

Appendix A
Title 10 Sections 1431-1455
Retired Serviceman's Family Protection Plan (RSFPP) (Sections 1431-1446)
Armed Forces Survivor Benefit Plan (Sections 1447-1455)

All provisions related to the Armed Forces Survivor Benefit Plan (SBP) are located in Title 10 U.S.C. That “prefix”, that is “10 U.S.C.” will not be hereafter used in this Appendix. The statutory basis for the RFSPP and SBP are found in 10 U.S.C. §§1431—1446 and 10 U.S.C. §§1447-1467, respectively. Some of the sections within that spread of statutory numbers have been repealed, but all provisions related to the creation, application, qualification of beneficiaries, payment to beneficiaries, funding of the two Plans, appeal of the denial of benefits, limitations on time to apply, etc. are all found within these section numbers. Each of these statutory provisions have been summarized by the author and are found in numerical order below for the convenience of the reader.

A place to start in any review and/or discussion of the SBP is to read and understand the substance of each provision of each of the applicable sections. This can be beneficial, not only as a reference tool, but also to better understand the significance of each section and how they all interrelate one to the other.

Retired Serviceman's Family Protection Plan (RSFPP)

Section 1431. Election of annuity: members of armed forces

All members of the armed forces fall within this provision except for members who are NOT on the list of Retired Reserve members maintained by the Secretary of their service branch under §12774(a); cadets at the several service academies and midshipmen (presumably whether at the Naval Academy or in the four year NROTC program).

A member electing to participate and provide a qualified beneficiary an annuity under §1434, that person must elect to receive a reduced amount of retired pay or retainer pay to which service member may become entitled as a result of service member's qualified service. Except for military operations and/or other exigent reasons specified in this section, if the service member chooses participate in the annuity program, the election to do so must be made before the completion of 19 years of creditable service or at least two years before the first day service member begins receiving retired pay. An election is **not** effective if the service member dies within thirty days of his entitlement to retired pay as a result of a qualifying disability for which he was assigned a 100% VA rating under Chapter 61; the disability was not “line of duty” as a direct result of an armed conflict; and his surviving spouse or children are entitled to dependency and indemnity compensation under Title 38 upon his death. The beneficiary election may be changed or revoked before the first day retired pay is granted. The election can also be changed “to reflect a change in the marital or dependency status of the member or his family that is caused by death, divorce, annulment, remarriage, or acquisition of a child, if such change or revocation of election is made ***within two years of such change in marital or dependency status.***” [Emphasis added.] If the service member's election is found to be void for any reason except fraud or willful intent of the service member, a corrected election can be made within 90 days of receipt of notification that the election is void and the corrected election will be effective as of the date of the voided election being replaced.

§1432. Election of annuity: former members of armed forces

A former member of an armed force on November 1, 1953 who is awarded retired after that date is entitled to make an election under §1431 at the time retired pay is awarded. This is merely a grandfather clause for reserve members who were no yet entitled to retired pay as of the effective date of the statute on August 8, 1953.

§1433. Mental incompetency of member

If a service member is entitled to make a RSFPP election and is determined to be mentally incompetent by medical doctors of a service branch or the VA or by a court and cannot make an election within the time prescribed, the Secretary of his branch can make the election for the service member upon the request of the service member's spouse, or if no spouse, of his children if they are eligible beneficiaries. If the "mentally incompetent service member" is later determined to be competent, the service member can change or revoke that election if made within 180 days after the competency determination, but the deductions for the premiums for the coverage will not be refunded.

§1434. Kinds of annuities that may be elected

The amount of the annuity elected cannot be more than 50% nor less than 12 ½% of his retired pay, but in no case less than \$25. The annuity may be made payable to "the surviving spouse, ending when the spouse dies or, if the spouse remarries before age 60, when the spouse remarries; the surviving eligible children in equal shares, ending when there is no surviving eligible child; or the surviving spouse, and, after the death of that spouse or the remarriage of that spouse before age 60, the surviving eligible children in equal share, ending when there is no surviving eligible child. The deduction for the premium from the service member's retired pay shall stop on the last day of the month when there is no eligible beneficiary. The service member may, if an application is made to the Secretary of the service member's service branch, revoke coverage for an eligible child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) if the child is at least eighteen, but under twenty-three years of age, and who is not enrolled in a course of study or training defined in §1435; otherwise, such a child shall be an eligible beneficiary. As an alternative, the service member may elect to provide, during the surviving spouse's eligibility, that a part of the annuity go to the service member's surviving children who are not children of that spouse. Finally, the annuitant(s) shall be entitled to cost of living increases in the same percentage as that to which the service member would have received if still alive.

§1435. Eligible beneficiaries

Eligible beneficiaries may be (1) the service member's spouse; (2) the service member's unremarried children who (a) are under 18 years of age; (b) are incapable of supporting themselves because of a mental defect or physical incapacity existing before their 18th birthday; (c) if they are or at least 18, but under 23, 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"; and (d) legitimate or adopted children of, or stepchildren in fact dependent for their support upon, the member; (e) and "living on the date when the member is retired or becomes entitled to retired pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, living on that date;" and born on or prior to November 1, 1953. A child is considered to be pursuing a full-time course of study or training if the interval between school years does not exceed 150 days and "the child has demonstrated to the satisfaction of the Secretary concerned that the child has a bonafide intention of commencing, resuming, or continuing to pursue a full-time course of study or training in a recognized educational institution immediately after that interval."

§1436. Computation of reduction in retired pay; withdrawal for severe financial hardship

The cost of the annuity (reduction in the service member's retired pay to pay for the annuity) shall be computed as of the date the service member becomes eligible for retired pay but without regard to any cost of living increases in the retired pay from changes in the Consumer Price Index. This section provides how the annual monthly premium cost is to be determined [although it has been a flat 6.5% of the retired pay for many years for active duty retirees and about 10% for Reservists who elect to have a covered beneficiary during their "gray area retiree period," that is from their transfer to the retired list (when they basically stop earning retirement points) until they become entitled to retired pay at age 60], but provides that a service member may make an application to the service Secretary to allow service member to change the participation level and/or withdraw from the Plan if the cost of participation creates a severe financial hardship for the service member.

