of such election.

(2) The difference in age between such person and the beneficiary of the annuity.

(3) Whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth.

(4) Appropriate group annuity tables.

(5) Such other factors as the Secretary considers relevant.

(g) ADJUSTMENTS TO ANNUITIES.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN ANNUITIES WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), each annuity that is payable under the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive (and otherwise entitled to such pay).

(C) CERTAIN REDUCTIONS TO BE DISREGARDED.—The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1450(c) of this title or under subsection (c)(2).

(2) ROUNDING DOWN.—The monthly amount of an annuity payable under this subchapter, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(h) ADJUSTMENTS TO BASE AMOUNT.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN BASE AMOUNT WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the base amount applicable to each participant in the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall be by the same percent as the percent by which the retired pay of the participant is so increased.

(2) RECOMPUTATION AT AGE 62.—When the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age,

the base amount applicable to that person shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of the base amount that would be in effect on that date if increases in such base amount under paragraph (1) had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(3) DISREGARDING OF RETIRED PAY REDUCTIONS FOR RETIREMENT OF CERTAIN MEMBERS BEFORE 30 YEARS OF SERVICE.—Computation of a member's retired pay for purposes of this section shall be made without regard to any reduction under section 1409(b)(2) of this title.

(i) RECOMPUTATION OF ANNUITY FOR CERTAIN BENEFICIARIES.—In the case of an annuity under the Plan which is computed on the basis of the retired pay of a person who would have been entitled to have that retired pay recomputed under section 1410 of this title upon attaining 62 years of age, but who dies before attaining that age, the annuity shall be recomputed, effective on the first day of the first month beginning after the date on which the member or former member would have attained 62 years of age, so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(Added Pub. L. 92-425, §1(3), Sept. 21, 1972, 86 Stat. 709; amended Pub. L. 94-496, §1(4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, §204, Sept. 30, 1978, 92 Stat. 846; Pub. L. 96-402, §3, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97-22, §11(a)(4), July 10, 1981, 95 Stat. 137; Pub. L. 98-94, title IX, §922(a)(14)(B), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98-525, title VI, §641(a), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99-145, title VII, §711(a), (b), Nov. 8, 1985, 99 Stat. 666, 670; Pub. L. 99-348, title III, §301(a)(2), (b), (c), July 1, 1986, 100 Stat. 702; Pub. L. 99-661, div. A, title VI, §642(b), title XIII, §1343(a)(8)(D), Nov. 14, 1986, 100 Stat. 3886, 3992; Pub. L. 100-26, §7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100-224, §3(a), (c), Dec. 30, 1987, 101 Stat. 1537; Pub. L. 100-456, div. A, title VI, §652(a), Sept. 29, 1988, 102 Stat. 1991; Pub. L. 101-189, div. A, title XIV, §§1403(a), 1407(a)(5)-(8), (b)(1), Nov. 29, 1989, 103 Stat. 1579, 1588, 1589; Pub. L. 103-337, div. A, title X, §1070(e)(4), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104-201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2566; Pub. L. 105-85, div. A, title X, §1073(a)(28), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 106-65, div. A, title VI, §643(a)(1), Oct. 5, 1999, 113 Stat. 663; Pub. L. 107-107, div. A, title VI, §642(b), (c)(2), Dec. 28, 2001, 115 Stat. 1152; Pub. L. 107-314, div. A, title X, §1062(a)(6), Dec. 2, 2002, 116 Stat. 2650; Pub. L. 108-375, div. A, title VI, §644(a), Oct. 28, 2004, 118 Stat. 1960.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(3)(A), (4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620,

as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 6413(c) of the Internal Revenue Code of 1986, referred to in subsec. (e)(4)(B)(ii), is classified to section 6413(c) of Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (a)(1)(B)(i). Pub. L. 108-375, § 644(a)(1)(A), substituted “the product of the base amount and the percent applicable to the month, as follows:” and subcls. (I) to (V) for “35 percent of the base amount.”

Subsec. (a)(1)(B)(ii). Pub. L. 108-375, § 644(a)(1)(B), struck out “, at the time the beneficiary becomes entitled to the annuity,” after “subsection (e) and if”.

Subsec. (a)(2)(B)(i)(I). Pub. L. 108-375, § 644(a)(2), substituted “the percent specified under subsection (a)(1)(B)(i) as being applicable for the month” for “35 percent”.

Subsec. (c)(1)(B)(i). Pub. L. 108-375, § 644(a)(3)(A), substituted “the applicable percent” for “35 percent” and inserted at end “The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.”

Subsec. (c)(1)(B)(ii). Pub. L. 108-375, § 644(a)(3)(B), struck out “, at the time the beneficiary becomes entitled to the annuity,” after “subsection (e) and if”.

Subsec. (d)(2)(A). Pub. L. 108-375, § 644(a)(4), substituted “Computation of annuity” for “35 percent annuity” in heading.

2002—Subsec. (c)(3). Pub. L. 107-314 struck out “section” before “clause (ii)”.

2001—Subsec. (c)(1)(A). Pub. L. 107-107, § 642(b)(1), substituted “when he died determined as follows:” and cls. (i) to (iii) for “based upon his years of active service when he died.”

Subsec. (c)(1)(B)(i). Pub. L. 107-107, § 642(b)(2), substituted “as determined under subparagraph (A)” for “if the member or former member had been entitled to that pay based upon his years of active service when he died”.

Subsec. (c)(3). Pub. L. 107-107, § 642(c)(2), substituted “clause (ii) or (iii) of section 1448(d)(1)(A)” for “1448(d)(1)(B) or 1448(d)(1)(C)”.

1999—Subsec. (h)(3). Pub. L. 106-65 inserted “OF CERTAIN MEMBERS” after “RETIREMENT” in heading.

1997—Subsec. (a)(2). Pub. L. 105-85 substituted “ANNUITY—” for “ANNUITY—” in heading.

