

CHAPTER 44

SURVIVOR BENEFIT PLAN - BENEFICIARIES4401 **ELIGIBLE BENEFICIARIES**

The eligible beneficiaries under the Survivor Benefit Plan (SBP) are the spouse and/or dependent children, a former spouse, or a natural person with an insurable interest, providing they meet certain eligibility requirements. The election, if required, must be received within the time period allowed.

440101. Spouse (Including the Spouse of a Common-Law Marriage). The spouse is an eligible beneficiary if he or she is/was:

A. Married to a pre-September 21, 1972, retiree on or before September 21, 1973. The election must have been received before March 21, 1974.

B. Married to a post-September 21, 1972 retiree on date of retirement. Unless the member elects otherwise before retirement, the spouse and/or children are automatically designated as the beneficiaries even though the beneficiary data is not received before date of retirement.

C. Married to a pre-September 21, 1972, retiree after September 21, 1973; or a post-September 21, 1972, retiree after the date of retirement if, on September 21, 1973, or date of retirement, whichever is later, the member has or had no spouse.

D. Married to a pre-September 21, 1972, retiree, or a post-September 21, 1972, retiree and, on September 21, 1973, or date of retirement, whichever is later, the member either had no beneficiaries and elected coverage for a natural person with an insurable interest coverage for a former spouse September 8, 1982, or later, coverage for former spouse and child March 1, 1986, or later. A spouse becomes eligible upon the first anniversary of the marriage or date of birth of the child of that marriage, whichever is earlier, provided the member changed to spouse coverage. A change of election must be received within 1 year of marriage. Until the spouse and/or child becomes eligible, the previously designated class of beneficiary remains in effect.

E. Married to the member, regardless of the date of retirement, after the ineligibility of the spouse previously covered by the Plan provided spouse coverage was resumed. A spouse becomes eligible upon the first anniversary of remarriage or birth of child of that remarriage, whichever is earlier. The member has up to 1 year after remarriage to decide whether to resume spouse coverage.

F. Married to a pre-September 21, 1972, retiree at the time of retirement, divorced, and later remarried to the member, but not married to member during the period September 21, 1972 to March 21, 1974. A spouse becomes eligible upon first anniversary of the

remarriage or upon birth of child of that remarriage, whichever is earlier. The election must be received within 1 year of the remarriage.

G. Married to a post-September 21, 1972, retiree at the time of retirement and member elected spouse coverage, divorced, and later remarried to the member. A spouse becomes eligible immediately upon remarriage provided spouse coverage was resumed. The member has up to 1 year after remarriage to decide whether to resume spouse coverage.

H. Married to a pre-September 21, 1972, retiree before March 21, 1974, and member elected spouse coverage, divorced, and later remarried to the member. A spouse becomes eligible immediately upon remarriage provided spouse coverage was resumed. The member has up to 1 year after remarriage to decide whether to resume spouse coverage.

I. Married to a pre-September 21, 1972, retiree after March 21, 1974, or a post-September 21, 1972, retiree after date of retirement, divorced, and later remarried to the member. A spouse becomes eligible upon first anniversary of remarriage or date of the birth of child of that remarriage. The election must be received within 1 year of the remarriage.

J. Married to a member who dies on active duty after: becoming eligible to receive retired pay, qualifying for retired pay except that member has not applied for or been granted that pay; or completing 20 years of active service but before member is eligible to retire as a commissioned officer because the member has not completed 10 years of active commissioned service. However, if the member elected former spouse coverage, or if the member is required under a court order or spousal agreement to elect former spouse coverage, the surviving spouse will not receive the annuity. A surviving spouse (or child) newly eligible upon enactment of section 712 of Public Law 99-145 (reference (fc)), which expanded the active duty death provision, had until October 1, 1988, to apply for such annuity. The annuity was payable March 1, 1986, or the first day after application is received by the Secretary of the Military Department concerned, whichever is later.

K. Married to a member who died before September 21, 1972, while serving on active duty. The member must have served on active duty for not less than 20 years and have been entitled to retired or retainer pay or would have been entitled to pay except that member had not applied for or been granted that pay.

440102. Children (Including Children of a Common-Law Marriage). A child is an eligible beneficiary if he or she is:

A. A child of the member who met the eligibility requirements on the date of the initial election for pre-September 21, 1972, retiree; on date of retirement for the post-September 21, 1972, retiree; or, within 1 year of the acquisition of the child after the election or retirement the same as for spouse coverage in paragraph 440101, above. The election must be received by the same date as required for the spouse, excluding a child election in conjunction with a former spouse election.

