

(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-

currence 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 re-

couped 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 pro-

vide 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 addi-

tion 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.

(Added Pub. L. 92-425, §1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 94-496, §1(3), (4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, §§203, 207(b), (c), Sept. 30, 1978, 92 Stat. 845, 848; Pub. L. 97-22, §11(a)(3), July 10, 1981, 95 Stat. 137; Pub. L. 97-252, title X, §1003(c), (d), Sept. 8, 1982, 96 Stat. 736; Pub. L. 98-94, title IX, §941(a)(3), (c)(3), Sept. 24, 1983, 97 Stat. 653; Pub. L. 98-525, title VI, §§642(b), 644, Oct. 19, 1984, 98 Stat. 2546, 2548; Pub. L. 99-145, title VII, §§713(b), 717, 718, 719(4)-(6), (8)(A), 722, 723(a), (b)(1), title XIII, §1303(a)(11), Nov. 8, 1985, 99 Stat. 672, 674-677, 739; Pub. L. 99-661, div. A, title VI, §§641(a), (b)(2), (3), 643(a), title XIII, §1343(a)(8)(C), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 100-26, §3(3), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100-180, div. A, title VI, §636(a), Dec. 4, 1987, 101 Stat. 1106; Pub. L. 100-224, §5(b)(1), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 101-189, div. A, title XIV, §1407(a)(2)-(4), title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 103-337, div. A, title X, §1070(e)(3), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104-201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2561; Pub. L. 105-85, div. A, title VI, §642(a), Nov. 18, 1997, 111 Stat. 1799; Pub. L. 105-261, div. A, title VI, §643(b), Oct. 17, 1998, 112 Stat. 2048; Pub. L. 106-398, §1 [[div. A], title VI, §655(c)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A-166; Pub. L. 110-181, div. A, title VI, §§643(a), 644, Jan. 28, 2008, 122 Stat. 157, 158; Pub. L. 110-417, [div. A], title VI, §631(a), Oct. 14, 2008, 122 Stat. 4492; Pub. L. 111-31, div. B, title II, §201, June 22, 2009, 123 Stat. 1857; Pub. L. 112-239, div. A, title VI, §641(b), Jan. 2, 2013, 126 Stat. 1783; Pub. L. 113-291, div. A, title VI, §624(a)(1), (2)(A), Dec. 19, 2014, 128 Stat. 3403.)

AMENDMENTS

2014—Subsec. (a)(4), (5). Pub. L. 113-291, §624(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (i). Pub. L. 113-291, §624(a)(2)(A), inserted “(a)(4) or” after “subsection”.

2013—Subsec. (d). Pub. L. 112-239 inserted “or chapter 84 of such title” after “chapter 83 of title 5”, “or 8416(a)” after “8339(j)”, and “or 8442(a)” after “8341(b)”.

2009—Subsec. (m)(2)(F) to (I). Pub. L. 111-31, §201(a), added subpars. (F) to (I) and struck out former subpar. (F) which read as follows: “for months after fiscal year 2013, \$100.”

Subsec. (m)(6). Pub. L. 111-31, §201(b), substituted “September 30, 2017” for “February 28, 2016” and substituted “October 1, 2017” for “March 1, 2016” in two places.

2008—Subsec. (c)(3). Pub. L. 110-181, §643(a), added par. (3).

Subsec. (m). Pub. L. 110-181, §644, added subsec. (m). Subsec. (m)(1)(B). Pub. L. 110-417 substituted “subsection (a)(1) of section 1448 of this title or by reason of coverage under subsection (d) of such section” for “section 1448(a)(1) of this title”.

2000—Subsec. (j)(1). Pub. L. 106-398 substituted “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.” for “An annuity elected by a person providing a reserve-component annuity shall be effective in accordance with the designation made by such person under section 1448(e) of this title.”

1998—Subsec. (f)(3)(D). Pub. L. 105-261 substituted “the day referred to in section 1448(b)(3)(E)(ii) of this title” for “the first day of the first month which begins after the date of the court order or filing involved”.

1997—Subsec. (f)(1)(C). Pub. L. 105–85 inserted at end “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.”

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

1994—Subsecs. (c), (k)(1). Pub. L. 103–337 substituted “section 1311(a) of title 38” for “section 411(a) of title 38”.

1989—Subsec. (f)(3)(B). Pub. L. 101–189, §1407(a)(4), substituted “within one year of the date of the court order or filing involved” for “before October 1, 1985, or within one year of the date of the court order or filing involved, whichever is later”.

Subsec. (h). Pub. L. 101–189, §1621(a)(1), substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

Subsec. (l)(1). Pub. L. 101–189, §1407(a)(2), substituted “reserve-component retired pay” for “retired pay under chapter 67 of this title”.

Subsec. (l)(2). Pub. L. 101–189, §1407(a)(3), struck out “or retainer” after “of which the retired”.

1987—Subsec. (b). Pub. L. 100–26, §3(3), made technical amendment to directory language of Pub. L. 99–661, §643(a). See 1986 Amendment note below.