1996—Pub. L. 104-201 amended section generally, revising and restating provisions relating to amounts of annuities and inserting subsec., par., and subpar. headings.

1994—Subsec. (c)(2). Pub. L. 103-337 substituted “section 1311(a) of title 38” for “section 411(a) of title 38”.

1989—Subsec. (c)(3). Pub. L. 101-189, § 1403(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “In the case of an annuity provided by a member described in section 1448(d)(1)(C) of this title, the retired pay to which the member would have been entitled when he died shall be determined based upon the rate of basic pay in effect at the time of death for the highest grade other than a commissioned officer grade in which the member served on active duty satisfactorily, as determined by the Secretary concerned.”

Subsec. (c)(4). Pub. L. 101-189, § 1407(a)(5), inserted “by reason of the service of a person who first became a member of a uniformed service before September 8, 1980”.

Subsec. (e)(1). Pub. L. 101-189, § 1407(a)(6), substituted “beneficiaries under the Plan” for “beneficiaries under the plan” in introductory provisions.

Subsec. (e)(1)(B). Pub. L. 101-189, § 1407(a)(7), in cl. (i), substituted “was” for “is”, in cl. (ii), substituted “was” for “is” in two places and “had” for “has”, and in cl. (iii), substituted “would have been” for “would be” and “was” for “is”.

Subsec. (e)(2)(A), (B). Pub. L. 101-189, § 1407(a)(8), struck out “(as the base amount is adjusted from time

to time under section 1401a of this title)” after “base amount”.

Subsec. (e)(3)(A), (4)(A). Pub. L. 101-189, § 1407(b)(1), inserted “or former spouse” after “widow or widower”.

1988—Subsec. (e)(1). Pub. L. 100-456 substituted “widow, widower, or former spouse” for “widow or widower” in subpar. (A), and inserted “or former spouse” after “A spouse” in subpar. (B).

1987—Subsec. (a)(1)(A), (B), (2)(A), (B). Pub. L. 100-224, § 3(a)(2), struck out “(as the base amount is adjusted from time to time under section 1401a of this title)” after “base amount”.

Subsec. (e)(4)(B)(ii). Pub. L. 100-26 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (h). Pub. L. 100-224, § 3(a)(1), designated existing provisions of subsec. (h) as par. (3) and added pars. (1) and (2).

Subsec. (i). Pub. L. 100-224, § 3(c), substituted “so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section)” for “on the basis of the amount of retired pay to which the member or former member would have been entitled upon recomputation of such pay effective on such date under section 1410 of this title, had the member or former member attained such age”.

1986—Subsec. (a)(1)(A). Pub. L. 99-661, § 1343(a)(8)(D), substituted “section” for “subsection” before “1401a of this title”.

Pub. L. 99-661, § 642(b)(1)(A), inserted “or is a dependent child”.

Subsec. (a)(1)(B). Pub. L. 99-661, § 642(b)(1)(B), inserted “(other than a dependent child)”.

Subsec. (a)(2)(A). Pub. L. 99-661, § 642(b)(1)(A), inserted “or is a dependent child”.

Subsec. (a)(2)(B). Pub. L. 99-661, § 642(b)(1)(B), inserted “(other than a dependent child)”.

Subsec. (c)(1)(A). Pub. L. 99-661, § 642(b)(2)(A), inserted “or is a dependent child”.

Subsec. (c)(1)(B). Pub. L. 99-661, § 642(b)(2)(B), inserted “(other than a dependent child)”.

Subsec. (g)(1). Pub. L. 99-348, § 301(b), struck out “by the same total percent” after “same time” in first sentence, and inserted provision that the increase, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive, and otherwise entitled to such pay.

Subsecs. (h), (i). Pub. L. 99-348, § 301(a)(2), (c), added subsecs. (h) and (i).

1985—Pub. L. 99-145, § 711(a), amended section generally, eliminating the social security offset to the Plan and establishing a two-tier system under which the beneficiary would receive 55 percent of retired pay before age 62 and 35 percent thereafter in recognition of the entitlement to social security based on military service, and providing benefits to certain beneficiaries under either the old social security offset system or the new two-tier system, whichever is higher.

Subsec. (a)(3). Pub. L. 99-145, § 711(b), repealed Pub. L. 98-525, § 641(a), effective Sept. 1, 1985. See 1984 Amendment note below.

1984—Subsec. (a)(3). Pub. L. 98-525, § 641(a), which substituted “is entitled” for “would be entitled” after “widow or widower” in first sentence and inserted “or to the extent that the benefit to which the beneficiary is entitled is based on the beneficiary’s own earnings or self-employment” at end of second sentence, was repealed effective Sept. 1, 1985, by Pub. L. 99-145, § 711(b). See Effective Date of 1984 Amendment note below.

1983—Subsec. (e). Pub. L. 98-94 added subsec. (e).

1981—Subsec. (a)(4). Pub. L. 97-22 substituted “December 1, 1980” for “the effective date of the Uniformed Services Survivor Benefits Amendments of 1980”.

1980—Subsec. (a). Pub. L. 96-402, §3(a), in revising subsec. (a), designated as par. (1)(A) and (B) existing first sentence containing cls. (1) and (2) and provided in subpar. (A) for adjustment of the annuity from time to time under section 1401a of this title and in subpar. (B) for a similar adjustment after the date the person becomes entitled to retired pay under chapter 67 of this title; designated as par. (2) existing second sentence but provided for reduction of the annuity by the lesser of amounts indicated in subpar. (A) or (B), previously limited to reduction by amount prescribed in predecessor of subpar. (A) provision; designated existing third and fourth sentences as par. (3) and inserted annuity reduction provision described for par. (2); and added par. (4).

Subsec. (c). Pub. L. 96-402, §3(b), substituted in first sentence “this section or under section 1448(d) of this title” for “this section, or section 1448(d) of this title, on the day before the effective day of that increase” and in second sentence “title or under” for “title, or” before “subsection (a)”.