§1436a. Coverage paid up at 30 years and age 70

As of October 1, 2008, a service member who has been paying monthly RSFPP premiums for 30 years (360 months) and is 70 years of age will not have to pay any more premiums and will be considered “paid up.” The premium deductions should cease the first of the month after both have been achieved.

§1437. Payment of Annuity

An annuitant’s payment shall commence on the first of the month that the service member dies and shall be payable monthly in equal installments on the first day, but not later than the 15th day of the following month. No payment is due the annuitant in the month the annuitant ceases to be entitled, i.e., surviving spouse remarries before age 55 and/or dies, or a child is no longer eligible, for instance. In the case of a child, the entitlement may come and go depending on the child’s eligibility, i.e., school enrollment. This section also covers situations where the service member has been determined to be missing and the retired pay has been suspended, and makes provision for payment to the annuitant in this situation and what the service Secretary is to do to recover annuity payments made if the service member is found.

§1438. Deposits for amounts not deducted

If a service member, after being retired and having started receiving retired pay, is no longer entitled to retired pay for any reason, the service member must, nevertheless, pay the RSFPP premium to the Treasury.

§1439. Refund of amounts deducted from retired pay

If a service member who has been transferred to the temporary disability retired list (TDRL) and has elected a RSFPP annuity has their name removed from the TDRL for any reason other than retirement to receive retired pay, the service member shall be entitled to a refund of the difference between the cost of term insurance to provide protection to the service member’s dependents and the amount by which his retired pay was reduced to provide for the annuity while on the TDRL.

§1440. Annuities not subject to legal process

RSFPP annuities are not assignable or subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 1437(c)(3)(B). [Thus, federal preemption from state and/or federal debt collectors.]

§1441. Annuities in addition to other payments

An annuitant receiving a RSFPP annuity can receive it, as well as any other pension or payment under any other provision of law and, as to the VA, is not to be considered as income to the annuitant.

§1442. Recovery of annuity erroneously paid

The service Secretary may deduct payments that were erroneously made to an annuitant by making a deduction from the annuitant’s annuity payment until the overpayment has been recovered. The Secretary may elect to not recover the overpayments if the Secretary determines that the annuitant to whom the payments were made was without any fault and recovery would be contrary to the purposes of the Act or against equity and good conscience.

§1443 was repealed.

§1444. Regulations; determinations

This section requires the President to prescribe uniform regulations to carry out the provisions of this subchapter.

§1444a. Regulations regarding payment of annuity to a representative payee

This section provides procedures for the payment of an annuity when a beneficiary annuitant has had a guardian or other fiduciary appointed, or if the annuitant is a minor, mentally incompetent, or otherwise legally disabled person

and a guardian or other fiduciary has not been appointed for them. Payment to the representative payee discharges the obligation of the government to the extent of the payments made.

§1445. Correction of administrative deficiencies

The Secretary concerned may correct any election, or any change or revocation of an election when he considers it necessary to correct an administrative error, which determination shall be final and conclusive on all officers of the government unless the decision was procured by fraud.

§ 1446. Restriction on participation

Notwithstanding section 1441 of this title, if a service member elected a SBP beneficiary and retired for physical disability before completing 19 years of creditable service for retirement dies, the beneficiaries are not entitled to the annuity until they give proof that they are not eligible for benefits under chapter 11 or 13 of title 38. If such proof is given, the annuity should begin on the first day of the month in which the death occurs, such that it is payable, like retired pay, at the end of that month. If the beneficiaries do not give the required proof and are not entitled to the annuity, they shall be refunded the amounts withheld from the service member's retired pay for the premium payments, but no interest shall accrue or be paid by the government on those premiums.

Armed Forces Survivor Benefit Plan (SBP)

§1447. Definitions

As indicated, this section defines all of the "terms" used in the subchapter on SBP. The ones the author has determined to be most relevant and/or important are numbered as in the statute and are:

- (2) Standard annuity is an annuity paid due to eligibility under §1448(a)(1)(A).
- (3) Reserve-component annuity is an annuity paid due to eligibility under §1448(a)(1)(B).
- (6) Base amount means the following:
 - (A) Full amount under standard annuity means the amount of monthly retired pay (determined without regard to any reduction under section 1409(b)(2) of this title) to which the person was entitled when eligible for that pay; or 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.
 - (B) Full amount under reserve-component annuity means the amount of monthly retired pay the service member would have been eligible to receive if the service member would have become eligible for reserve-component retired pay but for the fact that he died before becoming 60 years of age.
 - (C) Reduced amount means any amount less than a standard annuity or a full amount reserve-component annuity) but which is not less than \$300 and which is designated by the service member (with the concurrence of the service member's spouse, if required).
- (7)-(9) Widow or widower means the surviving spouse, as applicable, of a service member who, if not married to the service member at the time he became eligible for retired pay was married to him for at least one year immediately before his death; or is the parent of issue by that marriage. A surviving spouse means a widow or widower.
- (10) Former spouse means the surviving former spouse of a service member SBP participant..
- (11) Dependent child means a person who is unmarried; is under 18 years of age, or is 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 is

incapable of self support because of a mental or physical incapacity existing before the person's 18th birthday or incurred on or after that birthday, but before the person's 22nd birthday, while pursuing such a full-time course of study or training; and is the child of a SBP participant. Dependent child includes an adopted child, and a stepchild, foster child, or recognized natural child who lived with service member in a regular parent-child relationship.

In the case of a dependent child college student, it includes a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training and that child is considered to have become 22 years of age on the first day of July after that birthday. Such 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 the child shows to the satisfaction of the Secretary of Defense that the child 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.

A foster child is considered as a service member SBP participant's dependent child, if, at the time of service member's death, also resides with, and receives over one-half of their support from service member and is not cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while a "student" as defined, will not affect the "residence" of such a foster child.