Subsec. (f)(3)(A). Pub. L. 100–224 struck out second of two commas after “required by a court order to make such an election”.

Subsec. (k)(1). Pub. L. 100–180 substituted “55 years of age” for “60 years of age”.

1986—Subsec. (b). Pub. L. 99–661, §643(a), as amended by Pub. L. 100–26, §3(3), substituted “age 55” for “age 60” in two places.

Subsec. (c). Pub. L. 99–661, §1343(a)(8)(C), substituted “entitled to dependency and indemnity compensation” for “entitled to compensation”.

Subsec. (f)(2). Pub. L. 99–661, §641(b)(2)(A), substituted “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,” for “enters into a voluntary written agreement to elect under section 1448(b) of this title to provide an annuity to a former spouse and who makes an election pursuant to such agreement”.

Subsec. (f)(2)(A). Pub. L. 99–661, §641(b)(2)(B), substituted “in a case in which the election is required by a court order, or in which an agreement to make the election” for “in a case in which such agreement”.

Subsec. (f)(2)(A)(i). Pub. L. 99–661, §641(b)(2)(C), substituted “relating to such election, or the agreement to make such election,” for “relating to the agreement to make such election”.

Subsec. (f)(2)(B). Pub. L. 99–661, §641(b)(2)(D), substituted “of a written agreement that” for “in which such agreement”.

Subsec. (f)(3)(A). Pub. L. 99–661, §641(b)(3), struck out “voluntary” before “written agreement” in two places, inserted “or if such person is required by a court order to make such an election,” after “applicable” and inserted “requires such election or” after “on its face, which”.

Subsec. (f)(4). Pub. L. 99–661, §641(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Nothing in this chapter authorizes any court to order any person to elect under section 1448(b) of this title to provide an annuity to a former spouse unless such person has voluntarily agreed in writing to make such election.”

1985—Subsec. (a)(1), (2). Pub. L. 99–145, §723(a)(1), inserted “or the eligible former spouse” after “widow or widower”.

Subsec. (a)(3). Pub. L. 99–145, §723(a)(2), inserted “(with the concurrence of the person’s spouse, if re-

quired under section 1448(a)(3) of this title)” after “title applies”, and “or former spouse” after “the spouse”.

Subsec. (a)(4). Pub. L. 99–145, §723(a)(3), struck out “former spouse or other” before “natural person” in two places.

Subsec. (b). Pub. L. 99–145, §723(b)(1), substituted “widow, widower, or former spouse” for “widow or widower” in eight places.

Pub. L. 99–145, §719(4), substituted “under the Plan” for “under this section”.

Subsec. (c). Pub. L. 99–145, §723(b)(1), substituted “widow, widower, or former spouse” for “widow or widower” in two places.

Pub. L. 99–145, §718, inserted provision respecting the effective date of the dependency and indemnity compensation offset.

Subsec. (d). Pub. L. 99–145, §719(8)(A), substituted “retired pay” for “retired or retainer pay”.

Subsec. (e). Pub. L. 99–145, §719(8)(A), substituted “retired pay” for “retired or retainer pay” in two places.

Pub. L. 99–145, §723(b)(1), substituted “widow, widower, or former spouse” for “widow or widower” in two places.

Subsec. (f)(3)(A). Pub. L. 99–145, §722(1), inserted “or has been filed with the court of appropriate jurisdiction in accordance with applicable State law” after “by a court order” and “or receives 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” after “voluntary written agreement of such person”.

Subsec. (f)(3)(B), (C). Pub. L. 99–145, §722(2), inserted “or filing” after “court order”.

Subsec. (i). Pub. L. 99–145, §1303(a)(11)(A), substituted “subsection (l)(3)(B)” for “subsection (l)”.

Subsec. (j). Pub. L. 99–145, §719(5), substituted “a person providing a reserve-component annuity” for “any person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title”.

Pub. L. 99–145, §713(b), inserted provision respecting the effective date of an annuity payable under section 1448(f) of this title.

Subsec. (k). Pub. L. 99–145, §723(b)(1), substituted “widow, widower, or former spouse” for “widow or widower” wherever appearing.

Subsec. (k)(1). Pub. L. 99–145, §717(1), (2), designated existing provisions as par. (1) and substituted “had never been made.” for “had never been made, but such readjustment may not be made until the widow or widower repays any amount refunded under subsection (e) by reason of the adjustment under subsection (c).”

Subsec. (k)(2). Pub. L. 99–145, §717(3), added par. (2).

Subsec. (l)(1). Pub. L. 99–145, §719(6)(A), (8)(A), substituted in first sentence “the Plan” for “the plan” in two places, and substituted “retired pay” for “retired or retainer pay” before “has been suspended”.

Subsec. (l)(2). Pub. L. 99–145, §719(6)(B), struck out “the provision of” before “this subchapter”.

Subsec. (l)(3)(A). Pub. L. 99–145, §1303(a)(11)(B), struck out “(notwithstanding subsection (h))” before “may be collected”.

