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APPROVED
OCT 14 1976

8/10/14/76

THE WHITE HOUSE
WASHINGTON
October 12, 1976

ACTION
Last Day: October 18

Filed 10/15
To Sec 10/15

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *JAC*
SUBJECT: H.R. 14773 - To Amend the Military Survivor Benefit Plan

Attached for your consideration is H.R. 14773, sponsored by Representative O'Brien.

The enrolled bill would make several modifications to the Survivor Benefit Plan for personnel of the uniformed services. The enrolled bill would:

- reduce from two years to one year the duration of marriage requirement for a new spouse of a military retiree to be eligible for SBP benefits;
- clarify that a retiree may designate a dependent child or children as beneficiaries instead of a spouse;
- eliminate the irrevocable election provisions of SBP which require continuous deductions from the retired pay of a participating member on behalf of an intended beneficiary, even if that intended beneficiary predeceases the member; and
- increase the annuity to "minimum income widows" of uniformed service personnel who retired before SBP went into effect so that the widow's annual income, exclusive of their VA widow's pension, is increased from \$1,400 to \$2,100 per year.

The effective date of H.R. 14773 would be September 21, 1972 (the date the Plan became effective) but the bill specifies that no pay under this Act would accrue to any person for any period prior to October 1, 1976.

Additional information is provided in OMB's enrolled bill report at Tab A.



OMB, Max Friedersdorf, Counsel's Office (Kilberg), NSC and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 14773 at Tab B.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 9 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 14773 - To amend the
military Survivor Benefit Plan
Sponsors - Rep. Stratton (D) New York and
Rep. O'Brien (R) Illinois

Last Day for Action

October 18, 1976 - Monday

Purpose

Makes several modifications to the Survivor Benefit Plan for personnel of the uniformed services.

Agency Recommendations

Office of Management and Budget	Approval
Department of Defense	Approval
Department of Commerce	Approval
Department of Transportation	Approval
Civil Service Commission	Defers to Defense
Department of Health, Education, and Welfare	Defers to Defense
Veterans Administration	Defers to Defense

Discussion

The Survivor Benefit Plan (SBP) became effective on September 21, 1972. The SBP defines the terms and conditions under which annuities may be provided to survivors of members of the uniformed services who are retired or receiving retainer pay and who have elected to participate in SBP. Deductions are made from retired or retainer pay in order to provide future annuities for survivors.

H.R. 14773 would make the following changes in the terms and conditions of the SBP:

- Reduce from two years to one year the duration of marriage requirement for a new spouse of a military retiree to be eligible for SBP benefits;
- Clarify that a retiree may designate a dependent child or children as beneficiaries instead of a spouse, if the retiree so desires;
- Eliminate the irrevocable election provisions of SBP which require continuous deductions from the retired pay of a participating member on behalf of an intended beneficiary, even if that intended beneficiary predeceases the member; and,
- Increase the annuity to "minimum income widows" of uniformed service personnel who retired before SBP went into effect so that the widow's annual income, exclusive of their VA widow's pension, is increased from \$1,400 per year to \$2,100 per year.

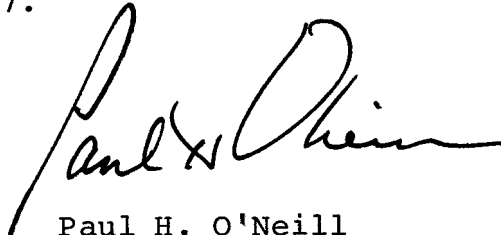
Finally, the effective date of H.R. 14773 would be September 21, 1972, but the bill specifies that no pay under this Act would accrue to any person for any period prior to October 1, 1976.

Two provisions of H.R. 14773, the reduction of the duration of marriage requirement and the elimination of SBP deductions when there is no longer an eligible spouse, conform to recent amendments enacted for the Civil Service Retirement law, upon which SBP was patterned.

The provision clarifying that a retiree may designate a child or children as beneficiaries, even when there is an eligible spouse, was necessary because of an ambiguity in the law establishing the SBP. In its implementing directives, the Department of Defense permitted the election of children beneficiaries, even when there was an eligible spouse, but the Comptroller General ruled that the law on this matter should be clarified.

The last major provision of H.R. 14773 deals with increasing the annuities provided to "minimum income widows." The current annuity raises the widows' total income, exclusive of their VA pension, to \$1,400 per year. In a report on this provision to Congress, Defense pointed out that this \$1,400, when added to the VA pension, brings the widows' annual income up to \$2,420 per year, an amount below the poverty threshold (\$2,680 per year) for a female head of household under the age of 65. The proposal to raise the minimum income supplement from \$1,400 to \$2,100 would increase annual incomes by approximately \$300 due to the reduction in VA widows' pension brought about by the higher income level. This would place the affected widows' income just above the poverty threshold mentioned above.

In its enrolled bill letter, the Department of Defense strongly recommends your approval of H.R. 14773. Defense states that the anticipated first year costs of approximately \$7 million can be accommodated within the amounts budgeted for retired pay for FY 1977.



Paul H. O'Neill
Acting Director

Enclosure



**GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE**
Washington, D.C. 20230

OCT 6 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H. R. 14773, an enrolled enactment

"To amend title 10, United States Code, to make certain changes in the Survivor Benefit Plan provided for under subchapter II of chapter 23 of title 10, United States Code, and for other purposes."

H. R. 14773 would amend subchapter II of chapter 23, of title 10, U. S. C. and section 4 of Pub. L. No. 92-425 (86 Stat. 712) to eliminate payments into the uniformed services Survivor Benefit Program (SBP) when a beneficiary predeceases the retiree; to reduce from 2 years to 1 year the eligibility period for a new spouse of a retiree to be eligible under the uniformed services SBP; to clarify statutory language in order to permit a retiree to leave benefits to children when there is a surviving spouse; and to increase the minimum income payment to certain widows of retired members of the uniformed services from \$1,400 to \$2,100 annually. The enrolled enactment would affect the SBP for the Commissioned Corps of this Department's National Oceanic and Atmospheric Administration.

The Department of Commerce, for the following reasons, recommends Presidential approval of H. R. 14773.

The uniformed services SBP presently provides that a member will continue to pay into the program even though he has no eligible beneficiary; this is the so-called "pay forever" clause. In addition, under the uniformed services SBP a new spouse must be married to the member for two years after his retirement to be eligible for benefits.



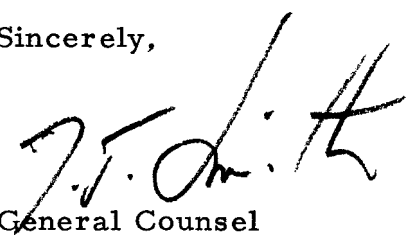
The uniformed services SBP was patterned after that of the Civil Service SBP. The Civil Service SBP was recently changed to provide that where there is no eligible surviving spouse the deductions from the member's retired pay will be suspended. In addition, the eligibility period under the Civil Service SBP has been changed from two years to one year for a new spouse. In light of these changes, the Department of Commerce believes it appropriate to make similar changes in the uniformed services SBP. The enrolled enactment would make such changes and would also assure the discontinuance of deductions from retired pay when a designated so-called "insurable-interest" beneficiary dies.

The Department of Defense directive which implemented the uniformed services SBP provided that a member could leave an annuity for children only, even if there was an eligible spouse. This Department follows the Department of Defense directive. The Comptroller General when asked to rule on this issue, posed no objection to continuing such elections, but held that Pub. L. No. 92-425 was not sufficiently clear in this matter. The Comptroller General indicated that a clarification in law on this matter would be desirable. The language in the enrolled enactment would make clear in law that a member can provide an annuity for children only, even if there is an eligible spouse.

When enacting Pub. L. No. 92-425, the Congress apparently recognized that there were some widows of retired uniformed services' personnel who were in a difficult financial situation. In order to provide some measure of assistance to such widows, section 4 of Pub. L. No. 92-425 authorized payment to assure a minimum-income level for those widows of uniformed services' personnel who died before September 21, 1973. Widows who are eligible receive a payment which, when added to other income, as defined by the Veterans Administration means test, totals \$1,400 annually. The Department of Commerce believes it appropriate to provide for an increase from \$1,400 to \$2,100 in the income provided these widows. The enrolled enactment would provide for such an increase.

Enactment of the legislation will have a minimal impact estimated to be less than \$5,000 per year on expenditures by this Department.

Sincerely,



General Counsel



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

OCT 6 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Transportation concerning H.R. 14773, an enrolled bill

"To amend title 10, United States Code, to make certain changes in the Survivor Benefit Plan provided for under subchapter II of chapter 73 of title 10, United States Code, and for other purposes."

The enrolled bill makes substantive changes in the Survivor Benefit Plan (SBP) for military retirees contained in chapter 73 of title 10, United States Code. Section 1 of the bill would reduce the length of time a couple must be married from two years to one for the survivor to be eligible for SBP annuities. It would also clarify that a participant in the SBP may provide an annuity for a dependent child in lieu of a spouse. Additionally, section 1 eliminates the "lock-in" provision which currently forces a retiree who participates in the SBP to continue making contributions even when there is not any surviving beneficiary. Section 2 of the enrolled bill would increase from \$1400 to \$2100 per year the guaranteed minimum income for widows of retired members who are ineligible for annuities under the SBP. Finally, section 3 of the enrolled bill provides for an effective date of September 21, 1972; but pay shall not accrue to any person by virtue of its enactment for any period prior to October 1, 1976. The effective date is made identical to the effective date of the original SBP to confirm the existing practice that has allowed a member to elect a child as beneficiary even though there is a surviving spouse. It also makes eligible for an annuity certain widows of retired members who were married for at least one year, but less than two years, at the time of the members death. The second clause limits the entitlement for payment of annuities to those accruing after October 1, 1976.

The SBP was enacted in September, 1972, to replace the Retired Serviceman's Family Protection Plan (RSFPP) which was enacted in 1953. The RSFPP was complex, with strict rules of election and definitions of beneficiaries. In addition, the RSFPP was actuarially sound, which meant that it was self-supporting and, therefore, relatively expensive for the member. Because of the high cost and stringent election rules, only 15 percent participated in the RSFPP. The SBP was intended to increase the participation rate of military retirees by lowering the cost of survivor benefits and by simplifying and relaxing some of the election requirements and other rules for participation. However, the SBP contains a number of restrictions which have discouraged widespread participation in the plan. Among these are the "lock-in" provisions and the ambiguity over whether a member may provide an annuity for a dependent child in lieu of a spouse.

The enrolled bill makes moderate changes to the SBP to eliminate some of the present restrictions in order to improve its flexibility and make it more attractive to military retirees. We believe that it will increase the 32 percent participation rate in the SBP since March, 1974. Because of the elimination of the "lock-in" provisions, we anticipate a moderate increase in cost to this Department from enactment of the enrolled bill.

Because of the elimination of unnecessary restrictions on the SBP, this Department supports the enrolled bill and recommends that the President sign it.

Sincerely,


William T. Coleman, Jr.



VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420



October 6, 1976

The Honorable
James T. Lynn
Director, Office of
Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

I am pleased to respond to the request from the Assistant Director for Legislative Reference for our views and recommendations on the enrolled enactment of H.R. 14773, 94th Congress.