Subsec. (d). Pub. L. 96-402, §3(c), substituted reference to “subsection (a)(1)(B)” for “subsection (a)(2)”.

1978—Subsec. (a). Pub. L. 95-397, §204(a), (b), substituted “The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—” for “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.”, and added pars. (1) and (2), and substituted “For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work” for “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”.

Subsec. (b). Pub. L. 95-397, §204(c), substituted “The monthly annuity payable under section 1450(a)(4) of this title shall be—” for “The monthly annuity payable under section 1450(a)(4) 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.”, added pars. (1) and (2) and provision following par. (2) relating to the entitlement to retirement pay, and computation thereof, by a person who provided an annuity and who dies before becoming 60 years of age.

Subsec. (d). Pub. L. 95-397, §204(d), added subsec. (d).
1976—Subsec. (b). Pub. L. 94-496 substituted “(a)(4)” for “(a)(3)”.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-107 effective Sept. 10, 2001, and applicable with respect to deaths of members of the Armed Forces occurring on or after that date, see section 642(d) of Pub. L. 107-107, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective Oct. 1, 1999, see section 644 of Pub. L. 106-65, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1407(b)(2) of Pub. L. 101-189 provided that: “The amendments made by paragraph (1) [amending this section] shall apply only with respect to the computation of an annuity for a person who becomes a former spouse under a divorce that becomes final after the date of the enactment of this Act [Nov. 29, 1989].”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 652(b) of Pub. L. 100-456 provided that: “The amendments made by subsection (a) [amending this

section] shall apply to payments under the Survivor Benefit Plan established under subchapter II of chapter 73 of title 10, United States Code, for periods after February 28, 1986.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 642(b) of Pub. L. 99-661 applicable to payments for periods after Feb. 28, 1986, see section 642(c) of Pub. L. 99-661, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 711(a) of Pub. L. 99-145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99-145, set out as a note under section 1447 of this title.

Section 711(b) of Pub. L. 99-145 provided that the repeal of section 641 of Pub. L. 98-525 [amending this section and enacting provision set out below] is effective Sept. 1, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 641(b) of Pub. L. 98-525, which provided that the amendments made by subsection (a), amending this section, was applicable only in the case of payments of annuities payable for periods that began on or after Sept. 30, 1985, was repealed effective Sept. 1, 1985, by section 711(b) of Pub. L. 99-145.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-402 effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96-402, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95-397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-496 effective Sept. 11, 1972, see section 3 of Pub. L. 94-496, set out as a note under section 1447 of this title.

ADJUSTMENT OF ANNUITIES FOR SURVIVORS OF CERTAIN MEMBERS WHO DIED WHILE ON ACTIVE DUTY BETWEEN SEPTEMBER 21, 1972 AND NOVEMBER 29, 1990

Section 1403(b)-(d) of Pub. L. 101-189 provided that:

“(b) ADJUSTMENT OF ANNUITIES ALREADY IN EFFECT.—

“(1) RECOMPUTATION.—The Secretary concerned shall recompute the annuity of any person who on the effective date specified in subsection (d) is entitled to an annuity under the Survivor Benefit Plan by reason of eligibility described in section 1448(d)(1)(B) or 1448(d)(1)(C) of title 10, United States Code, and who is further described in subsection (c).

“(2) AMOUNT OF RECOMPUTED ANNUITIES.—The amount of the annuity as so recomputed shall be the amount that would be in effect for that annuity on the effective date specified in subsection (d) if the annuity had originally been computed subject to the provisions of paragraph (3) of section 1451(c) of title 10, United States Code, as amended by subsection (a).

“(c) PERSONS ELIGIBLE FOR RECOMPUTATION.—A person is eligible to have an annuity under the Survivor Benefit Plan recomputed under subsection (b) if—

“(1) the annuity is based upon the service of a member of the uniformed services who died on active duty during the period beginning on September 21, 1972, and ending on the effective date specified in subsection (d); and

“(2) the retired pay of that member for the purposes of determining the amount of the annuity under the Survivor Benefit Plan was computed using a rate of basic pay lower than the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death.

“(d) EFFECTIVE DATE.—An annuity recomputed under subsection (b) shall take effect as so recomputed on March 1, 1990.”

§ 1452. Reduction in retired pay

(a) SPOUSE AND FORMER SPOUSE ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—Except as provided in subsection (b), the retired pay of a participant in the Plan who is providing spouse coverage (as described in paragraph (5)) shall be reduced as follows:

(A) STANDARD ANNUITY.—If the annuity coverage being provided is a standard annuity, the reduction shall be as follows:

(i) DISABILITY AND NONREGULAR SERVICE RETIREES.—In the case of a person who is entitled to retired pay under chapter 61 or chapter 1223 of this title, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(ii) MEMBERS AS OF ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first became a member of a uniformed service before March 1, 1990, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(iii) NEW ENTRANTS AFTER ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first becomes a member of a uniformed service on or after March 1, 1990, and who is entitled to retired pay under a provision of law other than chapter 61 or chapter 1223 of this title, the reduction shall be in an amount equal to 6½ percent of the base amount.

(iv) ALTERNATIVE REDUCTION AMOUNTS.—For purposes of clauses (i) and (ii), the alternative reduction amounts are the following:

(I) FLAT-RATE REDUCTION.—An amount equal to 6½ percent of the base amount.

(II) AMOUNT UNDER PRE-FLAT-RATE REDUCTION.—An amount equal to 2½ percent of the first \$337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—If the annuity coverage being provided is a reserve-component annuity, the reduction shall be in whichever of the following amounts is more favorable to that person:

(i) FLAT-RATE REDUCTION.—An amount equal to 6½ percent of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(ii) AMOUNT UNDER PRE-FLAT-RATE REDUCTION.—An amount equal to 2½ percent of the first \$337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(2) ADDITIONAL REDUCTION FOR CHILD COVERAGE.—If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1) shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(3) NO REDUCTION WHEN NO BENEFICIARY.—The reduction in retired pay prescribed by paragraph (1) shall not be applicable during any month in which there is no eligible spouse or former spouse beneficiary.

