

EFFECTIVE DATE OF 1976 AMENDMENT

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

RECOMPUTATION OF ANNUITIES

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

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

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

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

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

“(A) October 2005.

“(B) April 2006.

“(C) April 2007.

“(D) April 2008.

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

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

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

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

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

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

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

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

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

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

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

§ 1451. Amount of annuity

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—

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

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

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

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

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

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

(b) INSURABLE INTEREST BENEFICIARY.—

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

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

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

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

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

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

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

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

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

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

not applied for and been granted that pay; or

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

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

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

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

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

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

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

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

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

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

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

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

- (i) which was performed after December 1, 1980; and
- (ii) which involved periods of service of less than 30 continuous days for which the

person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1986 of the social security tax which the person had paid.

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

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

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

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

(4) Appropriate group annuity tables.

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

(g) ADJUSTMENTS TO ANNUITIES.—

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

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

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

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

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

(h) ADJUSTMENTS TO BASE AMOUNT.—

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

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

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

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

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

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

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

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

REFERENCES IN TEXT

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1978—Subsec. (a). Pub. L. 95-397, §204(a), (b), substituted “The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—” for “If the widow or widower is under age 62 or there is a dependent child, the monthly annuity payable to the widow, widower, or dependent child, under section 1450 of this title shall be equal to 55 percent of the base amount.”, and added pars. (1) and (2), and substituted “For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work” for “For the purpose of the preceding sentence, a widow or widower shall be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 even though that benefit has been offset by deductions under section 403 of title 42 on account of work”.

Subsec. (b). Pub. L. 95-397, §204(c), substituted “The monthly annuity payable under section 1450(a)(4) of this title shall be—” for “The monthly annuity payable under section 1450(a)(4) of this title shall be 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in that retired or retainer pay in accordance with section 1452(c) of this title.”, added pars. (1) and (2) and provision following par. (2) relating to the entitlement to retirement pay, and computation thereof, by a person who provided an annuity and who dies before becoming 60 years of age.

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

EFFECTIVE DATE OF 2001 AMENDMENT

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

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1985 AMENDMENT

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

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

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

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

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

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

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

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

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

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

§ 1452. Reduction in retired pay

(a) SPOUSE AND FORMER SPOUSE ANNUITIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) PERIODIC ADJUSTMENTS.—

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

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

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

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

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

(b) CHILD-ONLY ANNUITIES.—

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