(12) Court has the meaning defined §1408(a)(1), which is any court of competent jurisdiction of any State, the District of Columbia, commonwealth or trust territory; any court of the United States defined in 28 U.S.C. §451as having competent jurisdiction; any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor a court order of that country; and any administrative or judicial tribunal of a State competent to enter orders for support or maintenance.

(13) Court order "means a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or of a court ordered, ratified, or approved property settlement agreement incident to such previously issued decree)." Final decree "means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for the taking of such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals." Regular on its face, "when used in connection with a court order, means a court order that meets the conditions prescribed in section 1408(b)(2)."

§1448. Application of Plan

General Rules: This section lays out the general rules for participation in the Plan, specifying that service members entitled to retired pay or who would be entitled to retired pay if they were 60 years old are eligible, and who are eligible to be standard annuity participants (beneficiaries) and reserve-component participants. In the case of a reservist, the service member can elect to not participate when the service member has 20 qualifying good years and receives a Notice of Eligibility for Retired Pay, commonly known as a "NOE," but still has the right to elect to participate at age 60. The eligible service member, if married, must have the consent of their spouse to: (1) not participate in the Plan; (2) elect an annuity less than the maximum level; or (3) provide an annuity for a dependent child but not for the service member's spouse; and, (4) if the service member is a Reservist, their spouse must also consent to elect a commencement date for the annuity to be the service member's 60th birthday rather than the date of the service member's death if the service member were to die before age 60. The married service member is permitted to make one of the foregoing elections without spousal consent only if the service member establishes that the spouse's whereabouts cannot be determined, or if exceptional circumstances exist such that requiring the service member to obtain spousal consent would be inappropriate. In the event that a married service member elects to provide a standard annuity to a former spouse or a former spouse and dependent child, the service member's spouse must be notified and, in effect, given the opportunity to object. One would suppose that if the "election to designate a former spouse" were ordered by the Court, just the notice would suffice and the spouse's objection would be meaningless in the long run.

Election Irrevocable: When an election is made for a standard annuity, it is irrevocable unless the service member revokes the election before the service member becomes entitled to retired pay. In the case of a reservist, it is irrevocable if not revoked in the 90 days after receipt of the service member's NOE, or, if the election is made at age

60, before receipt of the first retired pay payment.

Participation by service member after retirement who marries or remarries: A service member who was single with no dependent child when eligible to participate in the Plan, upon marriage or acquiring a dependent child may elect to participate provided that the election is made and received within one year after the date of the eligibility event, i.e., marriage, for instance. The election, when made, is effective on the first day of the month following the election is irrevocable. However, if the service member was married while in the Plan but no longer has a beneficiary due to divorce, death, no eligible dependent child, etc., and remarries, the service member can elect to participate in the Plan and elect the new spouse as a beneficiary, but can also choose to not name the new spouse as a beneficiary, but the new spouse, as in the case of an original election, must be notified of this decision and apparently new spouse must consent to the “non-election.” If the election is made, it must be made within one year of the marriage/remarriage and the deductions from retired pay commence the month following the election and the election is irrevocable.

Insurable interest coverage: A single service member who does not have an eligible dependent child when eligible to participate in the Plan may choose to provide the annuity to “a natural person with an insurable interest in service member.” *If the insurable interest beneficiary is not a former spouse, the election is not irrevocable and may be terminated.* The Secretary concerned, upon receipt of such a discontinuation request, shall give the service member the opportunity to withdraw the discontinuation request and the service member has 30 days within which to withdraw the discontinuation notice. Once insurable interest participation is discontinued, the service member may not elect another insurable interest beneficiary unless the discontinuation was due to the death of the named beneficiary. In that case, the service member can elect a new insurable interest beneficiary within 180 days of the death of the prior beneficiary. If a new beneficiary is named, the service member must live for two years from the date of the election of a new insurable interest beneficiary or the election is void and the premiums will be refunded to the service member’s estate. If the service member has made an insurable interest election, retired after November 23, 2003 under chapter 61, dies within one year of the service member’s retirement, and the death is related to the disability for which the service member was retired, the insurable interest election is void and the premiums paid will be refunded to the service member’s estate.

Former spouse coverage: Generally, an eligible service member may elect to provide an annuity to a former spouse. However, if the service member has a spouse or a dependent child, the former spouse election prevents payment of an annuity to the spouse or child unless the former spouse election is former spouse and child. If there is more than one former spouse, the designated former spouse must be specifically identified.

Former spouse coverage by persons already participating in Plan. --

If the service member has elected spouse or spouse and child coverage under the Plan and gets a divorce, he can then elect to cover/insure the “new” former spouse or former spouse and child under the Plan. Any such election, however, terminates any previous coverage under the Plan, i.e., the prior “spouse” or “spouse and child” coverage. **The election must be in writing and signed by the service member and received by the DFAS within one year of the divorce, dissolution or annulment.** The service member cannot voluntarily, and presumably involuntarily, make such an election of a former spouse beneficiary unless their marriage lasted one year or the former spouse is the parent of a child of that marriage. A former spouse beneficiary election cannot be revoked except in accordance with the provisions of §1450(f) discussed *infra*. Additionally, if the service member has remarried within this one year period and before making the former spouse election, the new spouse must be notified of the election. The effective date of the former spouse election is the first of the month following the receipt by the DFAS of the application or, if the service member is required to make the former spouse election by court order (i.e. pursuant to §1450(f)(3)(B)) or filing the date of which is after October 16, 1998, then the effective date is the first day of the first month after the date of that court order or filing. In electing former spouse coverage, the service member may elect former spouse and child coverage if the child resulted from the person's marriage to that former spouse. The service member, at the time of the former spouse coverage election, is required to advise the DFAS that the election is being made pursuant to a court order or whether it is pursuant to a voluntary written agreement incident to a divorce.

Persons on TDRL. If a service member is on the TDRL, his eligibility to participate in the Plan ends when their name is removed from that list and the service member is no longer entitled to disability retired pay; that is, in this

situation, the service member will have been returned to active duty and return to receiving active duty pay.

