

## CHAPTER 43

SURVIVOR BENEFIT PLAN - ELECTIONS AND ELECTION CHANGES4301 ELECTION

430101. A member who retired before September 21, 1972 had until March 20, 1974 to elect to participate in the Plan. If the member was recalled to active duty before March 20, 1974, and not returned to the retirement list until after March 20, 1974, an election made at the end of the period of extended active duty may be considered valid. A member who retires on or after September 21, 1972 has automatic participation at the maximum level unless he or she elects otherwise before retirement or is ordered to participate in the Plan by a court order. If, on September 21, 1973 (pre-September 21, 1972 retiree), or on date of retirement (post-September 21, 1972 retiree), the member has no spouse or dependent children and later marries or acquires dependent children, the member may participate in the Plan. This election must be received by the Secretary concerned within 1 year of the marriage date or acquisition of the children. A member retiring between September 21, 1972 and March 20, 1973, had a "grace period" for making the final decision concerning this coverage. This member had 180 calendar days after the retirement date to change the automatic full coverage given at retirement if no election otherwise had been made. An election made before September 21, 1972, was null and void as of September 21, 1972, if the member retired on or after September 21, 1972.

430102. Public Law 97-35 (reference (bq)) gave certain eligible members an opportunity to elect or to change SBP coverage from October 1, 1981, through September 30, 1982. See section 4309, below.

430103. Public Law 98-94 (reference (aj)) gave certain participating members a limited opportunity from September 24, 1983, to September 23, 1984, to change SBP coverage from spouse or spouse and child(ren) to coverage for former spouse.

430104. Public Law 101-189 (reference (fb)), as amended, gave certain eligible members an opportunity to elect or change SBP coverage from April 1, 1992, through March 31, 1993. It also allowed members who were providing spouse or former spouse coverage at the maximum level a chance to elect SSBP.

4302 ELECTION OPTION

430201. Base Amount. A member who participates in the SBP must elect a base amount of maximum coverage or reduced coverage. A member must choose maximum coverage if electing SSBP. The base amount at any level is adjusted with each cost-of-living increase after retirement. See section 4901 of this volume.

430202. Coverage. Coverage may be provided for:

- A. Spouse and/or children;

- B. Former spouse or former spouse and children; or
- C. Natural person with an insurable interest (at maximum level of coverage only).

430203. Supplemental SBP Coverage. A member who elects SBP coverage for spouse or former spouse at the maximum level may elect a supplemental spouse annuity for that beneficiary. A member elects a monthly SSBP annuity payable to the beneficiary in increments of 5, 10, 15, or 20 percent of the base amount. A member may not elect SSBP if the annuity of the spouse or former spouse will be computed under the social security offset method, 10 U.S.C. 1451(e) (reference (c)). However, the member may elect SSBP as any other member if the right to have annuity computed under the social security offset method is waived.

#### 4303 ELECTION DATA

430301. Elections by the Member. DD Form 1881 (SBP Election Certificate by Existing Retiree), DD Form 1882 (SBP Election Change), DD Form 1883 (SBP Election Certificate), and DD Form 2618 (SBP Open Enrollment Election) when available, are recommended for use by the member. Elections in writing, signed by the member, which contain information necessary for establishing or declining coverage are acceptable. Spousal concurrence of certain elections is required beginning March 1, 1986. A member who anticipates becoming an SBP participant with maximum coverage for spouse or former spouse, must elect SSBP before the day on which the member first becomes a participant in SBP. If, upon becoming a participant in SBP, the member is not providing an annuity for spouse or former spouse at the maximum level, any SSBP election shall be void. If the former spouse election form does not include an election statement signed by the member and the former spouse, a separate election statement is required. In the election statement, the member attests as to whether the former spouse election is pursuant to a court order or a voluntary written agreement. Information concerning content of the written statement and the proper court order appears in paragraph 430503, below.

430302. Deemed Elections Requested By the Former Spouse. On deemed elections, requested by the former spouse or the former spouse's attorney, the request for the Secretary of the Military Department concerned to deem that an election has been made is accompanied by a court order or a statement from the clerk of the court. Information concerning content of the request by the former spouse or the former spouse's attorney and the statement from the clerk of the court, where necessary, appears in paragraph 430503.C, below.