(4) PERIODIC ADJUSTMENTS.—

(A) ADJUSTMENTS FOR INCREASES IN RATES OF BASIC PAY.—Whenever there is an increase in the rates of basic pay of members of the uniformed services effective on or after October 1, 1985, the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be increased by the overall percentage of such increase in the rates of basic pay. The increase under the preceding sentence shall apply only with respect to persons whose retired pay is computed based on the rates of basic pay in effect on or after the date of such increase in rates of basic pay.

(B) ADJUSTMENTS FOR RETIRED PAY COLAS.—In addition to the increase under subparagraph (A), the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be further increased at the same time and by the same percentage as an increase in retired pay under section 1401a of this title effective on or after October 1, 1985. Such increase under the preceding sentence shall apply only with respect to a person who initially participates in the Plan on a date which is after both the effective date of such increase under section 1401a and the effective date of the rates of basic pay upon which that person's retired pay is computed.

(5) SPOUSE COVERAGE DESCRIBED.—For the purposes of paragraph (1), a participant in the Plan who is providing spouse coverage is a participant who—

(A) has (i) a spouse or former spouse, or (ii) a spouse or former spouse and a dependent child; and

(B) has not elected to provide an annuity to a person designated by him under section 1448(b)(1) of this title or, having made such an election, has changed his election in favor of his spouse under section 1450(f) of this title.

(b) CHILD-ONLY ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay of a participant in the Plan who is providing child-only coverage (as de-

scribed in paragraph (4)) shall be reduced by an amount prescribed under regulations by the Secretary of Defense.

(2) NO REDUCTION WHEN NO CHILD.—There shall be no reduction in retired pay under paragraph (1) for any month during which the participant has no eligible dependent child.

(3) SPECIAL RULE FOR CERTAIN RCSBP PARTICIPANTS.—In the case of a participant in the Plan who is participating in the Plan under an election under section 1448(a)(2)(B) of this title and who provided child-only coverage during a period before the participant becomes entitled to receive retired pay, the retired pay of the participant shall be reduced by an amount prescribed under regulations by the Secretary of Defense to reflect the coverage provided under the Plan during the period before the participant became entitled to receive retired pay. A reduction under this paragraph is in addition to any reduction under paragraph (1) and is made without regard to whether there is an eligible dependent child during a month for which the reduction is made.

(4) CHILD-ONLY COVERAGE DEFINED.—For the purposes of this subsection, a participant in the Plan who is providing child-only coverage is a participant who has a dependent child and who—

(A) does not have an eligible spouse or former spouse; or

(B) has a spouse or former spouse but has elected to provide an annuity for dependent children only.

(c) REDUCTION FOR INSURABLE INTEREST COVERAGE.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title shall be reduced as follows:

(A) STANDARD ANNUITY.—In the case of a person providing a standard annuity, the reduction shall be by 10 percent plus 5 percent for each full five years the individual designated is younger than that person.

(B) RESERVE COMPONENT ANNUITY.—In the case of a person providing a reserve-component annuity, the reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

(2) LIMITATION ON TOTAL REDUCTION.—The total reduction under paragraph (1) may not exceed 40 percent.

(3) DURATION OF REDUCTION.—The reduction in retired pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired pay changes his election under section 1450(f) of this title.

(4) RULE FOR COMPUTATION.—Computation of a member's retired pay for purposes of this subsection shall be made without regard to any reduction under section 1409(b)(2) of this title.

(5) RULE FOR DESIGNATION OF NEW INSURABLE INTEREST BENEFICIARY FOLLOWING DEATH OF ORIGINAL BENEFICIARY.—The Secretary of Defense shall prescribe in regulations premiums

which a participant making an election under section 1448(b)(1)(G) of this title shall be required to pay for participating in the Plan pursuant to that election. The total amount of the premiums to be paid by a participant under the regulations shall be equal to the sum of the following:

(A) The total additional amount by which the retired pay of the participant would have been reduced before the effective date of the election if the original beneficiary (i) had not died and had been covered under the Plan through the date of the election, and (ii) had been the same number of years younger than the participant (if any) as the new beneficiary designated under the election.

(B) Interest on the amounts by which the retired pay of the participant would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable.

(C) Any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(d) DEPOSITS TO COVER PERIODS WHEN RETIRED PAY NOT PAID.—

(1) REQUIRED DEPOSITS.—If a person who has elected to participate in the Plan has been awarded retired pay and is not entitled to that pay for any period, that person must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period.

(2) DEPOSITS NOT REQUIRED WHEN PARTICIPANT ON ACTIVE DUTY.—Paragraph (1) does not apply to a person with respect to any period when that person is on active duty under a call or order to active duty for a period of more than 30 days.

(e) DEPOSITS NOT REQUIRED FOR CERTAIN PARTICIPANTS IN CSRS.—When a person who has elected to participate in the Plan waives that person's retired pay for the purposes of subchapter III of chapter 83 of title 5, that person 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(j) of title 5, that person has notified the Office of Personnel Management that he does not desire a spouse surviving him to receive an annuity under section 8341(b) of title 5.

(f) REFUNDS OF DEDUCTIONS NOT ALLOWED.—

(1) GENERAL RULE.—A person is not entitled to refund of any amount deducted from retired pay under this section.

(2) EXCEPTIONS.—Paragraph (1) does not apply—

(A) in the case of a refund authorized by section 1450(e) of this title; or

(B) in case of a deduction made through administrative error.

(g) DISCONTINUATION OF PARTICIPATION BY PARTICIPANTS WHOSE SURVIVING SPOUSES WILL BE ENTITLED TO DIC.—

(1) DISCONTINUATION.—

(A) CONDITIONS.—Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), a person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Secretary of Veterans Affairs as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan by submitting to the Secretary concerned a request to discontinue participation in the Plan.