This measure would amend the Survivor Benefit Plan (SBP) (10 U.S.C., Chapter 73, Subchapter II) by: (1) providing coverage under SBP to a surviving spouse after one year (now two years) of marriage when the retired member was not married to that spouse at the time of retirement; (2) clarifying existing law to specifically allow a member who has a spouse and child at the time of retirement to elect to provide such coverage for the child or children only, and not for the spouse; (3) assuring that the discontinuance of deductions from retired pay, when there is no eligible spouse, is extended to cases where a designated insurable-interest beneficiary dies; and (4) increasing the guaranteed minimum income of certain surviving spouses not otherwise eligible for the SBP annuity from \$1,400 to \$2,100.

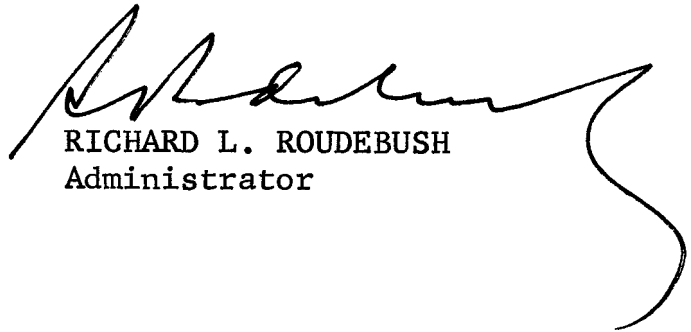
We were not asked to report on H.R. 14773 by the House and Senate Committees which considered the bill, or by your Office prior to clearance of the Department of Defense report on the proposal.

The Honorable
James T. Lynn

The measure does not directly concern benefits under laws administered by the Veterans Administration, it would have no significant impact on these benefits, and would impose no change in the responsibilities of this Agency.

Since H.R. 14773 relates to matters solely within the jurisdiction of the Department of Defense, we defer to that Department regarding recommendations as to Presidential action.

Sincerely,



RICHARD L. ROUDEBUSH
Administrator



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

OCT 7 1976

Dear Mr. Lynn:

This is in response to your request for a report on H.R. 14773, an enrolled bill "To amend title 10, United States Code, to make certain changes in the Survivor Benefit Plan provided for under subchapter II of chapter 73 of title 10, United States Code, and for other purposes".

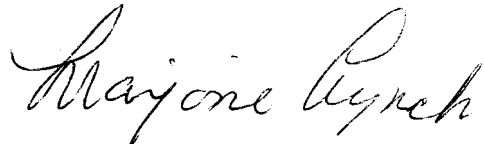
In summary, we support the modifications to the survivor annuity plan for members of the uniformed services provided in the first section of the enrolled bill because the changes would provide additional flexibility to members in providing for their families in case of death. We do not comment on section two of the enrolled bill, which is concerned with increasing minimum benefits for spouses eligible for death pension benefits from the Veterans Administration, as this provision would not affect the Commissioned Corps of the Public Health Service.

The enrolled bill would modify the Survivor Benefit Plan for members of the uniformed services by (1) reducing from two years to one year the period that a spouse must have been married to a member in order to be eligible for a survivor annuity, (2) permitting a member to designate his dependent children rather than his spouse, as beneficiaries, and (3) discontinuing Survivor Benefit Plan deductions when there are no longer any eligible beneficiaries. We estimate the cost of the bill to the Commissioned Corps to be \$61,200 for fiscal year 1977, \$78,600 for fiscal year 1978, \$96,000 for fiscal year 1979, \$113,400 for fiscal year 1980, and \$130,800 for fiscal year 1981.

The reduction in the waiting time for eligibility for spouses from two years to one would still provide an ample safeguard against "death bed" marriages while permitting additional deserving spouses to receive survivor benefits. Permitting a member to designate his dependent children, rather than his spouse, as beneficiaries would increase the flexibility a member of the uniformed services has in providing for his family where a spouse, for example, has her own independent income. Finally, a retired member of the uniformed services should not have to continue to suffer reduced retired pay when there are no longer any eligible beneficiaries.

We therefore support the first section of the bill but defer to the Department of Defense as to the merits of the bill as a whole.

Sincerely,

A handwritten signature in cursive script that reads "Marjorie Lynch".

~~Under~~ Secretary



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

October 7, 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

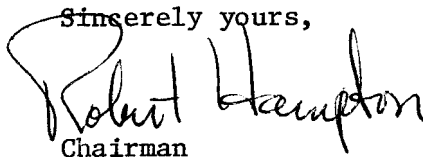
This is in reply to your request for the Commission's views on enrolled bill, H.R. 14773, "To amend title 10, United States Code, to make certain changes in the Survivor Benefit Plan provided for under subchapter II of chapter 73 of title 10, United States Code, and for other purposes."

The enrolled bill contains several provisions designed to conform the Survivor Benefit Plan for retired military personnel to recent amendments enacted for the Civil Service Retirement law.

The Commission views conformity as a desirable feature whenever possible and has no objection to these conforming provisions.

The other provisions are primarily to update and clarify provisions for benefits peculiar to survivors of retired military personnel. Since these provisions do not directly or substantially affect the programs administered by the Commission, we defer to the views of the Department of Defense on the merits of those provisions.

By direction of the Commission:

Sincerely yours,

Chairman



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

7 October 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for the views of the Department of Defense with respect to the enrolled enactment of H. R. 14773, 94th Congress, an Act "To amend title 10, United States Code, to make certain changes in the Survivor Benefit Plan provided for under subtitle II of chapter 73 of title 10, United States Code, and for other purposes. "

The purpose of this legislation is to update the military Survivor Benefit Plan (SBP) by making changes to conform with recent changes in the civil service plan and to increase annuity payments to certain widows. These changes will -

- o Eliminate the requirement to pay for the plan when the retired member's marriage terminates by death of the spouse, divorce, or annulment, or when the retired member elected a person with an insurable interest and that person predeceases the retired member.
- o Reduce the marriage requirement from two years to one year for a widow who would otherwise be eligible for SBP benefits.
- o Clarify an ambiguity in the SBP by clearly authorizing the designation of "children only" as beneficiaries even though there is an otherwise eligible spouse.
- o Increase the annual payment from \$1,400 to \$2,100 to widows who qualify for SBP annuities under section 4 of Public Law 92-425, approved September 21, 1972.

Under the present SBP law, the deductions from the retired pay of a member who elects an annuity for his spouse, or for a person with an insurable interest, continue throughout his life - even though his intended beneficiary predeceases him or otherwise becomes ineligible. This provision was patterned after a provision in the civil service plan. The civil service plan was subsequently changed to provide that when there is no eligible surviving spouse, the deductions from the member's retired pay will be suspended. H. R. 14773 would amend the military plan to provide for similar suspension of deductions from retired pay when there is no eligible beneficiary.

Under the SBP a widow who was not married to the military member at the time he became entitled to retired pay is not eligible for benefits under the plan unless they had been married for at least two years on the date of the member's death. The civil service plan which had a similar requirement has been changed to reduce this duration-of-marriage requirement to one year. H. R. 14773 would make a similar change in the military plan.

Under the Retired Serviceman's Family Protection Plan, which the SBP replaced, a military member could elect to provide an annuity for "children only" even though there was an eligible spouse. The Department of Defense directive which implemented the SBP provided procedures for such elections under that plan. The Comptroller General ruled that the language of Public Law 92-425 did not clearly authorize such elections but advised the Department of Defense that no objections would be interposed to continuing such elections pending submission of appropriate clarifying legislation to the Congress. H. R. 14773 contains appropriate language clearly authorizing such elections.

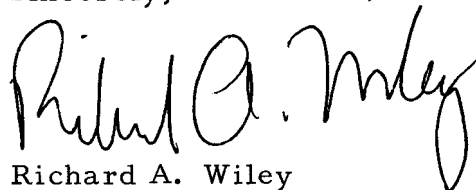
When enacting Public Law 92-425, the Congress recognized that there were some widows of retired personnel who were in need of financial assistance. In order to provide some measure of assistance to these widows, section 4 of Public Law 92-425 authorizes annual SBP payments of \$1,400, less other income except the VA pension, to assure a minimum income level for widows of military personnel who died before September 21, 1973. The increase from \$1,400 to \$2,100 will result in an annual increase of about \$300 to each minimum income widow who is currently receiving SBP payments, since her VA pension will be reduced about \$400 a year upon enactment of H. R. 14773. Also, H. R. 14773 will authorize SBP

payments to a qualified widow whose current annual income, excluding the VA pension, is more than \$1,400 but less than \$2,100. Such a widow will be entitled to SBP in an amount which equals the difference in her current total income and \$2,100. Further, H. R. 14773 will amend section 4 of Public Law 92-425 so that sections 1050(i) and 1453 of title 10, United States Code, are applicable to these widows. The former section protects annuities from being subject to garnishment or other legal process, whereas the latter section provides for not collecting annuities that were overpaid when recovery would be against equity and good conscience.

The Department of Defense strongly endorses this legislation and recommends that the President approve H. R. 14773. It is anticipated that the first year cost of \$6,982,000 can be accommodated within amounts budgeted for retired pay for FY 1977. The estimated costs for the four years thereafter are as follows:

FY 1978	\$ 8,679,000
FY 1979	10,366,000
FY 1980	12,187,000
FY 1981	14,041,000

Sincerely,



Richard A. Wiley

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 12

Time: 800pm

FOR ACTION: NSC/S *ou*
Max Friedersdorf *ou*
Bobbie Kilberg *ou*

cc (for information): Jack Marsh
Ed Schrults
Steve McConahey *nk*

FROM THE STAFF SECRETARY

DUE: Date: October 11 2

Time: 530pm

SUBJECT:

H.R.14773-To amend the military survivor Benefit Plan

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

Date: October 11

Time: 800pm

FOR ACTION: NSC/S
 Max Friedersdorf
 Bobbie Kilberg

cc (for information): Jack Marsh
 Ed Schmults
 Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 12

Time: 530pm

SUBJECT:

H.R.14773-To amend the military survivor Benefit Plan

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

please return to judy johnston, ground floor, west wing

Recommend Approval
[Signature]

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
 For the President

Date: October 11

Time: 800pm

FOR ACTION: NSC/S
Max Friedersdorf
Bobbie Kilberg

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 12

Time: 530pm

SUBJECT:

H.R.14773-To amend the military survivor Benefit Plan

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

x ___ For Your Comments

___ Draft Remarks

REMARKS:

please return to judy johnston, ground floor, west wing

approved Kelley 10/12/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. Cannon
For the President

MEMORANDUM

NATIONAL SECURITY COUNCIL

5679

October 12, 1976

MEMORANDUM FOR: JAMES M. CANNON

FROM: Jeanne W. Dav *JWD*

SUBJECT: H. R. 14773

The NSC Staff concurs with the proposed enrolled bill H. R. 14773-To amend the military survivor Benefit Plan.