430303. Election Data Requirements. The election data requirements are:

A. Identification. Member's name, social security number, birth date, and date of retirement.

B. Base Amount. The election form must indicate full coverage, in lieu of a dollar amount, when maximum coverage is elected. When a reduced base amount is elected, the dollar amount must be indicated on the election form. The reduced base amount must not be less than \$300. When retired pay is less than \$300, the election form must indicate full coverage.

C. Beneficiary. Show the name, birthdate, and social security number for each beneficiary named.

1. If coverage includes spouse, or former spouse, the member must furnish the date of marriage and divorce (if applicable).

2. When the beneficiary is a natural person with an insurable interest, the address and relationship must be shown. For the natural person with an insurable interest, the member must provide a signed statement to show proof of financial benefit if the person designated is more distantly related than cousin.

3. If the beneficiary designation is for a former spouse, the member must complete a statement signed by the member and the former spouse setting forth whether the election is being made pursuant to a written agreement previously entered into voluntarily by the member as a part of or incident to a proceeding of divorce, dissolution, or annulment and (of so) whether that voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

D. Signature. The member must sign and date the election. Two disinterested persons must witness a document signed by an "X".

NOTE: An election made on behalf of the member through a power of attorney is not valid. Such an election is not binding and is without force or effect of law.

E. Spousal Concurrence. Effective March 1, 1986, a married member is enrolled with spouse coverage on full retired pay at the time of retirement unless that spouse has concurred in writing to another election requested by the member. When the spouse's concurrence is required, the signature indicating concurrence must be corroborated by one or more witnesses. The spouse's concurrence with, or request for, an election other than that requested by the member shall be disregarded. If all requirements for an election needing the spouse's concurrence have not been satisfied prior to retirement, for whatever reason, full spouse costs and coverage will be implemented, regardless of any request by the member to do otherwise. In such cases, when the member has requested any form of child coverage, full spouse and child coverage will be implemented. Any change in SBP election subsequent to retirement will be done through an administrative correction of records. The requirements for spousal concurrence do not affect any obligation or right of the member to provide coverage for a former spouse. If former spouse coverage is elected or deemed, the spouse's concurrence is not required; however, the spouse will be notified of that election, as previously required when spouse coverage was declined. Spousal concurrence is not required in any case if the member establishes to the satisfaction of the Secretary concerned that either the spouse's whereabouts cannot be determined or, due to exceptional circumstances, the requirement of the member to seek the spouse's concurrence would be otherwise inappropriate. Exceptional circumstances will be evaluated on a case-by-case basis.

F. SSBP Percentage of Annuity Coverage. A member who elects spouse or former spouse coverage at the maximum level may provide an additional percentage of the base

amount in increments of 5, 10, 15, or 20 percent. A member may not make an SSBP election if the spouse or former spouse is entitled to annuity computed under the social security offset method, 10 U.S.C. 1451(e) (reference (c)). However, the member may elect SSBP if he or she waives the right to have the annuity computed under the social security offset method

4304 IRREVOCABLE ELECTIONS, CORRECTIONS AND DISCONTINUED PARTICIPATION

430401. An election by a pre-September 21, 1972 retiree on the basis of adequate information concerning the Plan or an election by a post-September 21, 1972 retiree (unless revoked or changed before the first day of retirement) is irrevocable, except under the following circumstances:

A. The member discontinues participation as a totally disabled member under section 4308, below.

B. A mentally incapacitated member later is determined to be mentally competent and revokes or changes the SBP election within 180 days after such determination of judgment.

C. A member, who became an SBP participant between October 19, 1984, and November 8, 1985, elects to withdraw from SBP before November 8, 1986, under the provision of Public Law 99-145, section 711 (reference (fc)).

D. A member retired on March 1, 1986 or later, who elected less than maximum SBP coverage without the spouse's concurrence, and it later is determined by the Secretary concerned that the spouse's concurrence in such election was appropriate.

E. The Secretary concerned revokes an election when necessary to correct an administrative error. Revocation or correction based on administrative error is a prerogative of the Secretary of the Military Department concerned and, except when procured by fraud, is final and conclusive on all officers of the United States.

★F. A member voluntarily terminates SBP coverage for a natural person with an insurable interest (not a former spouse).

430402. The SBP election may be changed as set out in sections 4307 and 4309, below.

4305 ELECTION COVERAGE430501. Spouse and/or Children

A. A member may elect coverage at the maximum level, or at a reduced amount with spouse's concurrence, if required, for:

1. An eligible spouse only
2. An eligible spouse and dependent children
3. Dependent children only

A member with spouse coverage at the maximum level also may elect SSBP coverage.

