Subtitle D—Survivor Benefits

Sec. 631. Benefits for survivors of members dying while in inactive-duty training status.
Sec. 632.Technical amendments to Survivor Benefit Plan statute.

SEC. 631. BENEFITS FOR SURVIVORS OF MEMBERS DYING WHILE IN INACTIVE-DUTY TRAINING STATUS.

(a) TREATMENT OF INACTIVE-DUTY TRAINING DEATHS IN SAME MANNER AS ACTIVE DUTY DEATHS.—

(1) Section 1451(c)(1)(A) of title 10, United States Code, is amended—

(A) in clause (i)—

(i) by inserting “or 1448(f)(1)(B)” after “section 1448(d)”; and

(ii) by inserting “or (iii)” after “clause (ii)”; and

(B) in clause (iii)—

(i) by striking “section 1448(f) of this title” and inserting “section 1448(f)(1)(A) of this title by reason of the death of a member or former member not in line of duty”; and

(ii) by striking "active”.

(2) APPLICATION OF AMENDMENTS.—No annuity benefit under the Survivor Benefit Plan shall accrue to any person by reason of the amendments made by paragraph (1) for any period before the date of the enactment of this Act. With respect to an annuity under the Survivor Benefit Plan for a death occurring on or after September 10, 2001, and before the date of the enactment of this Act, the Secretary concerned shall recompute the benefit amount to reflect the amendments made by subparagraphs (A) and (B)(i) of paragraph (1), effective for months beginning after the date of the enactment of this Act. The amendment made by subparagraph (B)(ii) of such paragraph shall apply only with respect to an annuity

under the Survivor Benefit Plan for a death occurring on or after the date of the enactment of this Act.

(b) CONSISTENT TREATMENT OF DEPENDENT CHILDREN.—

(1) IN GENERAL.—Paragraph (2) of section 1448(f) of title 10, United States Code, is amended to read as follows:

"(2) DEPENDENT CHILDREN ANNUITY.—

"(A) ANNUITY WHEN NO ELIGIBLE SURVIVING SPOUSE.—In the case of a person described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the dependent children of that person under subsection (a)(2) or (a)(4) of section 1450 of this title as applicable.

"(B) OPTIONAL ANNUITY WHEN THERE IS AN ELIGIBLE SURVIVING SPOUSE.—The Secretary may pay an annuity under this subchapter to the dependent children of a person described in paragraph (1) under subsection (a)(3) or (a)(4) of section 1450 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).".

(2) ELECTIONS FOR DEATHS BEFORE DATE OF ENACTMENT.—For any death that occurred before the date of the enactment of this Act with respect to which an annuity under the Survivor Benefit Plan is being paid (or could be paid) to a surviving spouse, the Secretary concerned may, within six months of such date of enactment and in consultation with the surviving spouse, determine it appropriate to provide an annuity for the dependent

children of the decedent under section 1448(f)(2)(B) of title 10, United States Codes, as added by paragraph (1), instead of an annuity for the surviving spouse. Any such determination and resulting change in beneficiary shall be effective as of the first day of the first month following the date of the determination and shall apply with respect to benefit payments for months beginning on or after that day.

(c) DEEMED ELECTIONS.—

(1) Section 1448(f) of title 10, United States Code, as amended by subsection (b), is further amended by adding at the end the following new paragraph:

"(5) DEEMED ELECTION TO PROVIDE AN ANNUITY FOR DEPENDENT.—In the case of a person described in paragraph (1) who dies on or after the date of the enactment of this paragraph, the Secretary concerned may, if no other annuity is payable on behalf of that person under this subchapter, pay an annuity to a natural person who has an insurable interest in such person as if the annuity were elected by the person 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 deceased person (as defined in section 1072(2) of this title). An annuity under this paragraph shall be computed in the same manner as provided under subparagraph (B) of subsection (d)(6) for an annuity under that subsection.".

(2) EFFECTIVE DATE.—No annuity payment under paragraph (5) of section 1448(f) of title 10, United States Code, as added by paragraph (1), may be made for any period before the date of the enactment of this Act

(d) DEFINITIONS.—For purposes of 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 "Secretary concerned" has the meaning given that term in section 101 of title 37, United States Code.

SEC. 632. TECHNICAL AMENDMENTS TO SURVIVOR BENEFIT PLAN STATUTE.

(a) AMENDMENT TO CLARIFY DEFINITION OF SURVIVING SPOUSE.—

(1) INCORPORATION OF DEATHS ON ACTIVE DUTY, ETC.—Paragraphs (7) and (8) of section 1447 of title 10, United States Code, are amended to read as follows:

"(7) WIDOW.—The term 'widow' means the surviving wife of a person who—

"(A) died on active duty under the circumstances described in section 1448(d) of this title;

"(B) died when or before eligible to elect a reserve-component annuity under the circumstances described in section 1448(f) of this title; or

"(C) died under circumstances other than those described in subparagraphs (A) and (B) and if the surviving wife was not married to the person at the time the person became eligible for retired pay—

"(i) was married to the person for at least one year immediately before the person's death; or

"(ii) is the mother of issue by that marriage.