MAKING IMPROVEMENTS IN THE SURVIVOR-BENEFIT PROGRAM FOR RETIRED MILITARY PERSONNEL

SEPTEMBER 1, 1976.—Ordered to be printed

Mr. STRATTON, from the Committee on Armed Services,
submitted the following

REPORT

[Including Congressional Budget Office cost estimate]

[To accompany H.R. 14773]

The Committee on Armed Services, to whom was referred the bill (H.R. 14773) to amend title 10, United States Code, to authorize cost-of-living adjustments of annuities under the Retired Serviceman's Family Protection Plan, to suspend retired-pay deductions under the Survivor Benefit Plan when there is no eligible spouse beneficiary, to reduce the duration-of-marriage requirement under the Survivor Benefit Plan from two year to one year, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 2, lines 13-19, strike the present subsection "(d)" and insert the following in place thereof:

(d) Section 1450 is amended as follows:

(A) Subsection (a) is amended by striking out "or" at the end of clause (2), renumbering clause (3) as clause (4), and inserting the following new clause (3):

(3) the dependent children in equal shares if the person to whom section 1448 of this title applies elected to provide an annuity for dependent children but not for the spouse; or"

(B) by adding the following new subsection "(j)" at the end thereof:

(j) Where the annuity has been adjusted under subsection (c) of this section and there is no entitlement to compensation under section 411 (a) of title 38, due to remarriage of the spouse after reaching age 60, annuity shall be readjusted to the rate of entitlement existing prior to the adjustment under

subsection (c) of this section, if any amounts refunded under subsection (e) of this section are repaid.

On page 2, lines 23-25, and page 3, lines 1-6, strike the present subsections "(f)" and "(g)" and insert the following in place thereof:

(f) Section 1451(a) of title 10, United States Code, is amended to read as follows:

(a) If the widow or widower is under age 62, 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. When the widow or widower reaches age 62, the monthly amount shall be reduced by an amount equal to 50 percent of the amount of any survivor benefit which the widow or widower receives under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 401(l)(1) of title 42 and calculated assuming that the person concerned lived to age 65. The reduction prescribed by the second sentence of this subsection shall not be made if the only service by the person concerned as described in section 410(l)(1) of title 42 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 title 26 of the social security tax which he had paid.

(g) Section 1452 of title 10 United States Code is amended by—

(A) further amending subsection (a) by—

(i) striking out the first word and inserting the following in place thereof: "Except as provided in subsection (b), the"; and

(ii) adding the following new sentence at the end thereof: "The reduction in retired or retainer pay prescribed by the first sentence of this subsection shall not be applicable during any month in which there is no eligible spouse beneficiary";

(B) amending subsection (b) by inserting "or who has a spouse but has elected to provide an annuity for dependent children only," after "spouse,"; and

(C) further amending subsection (c) by adding the following sentence at the end thereof: "The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(3) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f)."

On page 3, Sections 2 and 3 of the bill are renumbered Sections 4 and 5 respectively and the following new Sections 2 and 3 are inserted between lines 6 and 7:

SEC. 2. Section 4 of Public Law 92-425, September 21, 1972, 86 Stat. 712, is amended as follows:

(a) Subsection (a)(3) is amended by striking "\$1,400" and inserting "\$2,100" in place thereof.

(b) The first sentence of subsection (b) is amended by striking "\$1,400" and inserting "\$2,100" in place thereof.

(c) Subsection (c) is added as follows:

"(e) Subsection 1450(i) and section 1453 as added to title 10, United States Code by clause 3 of the first section of this Act, are applicable to persons covered by this section."

SEC. 3. Notwithstanding any other law, any person who is entitled to retired or retainer pay on the effective date of this Act and who did not elect to participate in the Survivor Benefit Plan as prescribed by subchapter II of chapter 73 of title 10, United States Code, may, within 270 days after the effective date of this Act, elect to participate in such Plan and continue his participation under subchapter I of that chapter, except that the total of the annuities elected may not exceed 100 percent of his retired or retainer pay.

On page 3, line 7, section 3 as renumbered is amended to read as follows:

SEC. 4. Except for subsections (a) and (f), section 1 is effective from September 21, 1972. Subsections (a) and (f) of section 1 and section 2 are effective October 1, 1976. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.

On page 3, lines 10-13 are amended to read as follows:

of chapter 73 of title 10, United States Code, on October 1, 1976, to a spouse or a child of a member who died on or before March 20, 1974, shall be increased effective October 1, 1976 by.

Amend the title of the bill to read:

To amend title 10, United States Code, to make certain changes in the Retired Serviceman's Family Protection Plan and the Survivor Benefit Plan as authorized by Chapter 73 of that title, and for other purposes.

EXPLANATION OF AMENDMENTS

The committee amendments would:

(a) Reduce the social security offset against widows' benefits under the Survivor Benefit Plan from 100 percent to 50 percent of the social security survivorship benefit attributable to military service and eliminate that offset completely in some cases.

(b) Assure that the discontinuance of deductions from retired pay when there is no eligible spouse is extended to cases where a designated insurable-interest beneficiary dies. Restoration of the full annuity under these conditions is appropriate for the same reason as applies in cases where there is no eligible spouse.

(c) Make the provisions of 10 USC 1450(i) and 10 USC 1453 relating to garnishment and collection of erroneous payments applicable to minimum-income benefits payable under section 4 of Public Law 92-425.

(d) Increase the minimum-income guaranteed payment from the Department of Defense to certain widows of retired members from \$1,400 to \$2,100 annually.

(e) Change the effective date of accrual of benefits under the bill from the date of enactment to October 1, 1976.

(f) Provide a 270-day new enrollment period during which currently retired members who previously declined to participate in the Survivor Benefit Plan may elect to participate in that plan.

These amendments are discussed in detail under the appropriate headings further on in this report. Other changes made by the amendments are technical.

PURPOSE

The purpose of H.R. 14773 as reported is as follows:

to extend to annuitants under the Retired Serviceman's Family Protection Plan whose military retiree sponsor died on or before March 20, 1974, a cost-of-living escalator similar to that authorized for annuitants under the Survivor Benefit Plan enacted by Public Law 92-425;

to update the military Survivor Benefit Plan by making a number of changes to conform with recent changes in the civil service plan on which it is patterned;

to clarify an ambiguity in the Survivor Benefit Plan by clearly authorizing designation of "children only" as beneficiaries even though there is an otherwise eligible spouse;

to permit payment of full benefits under the Survivor Benefit Plan to a spouse who remarries after age 60 if she had been eligible for Dependency and Indemnity Compensation and consequently had received reimbursement of all or part of the deductions from the retired member's pay, contingent on the repayment of the amount of that reimbursement;

to reduce the so-called social security offset against Survivor Benefit Plan payments from 100 percent of the amount attributable to military service to 50 percent of that amount and to eliminate that offset when (a) there is a dependent child, (b) the only military service involves periods of active service of less than 30 days, (c) no social security benefits are payable because the beneficiary is employed in social security covered employment, or has postponed receipt of benefits until age 65, or (d) the beneficiary is entitled to a greater benefit based on her own employment.

In addition, the bill will increase the minimum-income payment from \$1,400 to \$2,100 and make sections 1450(i) and 1453 of title 10, United States Code, barring garnishment of benefit payments and collection of erroneous payments respectively applicable to minimum-income payments under section 4, Public Law 92-425.

In view of these changes, the bill affords a 270-day new enrollment period within which persons on the retired rolls who previously declined coverage may elect into the Survivor Benefit Plan established by subchapter II, Chapter 73, of title 10, United States Code.

DISCUSSION

Cost-of-living increases of annuities under the Retired Serviceman's Family Protection Plan

The Retired Serviceman's Family Protection Plan (RSFPP) was established by law in 1953. The plan was designed to fill an urgent need to enable a retired member of the uniformed services to share his retired pay with his wife and children if he predeceased them. The plan was (and still is) an actuarial-equivalent plan; that is, the deductions from the retired pay of participants, plus interest, will pay the benefits authorized. The benefit payments to widows and children are specific dollar amounts which are fixed at the time the member retires. The high rate of inflation experienced in recent years has seriously eroded the purchasing power of those benefits.

The RSFPP was replaced by the Survivor Benefit Plan (SBP), which was established by Public Law 92-425 on September 21, 1972. Members retiring after that date could not participate in the RSFPP. Persons on the retired rolls on September 21, 1972, who were participating in the RSFPP were authorized until March 20, 1974, to elect to participate in the new SBP and either continue in, or drop out of, the RSFPP.

One of the most attractive features of the SBP is that the benefit amounts are automatically adjusted at the same time and by the same percentage amounts as military retired pay. Living retired members who were participating in the RSFPP were given an 18-month period in which to elect into the SBP and thereby provide their survivors an annuity with a cost-of-living escalator. On the other hand, those retired members who died before enactment of the Survivor Benefit Plan never had an opportunity to provide their survivors with an inflation-proof annuity.

In recognition of the serious erosion of purchasing power of RSFPP annuities which has occurred in recent years, H.R. 14773 would authorize increases in RSFPP annuities in cases of retired members who died on or before March 20, 1974—the last date on which retired members could elect to participate in the SBP. In addition to providing future increases, the bill authorizes annuities to be increased effective October 1, 1976, by the percentage by which retired pay has been increased since September 21, 1972, the date of establishment of the Survivor Benefit Plan.

Elimination of the "pay forever" requirement and reduction in the duration-of-marriage requirement from 2 years to 1

Under the present Survivors Benefit Plan law, the deductions from the retired pay of a member who elects an annuity for his spouse, or for a person with an insurable interest, continues throughout his life—even though his intended beneficiary predeceases him or otherwise becomes ineligible. This provision was patterned on a provision in the civil service plan. The civil service plan was subsequently changed to provide that when there is no eligible surviving spouse, the deductions from the member's retired pay will be suspended. H.R. 14773 would amend the military plan to provide for similar suspension of deductions from retired pay when there is no eligible beneficiary.

Under the SBP a widow who was not married to the military member at the time he became entitled to retired pay is not eligible for benefits under the plan unless they had been married for at least two years on the date of the member's death. The civil service plan which had a similar requirement has been changed to reduce this duration-of-marriage requirement to one year. H.R. 14773 would make a similar change in the military plan.

Clarification of the authority to designate "children only" as beneficiaries when there is an otherwise eligible spouse

Under the RSFPP which the Survivor Benefit Plan replaced a military member could elect to provide an annuity for "children only" even though there was an eligible spouse. The Department of Defense directive which implemented the SBP provided procedures for such elections under that plan. The Comptroller General ruled that the language of Public Law 92-425 did not clearly authorize such elections but advised the Department of Defense that no objections would be interposed to continuing such elections pending submission of appropriate clarifying legislation to the Congress. H.R. 14773 contains appropriate language clearly authorizing such elections.

Reinstatement of SBP payments to widows whose Dependency and Indemnity Compensation benefits are terminated on remarriage after age 60

Under present law, SBP payments to widows who remarry before age 60 are terminated. If remarriage is after age 60 these payments continue.

A problem area exists in the case of a retiree whose death is service connected. Under those conditions, the widow receives Dependency and Indemnity Compensation (DIC) from the Veterans Administration and, if that compensation exceeds the SBP payments to which she is entitled, she can receive DIC payments only and receives a refund of all of the deductions from her deceased husband's retired pay. In the DIC is less than the Survivor Benefit Plan payment, she receives the full DIC payment and, in addition, an amount of SBP benefits which exceeds the DIC payment. In this latter situation she receives a refund of a proportionate amount of the deductions from her husband's retired pay.