Annuity to survivors of members who die on active duty:

The surviving spouse of a service member who dies while on active duty will be entitled to be paid a surviving spouse annuity by the DFAS if the service member, at the time of death, was eligible to receive retired pay (i.e., had 20 creditable years of service for retired pay purposes) but had not applied for or been granted retired pay because the service member was still serving on active duty or was a commissioned officer who had completed 20 good years, but was prior enlisted and did not have 10 years of active commissioned service at the time of death, or otherwise died in line of duty while on active duty. If there is no eligible surviving spouse, the annuity will be paid to the service member's dependent children under §1450(a)(2). If the service member died after October 7, 2001, and there is a surviving spouse, and the DFAS, in consultation with the surviving spouse, determines that the annuity should be paid to the dependent children instead of the surviving spouse, then the annuity will be paid to the dependent children rather than to the surviving spouse.

Mandatory former spouse annuity: If the service member is required under a court order, deemed election or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has otherwise made an election to provide an annuity to a former spouse, the DFAS cannot pay the annuity to a surviving spouse or dependent child but **shall** pay the annuity to the former spouse pursuant to the court order. An annuity under this provision, that is, payment to a surviving spouse upon the death of the service member while on active duty, etc., takes priority over any other annuity elected by the service member on account of the same service of the service member. The amount of the annuity to be paid is to be computed under the provisions of §1451(c).

Deemed election of annuity for adult dependent with an insurable interest: If an active duty service member qualified to retire as noted above dies after November 23, 2003, the DFAS, if no other annuity is payable, may "deem an election" and pay an annuity to a person with an insurable interest in service member, that is, **only to** one who is the service member's qualified dependent, such as an adult dependent like a dependent parent, sibling, etc. An annuity payable under this provision shall be computed under §1451(b) as if the service member had retired for total disability on the date of death with reductions as required pursuant to §1452(c), as applicable to the ages of the service member and the natural person with an insurable interest (i.e., dependent).

Reserve-Component Annuity General Rules:

Commencement of reserve-component annuity: The service member shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on the day after the date of his death; or the 60th anniversary of his birth.

Coverage of survivors of reserve component service members dying when or before eligible to elect reserve-component annuity. The DFAS shall pay an annuity to the surviving spouse of a reserve component service member who is eligible to elect a reserve-component annuity and dies before being notified under §12731(d) that he has completed the years of service required for eligibility for reserve-component retired pay (that is, receives his NOE); or dies during the 90-day period beginning on the date the NOE is received by the reserve component service member if an election to participate in the Plan has not been made; or if the reserve component service member not otherwise addressed in one of the above descriptions and dies from an injury or illness incurred or aggravated in the line of duty during inactive-duty training. If there is no surviving spouse or if the person's surviving spouse subsequently dies, the annuity will be paid to any qualifying dependent child. Otherwise, the rules applicable to a former spouse election noted above apply to the reserve component service member as well. There is not a provision for a deemed election of an insurable interest dependent, but, if the reserve component service member died while on active duty under the specified rules, then the insurable interest dependent would probably qualify for the deemed election.

Election to increase coverage upon remarriage. A person who is a participant in the Plan and is providing coverage for a spouse or a spouse and child, but at less than the maximum level; and who remarries, may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person. Such an election shall be contingent on the service member paying the

government the amount, plus interest, of the difference in what would have been paid for the full coverage if initially elected and what was actually withheld and paid for the coverage actually elected.

§1449. Mental incompetency of member

If an service member is eligible to be a participant and determined to be mentally incompetent by medical doctors of a service branch or the VA or by a court, an annuity and annuitant election may be made on behalf of that person by the DFAS, but the service member may revoke that election if, later being determined to be mentally competent, the revocation occurs within 180 days of that determination. However, if revoked, the premium payments may not be refunded.

§1450. Payment of annuity: beneficiaries

(a) On the first day after the death of a Plan participant, a monthly annuity shall be paid to the designated beneficiaries in the following order:

(1) Surviving spouse or former spouse. -- The eligible surviving spouse or former spouse.

(2) Surviving children. -- The surviving dependent children in equal shares, if the eligible surviving spouse or the eligible former spouse is dead, dies, or otherwise becomes an ineligible beneficiary.

(3) Dependent children. -- The service member's dependent children in equal shares if the service member, with the spouse's concurrence, if applicable, elected to provide an annuity for dependent children but not for the spouse or former spouse.

(4) Natural person designated under "insurable interest" coverage. -- The natural person designated as one with an insurable interest, unless the election to provide such an annuity has been changed.

(b) Termination of annuity for death, remarriage before age 55. -- An annuity payable to a beneficiary terminates effective as of the first day of the month in which eligibility is lost. An annuity for a surviving spouse or former spouse shall be paid unless and/or until the surviving spouse or former spouse remarries before reaching age 55. If, however, the surviving spouse or former spouse remarries before reaching age 55 and that marriage is terminated by death, annulment, or divorce, payment of the annuity may be resumed on the first day of the month in which the marriage is terminated. However, a surviving spouse or former spouse cannot receive two such annuities. Thus, if the surviving spouse or former spouse "remarries" another service member who designates them as a beneficiary of that service member's SBP, the surviving spouse or former spouse cannot receive both annuities and must elect which annuity to receive in that circumstance.

(c) & (e) Offset for dependency and indemnity compensation (DIC). -- If the surviving spouse or former spouse beneficiary is also entitled to DIC under 38 U.S.C. §1311(a), the beneficiary can only be paid the amount the SBP payment exceeds the DIC payment and the offset is effective the month that DIC payments commence. The government shall recoup any annuity payments overpaid under this section. If the amount of the DIC exceeds the SBP annuity payment, the annuitant shall be refunded all of the premiums paid by the service member. There shall be a partial refund of premiums to account for the reduced SBP annuity due to DIC.

(d) Limitation when civil service retirement coverage elected. -- If, upon the death of a service member participant, the service member was also a Civil Service employee and has in effect a waiver of their retired pay for the purposes of subchapter III of chapter 83 of title 5, **a SBP annuity will not be paid unless**, the service member-Civil Service employee had notified the Office of Personnel Management (OPM) pursuant to 5 U.S.C. §8339(j) that any spouse surviving him was not to receive a survivorship annuity under 5 U.S.C. § 8341(b).

