

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

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

#### AMENDMENTS

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

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

#### EFFECTIVE DATE OF 1968 AMENDMENT

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

### SUBCHAPTER II—SURVIVOR BENEFIT PLAN

Sec.

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

#### AMENDMENTS

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

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

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

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

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

### § 1447. Definitions

In this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) DEPENDENT CHILD.—

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

(i) is unmarried;

(ii) is (I) under 18 years of age, (II) at least 18, but under 22, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution, or (III) incapable of self support because of a mental or physical incapacity existing before the person's eighteenth birthday or incurred on or after that birthday, but before the person's twenty-second birthday, while pursuing such a full-time course of study or training; and

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

(B) SPECIAL RULES FOR COLLEGE STUDENTS.—For the purpose of subparagraph (A), a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday. A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if the child shows to the satisfaction of the Secretary of Defense that the child has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(C) FOSTER CHILDREN.—A foster child, to qualify under this paragraph as the dependent child of a person to whom the Plan applies, must, at the time of the death of that person, also reside with, and receive over one-half of his support from, that person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while a student as described in this paragraph, shall not be considered to affect the residence of such a foster child.

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

(13) COURT ORDER.—

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

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

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

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

#### REFERENCES IN TEXT

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

#### AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1978—Par. (2). Pub. L. 95-397 inserted “in the case of a person who dies after becoming entitled to retired or retainer pay” before “the amount” and substituted “pay to which the person” for “pay to which a person” in subpar. (A), substituted “in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming 60 years of age, the amount of monthly retired pay for which the person would have been eligible—” for “any amount less than that described by clause (A) designated by that person on or before the first day for which he became eligible for retired or retainer pay, but not less than \$300” in subpar. (B), and added subpars. (B)(i), (ii) and (C).

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

#### EFFECTIVE DATE OF 1994 AMENDMENT

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

#### EFFECTIVE DATE OF 1990 AMENDMENT

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

#### EFFECTIVE DATE OF 1985 AMENDMENT

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

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

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

#### EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

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

#### EFFECTIVE DATE OF 1980 AMENDMENT

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

#### EFFECTIVE DATE OF 1978 AMENDMENT

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

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

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

#### EFFECTIVE DATE OF 1976 AMENDMENT

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

#### SHORT TITLE OF 1989 AMENDMENT

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

#### SHORT TITLE OF 1985 AMENDMENT

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

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

#### SHORT TITLE OF 1980 AMENDMENT

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

#### END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

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

### § 1448. Application of Plan

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

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

(A) Persons entitled to retired pay.

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

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

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

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

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

(3) ELECTIONS.—

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

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

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

- (i) not to participate in the Plan;
- (ii) to designate under subsection (e)(2) the effective date for commencement of annuity payments under the Plan in the event that the member dies before becoming 60 years of age to be the 60th anniversary of the member's birth (rather than the day after the date of the member's death);
- (iii) to provide an annuity for the person's spouse at less than the maximum level; or
- (iv) to provide an annuity for a dependent child but not for the person's spouse.

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

- (i) that the spouse's whereabouts cannot be determined; or
- (ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

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

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

#### (4) IRREVOCABILITY OF ELECTIONS.—

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

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

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

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