Unlike the Survivor Benefit Plan, the law governing payment of DIC does not permit continued payment to the widow who remarries after age 60. Accordingly, the DIC payments terminate with remarriage after age 60. Having received a refund of either all, or part of, the deductions from her husband's retired pay, she is not entitled to the full SBP payment to which she would have been entitled if her husband's death had not been service connected. H.R. 14773 would authorize reinstatement of the full SBP payment to which she would otherwise be entitled subject to repayment of the refund which she received of the deductions from her deceased husband's retired pay.

Reduction from 100 percent to 50 percent in the social security offset

Under the current Survivor Benefit Plan, the payments by the Department of Defense to widows are reduced at age 62 by an amount equal to 100 percent of the amount of social security benefits to which

she is entitled based on her husband's military service. Inasmuch as the military member and the government make equal contributions under the social security law, the Committee concluded that the 100 percent offset was excessive and should be reduced to 50 percent.

Eliminating the social security offset when there is a dependent child

When a military retiree dies leaving a widow and one or more children, a social security benefit is payable to the mother and to each dependent child. Under the Survivor Benefit Plan, if there is only one child, an amount equal to the amount of social security "mother's benefit payable based solely on the member's military service is "offset" against the Survivor Benefit Plan payment. If there is more than one dependent child, there is no offset. The Committee concluded that the reduction in the Survivor Benefit Plan payment to the widow when there is only one child is not warranted. H.R. 14773 will eliminate that reduction.

Elimination of the social security offset when the spouse beneficiary is not receiving social security benefits based on the deceased retiree's military service

The Survivor Benefit Plan currently requires an offset or reduction in payments under the Survivor Benefit Plan when the spouse beneficiary attains age 62 even though the beneficiary is not receiving a social security benefit because of employment, deferral to age 65 to receive 100 percent of husband's benefits, or because of entitlement to a greater social security benefit based on her own employment. The Committee concluded that to require a reduction under those circumstances when in fact there is no social security payable because of the deceased retiree's military service was inequitable and unwarranted.

H.R. 14773 eliminates the offset when the widow is not receiving a social security benefit based in whole or in part on her husband's military service.

Elimination of the social security offset when the only military service involved were periods of active duty of less than 30 continuous days and the member concerned received a refund of social security taxes withheld for those periods

Reservists who are called to annual training duty are, during those periods of training, covered under social security and both the Reservists and the government pay the appropriate social security tax for those periods of duty. It is possible for a Reservist to accrue an insured status under the social security law based solely on these short periods of active duty.

Assuming that the Reservist, having retired at age 60, had elected participation in the Survivor Benefit Plan and later died, there would be an offset at age 62 against Survivor Benefit Plan payments equal to the amount of a hypothetical social security benefit based on those short periods of active duty. That offset is required even though the Reservist in his civilian employment had paid social security taxes at the maximum rate and had received a refund of the taxes paid based on his military service. The Committee concluded that this was an unconscionable situation. H.R. 14773 will eliminate the offset when

the retiree's active military service involved only periods of active duty of less than 30 continuous days.

Increase in the "minimum-income payment" from \$1,400 to \$2,100

When enacting Public Law 92-425, the Congress recognized that there were some widows of retired military personnel who were in a different financial situation. In order to provide some measure of assistance to such widows, section 4 of Public Law 92-425 authorized payment by the Department of Defense to assure a minimum-income level for those widows of military personnel who died before September 21, 1973. Widows who are eligible receive a payment from the Defense Department which, when added to other income, as defined by the Veterans Administration means test, totals \$1,400 annually. Under the Veterans Administration pension system in effect in 1972, that supplementary payment, together with the VA death pension, would assure her an annual income of slightly in excess of \$2,100.

Because of increases in Veterans Administration pension rates since 1972, such widows are currently assured an annual income of approximately \$2,420.

The committee was concerned because these widows, although near the lowest rung of the economic ladder, do not have the benefit of any cost-of-living adjustments in the Defense Department portion of their income.

The committee concluded that to provide a current income comparable to that provided by section 4 of Public Law 92-425, the guaranteed minimum-income payment (exclusive of the Veterans Administration pension) should be increased from \$1,400 to \$2,100. The effect of this action would be to provide a minimum annual income of \$2,712 to these needy widows.

Need for additional data on widows

Members of the committee expressed considerable concern over the plight of pre-Survivor Benefit Plan widows during their deliberations on this legislation. The committee amendment provides a cost-of-living increase for minimum income widows, but contains no future escalator clause. One of the primary problems has been the lack of hard data on the number of individuals involved and the long-term costs of providing increased assistance to these widows. The committee suggests that the Defense Department develop concrete data on the pre-Survivor Benefit Plan widows and make recommendations to the committee for future refinements in the minimum-income widows' formula.

A 270-day new enrollment period for current retirees to elect into the plan

The undesirable features in the Survivor Benefit Plan which have been eliminated by H.R. 14773 undoubtedly contributed to the low participation rate in that Plan, particularly on the part of enlisted men. Accordingly, the Committee has included a new enrollment provision in H.R. 14773.

Under the new provision persons now on the retired rolls who are not participating in the Survivor Benefit Plan may, within 270 days, elect to participate. However, if such a person is participating in the

Retired Serviceman's Family Protection Plan, the combined annuities under the two plans may not exceed 100 percent of his retired pay.

Effective date

The effective date for authorizing payments under H.R. 14773 is specified as October 1, 1976.

DEPARTMENTAL DATA

The Department of Defense, in a letter dated July 28, 1976, supported H.R. 14773 as introduced. In a letter dated August 30, 1976, the Department of Defense deferred taking a formal position at this time on some of the amendments to the bill, in favor of awaiting the outcome of a thorough review of the entire Survivor Benefit Plan. The August 30 letter addressed itself to H.R. 6643, which incorporated the substance of the committee amendments to: reduce the social security offset from 100 percent to 50 percent, eliminate the offset for a widow with one child, eliminate the offset when the spouse beneficiary is not receiving social security benefits based on the deceased retiree's military service, eliminate the offset for reservists who only serve for periods of active duty of less than 30 days, and create a new 270-day enrollment period.

The letters cited above follow:

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., July 28, 1976.

HON. MELVIN PRICE,
Chairman, Committee on Armed Services,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with your request, we have reviewed the provisions of H.R. 14773, 94th Congress, a bill "To amend title 10, United States Code, to authorize cost-of-living adjustments of annuities under the Retired Serviceman's Family Protection Plan, to suspend retired pay deductions under the Survivor Benefit Pay when there is no eligible spouse beneficiary, to reduce the duration-of-marriage requirement under the Survivor Benefit Plan from two years to one year, and for other purposes."

The Department of Defense has previously sponsored legislation in support of the essential features of H.R. 14773. Most recently the provisions affecting the military Survivor Benefit Plan are included in Defense's proposed Retirement Modernization Act. We recognize that the Committee schedule to date has been full and has precluded an in-depth review of military nondisability retirement to this point in time. We are pleased that this Committee has identified the issues included in H.R. 14773 for special attention.

The Department of Defense strongly supports H.R. 14773, the main features of which would:

1. Provide cost-of-living increases to widows and children receiving benefits under the Retired Serviceman's Family Protection Plan (RSFPP);
2. Eliminate the reduction in retired pay of a retired military member whose marriage has been dissolved by divorce or by death of the spouse;

3. Provide coverage under the Survivor Benefit Plan to a surviving spouse after one year (now two years) of marriage when the retired member was not married to that spouse on the date of retirement; and

4. Clarify existing provisions of the Survivor Benefit Plan to specifically allow a member who is retiring to elect coverage for a dependent child or children when there is a surviving spouse.

With regard to the first feature of H.R. 14773, the Administration has under active consideration Defense sponsored legislation which would provide cost-of-living increases to annuities payable under the Retired Serviceman's Family Protection Plan. Either that proposal or H.R. 14773 would protect such annuities from erosion in purchasing power as the result of inflation. There is presently no statutory authority to increase RSFPP annuities.

This plan was originally enacted in 1953 and was replaced by the Survivor Benefit Plan on September 21, 1972. However, widows and dependent children of retired members who were participants in RSFPP and died before they had an opportunity to make elections under the Survivor Benefit Plan are only entitled to benefits under the RSFPP. Under the RSFPP, a retired military member could elect to receive a reduced retired pay in order to provide an annuity, following his death, for his surviving wife and children. The amount of the deductions from the retired member's pay and the potential benefit to the survivor were established as of the date the member retired and could not be changed thereafter. Therefore, unlike the Survivor Benefit Plan, no cost-of-living increases are authorized in RSFPP annuities.

Annuities payable under the Survivor Benefit Plan are increased each time and by the same percentage that retired pay is adjusted under the Consumer Price Index formula. H.R. 14773 would authorize RSFPP annuities payable to widows or dependent children of retired members who died before March 20, 1974 to be increased on the same basis as annuities that are paid to widows or dependent children under the Survivor Benefit Plan. March 20, 1974 was the end of the grace period for making an election under the Survivor Benefit Plan for a member who was retired when that plan was approved on September 21, 1972.

If H.R. 14773 is enacted, RSFPP annuities of the widows or dependent children involved would be increased by the cumulative total percentage (41.43 percent) of cost-of-living increases since September 21, 1972. However, no retroactive adjustments would be authorized. As indicated above, future adjustments would be made each time retired pay is adjusted under the Consumer Price Index formula.

It is the view of the Department of Defense that RSFPP annuitants are in need and deserving of having their annuities adjusted as provided for in H.R. 14773. This would provide for equity in the treatment of these survivors in comparison with that accorded a survivor of a retiree participant in the Survivor Benefit Plan. The average annual RSFPP annuity is currently about \$1,600. Since 1972, this average annuity has decreased about 38 percent in purchasing power due to inflation, which though slowed, still continues.

With respect to the second and third features of H.R. 14773, the Department submitted to the Congress on February 13, 1976 an amendment to the proposed Uniformed Services Retirement Modernization

Act (H.R. 7769, 94th Congress) which would amend Chapter 73 of title 10, United States Code. That amendment is identical to the provisions of the second and third features mentioned above, and as contained in subsections (b) and (f) of Section 1 of H.R. 14773.

Under the provisions of the Survivor Benefit Plan enacted by Public Law 94-425 and incorporated in Chapter 73 of title 10, United States Code, a retired military member may elect to accept a reduction in his retired pay in order to provide an annuity for his spouse in the event he predeceases her. That reduction in his retired pay continues for the remainder of his life even though his spouse predeceases him or the marriage is terminated by divorce. In the event of remarriage, coverage is provided for the new spouse. However, the benefits of the Plan are available to the new spouse only if the retired member's death is at least two years after the marriage or a child is born of that marriage.

The Survivor Benefit Plan was patterned in many respects on a plan available to retired civil service employees. In particular, the provisions for continuation of the deductions from the member's retired pay for the remainder of his life and the two year delay in the coverage for the new spouse were adopted from the Civil Service Survivorship Plan.