(f) Change in election of insurable interest or former spouse beneficiary. -- The service member who elected an insurable interest or former spouse beneficiary may, under certain criteria, change that election to provide for an annuity to their spouse or dependent child, provided the former spouse or other insurable interest person is notified of the change. The former spouse is an insurable interest person subject to having their beneficiary status terminated unless they have been designated or deemed designated by a court order.

If an election is required by a court order or in which an agreement to make the election that has been incorporated in or ratified or approved by a court order, to register the beneficiary designation, either the service member or the former spouse must furnish the DFAS a certified copy of the applicable court order or the agreement to make such election, so as to permit the person to change the election; and certify that the court order or agreement is valid and in effect, that is, a final unappealed or final appeal judgment in the case of a court order.

Required former spouse election to be deemed to have been made. -- If a service member participant is required to provide an annuity to a former spouse and the service member fails or refuses to make such an election, the service member shall be deemed to have made such an election if the former spouse sends the DFAS a written request, now DD Form 2656-10, requesting that an election be deemed to have been made, together with a copy of the applicable court order that reflects the election and/or incorporates, ratifies or approves the written agreement of the parties, together with a statement from the court clerk that the agreement was filed in accordance with state law. This statement of the court clerk can be obviated by obtaining and sending a certified or an authenticated copy of the applicable court order. This is the customary way to get the court clerk's statement. A service member shall be considered as being required to elect to provide an annuity to a former spouse if the service member enters into a written agreement to make such an election as part of a divorce proceeding and the agreement has been incorporated in or ratified or approved by a court order or has been filed with the court of appropriate jurisdiction in accordance with applicable State law; or the person is required by a court order to make such an election. **The notice to the DFAS, that is, the registration of the former spouse as a former spouse beneficiary, has to have been received by the DFAS within one year of the date of the court order or filed agreement, as applicable. It is within the discretion of the court to order a service member to elect to provide an annuity to a former spouse** (or to both a former spouse and child).

(g) Limitation on changing or revoking elections. -- Generally, an election to name a beneficiary may not be changed or revoked except as provided in §1449(b) or pursuant to a court order to change a spouse to a former spouse, for instance.

(h) Treatment of annuities under other laws. -- Except as provided in §1451, a SBP annuity is in addition to any other payment the beneficiary is entitled to receive and shall not be considered as income for VA purposes.

(i) Annuities are exempt from legal process. -- A SBP annuity is not assignable or subject to execution, levy, attachment, garnishment, or other legal process, except in the event of overpayment of annuity payments addressed by other provisions of the SBP subchapter.

(j) Effective date of reserve-component annuities. -- A reserve-component annuity shall be effective in accordance with the designation made under §1448(e). An annuity payable under §1448(f) shall be effective on the day after the date of the death of the service member.

(k) Adjustment of spouse or former spouse annuity upon loss of dependency and indemnity compensation. -- If a surviving spouse or former spouse whose annuity was adjusted due to the receipt of DIC thereafter loses entitlement to DIC because of the remarriage of the surviving spouse, or former spouse, and, if at the time of such remarriage the surviving spouse or former spouse is 55 years of age or more, the annuity paid shall be adjusted readjusted, effective on the effective date of such loss of DIC due to their remarriage, to the amount of the annuity which would be in effect with respect to the surviving spouse or former spouse if the adjustment had never been made. In this circumstance, the annuitant whose annuity is readjusted for the loss of the DIC payments shall repay any amount that was earlier refunded by reason of the adjustment. The repayment will include interest unless the repayment is in a lump sum.

(l) Authority to presume death of missing participant. -- Upon application of the beneficiary of a participant in the Plan who is missing, the DFAS may determine for purposes of this subchapter that the participant is presumed dead. In this event, such a participant is considered to be missing if the retired pay of the participant has been suspended on the basis that the participant is missing; or, in the case of a participant who would be eligible for reserve-component retired pay but for the fact that the participant is under 60 years of age, their retired pay, if entitled to retired pay, would be suspended on the basis that the participant is missing. To make a finding of presumed dead, the DFAS must find that the service member has been missing for at least 30 days; and the

circumstances under which the participant is missing would lead a reasonably prudent person to conclude that the participant is dead. In this event, the annuity shall be paid as if the participant died on the date as of which the retired pay of the participant was suspended. If, however, after a determination that the service member is presumed to be dead, the DFAS determines that the participant is alive any SBP annuity being paid shall be terminated; and the total amount of any SBP annuity payments made due to the determination that service member was dead shall constitute a debt to the United States and shall be repaid from any retired pay otherwise payable to the participant; or, if the participant is entitled to compensation under 38 U.S.C. chapter 11, from that compensation; or, if the participant is entitled to any other payment from the United States, from that payment. If the participant dies before the full recovery of the amount of the annuity payments made, the remaining amount of such annuity payments may be collected from the participant's beneficiary under the Plan if that beneficiary was the recipient of the annuity payments made by reason of service member's election.

(m) Special survivor indemnity allowance. -- The DFAS is required to pay a monthly special survivor indemnity allowance to the surviving spouse or former spouse if the surviving spouse or former spouse is entitled to DIC under 38 U.S.C. §1311(a); and, but for the offset required by the DIC offset provision of §1450(c), the beneficiary is entitled to a SBP annuity; and their eligibility is affected by a survivorship annuity being paid by OPM as referenced in §1450(d). Although the amount of the special survivor indemnity allowance payable to an eligible survivor under this provision for any month may not exceed the amount of the annuity for that month that is subject to offset under the DIC provision, the amount of the monthly allowance shall be \$50.00 in fiscal 2009, increasing each fiscal year by \$10.00 per year and then, for fiscal years 2014, 2015 and 2016 through February 28, 2016, the monthly payment shall be \$100.00; the payments shall terminate effective March 1, 2016.