B. A child of the member and the former spouse if the member elects former spouse and child coverage effective on March 1, 1986, or on the first day of the month after the election change is received by the Secretary concerned, whichever is later. A member who elected former spouse coverage before November 8, 1985, could change to former spouse and child coverage before March 1, 1987, or if former spouse coverage was elected during the period November 8, 1985 through February 28, 1986, no later than November 13, 1987. The change to former spouse and child could only be made if the former spouse coverage was provided under the spouse category.

C. A child of a member who died on active duty provided that the member died on active duty after the same requirements were met as in subparagraph 440101.J, above, and that the member did not elect former spouse coverage or was not required by a spousal agreement to provide former spouse coverage.

D. The child is an eligible beneficiary if:

1. Unmarried.
2. Under age 18, or at least 18 but under 22 and pursuing a full-time course of study in a recognized educational institution.
3. Incapable of self-support because of physical or mental disability which existed before the 18th birthday or incurred before age 22 while pursuing a full-time course of study.
4. An adopted child; stepchild, foster child, grandchild or recognized natural child who lived with the retiree in a regular parent-child relationship; a child under age 18 and serving on active duty in the Uniformed Services, or under age 22 and enrolled in an institution of higher learning under a military subsistence scholarship. In addition, to qualify as a dependent child, a foster child must have resided with the retiree at time of death, received over one-half of his or her support from the retiree and cannot have been cared for under a social agency contract.

NOTE: A child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year is considered to have become 22 years of age on the 1st day of July after that birthday.

E. Child eligibility terminates for school nonattendance. If the child resumes school attendance, eligibility is reinstated. Child eligibility terminates by marriage of the child, regardless of whether the child is an incapacitated child entering into a valid marriage with another incapacitated individual. The termination of a child's marriage by death or divorce does not serve as a basis for reinstating child coverage. An annulment of the child's marriage, however, which renders the marriage void or invalid, or by a judicial decree by a court of competent jurisdiction declaring the marriage void, would serve as a basis for reinstating child coverage.

F. In the case of a member who has served 20 years of active service and who dies on active duty, and the member's spouse is no longer living, the child remains an eligible beneficiary through age 22 if pursuing a full-time course of study in a recognized educational institution.

440103. Spouse and Children. Eligibility requirements are as shown in paragraphs 440101 and 440102, above. The spouse is the primary beneficiary with coverage passing to the children if the spouse remarries before age 55 (age 60, if remarried before November 14, 1986), or dies. Exception: If the annuity is payable because member dies on active duty (See 10 U.S.C. 1448(d) (reference (c))), or the member is eligible to provide RCSBP but dies before notification of eligibility or during the 90-day period after notification (See 10 U.S.C. 1448(f) (reference (c))), eligibility does not pass to the child when a spouse remarries.

440104. Former Spouse or Former Spouse and Child. A former spouse is an eligible beneficiary if:

A. The former spouse is the member's former spouse (at time of retirement) when the member became eligible to participate in the Plan and is elected the beneficiary by the member or through a request to the Secretary of the Military Department concerned to deem an election.

B. The former spouse was not the member's former spouse (at time of retirement) when the member becomes eligible to participate in the Plan, and the prior election is changed pursuant to paragraph 430503 of this volume to provide coverage for the former spouse. A former spouse acquired after member became eligible to participate in the Plan is an eligible beneficiary if married to the member for at least 1 year or the parent of issue of the marriage.

C. If coverage includes child, former spouse is the primary beneficiary with coverage passing to the children if the former spouse remarries before age 55 (age 60, if remarried before November 14, 1986), or dies. The child is an eligible beneficiary provided the conditions in subparagraph 440102.D, above, are met and the child resulted from the member-former spouse marriage.

440105. Natural Person With Insurable Interest. The eligibility requirements are:

A. A person who has a reasonable and lawful expectation of pecuniary benefit from the continued life of the member. This category may include parents, stepparents, grandparents, grandchildren, aunts, uncles, sisters, brothers, half-sisters, half-brothers, dependent or non-dependent child or stepchild, any other person more nearly related than cousin, or

B. Any individual having a reasonable and lawful basis, founded upon the relationship of parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the retiree.

NOTE: Proof of financial benefit from the continuance of the life of the member is required for persons other than those listed in subparagraph 440105.A., above. The legal staff of the supporting Military Service activity may coordinate on the eligibility requirements.