Legislation was enacted by the 93rd Congress which amended the statutes relative to civil service annuitants to discontinue reductions in retired pay when there is no surviving spouse and to reduce the two year marriage requirement before coverage of a new spouse. Public Law 93-474, enacted on October 26, 1974, amended chapter 83 of title 5, United States Code, to eliminate the annuity reduction made when the annuitant has no surviving spouse. Public Law 93-260, enacted on April 9, 1974, amended section 8341(a) of title 5, United States Code, by reducing the marriage duration requirement for civil service annuitants from two years to one year.

The fact that these provisions remain uncorrected in the military Survivor Benefit Plan constitutes an unwarranted inequity that has an extremely adverse impact on the morale of retirees and those nearing retirement. Many entering the retired rolls decline participation in the plan due to the resultant disadvantage of these provisions.

Provisions of H.R. 14773 would bring the military Survivor Benefit Plan in consonance with the Civil Service Survivor's Plan as discussed above. Therefore, the enactment of these provisions is highly desirable and is strongly recommended by the Department of Defense.

As presently written, H.R. 14773 does not clearly indicate when the Survivor Benefit Plan annuity commences for a widow who was married for at least one year, but less than two years, to a retired member who died before the enactment date of this legislation. Therefore, to clarify this matter, a recommended amendment to H.R. 14773 is enclosed. This amendment would prohibit the payment of the Survivor Benefit Plan annuity to such a widow for any period before the date of enactment of the Act.

The fourth feature of H.R. 14773 would clarify provisions relating to annuities for dependent children. Specifically, it would allow a member who is retiring to elect coverage under the Survivor Benefit Plan for only a dependent child or children even though the member has a spouse.

It is the desire and intent of the Department of Defense to authorize a retired member of the uniformed services to provide an annuity for his surviving spouse, his surviving spouse and dependent children, or to provide an annuity for a surviving dependent child or children whether or not there is a surviving spouse. It was the understanding of the Department of Defense that Public Law 92-425 authorized the retired member to provide such annuities and the Department of Defense implementing regulation so provides. However, the Comptroller General in decision B-177471, January 19, 1973 ruled that Public Law 92-425 does not authorize the retired member to provide an annuity for a dependent child if he has a spouse. However, the Comptroller General has advised that his office would delay questioning such elections pending the early submission of remedial legislation to the Congress. Such legislation was proposed by the Department of Defense and was most recently introduced as H.R. 8608, 94th Congress.

It is the view of the Department of Defense that this deficiency should be corrected so as to clearly authorize the retired member to provide an annuity for a dependent child when there is a spouse.

For reasons cited herein, the Department of Defense strongly favors enactment of H.R. 14773, with the minor technical amendment as recommended, at the earliest practicable date.

The estimated costs of H.R. 14773 are as follows:

Fiscal year:	Millions
1977	\$10.253
1978	11.715
1979	13.150
1980	14.657
1981	16.130

It is anticipated that the first year costs of this proposal could be accommodated from within amounts budgeted for retired pay for fiscal year 1977. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

RICHARD A. WILEY.

Enclosure.

PROPOSED AMENDMENT TO H.R. 14773

Section 4. Each annuity that is payable under subchapter II of chapter 73 of title 10, United States Code, as a result of subsection (b) of section 1, shall not accrue for any period before the date of enactment of this Act.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., August 30, 1976.

HON. MELVIN PRICE,
Chairman, Committee on Armed Services, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with your request, we have reviewed the provisions of H.R. 6643, 94th Congress, a bill "To amend section 1451 of title 10, United States Code, to change the offset for social security under the survivor benefit plan from 100 percent to 50

percent, and for other purposes." Senator Beall has also introduced a bill, S. 3739, 94th Congress, which is identical to H.R. 6643.

In addition to reducing the social security offset from 100 percent to 50 percent, H.R. 6643 would eliminate the offset for widows with one dependent child and make determination of the offset a function of actual benefits received by the widow as a result of the deceased's military service rather than her entitlement to such benefits. This latter provision would have the effect of eliminating all of the offset for widows not receiving benefits based on their husbands' military service. Also, a widow who received social security payments based on her earnings would be subject to the offset only on that portion of any additional benefits that may accrue because of her husband's military earnings. In addition, widows of reservists who had annually obtained maximum coverage as a result of their civilian employment would not have their SBP annuities offset. Section 2 of the bill provides for an open period of 270 days in which to opt into the revised Plan.

It should be noted that the Department of Defense supported, during consideration of the initial Survivor Benefit legislation, a 50 percent offset as opposed to a 100 percent offset. We continue to believe that the 100 percent offset feature acts as a deterrent to greater participation by our members.

Several legislative proposals have been introduced which would modify a number of provisions of the current Plan. There are other features of the plan for which there have not been legislative initiatives proposed but that also merit consideration. For example, it appears that over time, inflation will cause the cost to the SBP participant to become increasingly out of balance with the cost to his or her counterpart participating in the comparable plan for Federal civil servants. It is apparent to the Department that the program warrants a careful reexamination. Therefore, the Department is undertaking such a review and plans to report its findings to the Congress early in the next session.

For the reasons cited herein the Department of Defense prefers to defer, at this time, taking a formal position on H.R. 6643 in favor of awaiting the outcome of a thorough review of the entire Survivor Benefit Plan. This should not be construed to mean the Department does not favor a timely correction of the pay-forever clause and the two-year remarriage requirement as contained in H.R. 14773. Rectification of these deficiencies, already an accomplished fact for the Civil Service Survivorship Plan, should continue as a priority concern of the Congress.

The estimated costs of H.R. 6643 are as follows:

Fiscal year:	(Millions)
1977	\$2.5
1978	3.4
1979	4.6
1980	6.2
1981	8.7

These costs include estimates of the effect of reducing the offset from 100 percent to 50 percent and the elimination of the offset for widows who are not receiving benefits based on their husbands' military service or are receiving benefits resulting from their own employment. Due to a lack of pertinent data, the Department was unable to

develop firm estimates for the cost impact of eliminating the offset for widows with one dependent child and the widow of a reservist who had obtained maximum coverage from his civilian employment. However, their impact is not believed to be significant. Likewise, the Department was unable to produce reliable estimates of the number of retirees or their characteristics, who might opt to participate in the plan during a 270 day open period. However, it is reasonable to expect, as in the case of the initial start up of any like program, the new participants would generate more in contributions than disbursements for several years. At some point in the future, the open period could be expected to cost the Government in the sense of increasing the rate of disbursements above current anticipated levels.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

LEONARD NIEDERLEHNER,
(For Richard A. Wiley).

SECTION-BY-SECTION ANALYSIS

Section 1(a) amends 10 USC 1434 (relating to Annuities under the Retired Serviceman's Family Protection Plan) to provide that annuities payable under the Retired Serviceman's Family Protection Plan to the surviving spouse or child of a member who died on or before March 20, 1974 shall be increased at the same time and by the same percent as retired or retainer pay is increased under 10 USC 1401a.

Section 1(b) amends 10 USC 1447 by striking the words "two years" in Clauses (3)(A) and (4)(A) and inserting "one year" in place thereof. The effect of the amendment is to reduce from two years to one year the duration-of-marriage requirement for eligibility for benefits under the Survivor Benefit Plan. This change is consistent with a recent change in the civil service survivor benefit law.

Section 1(c) amends 10 USC 1448(a) (relating to the applicability of the Survivor Benefit Plan) to clearly establish that a military member who has a spouse and child at the time of retirement has the option to elect to provide coverage under the Plan for the child only, and not for the spouse. This is the current practice, but the Comptroller General ruled that the language of the law does not clearly authorize the practice and clarifying legislation is needed.

Section 1(d) amends 10 USC 1450 (relating to payment of annuities under the Survivor Benefit Plan) as follows:

Clause (A) amends subsection (a) by renumbering clause (3) as clause (4) and inserting a new clause (3) which specifies that if a member elects to provide an annuity for children but not for the spouse, the annuity shall be divided equally among the children. This amendment in connection with the amendment in (c) above is designed to clarify the intent of the Plan to permit a retired member to provide an annuity for children even though there is a spouse.

Clause (B) adds a new subsection (j) to section 1450. The new subsection relates to the widow beneficiary under the Survivor

Benefit Plan who was entitled to Dependency and Indemnity Compensation under 38 USC 411(a). The Survivor Benefit Plan payment is reduced by the amount of that Compensation. Under 10 USC 1450(e) the widow beneficiary is entitled to a refund of all or part of the deductions from her husband's retired pay. If after age 60, she remarries, she is no longer eligible for Dependency and Indemnity Compensation. If she had not been receiving Dependency and Indemnity Compensation, she could have continued to receive benefits under the Survivor Benefit Plan. However, because she was formerly eligible for Dependency and Indemnity Compensation and consequently had received a refund of her husband's deductions under the Survivor Benefit Plan, the Comptroller General ruled she cannot receive Survivor Benefit Plan payments. The proposed new subsection (j) will authorize payment of Survivor Benefit Plan benefits provided any refund she received is repaid.

Section 1(e) is a technical amendment to substitute a reference to "(a)(4)" for the current reference to "(a)(3)" in sections 1450(f), 1451(b), 1452(a) and 1452(e) in view of the renumbering of the clause by section 1(d)(A) above.

Section 1(f) amends and restates 10 USC 1451(a) relating to the amount of the annuity under the Survivor Benefit Plan. The amendments relate to current provisions in subsection (a) which require a reduction in the payment under the Survivor Benefit Plan to the spouse beneficiary when there is only one dependent child or when the spouse attains age 62.

Under current law, the Survivor Benefit Plan payments to the widow with only one dependent child are reduced by an amount equal to 100 percent of the amount of a hypothetical social security benefit computed solely on the basis of the deceased retiree's military service. Under the amendment of 10 USC 1451(a) that reduction will no longer be required.

Under the current provision of 10 USC 1451(a) benefits under the Survivor Benefit Plan to a widow or widower who attains age 62 are reduced by an amount equal to 100 percent of the amount of a hypothetical social security benefit computed solely on the basis of the deceased retiree's military service. Under the amended 10 USC 1451(a) that reduction is reduced to 50 percent.

Under the social security law, a person who is otherwise entitled to a social security survivorship benefit who is employed and earning pay in social security covered employment has that benefit reduced or eliminated based on the amount of those employment earnings. Under current 10 USC 1451(a), benefits under the Survivor Benefit Plan payment are reduced by the amount of the hypothetical social security benefit to which the beneficiary is "entitled" even though the beneficiary is not receiving any social security benefit by reason of being employed or deferring benefits until age 65. The amendment of 10 USC 1451(a) by this subsection will eliminate the reduction in these cases.

The Social Security law does not permit a widow to receive concurrently a social security benefit based on her own employment and in addition a social security survivorship benefit based on her deceased

husband's employment. If her social security benefits based on her own earnings are greater, she receives that benefit. However, under the current 10 USC 1451(a) her benefits under the Survivor Benefit Plan are reduced based on her deceased husband's social-security-covered military service even though she receives no social security benefits based on her husband's service. The amendment of 10 USC 1451(a) will eliminate the offset in those cases where she does not receive any social security benefits based on her deceased husband's military service.