§1451. Amount of annuity

(a) Spouse, former spouse, or child.--

(1) Standard annuity.— Since April 1, 2008, if the beneficiary is under 62 years of age or is a dependent child when entitled to the annuity, the monthly annuity is **55% of the base amount** elected by the participant, generally, the amount equal to the gross retired pay, that is “full coverage.” Previously, if the beneficiary was eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i) wherein a social security offset, not to exceed 40%, was applied, the annuity was to be computed under that subsection rather than under clause (i).

(2) Reserve-component annuity. -- Since April 1, 2008, if the beneficiary is under 62 years of age or is a dependent child when entitled to the annuity, the monthly annuity shall be the amount equal to a percentage that is **less than 55%** of the base amount and is determined under subsection (f), which takes into account actuarial adjustments depending on whether the reserve component service member elected for the coverage to commence on his death before age 60 or at age 60. Previously, if the beneficiary was eligible to have the annuity computed under subsection (e) and if computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i) wherein a social security offset, not to exceed 40%, was applied, the annuity was to be computed under that subsection rather than under clause (i).

(b) Insurable interest beneficiary.--

(1) Standard annuity.--The monthly annuity payable shall be the amount equal to 55% of the retired pay of the participant after the reduction in that pay as provided by §1452(c), that is, 10% plus 5% for each full five years the beneficiary is younger than the participant, not to exceed a 40% reduction.

(2) Reserve-component annuity.-- The monthly annuity shall be the amount equal to a percentage of the retired pay of the participant after the reduction in that pay as provided by §1452(c), that is, 10% plus 5% for each full five years the beneficiary is younger than the participant, not to exceed a 40% reduction, that is less than 55% and is determined under subsection (f).

(3) Reserve-component annuity when participant dies before age 60.-- A person who has elected to provide an annuity, is otherwise entitled to receive retired pay at age 60, but dies before becoming 60 years of age shall be considered to have been entitled to retired pay at the time of death. The retired pay of such person for this

purpose shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity provided by such person is to become effective in accordance with the designation of such person under §1448(e). That is, if the beneficiary is entitled to be paid upon the death of the service member, the annuity would be based upon the basic pay rate in effect on the date of service member's death; otherwise, the annuity would be determined using the base pay tables in effect at the time the service member would have been 60.

(c) Annuities for survivors of certain persons dying during a period of special eligibility for SBP. -- For annuities payable under §1448(d) or §1448(f), the amount of the annuity shall be determined as follows:

(A) Beneficiary under 62 years of age.--If the person receiving the annuity is under 62 years of age or is a dependent child when the member or former member dies, the monthly annuity shall be the amount equal to 55% of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay when he died determined as follows:

(i) In the case of an annuity provided under §1448(d) for members who die on active duty in the line of duty (other than in a case covered by clause (ii)), such retired pay shall be computed as if the member had been retired under 10 U.S.C. §1201 on the date of the member's death with a total disability rating.

(ii) In the case of an annuity provided under §1448(d)(1)(A) by reason of the death of a member not in line of duty, such retired pay shall be computed based upon the member's years of active service when he died.

(iii) In the case of an annuity provided under §1448(f) ("gray area" reserve-component members), the retired pay shall be based upon the member or former member's years of active service when he died computed under 10 U.S.C. §12733 (provision for determining a reservist's retirement based upon points earned).

(B) Beneficiary 62 years of age or older.-- If the person receiving the annuity (other than a dependent child) is 62 years of age or older when the participant dies, the monthly annuity shall be the amount equal to 55% of the retired pay to which the member or former member would have been entitled as determined under subparagraph (A). The provision in the balance of this section related to a social security offset calculation is, since April 1, 2008, obsolete.

If the annuitant receives DIC payments, there shall be a corresponding offset as discussed above.

If the service member became a member of a uniformed service before September 8, 1980, the retired pay to which the member would have been entitled when he died shall be determined based upon the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death, unless the member would have been entitled to be retired in a higher grade. If the annuitant is not entitled to receive the annuity until the member would have been 60 in such case, the annuity will be determined by using the base pay tables in effect at the time the annuity is payable rather than those in effect at the time of the member's death.

(d) Reduction of annuities at age 62.-- As of April 1, 2008, this provision is no longer applicable.

(e) Savings provision for certain beneficiaries.-- A beneficiary receiving an annuity under the Plan on October 1, 1985, as the surviving spouse or former spouse of the person providing the annuity; and a spouse or former spouse beneficiary of a service member who on October 1, 1985 was a participant in the Plan, was entitled to retired pay or was qualified for that pay except that no application therefore had been submitted or had been granted; or would have been eligible for reserve-component retired pay but for the fact that the service member was under 60 years of age. If entitled to a standard annuity, then annuity would be equal to 55% of the base amount. If entitled to a reserve-component annuity, then the percentage of the base amount that is less than 55% and adjusted as required by subsection (f), that is for whether the annuity is payable immediately on death of the participant before age 60 or at age 60. If the retirement eligible service member dies on active duty (§1448(d)) or the retirement eligible reserve component service member dies before making an election (§1448(f)), the annuity shall be the amount equal to 55% of the retired pay of the deceased participant.

Social security offset: As of April 1, 2008 the social security offset is now obsolete.

(f) Determination of percentages applicable to reserve-component annuities. -- The percentage to be applied in determining the amount of a reserve-component annuity shall be determined under regulations prescribed by the Secretary of Defense, which regulations shall take into consideration the following:

- (1) The age of the person electing to provide the annuity at the time of such election.
- (2) The difference in age between such person and the beneficiary of the annuity.
- (3) Whether the participant provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth.
- (4) Appropriate group annuity tables.
- (5) Such other factors as the Secretary considers relevant.