(B) EFFECTIVE DATE.—Participation in the Plan of a person who submits a request under subparagraph (A) shall be discontinued effective on the first day of the first month following the month in which the request under subparagraph (A) is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) FORM FOR REQUEST FOR DISCONTINUATION.—Any request under this paragraph to discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

(2) CONSENT OF BENEFICIARIES REQUIRED.—A person described in paragraph (1) may not discontinue participation in the Plan under such paragraph without the written consent of the beneficiary or beneficiaries of such person under the Plan.

(3) INFORMATION ON PLAN TO BE PROVIDED BY SECRETARY CONCERNED.—

(A) INFORMATION TO BE PROVIDED PROMPTLY TO PARTICIPANT.—The Secretary concerned shall furnish promptly to each person who files a request under paragraph (1) to discontinue participation in the Plan a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation.

(B) RIGHT TO WITHDRAW DISCONTINUATION REQUEST.—A person may withdraw a request made under paragraph (1) if it is withdrawn within 30 days after having been submitted to the Secretary concerned.

(4) REFUND OF DEDUCTIONS FROM RETIRED PAY.—Upon the death of a person described in paragraph (1) who discontinued participation in the Plan in accordance with this subsection, any amount deducted from the retired pay of that person under this section shall be refunded to the person's surviving spouse.

(5) RESUMPTION OF PARTICIPATION IN PLAN.—

(A) CONDITIONS FOR RESUMPTION.—A person described in paragraph (1) who discontinued

participation in the Plan may elect to participate again in the Plan if—

(i) after having discontinued participation in the Plan the Secretary of Veterans Affairs reduces that person's service-connected disability rating to a rating of less than total; and

(ii) that person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require.

(B) EFFECTIVE DATE OF RESUMED COVERAGE.—Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month after the month in which the Secretary concerned receives the application for resumption of participation in the Plan.

(C) RESUMPTION OF CONTRIBUTIONS.—When a person elects to participate in the Plan under this paragraph, the Secretary concerned shall begin making reductions in that person's retired pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on the effective date of such participation under subparagraph (B).

(h) INCREASES IN REDUCTION WITH INCREASES IN RETIRED PAY.—

(1) GENERAL RULE.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount of the reduction to be made under subsection (a) or (b) in the retired pay of any person shall be increased at the same time and by the same percentage as such retired pay is so increased.

(2) COORDINATION WHEN PAYMENT OF INCREASE IN RETIRED PAY IS DELAYED BY LAW.—

(A) IN GENERAL.—Notwithstanding paragraph (1), when the initial payment of an increase in retired pay under section 1401a of this title (or any other provision of law) to a person is for a month that begins later than the effective date of that increase by reason of the application of subsection (b)(2)(B) of such section (or section 631(b) of Public Law 104-106 (110 Stat. 364)), then the amount of the reduction in the person's retired pay shall be effective on the date of that initial payment of the increase in retired pay rather than the effective date of the increase in retired pay.

(B) DELAY NOT TO AFFECT COMPUTATION OF ANNUITY.—Subparagraph (A) may not be construed as delaying, for purposes of determining the amount of a monthly annuity under section 1451 of this title, the effective date of an increase in a base amount under subsection (h) of such section from the effective date of an increase in retired pay under section 1401a of this title to the date on which the initial payment of that increase in retired pay is made in accordance with subsection (b)(2)(B) of such section.

(i) RECOMPUTATION OF REDUCTION UPON RECOMPUTATION OF RETIRED PAY.—Whenever the

retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the amount of the reduction in such retired pay under this section shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of such reduction that would be in effect on that date if increases in such retired pay under section 1401a(b) of this title, and increases in reductions in such retired pay under subsection (h), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(j) COVERAGE PAID UP AT 30 YEARS AND AGE 70.—Effective October 1, 2008, no reduction may be made under this section in the retired pay of a participant in the Plan for any month after the later of—

(1) the 360th month for which the participant's retired pay is reduced under this section; and

(2) the month during which the participant attains 70 years of age.

(Added Pub. L. 92-425, §1(3), Sept. 21, 1972, 86 Stat. 710; amended Pub. L. 94-496, §1(4), (5), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, §205, Sept. 30, 1978, 92 Stat. 847; Pub. L. 96-402, §4, Oct. 9, 1980, 94 Stat. 1706; Pub. L. 97-22, §11(a)(3), (5), July 10, 1981, 95 Stat. 137; Pub. L. 99-145, title VII, §§714(a), 719(7), (8), 723(b)(2), Nov. 8, 1985, 99 Stat. 672, 675-677; Pub. L. 99-348, title III, §301(a)(3), July 1, 1986, 100 Stat. 702; Pub. L. 99-661, div. A, title XIII, §1343(a)(8)(E), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100-224, §3(b), Dec. 30, 1987, 101 Stat. 1537; Pub. L. 101-189, div. A, title XIV, §§1402(a)-(c), 1407(a)(9), title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1577, 1578, 1589, 1602; Pub. L. 101-510, div. A, title XIV, §1484(l)(4)(C)(ii), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103-337, div. A, title VI, §637(a), Oct. 5, 1994, 108 Stat. 2790; Pub. L. 104-201, div. A, title VI, §§634, 635(a), Sept. 23, 1996, 110 Stat. 2572, 2579; Pub. L. 105-85, div. A, title X, §1073(a)(29), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105-261, div. A, title VI, §641, Oct. 17, 1998, 112 Stat. 2045; Pub. L. 106-65, div. A, title VI, §643(a)(2), Oct. 5, 1999, 113 Stat. 663; Pub. L. 109-364, div. A, title VI, §643(b), Oct. 17, 2006, 120 Stat. 2260.)

REFERENCES IN TEXT

Section 631(b) of Public Law 104-106 (110 Stat. 364), referred to in subsec. (h)(2)(A), was set out as a note under section 1401a of this title prior to repeal by Pub. L. 104-201, div. A, title VI, §631(b), Sept. 23, 1996, 110 Stat. 2549.