Active duty for training performed by Reservists is covered employment under the Social Security Act. The Reservists and the government each pay the appropriate tax. Most Reservists are covered under social security in their civilian employment and in many cases their civilian earnings equal or exceed the maximum covered earnings under social security and accordingly the military service does not add to their potential social security benefits. Nonetheless, under current 10 USC 1451(a), if their Reserve service was sufficient to confer an "insured" status for social security survivor benefit purposes, the amount of Survivor Benefit Plan payments are reduced by the amount of the hypothetical social security benefit even though that military service did not contribute to the amount of the social security benefit. 10 USC 1451(a), as amended, will eliminate the offset if the only military service performed was active duty for training for periods of less than 30 continuous days and the Reservist is entitled to receive a refund of the social security taxes he paid because of that active duty employment.

Section 1(g) amends 10 USC 1452 (relating to reductions in retired or retainer pay).

Clause (A) further amends subsection (a) by—

(i) substituting the words "Except as provided in subsection (b), the" for the first word of the subsection. The purpose of this amendment is to provide a reference to subsection (b) which, as hereinafter amended includes a reference to the situation of a retired member who has a spouse but elects to provide coverage under the Survivor Benefit Plan for a child only; and

(ii) specifying that when a retired member had elected an annuity for his spouse, deductions from retired or retainer pay would be made only when there is potentially eligible spouse beneficiary. When the potential spouse beneficiary dies, or is divorced, the deductions from the retired member's pay to provide benefits for a spouse would be suspended. If the member remarries, the deductions would thereafter be resumed at the appropriate level.

Clause (B) amends 10 USC 1452(b) (relating to deductions from retired or retainer pay to provide coverage for a dependent child) to provide that deductions from retired or retainer pay to provide an annuity for a child when the member had a spouse, but had elected to provide coverage for the child only, will be the same as when there is no spouse. This language is to clarify the intent of the Plan that a retired member can cover a "child only" even though there is a spouse (See Section 1(c) above).

Clause (C) further amends 10 USC 1452(c) (relating to the deductions from the retired or retainer pay of a member who elected to receive a reduced retired or retainer pay to provide an annuity for a person with an insurable interest in the life of that member). Under present law, the deductions from such a member's retired pay continue for life, even though the intended beneficiary dies. This clause amends 10 USC 1452(c) by adding a new sentence which provides that the reduction in a member's retired or retainer pay to provide an annuity for a person with an insurable interest will continue during the lifetime of the designated beneficiary. The effect of the amendment will be to terminate the deduction if the intended beneficiary predeceases the member receiving retired or retainer pay.

Section 2 amends section 4 of Public Law 92-425. Section 4 of that Public Law established the so-called minimum income guarantee provision of the Survivor Benefit Plan. Under the current provision of Section 4, widows of retired members who died on or before March 20, 1974 who are receiving a pension from the Veterans Administration, whose income (other than the Veterans Administration pension) is less than \$1,400 annually are entitled to a supplementary payment from the Department of Defense which assures such a widow an income of at least \$1,400 annually exclusive of that pension. Section 2 of the bill would increase the guaranteed income (from other than the pension) from \$1,400 to \$2,100 annually. In addition, subsection (c) of section 2 amends section 4 of Public Law 92-425 to add a new subsection (c) which provides that the provisions of 10 USC 1450(i) (which exempts benefits under the SBP from legal process) and 10 USC 1453 (relating to recovery of erroneous payments) will be applicable to the minimum-income guarantee payments.

Section 3 of H.R. 14773 will authorize a person who, on the date of enactment of the bill are entitled to receive retired or retainer pay, who did not elect to participate in the Survivor Benefit Plan established by subchapter II of chapter 73 of title 10 United States Code, to elect, within 270 days after enactment of the bill, to participate in that Plan. Any such person who is participating in the Retired Serviceman's Family Protection Plan can elect to participate in the Survivor Benefit Plan but the total annuities elected may not exceed 100 percent of his retired or retainer pay.

Section 4 specifies the effective date of the several provisions of the bill as follows:

Section 1(a) which provides for increasing annuities under the Retired Serviceman's Family Protection Plan at the same time and by the same percent as retired or retainer pay, becomes effective October 1, 1976.

Section 1(b) which reduces from two years to one, the duration-of-marriage eligibility requirement for entitlement to a "spouse benefit" as effective from September 21, 1972.

Section 1(c), 1(d)(A), 1(e), 1(g)(B) which relate to clarifying the intent of the Plan to permit a retired member to designate a child as beneficiary even though there is a spouse, are effective from September 21, 1972. These provisions are to clarify the law

and confirm the manner in which the Plan is currently being administered.

Section 1(d) (B) which relates to reinstatement of benefits under the Survivor Benefit Plan for a spouse whose eligibility for Dependency and Indemnity Compensation terminates because she remarried after age 60, is effective from September 21, 1972.

Section 1(g) (A) and (C) which provides for suspension of deductions from retired pay (1) when there is no potentially eligible spouse; or (2) on the death of the designated person with an insurable interest, as the case may be, are effective from September 21, 1972.

Section 1(f) which relates to the reduction or elimination of the social security offset is effective from October 1, 1976.

Section 2 of the bill which provides for increases in the guaranteed minimum income provisions of Section 4, Public Law 92-425 is effective from October 1, 1976.

Section 3 is effective from the date of enactment and authorizes a new enrollment period of 270 days thereafter for former retirees to participate in the Survivor Benefit Plan.

Section 5 specifies that persons receiving benefits under the Retired Serviceman's Family Protection Plan based on the death of a military member on or before March 20, 1974 shall, effective October 1, 1976 be entitled to a percentage increase in their annuities equal to the percent by which retired pay has been increased since September 21, 1972.

COMMITTEE POSITION

The Committee on Armed Services, on August 31, 1976, a quorum being present, approved H.R. 14773, as amended, by voice vote.

FISCAL DATA

The Department of Defense estimated that H.R. 14773 as introduced would have an estimated cost in fiscal year 1977 of \$10.2 million. The cost of increasing the minimum-income guarantee for widows under section 4 of Public Law 92-425 is estimated to be \$3.4 million in fiscal year 1977 for the Defense budget. However, there will be some offsetting savings in government costs because of decreased Veterans Administration pensions to those eligible for the supplementary payment. The additional amendments approved by the committee are estimated to add \$2.5 million to the fiscal year 1977 cost of the bill, according to the Department of Defense. Thus total first year cost, according to Defense Department estimates would be \$16.1 million.

The committee would point out, however, that the Defense Department estimate did not include reductions in budgetary requirements that might result initially from increased participation allowed by the new enrollment period. By eliminating objectionable features of present law, the bill will undoubtedly encourage increased enrollments. The committee notes that according to the Congressional Budget Office (CBO) estimates, the impact of increased enrollments will be such as to require no additional cost, but rather a budget saving, through fiscal year 1980. CBO estimates a \$5.9 million reduction in budgetary requirements for fiscal year 1977.

EXECUTIVE BRANCH ESTIMATE

The Defense Department estimate of the cost of the legislation, as introduced, for the next five fiscal years is as follows:

Fiscal year:	(Millions)
1977	\$10.253
1978	11.715
1979	13.150
1980	14.657
1981	16.180

The Defense Department estimate of the cost of the committee amendments, except for the increase in payments to widows under the minimum-income program, for the next five fiscal years is as follows:

Fiscal year:	(Millions)
1977	\$2.5
1978	3.4
1979	4.6
1980	6.2
1981	8.7

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(1) (3) (C) of Rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget Act of 1974 is included hereafter:

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

AUGUST 31, 1976.

1. Bill number: H.R. 14773 (as amended).
2. Bill title and purpose: To amend Title 10, United States Code.
 1. To authorize cost-of-living adjustments of annuities under the Retired Servicemen's Family Protection Plan (RSFPP);
 2. To suspend retired pay deductions under the Survivor Benefit Plan (SBP) when there is no eligible beneficiary;
 3. To reduce the duration-of-marriage requirement under the SBP from two years to one year;
 4. To increase the income supplement for certain widows of retired members;
 5. To provide for reinstatement of SBP benefits to the widow of a retired member who had elected VA benefits upon the death of the retired member and who had subsequently remarried after age 60. The reinstatement of benefits would be effective upon the termination of the subsequent marriage;
 6. To reduce the offset for Social Security benefits for beneficiaries of SBP from 100 percent to 50 percent for those Social Security benefits attributable to military service;
 7. To eliminate the reduction in SBP benefits of a widow who is entitled to Social Security benefits based on her husband's military service, but who is not receiving those benefits;
 8. To eliminate the offset of SBP benefits for Social Security benefits for a widow with one child;

9. To eliminate the offset of SBP benefits for Social Security benefits for the widow of Reserve retirees whose only active service after 1956 consisted of active duty for training for periods of less than 30 days, and

10. To reopen the enrollment period for the Survivor Benefits Plan for 270 days.

3. Budget impact:

	(Millions of dollars)				
	Fiscal year—				
	1977	1978	1979	1980	1981
Budget function 050:					
Authorization amounts and estimated costs (Items 1 to 5)...	14.9	16.1	17.4	18.5	19.7
Authorization amounts and estimated costs (Items 6 to 9)...	3.2	4.5	6.0	7.5	9.8
Authorization amounts and estimated costs (Item 10).....	-24.0	-24.7	-25.3	-26.0	-26.5
Total	-5.9	-4.1	-1.9	0	+3.0
Budget function 700: Estimated savings	2.0	2.0	2.0	2.0	2.0

4. Basis for estimate: The provision of a cost of living adjustment under RSFPP estimate is based on 9,686 widows receiving an average benefit of \$1,600 per year in FY 1976. Subsequent year estimates are based on expected mortality and projections of the Consumer Price Index.

The estimated cost of the suspensions of retired pay deductions when there is no eligible beneficiary is based on an actuarial estimate of 7,800 SBP participants that no longer have a beneficiary, and an average annual deduction from retired pay for SBP of \$450 in fiscal year 1975.

The cost of changing the duration of marriage requirement under SBP from 2 years to one year was determined by estimating the number of military retirees that die between the first and second anniversary of marriage and who participate in SBP, and multiplying by the average SBP widow benefit.

The increase in the income supplement was estimated by determining the number of widows currently receiving the income supplement and estimating the additional widows that would become eligible as a result of this legislation. No data is available on the number of widows with an income of more than \$1400 per year but less than \$2100 per year. Based on data of the income of non-married women over 62 it was estimated that the number of women eligible for the income supplement would increase by 50 percent. The average additional benefit was estimated to be \$700 per year for current recipients and \$350 per year for those becoming eligible as a result of this legislation. The savings in Veterans Administration pension costs were estimated based on the income increases resulting from this legislation which result in reductions in VA pensions.

The number of widows eligible for the fifth provision of the bill is believed to be very small, 50 or less. In order for a woman to benefit from this provision she must:

1. Have been widowed by a retired member who participated in SBP.
2. Widowed by a retired member who died of a service connected disability.
3. Chosen benefits from the VA instead of SBP upon her husband's death.
4. Have remarried after her sixtieth birthday.
5. Have her marriage terminated by death or divorce.

The annual pension for a widow under SBP is \$4,500 per year. Accordingly, it is estimated that the FY 1977 costs would be less than \$228,000.