(g) Adjustments to annuities. -- Whenever retired pay is increased under 10 U.S.C. §1401a (i.e., cost-of-living adjustments) or any other provision of law, each SBP annuity shall be increased at the same time by the same percent as the percent by which the retired pay of the participant providing the annuity would have been increased if the person were alive and otherwise entitled to such retired pay. The amount of the increase shall be based on the monthly annuity payable before any reduction under §1450(c) [DIC offset]. Further, as with retired pay, **the monthly amount of an annuity, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.**

(h) Adjustments to base amount.-- Whenever retired pay is increased under 10 U.S.C. §1401a or any other provision of law, the base amount applicable to each participant in the Plan shall be increased at the same time and the increase shall be by the same percent as the percent by which the retired pay of the participant is increased. **Service member's who elected to participate in REDUX:** When the retired pay of a SBP participant who entered the service on or after August 1, 1986 [i.e., is a REDUX participant] is recomputed under 10 U.S.C. §1410 upon the participant becoming 62 years of age, the base amount applicable to that person shall be recomputed effective on the effective date of the recomputation of the retired pay under 10 U.S.C. §1410 so as to be the amount equal to the amount of the base amount that would be in effect on that date if increases in such base amount due to COLAs had been computed as provided in 10 U.S.C. §1401a(b)(2) rather than under 10 U.S.C. §1401a(b)(3). Computation of a member's retired pay for in determining the participant's base amount shall be made without regard to any reduction under 10 U.S.C. §1409(b)(2).

(i) Recomputation of annuity for certain beneficiaries.--In the case of a SBP annuity which is computed on the basis of the retired pay of a person who would have been entitled to have that retired pay recomputed under 10 U.S.C. §1410 upon attaining 62 years of age, but who dies before attaining that age, the annuity shall be recomputed, effective on the first day of the first month beginning after the date on which the participant would have attained 62 years of age, so as to be the amount equal to the amount of the annuity that would be in effect on that date if COLA increases in the base amount applicable to that annuity to the time of the death of the SBP participant, and COLA increases in the annuity had been computed as provided in 10 U.S.C. §1401a(b)(2) rather than under 10 U.S.C. §1401a(b)(3).

§1452. Reduction in retired pay

(a) Spouse and former spouse annuities.--

(1) Required reduction in retired pay.-- Except as provided in subsection (b), which is related to reserve component members, the retired pay of a participant in the Plan who is providing spouse/former spouse coverage (as described in paragraph (5)) shall be reduced as follows:

(A) Standard annuity.--

(i) Disability and nonregular service retirees.—For persons entitled to retired pay under chapter 61 (VA disability compensation provisions) or chapter 1223 (reserve component member provisions), the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(ii) Members as of enactment of flat-rate reduction.—For members who became a member of a uniformed service before March 1, 1990, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(iii) New entrants after enactment of flat-rate reduction.—For members who joined or join a uniformed service on or after March 1, 1990, and who are entitled to retired pay under a provision of law other than chapter 61 or chapter 1223, the premium/reduction shall be equal to 6.5% of the base amount selected. This provision on cost will include most active duty Plan participants.

(iv) Alternative reduction amounts.—For purposes of clauses (i) and (ii), the alternative reduction amounts are the following:

(I) Flat-rate reduction.—An amount equal to 6.5% of the base amount.

(II) Amount under pre-flat-rate reduction.—An amount equal to 2.5% of the first \$337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10% of the remainder of the base amount.

(B) Reserve-component annuity.—For a reserve-component annuity, the reduction shall be in whichever of the following amounts is more favorable to that person:

(i) Flat-rate reduction.—An amount equal to 6.5% of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(ii) Amount under pre-flat-rate reduction.—An amount equal to 2.5% of the first \$337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10% of the remainder of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(2) Additional reduction for child coverage.—If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1) shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(3) No reduction when no beneficiary.

(4) Periodic adjustments.—

(A) Adjustments for increases in rates of basic pay.—Whenever there is an increase in the rates of basic pay of members of the uniformed services on or after October 1, 1985, the amounts under paragraph (1) with respect to which the 2.5% is applied shall be increased by the overall percentage of such increase in the rates of basic pay. The increase under the preceding sentence shall apply only with respect to persons whose retired pay is computed based on the rates of basic pay in effect on or after the date of such increase in rates of basic pay.

(B) Adjustments for retired pay COLAS.—In addition to the increase under subparagraph (A), the amounts under paragraph (1) with respect to which the 2.5% is applied shall be further increased at the same time and by the same percentage as an increase in retired pay under section 1401a effective on or after October 1, 1985. The increase shall apply only with respect to a person who initially participates in the Plan on a date which is after both the effective date of such increase under section 1401a and the effective date of the rates of basic pay upon which that person's retired pay is computed.

(5) Spouse coverage described.—For the purposes of paragraph (1), a participant in the Plan who is providing spouse coverage is a participant who--

(A) has a spouse or former spouse, or a spouse or former spouse and a dependent child; and

(B) has not elected to provide an annuity to an insurable interest designee, or, having made such an insurable interest election, has changed his election in favor of his spouse under section 1450(f).

(b) Child-only annuities.--

(1) Required reduction in retired pay shall be in an amount prescribed under regulations by the Secretary of Defense.

(2) No reduction when no child.--There shall be no reduction in retired pay under paragraph (1) for any month during which the participant has no eligible dependent child.

(3) Special rule for certain RCSBP participants who provided child-only coverage during a period before the participant becomes entitled to receive retired pay, the retired pay of the participant shall be reduced by an amount prescribed under regulations by the Secretary of Defense to reflect the coverage provided under the Plan during the period before the participant became entitled to receive retired pay, which is in addition to any reduction under paragraph (1) and is made without regard to whether there is an eligible dependent child during a month for which the reduction is made.

(4) Child-only coverage defined: A participant who has a dependent child and who does not have an eligible spouse or former spouse; or has a spouse or former spouse but has elected to provide an annuity for dependent children only.

(c) Reduction for insurable interest coverage:

(A) Standard annuity.-- The reduction shall be 10% plus 5% for each full five years the individual designated is younger than that person.

(B) Reserve component annuity.-- The reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

(2) Limitation on total reduction.--The total reduction for an insurable interest beneficiary may not exceed 40%.

(3) Duration of reduction shall continue during the lifetime of the insurable interest beneficiary or until the person receiving retired pay changes his beneficiary designation to someone other than the designated insurable interest beneficiary or cancels the designation.