B. A member who retires on or after September 21, 1972, automatically is covered at the maximum level for spouse and/or dependent children unless the member elects not to participate or to participate at a reduced level before the first day of eligibility to retired pay with the concurrence of the member's spouse, if required. See subparagraph 430501.D., below.

C. A member with an eligible spouse and dependent children on September 21, 1973, (pre-September 21, 1972, retiree) or on date of retirement (post-September 21, 1972, retiree) who:

1. Declines coverage is prohibited from electing into the Plan, except under section 4309, below;
2. Refuses coverage for an eligible spouse, and elects coverage for children only, is prohibited from electing spouse coverage at a later date, except under section 4309, below.
3. Refuses coverage for his or her dependent children, and elects coverage for spouse only, is barred from electing child coverage at a later date.

D. A married member who is eligible to provide SBP may not elect, without the concurrence of his or her spouse, to decline participation in SBP, to provide an annuity for the member's spouse at less than maximum level, or to provide an annuity for a dependent child but not for spouse unless the member establishes to the satisfaction of the Secretary concerned that:

1. The spouse's whereabouts cannot be determined; or
2. Due to exceptional circumstances, a requirement that the member seek the spouse's consent would otherwise be inappropriate.

E. A member with dependent children, who was unmarried on September 21, 1973, (pre-September 21, 1972, retiree) or on date of retirement (post-September 21, 1972, retiree),

may elect spouse coverage upon marriage regardless of whether coverage was elected for his or her dependent children. A member who is going to elect SBP for his or her spouse at the maximum level simultaneously may elect SSBP coverage.

F. A member with an eligible spouse who did not have dependent children on September 21, 1973, (pre-September 21, 1972, retiree) or on date of retirement (post-September 21, 1972, retiree) later may elect coverage for dependent children.

G. If a member elects to provide an SBP annuity for a former spouse or a former spouse and child and the member has remarried, the member's spouse shall be notified of that election and any SSBP election. The member may make such election without spousal concurrence.

430502. Natural Person With Insurable Interest. An election for a natural person with an insurable interest may be made only when there is no eligible spouse or dependent children. As an exception, a person who is unmarried but who has a dependent child may provide coverage for that child under the insurable interest provision rather than an election for child. For a pre-September 21, 1972, retiree, the Secretary concerned must have received the election by March 20, 1974 and, for the post-September 21, 1972, retiree, before the first day of eligibility for retired pay. A member must elect full coverage when electing for a natural person with an insurable interest.

430503. Former Spouse or Former Spouse and Children. When a member elects former spouse coverage, the member and the former spouse must complete an election statement indicating whether the election is being made pursuant to the requirements of a court order or by a voluntary written agreement. If the member entered into a voluntary written agreement as a part of, or incident to, a proceeding of divorce, dissolution or annulment, the member must indicate on the written statement whether the agreement has been incorporated in, or ratified or approved by, a court order. If the member has a spouse or child, a former spouse election prevents an annuity to that spouse or child (other than the child beneficiary under an election for a former spouse and child). If there is more than one former spouse, the member shall designate which former spouse is to receive the annuity.

A. Upon Retirement. A member who has a former spouse and dependent child when becoming eligible to participate on March 1, 1986, or later may elect former spouse or former spouse and child coverage, provided the child resulted from the member's marriage to that former spouse. A member with former spouse coverage at the maximum level also may elect SSBP coverage. The annuity for the former spouse is provided under the spouse category. If the former spouse election was effective before March 1, 1986, the former spouse annuity was provided under the insurable interest category and child coverage, in conjunction with former spouse coverage, was unavailable. A member participating before March 1, 1986, with former spouse coverage could provide an annuity for a former spouse and child, if such election was made before March 1, 1987, for a member who elected former spouse coverage before November 8, 1985, and not later than November 13, 1987, for the member who elected former spouse coverage November 8, 1985 through February 28, 1986.

NOTE: An annuity for the former spouse first must be provided under the spouse category in order to add child coverage.