The costs of provisions 6 through 9 of the bill are based on 1976 actual data on Social Security offsets for all recipients of SBP benefits. The 1976 data was projected using Department of Defense actuarial estimates of the number of widows receiving benefits, a constant proportion having their benefits offset, and an average benefit growing at about 55 percent per year. Based on Social Security Administration data it was estimated that 3 percent of the widows have entitlement to Social Security benefits but are not receiving them. Also using Social Security Administration data it was estimated that 15 percent of the widows have one child. There is no good data base for estimating the number of widows affected by provision 9. The number must be very small because reserve retirees amount to about 4 percent of the retired pay base, and only a small fraction of those would satisfy the requirement of paying full Social Security taxes as a result of civilian employment. A figure of 1 percent of the widow population has been used.

The cost of provision 10 has been estimated by projecting forward the 1975 actual experience. In 1975 deductions for the plan totaled \$189 million and benefits paid totaled \$36 million. The actual cost will depend upon how many retirees decide to participate in SBP as a result of the changes in the plan and as a result of the second opportunity to enroll. Currently about 50 percent participate. If this were to increase by 25 percent, to a participation of 62.5 percent, the cost would be—\$61 million in 1977. A 10 percent increase in the participation rate would cost—\$24 million in 1977. For this estimate a 10 percent increase in the participation rate was used. The out year increase results from a growing retired population.

At some point beyond the five year time frame, the benefits paid will exceed the deductions for the SBP program. The deductions for the SBP program are not sufficient to finance the expected cost of the future benefits. Thus by reopening enrollment, the future net cost of the program, benefits paid less deductions, will be larger than if the enrollment were not reopened.

5. Estimate comparison: The CBO estimate differs from the DOD estimate in that it includes an estimate for provisions which were not estimated by DOD. In addition CBO has used different assumptions about future Consumer Price Index changes.

6. Previous CBO estimate: CBO prepared an estimate for this bill on August 23, 1976 for this bill as amended by the subcommittee. That estimate included items 1-5 as described in Purpose of the bill. This estimate includes amendments made in full committee which added items 6-10.

INFLATION-IMPACT STATEMENT

It is the belief of the committee that the legislation will not have a significant effect on the national economy.

OVERSIGHT FINDINGS

With reference to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, there is herewith printed in parallel columns the text of existing law which would be repealed or amended by the various provisions of the bill as reported.

EXISTING LAW

THE BILL AS REPORTED

TITLE 10.—ARMED FORCES

Chapter 73.—ANNUITIES BASED ON RETIRED OR RETAINER PAY; SURVIVOR BENEFIT PLAN

Subchapter	Sec.
I. Retired Serviceman's Family Protection Plan.....	1431
II. Survivor Benefit Plan.....	1447

SUBCHAPTER I.—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

- Sec.
- 1431. Election of annuity: members of armed forces.
 - 1432. Election of annuity: former members of armed forces.
 - 1433. Mental incompetency of member.
 - 1434. Kinds of annuities that may be elected.
 - 1435. Eligible beneficiaries.
 - 1436. Computation of reduction in retired pay; withdrawal for severe financial hardship.
 - 1437. Payment of annuity.
 - 1438. Deposits for amounts not deducted.
 - 1439. Refund of amounts deducted from retired pay.
 - 1440. Annuities not subject to legal process.
 - 1441. Annuities in addition to other payments.
 - 1442. Recovery of annuity erroneously paid.

- 1444. Regulations; determinations.
- 1445. Correction of administrative deficiencies.
- 1446. Restriction on participation.

SUBCHAPTER II.—SURVIVOR BENEFIT PLAN

- 1447. Definitions.
- 1448. Application of Plan.
- 1449. Mental incompetency of member.
- 1450. Payment of annuity: beneficiaries.
- 1451. Amount of annuity.
- 1452. Reduction in retired or retainer pay.
- 1453. Recovery of annuity erroneously paid.
- 1454. Correction of administrative deficiencies.
- 1455. Regulations.

§ 1434. Kinds of annuities that may be elected.

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 per centum nor less than 12½ per centum of his retired or retainer pay, in no case less than \$25. He may make the annuity payable—

- (1) to, or on behalf of, the surviving spouse, ending when the spouse dies or remarries;
- (2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or
- (3) to, or on behalf of, the surviving spouse, and after the death or remarriage of that spouse, in equal

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 73 of title 10, United States Code, is amended as follows:

(a) Section 1434 of title 10, United States Code, is amended by adding the following new subsection at the end thereof:

shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of subsection (a), but the combined amount of the annuities may not be more than 50 per centum nor less than 12½ per centum of his retired or retainer pay but in no case less than \$25.

(c) An election of any annuity under clause (1) or (2) of subsection (a), or any combination of annuities under subsection (b), shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died. For the purposes of the preceding sentence, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age, and who is not pursuing a course of study or training defined in section 1435 of this title, shall be considered an eligible beneficiary unless the Secretary concerned approves an application submitted by the member under section 1436(b)(4) of this title. An election of an annuity under clause (3) of subsection (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no eligible spouse because of death or divorce.

(d) Under regulations prescribed under section 1444(a) of this title, a person may, before or after the first day for which retired or retainer pay is granted, provided for allocating, during the period of the surviving spouse's eligibility, a part of the annuity under subsection (a)(3) for payment to those of his surviving children who are not children of that spouse. (Aug. 10, 1956, ch. 1041, 70A Stat. 109; Oct. 4, 1961, Pub. L. 87-381, § 3, 75 Stat. 811; Aug. 13, 1968, Pub. L. 90-485, § 1(3), 82 Stat. 751.)

“(e) Whenever retired or retainer pay is increased under section 1401a of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or a child of a member who died on or before March 20, 1974, shall be increased at the same time by the same total percent.”

SUBCHAPTER II.—SURVIVOR BENEFIT PLAN

§ 1447. Definitions.

In this subchapter:

(1) “Plan” means the Survivor Benefit Plan established by this subchapter.

(2) “Base amount” means—

(A) the amount of monthly retired or retainer pay to which a person—

(i) was entitled when he became eligible for that pay; or

(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list; or

(B) any amount less than that described by clause (A) designated by that person on or before the first day for which he became eligible for retired or retainer pay, but not less than \$300;

as increased from time to time under section 1401a of this title.

(3) "Widow" means the surviving wife of a person who, if not married to the person at the time he became eligible for retired or retainer pay—

(A) was married to him for at least two years immediately before his death; or

(B) is the mother of issue by that marriage.

(4) "Widower" means the surviving husband of a person who, if not married to the person at the time she became eligible for retired or retainer pay—

(A) was married to her for at least two years immediately before her death; or

(B) is the father of issue by that marriage.

(5) "Dependent child" means a person who is—

(A) unmarried;

(B) (i) under 18 years of age; (ii) at least 18, but under 22, years of age and pursuing a full-time course of study or training in a high school, trade school,

technical or vocational institute, junior college, college, university, or comparable recognized educational institution; or (iii) incapable of supporting himself because of a mental or physical incapacity existing before his eighteenth birthday or incurred on or after that birthday, but before his twenty-second birthday, while pursuing such a full-time course of study or training; and

(C) the child of a person to whom the Plan applies, including (i) an adopted child, and (ii) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship.

For the purpose of this clause, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday. A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if he shows to the satisfaction of the Secretary of Defense that he has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim. Under this clause, a foster child, to qualify as the dependent child of a person to whom the Plan applies, must, at the time of the death of that person, also reside with, and receive over one-half of his support from, that

(b) Clauses (3)(A) and (4)(A) of section 1447 are each amended by striking out "two years" and inserting in place thereof "one year".

person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while he is a student as described in this clause, will not be considered to affect the residence of such a foster child.

§ 1448. Application of Plan.

(a) The Plan applies to a person who is married or has a dependent child when he becomes entitled to retired or retainer pay unless he elects not to participate in the Plan before the first day for which he is eligible for that pay. If a person who is married elects not to participate in the Plan at the maximum level, that person's spouse shall be notified of the decision. An election not to participate in the Plan is irrevocable if not revoked before the date on which the person first becomes entitled to retired or retainer pay. However, a person who is not married when he becomes entitled to retired or retainer pay but who later marries, or acquires a dependent child, may elect to participate in the Plan but his election must be written, signed by him, and received by the Secretary concerned within one year after he marries, or acquires that dependent child. Such an election may not be revoked. His election is effective as of the first day of the month after his election is received by the Secretary concerned.

(b) A person who is not married and does not have a dependent child when he becomes entitled to retired or retainer pay may elect to provide an annuity to a natural person with an insurable interest in that person.

(c) The second sentence of section 1448 (a) is amended by inserting “, or elects to provide an annuity for a dependent child but not for his spouse” after “maximum level”.

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(c) The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to retired pay.

(d) If a member of an armed force dies on active duty after he has become entitled to retired or retainer pay, or after he has qualified for that pay except that he has not applied for or been granted that pay, and his spouse is eligible for dependency and indemnity compensation under section 411(a) of title 38 in an amount that is less than the annuity the spouse would have received under this subchapter if it had applied to the member when he died, the Secretary concerned shall pay to the spouse an annuity equal to the difference between that amount of compensation and 55 percent of the retired or retainer pay to which the otherwise eligible spouse described in section 1450(a) (1) of this title would have been entitled if the member had been entitled to that pay based upon his years of active service when he died. (Added Pub. L. 92-425, § 1(3), Sept. 21, 1972, 86 Stat. 707.)

§ 1450. Payment of annuity: beneficiaries.

(a) Effective as of the first day after the death of a person to whom section 1448 of this title applies, a monthly annuity under section 1451 of this title shall be paid to—

- (1) the eligible widow or widower;
- (2) the surviving dependent children in equal shares, if the eligible widow or widower is dead, dies, or otherwise becomes ineligible under this section; or

(d) Section 1450 is amended as follows:

- (A) Subsection (a) is amended by striking out “or” at the end of clause (2), renumbering clause (3) as clause (4), and inserting the following new clause (3):
- “(3) the dependent children in equal shares if the person to whom section 1448 of this title applies elected to provide an annuity for dependent children but not for the spouse; or”.

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(3) the natural person designated under section 1448 (b) of this title at the time the person to whom section 1448 applies became entitled to retired or retainer pay, if there is no eligible beneficiary under clause (1) or (2).

(b) An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost. An annuity for a widow or widower shall be paid to the widow or widower while the widow or widower is living or, if the widow or widower remarries before reaching age 60, until the widow or widower remarries. If the widow or widower remarries before reaching age 60 and that marriage is terminated by death, annulment, or divorce, payment of the annuity will be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the widow or widower is also entitled to an annuity under this section based upon the marriage so terminated, the widow or widower may not receive both annuities but must elect which to receive.

(c) If, upon the death of a person to whom section 1448 of this title applies, the widow or widower of that person is also entitled to compensation under section 411 (a) of title 38, the widow or widower 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.

(d) If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of his

retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339 (i) of title 5, he notified the Civil Service Commission that he did not desire any spouse surviving him to receive an annuity under section 8341 (b) of that title.

(e) If no annuity under this section is payable because of subsection (c), any amounts deducted from the retired or retainer pay of the deceased under section 1452 of this title shall be refunded to the widow or widower. 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 or retainer pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted prior to 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 widow or widower.