(4) Rule for computation.--Computation of a member's retired pay for purposes of this subsection shall be made without regard to any reduction under section 1409(b)(2).

(5) Rule for designation of new insurable interest beneficiary following death of original beneficiary.--The Secretary of Defense shall prescribe the premiums a participant making an insurable interest election shall be required to pay for participating in the Plan pursuant to that election. The total amount of the premiums to be paid by a participant shall be equal to the sum of the following:

(A) The total additional amount by which the retired pay of the participant would have been reduced before the effective date of the election if the original beneficiary (i) had not died and had been covered under the Plan through the date of the election, and (ii) had been the same number of years younger than the participant (if any) as the new beneficiary designated under the election.

(B) Interest on the amounts by which the retired pay of the participant would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable.

(C) Any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(d) Deposits to cover periods when retired pay not paid.--

(1) Required deposits.--If a person who has elected to participate in the Plan has been awarded retired pay and is not entitled to that pay for any period (i.e., 100% VA/CRSC recipients), that person must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period.

(2) Deposits not required when participant on active duty.--Paragraph (1) does not apply to a member for any period when the member is on active duty under a call or order to active duty for a period of more than 30 days.

(e) Deposits not required for certain participants in CSRS.--When a person who has elected to participate in the Plan waives that person's retired pay for the purposes of subchapter III of chapter 83 of title 5, that person 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(j) of title 5, that person has notified the Office of Personnel Management that he does not desire a spouse surviving him to receive an annuity under section 8341(b) of title 5.

(f) Refunds of deductions not allowed unless authorized by section 1450(e) or in case of a deduction made through administrative error.

(g) Discontinuation of participation by participants whose surviving spouses will be entitled to DIC.-- (1) A member participating in the Plan who is suffering from a service-connected disability rated by the VA 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 DFAS a request to discontinue participation in the Plan. The effective date of the discontinuance shall be the first day of the first month following the month in which the discontinuance request is received by the DFAS and the payments previously being deducted shall cease or, if being made directly by the participant, he can stop making the payments. Any such discontinuation request shall be in such form and shall contain such information as the DFAS may require by regulation and (2) can only occur if the requestor obtains the written consent of the requestor's beneficiary or beneficiaries. (3) Upon receipt of the discontinuation request, the DFAS shall promptly furnish to the requestor a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation. The requestor may withdraw his discontinuation request if it is withdrawn within 30 days after its receipt by the DFAS. (4) If the person who has submitted his declination request dies before the DFAS has acted upon his request, any SBP premium deducted from his retired pay shall be refunded to the person's surviving spouse. (5) A person under this subsection who discontinued participation in the Plan may elect to participate again in the Plan if, after having discontinued participation, the VA reduces that person's service-connected disability rating to a rating of less than total; and that person applies to the DFAS, within such period of time after the reduction in such person's service-connected disability rating has been made as the DFAS may prescribe, to again participate in the Plan and includes in such application such information as the DFAS may require. Participation shall be resumed beginning on the first day of the month after the month in which the DFAS receives the application for resumption of participation in the Plan. Thereafter, the DFAS will begin making reductions in that person's retired pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on the effective date of resumption of participation.

(h) Increases in reduction with increases in retired pay. — (A) (1) The general rule is that whenever retired pay is increased, the SBP premium will increase at the same time and by the same percentage the retired pay is increased. (2) On the other hand, if the effective date of a retired pay increase is delayed by law for any reason, nevertheless, the SBP premium increases become effective the date the COLA was supposed to be effective even if the retired pay increase is not effective until a later date. (B) If there is such a delay in the payment of a retired pay COLA, that delay will not delay the effective date of the computation of the base amount for annuity payment purposes any more than it delayed the payment of the increased SBP premium amount.

(i) Whenever the REDUX retiree becomes 62 years of age, the amount of the SBP premium shall be recomputed effective same date that his retired pay is recomputed.

(j) Effective October 1, 2008, SBP participants will no longer have SBP premiums deducted from their retired pay

for any month after the 360th month in which he has paid a full month's SBP premium AND the month during which the participant attains 70 years of age.

§1453. Recovery of amounts erroneously paid

The DFAS may authorize the recovery of any amount erroneously paid to a SBP annuitant by deduction from later payments to that annuitant, as well as by using any other method of recovery provided by law. **The DFAS has discretion to forgo** recovery if it determines that there has been no fault by the annuitant receiving the erroneous payments, and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.

§1454. Correction of administrative errors

The DFAS may, under regulations prescribed under §1455, correct or revoke any election under this subchapter when the DFAS considers it necessary to correct an administrative error. Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.

§1455. Regulations

In general, the President shall prescribe regulations uniform for all the uniformed services, to carry out this subchapter. These regulations shall provide that before the date on which a member becomes entitled to retired pay if the member is married, the member and the member's spouse shall be informed of the elections available under §1448(a) and the effects of such elections; and, if the notification referred to in §1448(a)(3)(E) is required, any former spouse of the member shall be informed of the elections available and the effects of such elections. The regulations shall provide procedures for the payment of an annuity to a beneficiary for whom a guardian or other fiduciary has been appointed; and **to** a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed. These regulations shall also provide authority for the payee of an annuity acting in a fiduciary capacity (representative payee) to be paid out of the annuity a fee, not to exceed 4% of the annuity and that the representative payee be required to provide a surety bond sufficient to protect the annuitant's interest and may pay for the bond out of the annuity. The representative payee may be required to maintain and, upon request, provide the DFAS an accounting of expenditures and investments of amounts paid to the representative payee benefit of the annuitant. The regulations should also provide for procedures for determining the incompetency of an annuitant and for selecting a payee to represent the annuitant, including provisions for notifying the annuitant of the actions being taken to make such a determination and to select a representative payee, an opportunity for the annuitant to review the evidence being considered, and an opportunity for the annuitant to submit additional evidence before the determination is made; and standards for determining incompetency, including standards for determining the sufficiency of medical evidence and other evidence. Payments to a representative payee by the DFAS in accordance with the prescribed regulations discharges the obligation of the government for the payment of the annuity.