Subsec. (l)(3)(A)(i). Pub. L. 99–145, §719(8)(A), substituted “retired pay” for “retried or retainer pay”.

1984—Subsec. (f)(3), (4). Pub. L. 98–525, §644, added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 98–525, §642(b)(1), substituted “Except as provided in subsection (l), an” for “An”.

Subsec. (l). Pub. L. 98–525, §642(b)(2), added subsec. (l).

1983—Subsec. (a)(4). Pub. L. 98–94, §941(a)(3)(A), struck out “at the time the person to whom section 1448 applies became entitled to retired or retainer pay” after “section 1448(b) of this title”.

Subsec. (f)(1). Pub. L. 98–94, §941(a)(3)(B), inserted “(without regard to the eligibility of the person making the change of election to make an election under such section)” after “section 1448(a)(5) of this title”.

Pub. L. 98–94, §941(c)(3)(A), struck out “of this subsection” after “subject to paragraph (2)”.

Subsec. (f)(2). Pub. L. 98–94, §941(c)(3)(B), substituted “or annulment,” for “annulment, or legal separation,”.

1982—Subsec. (a)(4). Pub. L. 97-252, §1003(c), substituted “former spouse or other natural person” for “natural person” and “unless the election to provide an annuity to the former spouse or other natural person has been changed as provided in subsection (f)” for “if there is no eligible beneficiary under clause (1) or clause (2)”.

Subsec. (f). Pub. L. 97-252, §1003(d), designated existing provisions as par. (1), substituted “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) of this subsection,” for “An unmarried person who elects to provide an annuity to a person designated by him under subsection (a)(4), but who later marries or acquires a dependent child,”, inserted provision that the Secretary concerned notify the former spouse or such other natural person previously designated under section 1448(b) of any such change in election, and added pars. (2) and (3).

1981—Subsec. (d). Pub. L. 97-22 substituted “Office of Personnel Management” for “Civil Service Commission”.

1978—Subsec. (a). Pub. L. 95-397, §203(1), inserted “(or on such other day as he may provide under subsection (j))” after “death of a person to whom section 1448 of this title applies”.

Subsec. (d). Pub. L. 95-397, §207(b), substituted “section 8339(j)” for “section 8339(i)”.

Subsec. (f). Pub. L. 95-397, §207(c), substituted “section 1448(a)(5)” for “the last three sentences of section 1448(a)”.

Subsecs. (j), (k). Pub. L. 95-397, §203(2), added subsecs. (j) and (k).

1976—Subsec. (a)(3), (4). Pub. L. 94-496, §1(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f). Pub. L. 94-496, §1(4), substituted “(a)(4)” for “(a)(3)”.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-239, div. A, title VI, §641(c), Jan. 2, 2013, 126 Stat. 1783, provided that: “The amendments made by this section [amending this section and section 1452 of this title] shall apply with respect to any participant electing an annuity for survivors under chapter 84 of title 5, United States Code, on or after the date of the enactment of this Act [Jan. 2, 2013].”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-417, [div. A], title VI, §631(b), Oct. 14, 2008, 122 Stat. 4492, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to the month beginning on October 1, 2008, and subsequent months as provided by paragraph (6) of subsection (m) of section 1450 of title 10, United States Code, as added by section 644 of the National Defense Authorization Act for Fiscal Year 2008 [Pub. L. 110-181].”

Pub. L. 110-181, div. A, title VI, §643(b), Jan. 28, 2008, 122 Stat. 157, provided that: “Paragraph (3) of subsection (c) of section 1450 of title 10, United States Code, as added by subsection (a), shall apply with respect to the recoupment on or after April 1, 2008, of amounts subject to offset under such subsection.”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-85, div. A, title VI, §642(b), Nov. 18, 1997, 111 Stat. 1799, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to marriages occurring before, on, or after the date of the enactment of this Act [Nov. 18, 1997].”

EFFECTIVE DATE OF 1987 AMENDMENTS

Pub. L. 100-180, div. A, title VI, §636(b), Dec. 4, 1987, 101 Stat. 1106, provided that: “The amendment made by subsection (a) [amending this section] shall apply as if included in the amendments made by section 643(a) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99-661; 100 Stat. 3886) [amending this section].”

Amendment by Pub. L. 100-26 applicable as if included in Pub. L. 99-661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100-26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-661, div. A, title VI, §641(c), Nov. 14, 1986, 100 Stat. 3886, provided that: “The amendments made by this section [amending this section and section 1448 of this title] apply to court orders issued on or after the date of the enactment of this Act [Nov. 14, 1986].”

Pub. L. 99-661, div. A, title VI, §643(b), Nov. 14, 1986, 100 Stat. 3886, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to remarriages that occur on or after the date of the enactment of this Act [Nov. 14, 1986], but only with respect to payments for periods after the date of the enactment of this Act.”

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII 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.

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 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. 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)),¹ 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)),¹ 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

¹ See References in Text note below.