(f) An unmarried person who elects to provide an annuity to a person designated by him under subsection (a) (3), but who later marries or acquires a dependent child, may change that election and provide an annuity to his spouse or dependent child. A change of election under this subsection is subject to the rules with respect to execution, revocation, and effectiveness set forth in the last three sentences of section 1448 (a) of this title.

(g) Except as provided in section 1449 of this title or in subsection (f) of this section, an election under this section may not be changed or revoked.

(h) Except as provided in section 1451 of this title, an annuity under this section is in addition 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 Veterans' Administration.

(i) An annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process. (Added Pub. L. 92-425, § 1(3), Sept. 21, 1972, 86 Stat. 708.)

§ 1451. Amount of annuity

(a) 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. However, when the widow has one dependent child, the monthly annuity shall be reduced by an amount equal to the mother's benefit, if any, to which the widow would be entitled under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(7)(1) of title 42 and calculated assuming that the person concerned lived to age 65. When the widow or widower reaches age 62, or there is no longer a dependent child, whichever occurs later, the monthly annuity shall be reduced by an amount equal to the amount of the survivor benefit, if any, to which the widow or widower

(B) by adding the following new subsection "(j)" at the end thereof:

"(j) Where the annuity has been adjusted under subsection (c) of this section and there is no entitlement to compensation under section 411(a) of title 38, due to remarriage of the spouse after reaching age 60, annuity shall be readjusted to the rate of entitlement existing prior to the adjustment under subsection (c) of this section, if any amounts refunded under subsection (e) of this section are repaid."

(e) Sections 1450(f), 1451(b), 1452(a), and 1452(c) are each amended by striking out "(a)(3)" and inserting in place thereof "(a)(4)".

(f) Section 1451(a) of title 10, United States Code, is amended to read as follows:

"(a) If the widow or widower is under age 62, 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. When the widow or widower reaches age 62, the monthly amount shall be reduced by an amount equal to 50 percent of the amount of any survivor benefit which the widow or widower receives under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(7)(1) of title 42 and calculated assuming that

would be entitled under subchapter II of chapter 7 of title 42 based solely upon service by the person concerned as described in section 410(7)(1) of title 42 and calculated assuming that the person concerned lived to age 65. 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.

(b) The monthly annuity payable under section 1450 (a)(3) 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.

(c) Whenever retired or retainer pay is increased under section 1401a of this title, each annuity that is payable under this section, or section 1448(d) of this title, on the day before the effective day of that increase shall be increased at the same time by the same total percent. The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1448 (d) or 1450(c) of this title, or subsection (a) of this section. (Added Pub. L. 92-425, § 1(3), Sept. 21, 1972, 86 Stat. 709).

the person concerned lived to age 65. The reduction prescribed by the second sentence of this subsection shall not be made if the only service by the person concerned as described in section 410(7)(1) of title 42 involved periods of service less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of title 26 of the social security tax which he had paid."

"(g) Section 1452 of title 10 United States Code is amended by—

(A) further amending subsection (a) by—

(i) striking out the first word and inserting the following in place thereof: "Except as provided in subsection (b), the"; and

(ii) adding the following new sentence at the end thereof: "The reduction in retired or retainer pay prescribed by the first sentence of this subsection shall not be applicable during any month in which there is no eligible spouse beneficiary";

(B) amending subsection (b) by inserting "or who has a spouse but has elected to provide an annuity for dependent children only," after "spouse,"; and

(C) further amending subsection (c) by adding the following sentence at the end thereof: "The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(3) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f)."

§ 1452. Reduction in retired or retainer pay.

(a) The retired or retainer pay of a person to whom section 1448 of this title applies who has a spouse, or who has a spouse and a dependent child, and who has not elected to provide an annuity to a person designated by him under section 1450(a)(3) of this title, or who had elected to provide such an annuity to such a person but has changed his election in favor of his spouse under section 1450(f) of this title, shall be reduced each month by an amount equal to 2½ percent of the first \$300 of the base amount plus 10 percent of the remainder of the base amount. As long as there is an eligible spouse and a dependent child, that amount shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(b) The retired or retainer pay of a person to whom section 1448 of this title applies who has a dependent child but does not have an eligible spouse, shall, as long as he has an eligible dependent child, be reduced by an amount prescribed under regulations of the Secretary of Defense.

(c) The retired or retainer pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(3) of this title shall be reduced by 10 percent plus 5 percent for each full 5 years the individual designated is younger than that person. However, the total reduction may not exceed 40 percent.

(d) If a person who has elected to participate in the Plan has been awarded retired or retainer pay and is not entitled to that pay for any period, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period, except when he is called or ordered to active duty for a period of more than 30 days.

(e) When a person who has elected to participate in the Plan waives his retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, he shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(i) of title 5, he has notified the Civil Service Commission that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of title 5.

(f) Except as provided in section 1450(e) of this title, a person is not entitled to any refunds of amounts deducted from retired or retainer pay under this section unless the amounts were deducted through administrative error. (Added Pub. L. 92-425, § 1(3), Sept. 21, 1972, 86 Stat. 710.)

PUBLIC LAW 92-425—SEPT. 21, 1972 [86 STAT.]

SEC. 4. (a) A person—

(1) who, on the effective date of this Act is, or within one calendar year after that date becomes, a widow of a person who was entitled to retired or retainer pay when he died;

SEC. 2. Section 4 of Public Law 92-425, September 21, 1972, 86 Stat. 712 is amended as follows:

(a) Subsection (a)(3) is amended by striking "\$1,400" and inserting "\$2,100" in place thereof.

(2) who is eligible for a pension under subchapter III of chapter 15 of title 38, United States Code, or section 9(b) of the Veterans' Pension Act of 1959 (73 Stat. 436); and

(3) whose annual income, as determined in establishing that eligibility, is less than \$1,400; shall be paid an annuity by the Secretary concerned unless she is eligible to receive an annuity under the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act. However, such a person who is the widow of a retired officer of the Public Health Service or the National Oceanic and Atmospheric Administration, and who would otherwise be eligible for an annuity under this section except that she does not qualify for the pension described in clause (2) of this subsection because the service of her deceased spouse is not considered active duty under section 101(21) of title 38, United States Code, is entitled to an annuity under this section.

(b) The annuity under subsection (a) of this section shall be in an amount which when added to the widow's income determined under subsection (a) (3) of this section, plus the amount of any annuity being received under sections 1431-1436 of title 10, United States Code, but exclusive of a pension described in subsection (a) (2) of this section, equals \$1,400 a year. In addition, the Secretary concerned shall pay to the widow, described in the last sentence of subsection (a) of this section, an amount equal to the pension she would otherwise have been eligible to

receive under subchapter III of chapter 15 of title 38, United States Code, if the service of her deceased spouse was considered active duty under section 101(21) of that title.

(b) The first sentence of subsection (b) is amended by striking "\$1,400" and inserting "\$2,100" in place thereof."

(c) Subsection (c) is added as follows:

"(c) Subsection 1450(i) and section 1453 as added by clause 3 of the first section of this Act, are applicable to persons covered by this section."

SEC. 3. Notwithstanding any other law, any person who is entitled to retired or retainer pay on the effective date of this Act and who did not elect to participate in the survivor benefit plan as prescribed by subchapter II of chapter 73 of title 10, United States Code, may, within 270 days after the effective date of this Act, elect to participate in such plan and continue his participation under subchapter I of that chapter, except that the total of the annuities elected may not exceed 100 percent of his retired or retainer pay.

SEC. 4. Except for subsections (a) and (f), section 1 is effective from September 21, 1972. Subsections (a) and (f) of section 1 and section 2 are effective October 1, 1976. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.

SEC. 5. Each annuity that is payable under subchapter I of chapter 73 of title 10, United States Code, on October 1, 1976, to a spouse or a child of a member who died on or before March 20, 1974, shall be increased effective October 1, 1976 by the total percent that retired or retainer pay has been increased under section 1401a of that title since September 21, 1972.

SUMMARY**PURPOSE**

The purpose of the bill is to provide cost-of-living increases for widows under the Retired Servicemen's Family Protection Plan and to make improvements in the Survivor Benefit Plan for retired military personnel.

FISCAL DATA

The Department of Defense estimates that the additional cost of the bill to the Department for fiscal year 1977 is approximately \$16.1 million. However, the Congressional Budget Office estimates that because of the increased participation, and therefore increased deductions from retired pay, which would result from the bill, the estimated fiscal impact in fiscal year 1977 would be a reduction in budgetary requirements of \$5.9 million.

DEPARTMENTAL POSITION

The Department of Defense supports the provision of H.R. 14773 as introduced but deferred taking a formal position on the committee amendments.

COMMITTEE POSITION

The Committee on Armed Services, on August 31, 1976, a quorum being present, approved H.R. 14773, as amended, by voice vote.

○

H. R. 14773

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To amend title 10, United States Code, to make certain changes in the Survivor Benefit Plan provided for under subchapter II of chapter 73 of title 10, United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 73 of title 10, United States Code, is amended as follows:

- (1) Clauses (3) (A) and (4) (A) of section 1447 are each amended by striking out "two years" and inserting in place thereof "one year".
 - (2) The second sentence of section 1448 (a) is amended by inserting "or elects to provide an annuity for a dependent child but not for his spouse" after "maximum level."
 - (3) Section 1450 (a) is amended by striking out "or" at the end of clause (2), renumbering clause (3) as clause (4), and inserting after clause (2) a new clause (3) as follows:
 - "(3) the dependent children in equal shares if the person to whom section 1448 of this title applies elected to provide an annuity for dependent children but not for the spouse; or".
 - (4) Sections 1450 (f), 1451 (b), 1452 (a), and 1452 (c) are each amended by striking out "(a) (3)" and inserting in place thereof "(a) (4)".
 - (5) Section 1452 of title 10, United States Code, is amended by—
 - (A) further amending subsection (a) by—
 - (i) striking out the first word and inserting the following in place thereof: "Except as provided in subsection (b), the"; and
 - (ii) adding the following new sentence at the end thereof: "The reduction in retired or retainer pay prescribed by the first sentence of this subsection shall not be applicable during any month in which there is no eligible spouse beneficiary";
 - (B) amending subsection (b) by inserting "or who has a spouse but has elected to provide an annuity for dependent children only," after "spouse,"; and
 - (C) further amending subsection (c) by adding the following sentence at the end thereof: "The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450 (a) (4) of this title or until the person receiving retired or retainer pay changes his election under section 1450 (f)."
- Sec. 2. Section 4 of Public Law 92-425, September 21, 1972 (86 Stat. 712), is amended as follows:
- (1) Subsection (a) (3) is amended by striking "\$1,400" and inserting "\$2,100" in place thereof.
 - (2) The first sentence of subsection (b) is amended by striking "\$1,400" and inserting "\$2,100" in place thereof.

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(3) Add at the end thereof a new subsection (c) as follows:
“(c) Subsection 1450(i) and section 1453 as added to title 10, United States Code, by clause 3 of the first section of this Act, are applicable to persons covered by this section.”.

SEC. 3. This Act shall be effective as of September 21, 1972. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*