B. Following Retirement. A member with spouse or spouse and child coverage may, before September 24, 1984, or within 1 year of date of the decree of divorce, dissolution, or annulment, whichever is later, change that election to provide an annuity to a former spouse or to a former spouse and child. If the member elects to provide former spouse coverage at the maximum level, he or she simultaneously may elect SSBP coverage. A member who has SSBP for spouse and who changes coverage from spouse to former spouse may drop SSBP. If a member had SBP and SSBP coverage for spouse and the member is changing to former spouse coverage, the level of SSBP may be increased. The former spouse beneficiary may not be the former spouse that the member had when he or she became eligible to participate in the Plan. If the SBP election was changed to former spouse coverage and was in effect before March 1, 1986, the annuity was provided under the insurable interest category and child coverage in conjunction with former spouse coverage was unavailable. A member participating in the Plan before March 1, 1986, with former spouse coverage could provide an annuity to a former spouse and child if such election was made before March 1, 1987, for a member who elected former spouse coverage before November 8, 1985, and not later than November 13, 1987, for the member who elected former spouse coverage November 8, 1985 through February 28, 1986.

NOTE: An annuity for the former spouse must first be provided under the spouse category before child coverage may be added. If a member elects coverage for a former spouse who the member acquired after becoming eligible for retired pay, the member and former spouse must have been married at least one year or the former spouse must be the parent of a child or children born of that marriage in order for the former spouse to be an eligible beneficiary. Public Law 99-145 (reference (fc)) allowed SBP participants who had not elected former spouse coverage to elect former spouse coverage during the period November 8, 1985 through November 7, 1986.

C. Deemed Elections. If a member enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to elect an SBP annuity for a former spouse, and such agreement has been incorporated in, or ratified or approved by, a court order, and then the member fails or refuses to make the election, the Secretary concerned may deem an election for the former spouse. The former spouse or the former spouse's attorney makes a written request. The request is acceptable if it refers to, or cites provisions in a court order concerning SBP former spouse coverage, or makes clear by other references to SBP that there is an intent that the coverage be provided to a former spouse. The written request is accompanied by a copy of the court order and/or a statement from the clerk of the court. The court order, regular on its face, must require an SBP election or, incorporate, ratify, or approve the written agreement of the member. If an election is deemed on a case involving a statement from the clerk of the court, the statement from the clerk of the court or other appropriate official must indicate that the agreement has been filed with the court under applicable state law.

★1. The former spouse will provide a certified copy of the court order, regular on its face, which requires such election, or incorporates, ratifies, or approves the written agreement of the member; a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable state law; or, for a

deemed SBP election only, a copy of the court order which requires the SBP election. A court order which requires the member to elect (or to enter into an agreement to elect) SBP for a former spouse or former spouse and child must be issued on or after November 14, 1986. If the member was ordered by a court to elect former spouse coverage before November 14, 1986, a second court order, issued on or after November 14, 1986, enforcing the original order which requires a former spouse election, constitutes a modification of the previous order and establishes a new one-year period during which a request for a deemed election may be filed.

2. The request from the former spouse must have been received by the Secretary concerned before October 1, 1985, or within 1 year of the date of the court order or filing involved, whichever is later. If an election of former spouse coverage was agreed to or ordered by an earlier court order, a subsequent order or modification that merely restates the previous provision and imposes no new obligation on the member does not begin a new 1-year period. A subsequent court order holding a member in contempt of court for failing to fulfill the prior agreement is not the type of court order that can be used to begin a new 1-year period to deem an election.

3. No election may be deemed to have been made which could never have been made by the member concerned.

4. If the request is received from a former spouse and the member still has time remaining during the 1-year period in which to make an election, the member should not yet be considered to have failed to make the election. The member should be notified within 30 days of receipt of the former spouse's request for a deemed election. The member shall be given 60 days from the date of the notice in which to make a voluntary election.

5. A qualifying election shall be deemed no later than the last known day during which the member voluntarily could make the election, or 60 days after the member had been notified, whichever is earlier.

6. If a member dies before making an election, a former spouse's request, which is otherwise qualified, shall be honored even if the date of the request is after the date of the member's death.

7. If a member has more than one former spouse, the first request for a deemed election received with complete documentation shall be the one honored.

430504. SSBP. A member may not be ordered or required to elect (or to enter into an agreement to elect) to provide a spouse or former spouse with a supplemental spouse annuity. Except as provided in subparagraph 430503.C, above, in no case shall a person be deemed to have made an election to provide a supplemental annuity for a spouse or former spouse of such person.

