

(2) the month during which that person attains 70 years of age.

(Added Pub. L. 106-65, div. A, title VI, § 655(a), Oct. 5, 1999, 113 Stat. 667.)

§ 1437. Payment of annuity

(a) Except as provided in subsections (b) and (c), each annuity payable under this subchapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends. 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.

(b) Each annuity payable to or on behalf of an eligible child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) as defined in section 1435(2)(B) of this title who is at least eighteen years of age and pursuing a full-time course of study or training at a recognized educational institution, accrues—

(1) as of the first day of the month in which the member upon whose pay the annuity is based dies, if the eligible child's eighteenth birthday occurs in the same or a preceding month.

(2) as of the first day of the month in which the eighteenth birthday of an eligible child occurs, if the member upon whose pay the annuity is based died in a preceding month.

(3) as of the first day of the month in which a child first becomes or again becomes eligible, if that eligible child's eighteenth birthday and the death of the member upon whose pay the annuity is based both occurred in a preceding month or months.

However, no such annuity is payable or accrues for any month before November 1, 1968.

(c)(1) Upon application of the beneficiary of a member entitled to retired or retainer pay whose retired or retainer pay has been suspended because the member has been determined to be missing, the Secretary concerned may determine for purposes of this subchapter that the member is presumed dead. Any such determination shall be made in accordance with regulations prescribed under section 1444(a) of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a member is presumed dead unless he finds—

(A) that the member has been missing for at least 30 days; and

(B) that the circumstances under which the member is missing would lead a reasonably prudent person to conclude that the member is dead.

(2) Upon a determination under paragraph (1) with respect to a member, an annuity otherwise payable under this subchapter shall be paid as if the member died on the date as of which the retired or retainer pay of the member was suspended.

(3)(A) If, after a determination under paragraph (1), the Secretary concerned determines that the member is alive, any annuity being paid under this subchapter by reason of this subsection shall be promptly terminated and the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States which may be collected or offset—

(i) from any retired or retainer pay otherwise payable to the member;

(ii) if the member is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the member is entitled to any other payment from the United States, from that payment.

(B) If the member dies before the full recovery of the amount of annuity payments described in subparagraph (A) has been made by the United States, the remaining amount of such annuity payments may be collected from the member's beneficiary under this subchapter if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 90-485, §1(7), Aug. 13, 1968, 82 Stat. 753; Pub. L. 92-425, §1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 96-513, title V, §511(57), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 98-94, title IX, §922(a)(14)(A), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98-525, title VI, §642(a)(1), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99-145, title XIII, §1303(a)(9), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1437	37:379.	Aug. 8, 1953, ch. 393, §10, 67 Stat. 504.

The words "the person upon whose reduced pay the annuity is based" are substituted for the words "the retired member" since persons other than retired members may elect an annuity. The words "due and" and "or be paid" are omitted as surplusage.

AMENDMENTS

1985—Subsec. (c)(3)(A). Pub. L. 99-145 struck out "(notwithstanding section 144 of this title)" after "which".

1984—Subsec. (a). Pub. L. 98-525, §642(a)(1)(A), substituted "subsections (b) and (c)," for "subsection (b)".

Subsec. (c). Pub. L. 98-525, §642(a)(1)(B), added subsec. (c).

1983—Subsec. (a). Pub. L. 98-94 inserted "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."

1980—Subsec. (b). Pub. L. 96-513 substituted "before November 1, 1968" for "prior to the effective date of this subsection".

1972—Subsec. (a). Pub. L. 92-425 substituted "subchapter" for "chapter".

1968—Pub. L. 90-485 designated existing provisions as subsec. (a), inserted "Except as provided in subsection (b)", substituted "whose pay" for "whose reduced pay", and added subsec. (b).

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. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90-485, see section 6 of Pub. L. 90-485, set out as a note under section 1431 of this title.

§ 1438. Deposits for amounts not deducted

If, for any period, a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this subchapter, is not entitled to retired or retainer pay, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period to provide the annuity.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 92-425, §1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1438	37:374.	Aug. 8, 1953, ch. 393, §5, 67 Stat. 504.

The words “a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this chapter” are substituted for the words “a retired member of a uniformed service who has made the election specified in section 372 of this title”, since the revised chapter applies to persons who are receiving retired pay as well as retired members. The word “otherwise” is substituted for the words “had he been receiving that pay”. The words “to provide the annuity” are inserted for clarity.

AMENDMENTS

1972—Pub. L. 92-425 substituted “subchapter” for “chapter”.

§ 1439. Refund of amounts deducted from retired pay

If a person whose name is on the temporary disability retired list of an armed force, and who has elected an annuity under this subchapter, has his name removed from that list for any reason other than retirement or grant of retired pay, he is entitled to a refund of the difference between the amount by which his retired pay was reduced to provide the annuity and the cost of an amount of term insurance equal to the protection provided for his dependents during the period that he was on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92-425, §1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1439	37:373(d).	Aug. 8, 1953, ch. 393, §4(d), 67 Stat. 503.

The words “person whose name is on” are substituted for the words “Any active member or former member on the”. The words “is entitled to a refund” are substituted for the words “shall have refunded to him”. The words “permanent”, “a sum which represents”, and “in accordance with his election under section 372 of this title” are omitted as surplusage. The words “re-

tirement or grant of retired pay” are substituted for the words “permanent retirement”, since under chapter 67 of this title a member of the Army or Air Force may be granted retired pay without being retired.

AMENDMENTS

1972—Pub. L. 92-425 substituted “subchapter” for “chapter”.

§ 1440. Annuities not subject to legal process

Except as provided in section 1437(c)(3)(B) of this title, no annuity payable under this subchapter is assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92-425, §1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 98-525, title VI, §642(a)(2), Oct. 19, 1984, 98 Stat. 2546; Pub. L. 99-145, title XIII, §1303(a)(10), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1440	37:378.	Aug. 8, 1953, ch. 393, §9, 67 Stat. 504.

The words “either in law or equity” are omitted as surplusage.

AMENDMENTS

1985—Pub. L. 99-145 substituted “1437(c)(3)(B)” for “1437(c)(3)”.

1984—Pub. L. 98-525 substituted “Except as provided in section 1437(c)(3) of this title, no” for “No”.

1972—Pub. L. 92-425 substituted “subchapter” for “chapter”.

§ 1441. Annuities in addition to other payments

An annuity under this subchapter is in addition to any pension or other payment to which the beneficiary is entitled under any other provision of law, and may not be considered as income under any law administered by the Department of Veterans Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 85-857, §13(v)(1), Sept. 2, 1958, 72 Stat. 1266; Pub. L. 85-861, §1(31B), Sept. 2, 1958, 72 Stat. 1452; Pub. L. 86-211, §8(a), Aug. 29, 1959, 73 Stat. 436; Pub. L. 91-588, §8(b), Dec. 24, 1970, 84 Stat. 1584; Pub. L. 92-425, §1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 101-189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1441	37:380.	Aug. 8, 1953, ch. 393, §11, 67 Stat. 504.

The word “is” is substituted for the words “may now or hereafter be”.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1441	37:380.	Aug. 1, 1956, ch. 837, §501(1), 70 Stat. 884.

The change is made to reflect the amendment made by section 501(1) of the Servicemen’s and Veterans’ Sur-