

Public Law 96-402
96th Congress

An Act

To amend title 10, United States Code, to remove certain inequities in the Survivor Benefit Plan provided for under chapter 73 of such title, and for other purposes.

Oct. 9, 1980

[S. 91]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniformed Services Survivor Benefits Amendments of 1980".

Uniformed
Services
Survivor
Benefits
Amendments
of 1980.
10 USC 1447
note.

SEC. 2. Section 1447(2) of title 10, United States Code, relating to definitions, is amended—

(1) in subparagraph (C)—

(A) by inserting "but which is not less than \$300" after "under the Plan"; and

(B) by striking out "but not less than \$300;" and inserting in lieu thereof a period; and

(2) by striking out "as increased from time to time under section 1401a of this title."

SEC. 3. (a) Subsection (a) of section 1451 of title 10, United States Code, relating to the amount of annuities under the Survivor Benefit Plan, is amended to read as follows:

"(a)(1) The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—

Monthly
annuity.
10 USC 1450.

"(A) 55 percent of the base amount, as adjusted from time to time under section 1401a of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(A) of this title; or

10 USC 1401a.
10 USC 1448.

"(B) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the base amount, as adjusted from time to time under section 1401a of this title on or after the date the person becomes entitled to retired pay under chapter 67 of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

10 USC 1331.

"(2) In the case of a widow who has one dependent child, the monthly annuity shall be reduced by the lesser of (A) an amount equal to the amount of the mother's benefit, if any, to which the widow would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(l)(1) of such Act (42 U.S.C. 410(l)(1)) and calculated assuming that the person concerned lived to age 65, or (B) an amount equal to 40 percent of the amount of the monthly annuity as determined under paragraph (1).

"(3) 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 the lesser of (A) an amount equal to the amount of the survivor benefit, if any, to which the widow or widower would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(l)(1) of such Act (42 U.S.C. 410(l)(1)) and calculated assuming that the person concerned lives to age 65, or (B)

an amount equal to 40 percent of the amount of the monthly annuity as determined under paragraph (1). For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

"(4) In the computation of any reduction made under paragraph (2) or (3), there shall be excluded any period of service described in section 210(1)(1) of the Social Security Act (42 U.S.C. 410(1)(1)) which was performed after the effective date of the Uniformed Services Survivor Benefits Amendments of 1980 and which 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 the Internal Revenue Code of 1954 of the social security tax which he had paid."

(b) Subsection (c) of such section is amended—

(1) by striking out "section, or section 1448(d) of this title, on the day before the effective day of that increase" in the first sentence and inserting in lieu thereof "section or under section 1448(d) of this title"; and

(2) by striking out "title, or" in the second sentence and inserting in lieu thereof "title or under".

(c) Subsection (d) of such section is amended by striking out "(a)(2)" and inserting in lieu thereof "(a)(1)(B)".

SEC. 4. Section 1452 of title 10, United States Code, relating to reductions in retired and retainer pay, is amended by adding at the end thereof the following new subsections:

"(g)(1) Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), any person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Veterans' Administration as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan by submitting to the Secretary concerned a request to discontinue participation in the Plan. Any such person's participation in the Plan shall be discontinued effective on the first day of the first month following the month in which a request under this paragraph is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired or retainer pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date. Any request under this paragraph to discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

"(2) A person described in paragraph (1) may not discontinue participation in the Plan under such paragraph without the written consent of the beneficiary or beneficiaries of such person under the Plan.

"(3) The Secretary concerned shall furnish promptly to each person who files a request under paragraph (1) to discontinue participation in the Plan a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw a request made under paragraph (1) if it

Ante, p. 1705.

26 USC 6413.

10 USC 1448.

Plan participation, discontinuance request.

Request withdrawal.

is withdrawn within 30 days after having been submitted to the Secretary concerned.

“(4) Upon the death of any person described in paragraph (1) who has discontinued participation in the Plan in accordance with this subsection, 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.

Deductions,
refund.

Ante, p. 1706.

“(5) Any person described in paragraph (1) who has discontinued participation in the Plan may again elect to participate in the Plan if (A) at any time after having discontinued participation in the Plan the Veterans' Administration reduces such person's service-connected disability rating to less than total, and (B) such person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require. Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month after the month in which the Secretary concerned receives the application for resumption of participation in the Plan, and the Secretary concerned shall begin making reductions in such person's retired or retainer pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on such day.