AMENDMENTS

2006—Subsec. (c)(5). Pub. L. 109-364 added par. (5).

1999—Subsec. (i). Pub. L. 106-65 substituted “Whenever the retired pay” for “When the retired pay”.

1998—Subsec. (j). Pub. L. 105-261 added subsec. (j).

1997—Subsec. (a)(1)(A). Pub. L. 105-85, §1073(a)(29)(A), substituted “provided” for “providing” in introductory provisions.

Subsec. (e). Pub. L. 105-85, §1073(a)(29)(B), substituted “section 8339(j)” for “section 8339(i)” and “section 8341(b)” for “section 8331(b)”.

1996—Pub. L. 104-201, §634, amended section generally, revising and restating provisions relating to reductions in retired pay.

Subsec. (h)(2). Pub. L. 104-201, §635(a), added par. (2).
1994—Subsec. (b). Pub. L. 103-337 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The retired pay of a person to whom section 1448 of this title applies who has a dependent child but does not have an eligible spouse or former spouse, or who has a spouse or former spouse but has elected to provide an annuity for dependent children only, shall, as long as he has an eligible dependent child, be reduced by an amount prescribed under regulations of the Secretary of Defense.”

1990—Subsec. (h). Pub. L. 101-510 made clarifying amendment to directory language of Pub. L. 101-189, §1407(a)(9), see 1989 Amendment note below.

1989—Subsec. (a). Pub. L. 101-189, §1402(a), inserted heading.

Subsec. (a)(1). Pub. L. 101-189, §1402(a), added par. (1) and struck out former par. (1) which read as follows: “Except as provided in subsection (b), the retired pay of a person to whom section 1448 of this title applies who has a spouse or former spouse, or who has a spouse or former spouse and a dependent child, and who has not elected to provide an annuity to a person designated by him under section 1450(a)(4) 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—

“(A) by an amount equal to 2½ percent of the first \$300 (as adjusted from time to time under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount, if the person is providing a standard annuity; or

“(B) by an amount prescribed under regulations of the Secretary of Defense, if the person is providing a reserve-component annuity.”

Subsec. (a)(4)(A), (B). Pub. L. 101-189, §1402(c), substituted “amounts under paragraph (1)” for “amount under paragraph (1)(A)”.

Subsec. (a)(5). Pub. L. 101-189, §1402(b), added par. (5).

Subsec. (g)(1), (5). Pub. L. 101-189, §1621(a)(1), substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

Subsec. (h). Pub. L. 101-189, §1407(a)(9), as amended by Pub. L. 101-510, inserted “(or any other provision of law)” after “Whenever retired pay is increased under section 1401a of this title” and substituted “such retired pay is so increased” for “such retired pay is increased under section 1401a of this title”.

1987—Subsec. (i). Pub. L. 100-224 added subsec. (i).

1986—Subsec. (c). Pub. L. 99-348 inserted provision that computation of a member's retired pay for purposes of this subsection be made without regard to any reduction under section 1409(b)(2) of this title.

Subsec. (h). Pub. L. 99-661 struck out “and retainer” after “Whenever retired”.

1985—Pub. L. 99-145, §719(8)(B), struck out “or retainer” after “retired” in section catchline.

Subsec. (a)(1). Pub. L. 99-145, §714(a)(1), (2), designated existing first sentence of subsec. (a) as par. (1); redesignated cl. (1) as (A), inserting “(as adjusted from time to time under paragraph (4))” after “\$300” and substituting “a standard annuity” for “an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title”; and redesignated cl. (2) as (B), substituting “a reserve-component annuity” for “an annuity by virtue of eligibility under section 1448(a)(1)(B)”.

Pub. L. 99-145, §719(8)(A), substituted “retired pay” for “retired or retainer pay”.

Pub. L. 99-145, §723(b)(2)(1), inserted “or former spouse” after first two references to “spouse”.

Subsec. (a)(2). Pub. L. 99-145, §714(a)(3), designated existing second sentence of subsec. (a) as par. (2), and substituted “If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1)” for “As long as there is an eligible spouse and a dependent child, that amount”.

Subsec. (a)(3). Pub. L. 99-145, §714(a)(4), designated existing third sentence of subsec. (a) as par. (3), substituted “paragraph (1)” for “the first sentence of this

subsection", and inserted "or former spouse" after "eligible spouse".

Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay".

Subsec. (a)(4). Pub. L. 99-145, § 714(a)(5), added par. (4).

Subsec. (b). Pub. L. 99-145, § 723(b)(2)(2), inserted "or former spouse" after "spouse" in two places.

Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay".

Subsec. (c). Pub. L. 99-145, § 719(7), (8)(A), substituted "retired pay" for "retired or retainer pay" in three places, and substituted "a standard annuity" for "the annuity by virtue of eligibility under section 1448(a)(1)(A) of this title" in cl. (1), "a reserve-component annuity" for "the annuity by virtue of eligibility under section 1448(a)(1)(B) of this title" in cl. (2), and "this subsection" for "this section" in third sentence.

Subsecs. (d) to (h). Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay" wherever appearing.

1981—Subsec. (e). Pub. L. 97-22, § 11(a)(3), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (g)(4). Pub. L. 97-22, § 11(a)(5), substituted "this section" for "section 1452 of this title".

1980—Subsecs. (g), (h). Pub. L. 96-402, added subsecs. (g) and (h).

1978—Subsec. (a). Pub. L. 95-397, § 205(a), substituted pars. (1) and (2) for "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" after "shall be reduced each month".

Subsec. (c). Pub. L. 95-397, § 205(b), substituted pars. (1) and (2) for "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. The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f)", and inserted provision following par. (2) that the total reduction under clause (1) may not exceed 40 percent, and that the reduction in retired or retainer pay shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person changes his election under section 1450(f) of this title.