"(8) WIDOWER.—The term 'widower' means the surviving husband of a person who—

"(A) died on active duty under the circumstances described in section 1448(d) of this title;

"(B) died when or before eligible to elect a reserve-component annuity under the circumstances described in section 1448(f) of this title; or

"(C) died under circumstances other than those described in subparagraphs (A) and (B) and, if the surviving husband was not married to the person at the time the person became eligible for retired pay—

"(i) was married to the person for at least one year immediately before the person's death; or

"(ii) is the father of issue by that marriage.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as of September 10, 2001, and shall apply with respect to deaths occurring on or after that date, as if included in the amendments made by section 642 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1151) when enacted.

(b) CROSS-REFERENCE CORRECTIONS.—

(1) Section 1451 of title 10, United States Code, is amended by striking "section 1450(a)(4)" in subsections (a)(1), (a)(2), (b)(1), and (b)(2) and inserting "section 1450(a)(5)".

(2) Section 1452 of such title is amended by striking "section 1450(a)(4)" in subsections (c)(1) and (c)(3) and inserting "section 1450(a)(5)".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

Section 631 would correct the inequity between Reserve Component members who die on inactive duty versus active status.

This section would amend title 10, United States Code, to eliminate the different treatment accorded Reserve Component (RC) members who die from an injury or illness incurred or aggravated in the line of duty during inactive-duty training (IDT) as compared to RC members who die in the line of duty while on active duty. It is routine for RC members to be performing the same military mission but in different statuses depending on availability of funds and the types of duty required by the individual. There have been several accidents in the past where annuity payments

were calculated differently depending on the RC member's duty status at the time of death. For example, an Air Force T-6 crashed during takeoff on April 3, 2004: one Reservist was on IDT status and one on active duty status. Both members were Air Force Reserve Captains at the time of death and their families received significantly different survivor benefits.

The 11th Quadrennial Review of Military Compensation recommends to: "Calculate Survivor Benefit Plan benefits for a reservist who dies while performing inactive duty training using the same criteria as for a member who dies while on active duty." In addition, the Military Coalition (33 military, veterans, and uniformed service organizations), the Air Reserve Forces Policy Committee, and the Reserve Forces Policy Board have all advocated for IDT legislative change.

Subsection (a) adjusts the formula for paying an SBP annuity upon the death of Reserve Component member on IDT to be the same as that paid upon the death of a RC member on active duty, rather than using the member's effective years of service (based upon retirement points) in the SBP annuity calculation.

Subsection (b) adds the ability for a surviving spouse of a Reserve Component member to elect to have the SBP paid to the child. Unlike the death of a Reserve Component member who dies on active duty where the surviving spouse may elect to receive SBP or may elect to have the SBP paid to a dependent child, the surviving spouse of a RC member who dies while serving on IDT does not currently have the ability to elect to have the SBP paid to the child. Subsection (b) adds the ability for a surviving spouse of a Reserve Component member to elect to have the SBP paid to the child. Additionally, for deaths of RC members on IDT that occurred before the date of enactment, subsection (b) allows the Secretary concerned the authority, in consultation with the surviving spouse, to change the beneficiary of the SBP from the surviving spouse to the dependent child.

Subsection (c), assuming the change in subsection (a) is enacted, provides for a deemed election, which would allow the payment of the SBP annuity to a person, in the absence of a spouse or child, who is dependent upon the deceased member. For example, this would allow an SBP annuity to be paid to a dependent parent.

Section 632 would clarify the existing interpretation of surviving spouse to explicitly define the term widow and widower to include the surviving wife/husband of member who dies while on active duty or a member who dies after becoming eligible to elect a reserve-component annuity but has not yet made the election.

Budget Implications:

Section 631. The table below details resource requirements and impacted personnel associated with this proposal. These estimated requirements include the provision to recalculate SBP benefits from the date of enactment for survivors of members who died on IDT status since Sep 10, 2001.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	0.22	0.37	0.54	0.72	0.92	Military Retirement Fund			
Total*	0.22	0.37	0.54	0.72	0.92				

***Amounts reflect impact to mandatory Treasury outlays from the Military Retirement Fund**

Section 632. This section has no budgetary impact.

