

1990—Pub. L. 101-510, div. A, title VI, §631(1), title XIV, §1484(l)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, amended Pub. L. 101-189, §1404(a)(2), see 1989 Amendment note below.

1989—Pub. L. 101-189, div. A, title XIV, §1404(a)(2), Nov. 29, 1989, 103 Stat. 1586, as amended by Pub. L. 101-510, div. A, title VI, §631(1), title XIV, §1484(l)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, added item for subchapter III, effective Apr. 1, 1992.

1980—Pub. L. 96-513, title V, §511(54)(A), Dec. 12, 1980, 94 Stat. 2925, amended chapter heading to read: "ANNUITIES BASED ON RETIRED OR RETAINER PAY".

1972—Pub. L. 92-425, §1(1), Sept. 21, 1972, 86 Stat. 706, added subchapter analysis and amended chapter heading by inserting "SURVIVOR BENEFIT PLAN" after "PAY" which could not be executed as directed in view of amendment by Pub. L. 87-381.

1961—Pub. L. 87-381, §1(1), Oct. 4, 1961, 75 Stat. 810, substituted "RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN" for "ANNUITIES BASED ON RETIRED OR RETAINER PAY" in chapter heading.

#### SUBCHAPTER I—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

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#### AMENDMENTS

1999—Pub. L. 106-65, div. A, title VI, §655(b), Oct. 5, 1999, 113 Stat. 667, added item 1436a.

1991—Pub. L. 102-190, div. A, title VI, §654(b)(2), Dec. 5, 1991, 105 Stat. 1390, added item 1444a.

1972—Pub. L. 92-425, §1(2)(B), (C), Sept. 21, 1972, 86 Stat. 706, struck out item 1443 "Board of Actuaries", and struck out "reports to Congress" from item 1444.

1961—Pub. L. 87-381, §6(2), (3), Oct. 4, 1961, 75 Stat. 812, inserted "withdrawal for severe financial hardship" in item 1436, and added items 1445 and 1446.

#### § 1431. Election of annuity: members of armed forces

(a) This section applies to all members of the armed forces except—

(1) members whose names are on a retired list other than a list maintained under section 12774(a) of this title;

(2) cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy; and

(3) midshipmen.

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed

force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after August 13, 1968, is not effective if—

(1) the elector dies during the first thirty-day period he is entitled to retired pay as a result of a physical condition which led to his being granted retired pay under chapter 61 of title 10 with a disability of 100 per centum under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination of the per centum of his disability;

(2) the disability was not the result of injury or disease received in line of duty as a direct result of armed conflict; and

(3) his surviving spouse or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.

(c) An election may be changed or revoked by the elector before the first day for which retired or retainer pay is granted. Unless it is made on the basis of restored mental competency under section 1433 of this title, or unless it is made before the elector completes nineteen years of service for which he is entitled to credit in the computation of his basic pay (in which case only the latest change or revocation shall be effective), the change or revocation is not effective if it is made less than two years before the first day for which retired or retainer pay is granted. The elector may, however, before the first day for which retired or retainer pay is granted, change or revoke his election (provided the change does not increase the amount of the annuity elected) to reflect a change in the marital or dependency status of the member or his family that is caused by death, divorce, annulment, remarriage, or acquisition of a child, if such change or revocation of election is made within two years of such change in marital or dependency status.

(d) If an election made under this section is found to be void for any reason except fraud or willful intent of the member making the election, he may make a corrected election at any time within 90 days after he is notified in writing that the election is void. A corrected election made under this subsection is effective as of the date of the voided election it replaces.