Plan
participation,
resumption.

“(h) Whenever retired and retainer pay is increased under section 1401a of this title, the amount of the reduction to be made under subsection (a) or (b) in the retired or retainer pay of any person shall be increased at the same time and by the same percentage as such retired or retainer pay is increased under section 1401a of this title.”

Retired and
retainer pay,
increased,
reduction.

SEC. 5. (a)(1) The Secretary concerned shall pay an annuity to any individual who is the surviving spouse of a member of the uniformed services who—

Surviving
spouse, annuity
payment
provisions.
10 USC 1448
note.

(A) died before September 21, 1972;

(B) was serving on active duty in the uniformed services at the time of his death and had served on active duty for a period of not less than 20 years; and

(C) was at the time of his death entitled to retired or retainer pay or would have been entitled to that pay except that he had not applied for or been granted that pay.

(2) An annuity under paragraph (1) shall be paid under the provisions of subchapter II of chapter 73 of title 10, United States Code, in the same manner as if such member had died on or after September 21, 1972.

10 USC 1447.

(b)(1) The amount of retired or retainer pay to be used as the basis for the computation of an annuity under subsection (a) is the amount of the retired or retainer pay to which the member would have been entitled if the member had been entitled to that pay based upon his years of active service when he died, adjusted by the overall percentage increase in retired and retainer pay under section 1401a of title 10, United States Code (or any prior comparable provision of law), during the period beginning on the date of the member's death and ending on the day before the effective date of this section.

(2) In addition to any reduction required under the provisions of subchapter II of chapter 73 of title 10, United States Code, the annuity paid to any surviving spouse under this section shall be reduced by any amount such surviving spouse is entitled to receive as an annuity under subchapter I of such chapter.

Annuity
payment,
reduction.

10 USC 1431.

(c) If an individual entitled to an annuity under this section is also entitled to an annuity under subchapter II of chapter 73 of title 10, United States Code, based upon a subsequent marriage, the individual may not receive both annuities but must elect which to receive.

10 USC 1447.

Definitions.

(d) As used in this section:

(1) The term "uniformed services" means the Armed Forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration.

(2) The term "surviving spouse" has the meaning given the terms "widow" and "widower" in section 1447 of title 10, United States Code.

(3) The term "Secretary concerned" has the meaning given such term in section 101(8) of title 10, United States Code, and includes the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration, and the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.

SEC. 6. Section 4 of the Act entitled "An Act to amend chapter 73 of title 10, United States Code, to establish a Survivor Benefit Plan, and for other purposes", approved September 21, 1972 (10 U.S.C. 1448 note), is amended—

38 USC 521 note.

(1) by striking out "section 9(b) of the Veterans' Pension Act of 1959 (73 Stat. 436)" in subsection (a)(2) and inserting in lieu thereof "section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978";

(2) by striking out "in the limitation on annual income for purposes of eligibility for benefits under section 541(b) of title 38, United States Code" in the first sentence of subsection (c) and inserting in lieu thereof "under section 3112 of title 38, United States Code, in the maximum annual rate of pension under section 541(b) of such title"; and

38 USC 541.

(3) by striking out "limitation on annual income" in the second sentence of subsection (c) and inserting in lieu thereof "the maximum annual rate of pension".

Effective date. 10 USC 1447 note.

SEC. 7. The amendments made by sections 2, 3, and 4 of this Act and the provisions of section 5 of this Act shall be effective on the first day of the second calendar month following the month in which this Act is enacted and shall apply to annuities payable by virtue of such amendments and provisions for months beginning on or after such date. No benefits shall accrue to any person by virtue of the enactment of this Act for any period before the date of the enactment of this Act.

Approved October 9, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1315 (Comm. on Armed Services).
SENATE REPORT No. 96-748 (Comm. on Armed Services).
CONGRESSIONAL RECORD, Vol. 126 (1980):

May 28, considered and passed Senate.
Sept. 22, considered and passed House, amended.
Sept. 29, Senate concurred in House amendment.