

(a) without the concurrence of the participant's spouse.

(2) EXCEPTIONS.—A participant may make such an election without the concurrence of the participant's spouse by establishing to the satisfaction of the Secretary concerned that one of the conditions specified in section 1448(a)(3)(C) of this title exists.

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

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

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

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

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

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

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

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

EFFECTIVE DATE

Pub. L. 105-85, div. A, title VI, §641(c), Nov. 18, 1997, 111 Stat. 1799, provided that: "Section 1448a of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997]."

TRANSITION PROVISION FOR CURRENT PARTICIPANTS

Pub. L. 105-85, div. A, title VI, §641(b), Nov. 18, 1997, 111 Stat. 1798, provided that: "Notwithstanding the limitation on the time for making an election under section 1448a of title 10, United States Code (as added by subsection (a)), that is specified in subsection (a) of such section, a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of such title may make an election in accordance with that section within one year after the effective date of that section under subsection (c) [set out as an Effective Date note above] if the second anniversary of the commencement of payment of retired pay to the participant precedes that effective date."

§ 1449. Mental incompetency of member

(a) ELECTION BY SECRETARY CONCERNED ON BEHALF OF MENTALLY INCOMPETENT MEMBER.—If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, an election de-

scribed in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned.

(b) REVOCATION OF ELECTION BY MEMBER.—

(1) AUTHORITY UPON SUBSEQUENT DETERMINATION OF MENTAL COMPETENCE.—If a person for whom the Secretary has made an election under subsection (a) is later determined to be mentally competent by an authority named in that subsection, that person may, within 180 days after that determination, revoke that election.

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

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

AMENDMENTS

1996—Pub. L. 104-201 amended section generally. Prior to amendment, section read as follows: "If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, any election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned. If the person for whom the Secretary has made an election is later determined to be mentally competent by an authority named in the first sentence, he may, within 180 days after that determination revoke that election. Any deductions made from retired pay by reason of such an election will not be refunded."

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

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

EFFECTIVE DATE OF 1978 AMENDMENT

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

§ 1450. Payment of annuity: beneficiaries

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

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

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

(3) DEPENDENT CHILDREN.—The dependent children in equal shares if the person to whom section 1448 of this title applies (with the con-