1976—Subsec. (a). Pub. L. 94-496, § 1(4), (5)(A), substituted "Except as provided in subsection (b), the retired or retainer pay" for "The retired or retainer pay", "(a)(4)" for "(a)(3)", and inserted provision prohibiting a reduction in retired or retainer pay during any month in which there is no eligible spouse beneficiary.

Subsec. (b). Pub. L. 94-496, § 1(5)(B), inserted "or who has a spouse but has elected to provide an annuity for dependent children only," after "spouse".

Subsec. (c). Pub. L. 94-496, § 1(4), (5)(C), substituted "(a)(4)" for "(a)(3)", and inserted provision directing that reduction in retired or retainer pay continue during the lifetime of a beneficiary designated under section 1450(a)(4) of this title or until such person change his election pursuant to section 1450(f) of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective Oct. 1, 1999, see section 644 of Pub. L. 106-65, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 635(b) of Pub. L. 104-201 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to retired pay payable for months beginning on or after the date of the enactment of this Act [Sept. 23, 1996]."

EFFECTIVE DATE OF 1994 AMENDMENT

Section 637(b) of Pub. L. 103-337 provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] applies to any election for child-only coverage under a reserve-component annuity under the Survivor Benefit Plan, whether made before, on, or after the date of the enactment of this Act [Oct. 5, 1994].

"(2) Paragraph (1) does not apply in a case of an election referred to in that paragraph that was made before the date of the enactment of this Act if the participant was informed, in writing, before the date of the enactment of this Act that no reduction in the participant's retired pay for child-only coverage would be made during a period when there was no eligible dependent child."

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1484(I)(4)(C) of Pub. L. 101-510 provided that the amendment made by that section is effective Nov. 29, 1989.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 714(b) of title VII of Pub. L. 99-145 provided that: "The amendments made by clause (5) of subsection (a) [amending this section] shall apply only with respect to persons who first participate in the Plan on or after the effective date of this title [see note below]."

Amendment by title VII of Pub. L. 99-145 effective Mar. 1, 1986, except as otherwise provided, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99-145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-402 effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96-402, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95-397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-496 effective Sept. 11, 1972, see section 3 of Pub. L. 94-496, set out as a note under section 1447 of this title.

RECOMPUTATION OF SBP PREMIUM FOR CURRENT PARTICIPANTS

Section 1402(d) of Pub. L. 101-189 provided that:

"(1) RECOMPUTATION.—The Secretary concerned shall recompute the SBP premium of persons described in paragraph (2). Any such recomputation shall take effect on March 1, 1990.

"(2) PERSONS COVERED.—A person referred to in paragraph (1) as described in this paragraph is a person who on March 1, 1990—

"(A) is entitled to retired pay;

"(B) is providing spouse coverage (as described in paragraph (5) of section 1452[(a)] of title 10, United States Code, as added by subsection (b)); and

"(C) is subject to an SBP premium in excess of 6½ percent of the base amount of that person under the Survivor Benefit Plan.

"(3) AMOUNT OF RECOMPUTED PREMIUM.—The amount of an SBP premium recomputed under this subsection shall be 6½ percent of the base amount under the Survivor Benefit Plan of the person whose premium is recomputed.

"(4) SBP PREMIUM DEFINED.—For purposes of this subsection, the term 'SBP premium' means a reduction in

retired pay under section 1452 of title 10, United States Code.”

§ 1453. Recovery of amounts erroneously paid

(a) RECOVERY.—In addition to any other method of recovery provided by law, the Secretary concerned may authorize the recovery of any amount erroneously paid to a person under this subchapter by deduction from later payments to that person.

(b) AUTHORITY TO WAIVE RECOVERY.—Recovery of an amount erroneously paid to a person under this subchapter is not required if, in the judgment of the Secretary concerned—

(1) there has been no fault by the person to whom the amount was erroneously paid; and

(2) recovery of such amount would be contrary to the purposes of this subchapter or against equity and good conscience.

(Added Pub. L. 92-425, §1(3), Sept. 21, 1972, 86 Stat. 710; amended Pub. L. 104-201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2577; Pub. L. 104-316, title I, §105(a), Oct. 19, 1996, 110 Stat. 3830.)

AMENDMENTS

1996—Pub. L. 104-201 substituted “amounts” for “annuity” in section catchline and amended text generally. Prior to amendment, text read as follows: “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.”

Subsec. (b). Pub. L. 104-316 struck out “and the Comptroller General” after “judgment of the Secretary concerned” in introductory provisions.

§ 1454. Correction of administrative errors

(a) AUTHORITY.—The Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

(b) FINALITY.—Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.

(Added Pub. L. 92-425, §1(3), Sept. 21, 1972, 86 Stat. 711; amended Pub. L. 101-189, div. A, title XIV, §1407(a)(10)(A), Nov. 29, 1989, 103 Stat. 1589; Pub. L. 104-201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2577.)

AMENDMENTS

1996—Pub. L. 104-201 amended section generally. Prior to amendment, section read as follows: “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.”

1989—Pub. L. 101-189 substituted “errors” for “deficiencies” in section catchline.

§ 1455. Regulations

(a) IN GENERAL.—The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the uniformed services.

(b) NOTICE OF ELECTIONS.—Regulations prescribed under this section shall provide that before the date on which a member becomes entitled to retired pay—

(1) if the member is married, the member and the member’s spouse shall be informed of the elections available under section 1448(a) of this title and the effects of such elections; and

(2) if the notification referred to in section 1448(a)(3)(E) of this title is required, any former spouse of the member shall be informed of the elections available and the effects of such elections.

(c) PROCEDURE FOR DEPOSITING CERTAIN RECEIPTS.—Regulations prescribed under this section shall establish procedures for depositing the amounts referred to in sections 1448(g), 1450(k)(2), and 1452(d) of this title.

(d) PAYMENTS TO GUARDIANS AND FIDUCIARIES.—

(1) IN GENERAL.—Regulations prescribed under this section shall provide procedures for the payment of an annuity under this subchapter in the case of—

(A) a person for whom a guardian or other fiduciary has been appointed; and

(B) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.