Changes to Existing Law: This proposal would make the following changes in provisions of title 10, United States Code:

§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.~~

(7) Widow.—The term “widow” means the surviving wife of a person who—

(A) died on active duty under the circumstances described in section 1448(d) of this title;

(B) died when or before eligible to elect a reserve-component annuity under the circumstances described in section 1448(f) of this title; or

(C) died under circumstances other than those described in subparagraphs (A) and (B) and if the surviving wife was not married to the person at the time the person became eligible for retired pay—

(i) was married to the person for at least one year immediately before the person’s death; or

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

(8) Widower.—The term “widower” means the surviving husband of a person who—

(A) died on active duty under the circumstances described in section 1448(d) of this title;

(B) died when or before eligible to elect a reserve-component annuity under the circumstances described in section 1448(f) of this title; or

(C) died under circumstances other than those described in subparagraphs (A) and (B) and, if the surviving husband was not married to the person at the time the person became eligible for retired pay—

(i) was married to the person for at least one year immediately before the person's death; or

(ii) 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.

§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 dependent 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 insurable 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 reduc-

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

(6) Special needs trusts for sole benefit of certain dependent children.—A person who has established a supplemental or special needs trust under subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)) for the sole benefit of a dependent child considered disabled under section 1614(a)(3) of that Act (42 U.S.C. 1382c(a)(3)) who is incapable of self-support because of mental or physical incapacity may elect to provide an annuity to that supplemental or special needs trust.

(7) Effect of death of former spouse beneficiary.—

(A) Termination of participation in plan.—A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) and whose former spouse subsequently dies is no longer a participant in the Plan, effective on the date of death of the former spouse.

(B) Authority for election of new spouse beneficiary.—If a person’s participation in the Plan is discontinued by reason of the death of a former spouse beneficiary, the person may elect to resume participation in the Plan and to elect a new spouse beneficiary as follows:

(i) Married on the date of death of former spouse.—A person who is married at the time of the death of the former spouse beneficiary may elect to provide coverage to that person’s spouse. Such an election must be received by the Secretary concerned within one year after the date of death of the former spouse beneficiary.

(ii) Marriage after death of former spouse beneficiary.—A person who is not married at the time of the death of the former spouse beneficiary and who later marries may elect to provide spouse coverage. Such an election must be received by the Secretary concerned within one year after the date on which that person marries.

(C) Effective date of election.—The effective date of election under this paragraph shall be as follows:

(i) An election under subparagraph (B)(i) is effective as of the first day of the first calendar month following the death of the former spouse beneficiary.

(ii) An election under subparagraph (B)(ii) 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.

(D) Level of coverage.—A person making an election under subparagraph (B) may not reduce the base amount previously elected.

(E) Procedures.— An election under this paragraph shall be in writing, signed by the participant, and made in such form and manner as the Secretary concerned may prescribe.

(F) Irrevocability.—An election under this paragraph is irrevocable.

(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 subsection (a)(2) or (a)(4) of section 1450 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 subsection (a)(3) or (a)(4) of section 1450 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, or to a special needs trust pursuant to section 1450(a)(4) of this title, of a person described in paragraph (1) if there is no surviving spouse or if the person's surviving spouse subsequently dies.~~

(2) Dependent children annuity.—

(A) Annuity when no eligible surviving spouse.—In the case of a person described in paragraph (1), the Secretary concerned shall pay an annuity under this subchapter to the dependent children of that person under subsection (a)(2) or (a)(4) of section 1450 of this title as applicable.

(B) Optional annuity when there is an eligible surviving spouse.—The Secretary may pay an annuity under this subchapter to the dependent children of a person described in paragraph (1) under subsection (a)(3) or (a)(4) of section 1450 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 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.

(5) Deemed election to provide an annuity for dependent.—In the case of a person described in paragraph (1) who dies on or after the date of the enactment of this paragraph, the Secretary concerned may, if no other annuity is payable on behalf of that person under this subchapter, pay an annuity to a natural person who has an insurable interest in such person as if the annuity were elected by the person 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 deceased person (as defined in section 1072(2) of this title). An annuity under this paragraph shall be computed in the same manner as provided under subparagraph (B) of subsection (d)(6) for an annuity under that subsection.

(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 Secretary 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.

§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).

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§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) Special needs trusts for sole benefit of certain dependent children.—Notwithstanding subsection (i), a supplemental or special needs trust established under subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)) for the sole benefit of a dependent child considered disabled under section 1614(a)(3) of that Act (42 U.S.C. 1382c(a)(3)) who is incapable of self-support because of mental or physical incapacity.

(5) 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 deduction 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 or chapter 84 of such title, an annuity under this section shall not be payable unless, in accordance with section 8339(j) or 8416(a) 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) or 8442(a) 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 (a)(4) or (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.

§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)~~ 1450(a)(5), 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)~~ 1450(a)(5), 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)~~ 1450(a)(5) 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)~~ 1450(a)(5) 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) or 1448(f)(1)(B) of this title (other than in a case covered by clause (ii) or (iii)), 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~~ section 1448(f)(1)(A) of this title by reason of the death of a member or former member not in line of duty, 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).

§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 described 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)~~ 1450(a)(5) 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)~~ 1450(a)(5) 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 and FERS.—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 or chapter 84 of such title, 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) or 8416(a) 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) or 8442(a) 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.

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