(2) AUTHORIZED PROCEDURES.—The regulations under paragraph (1) may include provisions for the following:

(A) In the case of an annuitant referred to in paragraph (1)(A), payment of the annuity to the appointed guardian or other fiduciary.

(B) In the case of an annuitant referred to in paragraph (1)(B), payment of the annuity to any person who, in the judgment of the Secretary concerned, is responsible for the care of the annuitant.

(C) Subject to subparagraphs (D) and (E), a requirement for the payee of an annuity to spend or invest the amounts paid on behalf of the annuitant solely for benefit of the annuitant.

(D) Authority for the Secretary concerned to permit the payee to withhold from the annuity payment such amount, not in excess of 4 percent of the annuity, as the Secretary concerned considers a reasonable fee for the fiduciary services of the payee when a court appointment order provides for payment of such a fee to the payee for such services or the Secretary concerned determines that payment of a fee to such payee is necessary in order to obtain the fiduciary services of the payee.

(E) Authority for the Secretary concerned to require the payee to provide a surety bond in an amount sufficient to protect the interests of the annuitant and to pay for such bond out of the annuity.

(F) A requirement for the payee of an annuity to maintain and, upon request, to pro-

vide to the Secretary concerned an accounting of expenditures and investments of amounts paid to the payee.

(G) In the case of an annuitant referred to in paragraph (1)(B)—

(i) procedures for determining incompetency and for selecting a payee to represent the annuitant for the purposes of this section, including provisions for notifying the annuitant of the actions being taken to make such a determination and to select a representative payee, an opportunity for the annuitant to review the evidence being considered, and an opportunity for the annuitant to submit additional evidence before the determination is made; and

(ii) standards for determining incompetency, including standards for determining the sufficiency of medical evidence and other evidence.

(H) Provisions for any other matter that the President considers appropriate in connection with the payment of an annuity in the case of a person referred to in paragraph (1).

(3) **LEGAL EFFECT OF PAYMENT TO GUARDIAN OR FIDUCIARY.**—An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to paragraph (1) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added Pub. L. 92-425, §1(3), Sept. 21, 1972, 86 Stat. 711; amended Pub. L. 99-145, title VII, §724, Nov. 8, 1985, 99 Stat. 678; Pub. L. 102-190, div. A, title VI, §654(a), Dec. 5, 1991, 105 Stat. 1389; Pub. L. 104-201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2577.)

AMENDMENTS

1996—Pub. L. 104-201 amended section generally, revising and restating provisions relating to regulations to carry out this subchapter.

1991—Subsecs. (a) to (d). Pub. L. 102-190 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1985—Pars. (1), (2). Pub. L. 99-145 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

“(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.”

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99-145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99-145, set out as a note under section 1447 of this title.

[SUBCHAPTER III—REPEALED]

[§§ 1456 to 1460b. Repealed. Pub. L. 108-375, div. A, title VI, §644(b)(2), Oct. 28, 2004, 118 Stat. 1961]

Section 1456, added Pub. L. 101-189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1580, related to sup-

plemental spouse coverage: establishment of plan; definitions.

Section 1457, added Pub. L. 101-189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1580; amended Pub. L. 102-190, div. A, title VI, §653(b)(1), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 103-337, div. A, title X, §1070(e)(5), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 108-375, div. A, title VI, §644(b)(1), Oct. 28, 2004, 118 Stat. 1960, related to supplemental spouse coverage: payment of annuity; amount.

Section 1458, added Pub. L. 101-189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1581; amended Pub. L. 102-190, div. A, title VI, §653(c)(1), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 108-136, div. A, title VI, §645(b)(2), Nov. 24, 2003, 117 Stat. 1519; Pub. L. 108-375, div. A, title X, §1084(d)(10), Oct. 28, 2004, 118 Stat. 2061, related to supplemental spouse coverage: eligible participants; elections of coverage.

Section 1459, added Pub. L. 101-189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1584, related to former spouse coverage: special rules.

Section 1460, added Pub. L. 101-189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1584; amended Pub. L. 102-190, div. A, title VI, §653(b)(2), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 110-181, div. A, title IX, §906(c)(2), Jan. 28, 2008, 122 Stat. 277, related to supplemental spouse coverage: reductions in retired pay.

Section 1460a, added Pub. L. 101-189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1585; amended Pub. L. 101-510, div. A, title XIV, §1484(k)(5), Nov. 5, 1990, 104 Stat. 1719, related to incorporation of certain administrative provisions.

Section 1460b, added Pub. L. 101-189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1585, related to regulations.

EFFECTIVE DATE OF REPEAL

Pub. L. 108-375, div. A, title VI, §644(b)(2), Oct. 28, 2004, 118 Stat. 1961, provided that the repeal of this subchapter by section 644(b)(2) is effective Apr. 1, 2008.

CHAPTER 74—DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND

Sec.

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| 1461. | Establishment and purpose of Fund; definition. |
| 1462. | Assets of Fund. |
| 1463. | Payments from the Fund. |
| [1464. | Repealed.] |
| 1465. | Determination of contributions to the Fund. |
| 1466. | Payments into the Fund. |
| 1467. | Investment of assets of Fund. |

AMENDMENTS

2008—Pub. L. 110-181, div. A, title IX, §906(b)(1)(B), Jan. 28, 2008, 122 Stat. 277, struck out item 1464 “Board of Actuaries”.

§ 1461. Establishment and purpose of Fund; definition

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Military Retirement Fund (hereinafter in this chapter referred to as the “Fund”), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the Department of Defense under military retirement and survivor benefit programs.

(b) In this chapter, the term “military retirement and survivor benefit programs” means—

(1) the provisions of this title creating entitlement to, or determining the amount of, retired or retainer pay;

(2) the programs under the jurisdiction of the Department of Defense providing annuities