430505. Federal Civil Service Retiree

A. A member with SBP coverage (or SBP and SSBP coverage) who (1) retires under the civil service retirement program, (2) waives military retired pay to combine civilian and military service credits and (3) elects survivor coverage, at any level, under the civil service retirement, has SBP coverage suspended while the waiver is in effect. If the waiver is terminated for any reason, SBP (or SBP and SSBP) coverage resumes concurrent with the resumption of retired pay. The type of coverage and level of participation, as adjusted by any changes in retired pay during the period of waiver, is as first elected. If the retired service member dies while the waiver of military retired pay is in effect, no SBP (or SBP and SSBP) annuity becomes due and payable to either the surviving spouse and/or children.

B. An election in the SBP with concurrent cancellation of previous RSFPP coverage is without force or effect if retired pay previously was waived for civilian retirement and survivor coverage from the civilian annuity was elected.

C. A member who elects SBP coverage, including SSBP coverage, and who does not waive military retired pay for civil service retirement, may have survivor coverage under both retirement plans.

D. A member may waive retired pay in total to receive VA compensation and retire from civil service. The waiver of full retired pay in favor of VA benefits also may be considered as a waiver of retired pay for the purpose of a civil service retirement. A specific waiver of military retired pay for the civilian retirement is not required. The SBP coverage, including SSBP coverage, is suspended if survivor coverage is elected from the civil service annuity.

E. Provisions in subparagraphs 430505.A. and D., above, do not apply to a member who retired under 10 U.S.C. 12731 (reference (c)) or retired due to a combat-incurred disability.

F. Death of a federal civil service employee before waiver of military retired pay. The survivor of a federal civil service employee who was awarded retired pay based on any period of military service and who dies before separation from civil service shall receive a survivor annuity computed using military service. The survivor annuity from civil service shall be reduced by any military survivor benefits payable. The survivor may elect not to be covered by this provision, which automatically uses military service credit in computing the federal survivor annuity.

G. Foreign Service and Judiciary Retirements. Except for participation in federal service survivor annuity programs, SBP coverage does not terminate when a member participates in other survivor benefit plans administered by the U.S. Government such as under the Foreign Service or federal judges retirement systems.

4306 COMBINED RSFPP AND SBP COVERAGE

430601. Members participating in RSFPP on or before September 21, 1972, could, before March 20, 1974:

- A. Decline SBP coverage and continue RSFPP, or
- B. Cancel RSFPP in favor of SBP, or
- C. Elect coverage under both Plans.

430602. The commitment concerning the RSFPP participation must have been made at the time of the SBP election. In the absence of such commitment, coverage under both Plans was established and the member was contacted regarding his or her intent on the RSFPP. A member could not cancel RSFPP participation and, at the same time, decline SBP coverage. Cancellation of the RSFPP in favor of SBP was both final and complete. A member having RSFPP coverage under two options could not cancel one option and retain the other.

430603. When electing coverage under both Plans, the member could, within certain limitations, designate the amount of coverage under each Plan. The total of the annuities could not exceed the gross retired pay entitlement on the effective date of the SBP election. The reduced base amount limits had to be maintained and the original RSFPP base amount could not be increased. A member retiring before November 1, 1968, could reduce RSFPP coverage to one-fourth or one-eighth of the gross pay entitlement or reduce RSFPP coverage on date of retirement. A member retiring on or after November 1, 1968, and electing SBP, could reduce the RSFPP annuity by any amount provided the amount was not less than 12-1/2 percent of the retired pay entitlement on the date SBP was elected and the monthly annuity elected was not less than \$25.

430604. Cancellation of the RSFPP at the time of election into the SBP did not entitle the member to a refund of the previous RSFPP premiums. Any delinquent premiums under the RSFPP on the date of conversion to SBP continued as debts, subject to interest, until paid.

4307 CHANGES IN ELECTION AND COVERAGE

430701. Later-Acquired Spouse and/or Child. This election must be received within 1 year of the event.

A. A member who is participating with spouse or spouse and child coverage and who does not have an eligible spouse beneficiary may, upon remarriage: resume coverage, increase the level of coverage up to and including full retired pay, or elect not to have spouse coverage resumed. A member who is participating with maximum spouse coverage, but who is not a participant in the SSBP, may elect SSBP upon remarriage. The SSBP election is irrevocable and shall be made within one year after the remarriage.

1. The member may not add child coverage by virtue of this remarriage alone if child coverage was previously bypassed.

2. The level of SBP coverage may not be reduced nor may child coverage be eliminated. The SSBP level of coverage may be increased upon remarriage.

3. SBP elections become effective when the new spouse becomes an eligible beneficiary, and any increase in premium, plus interest, has been paid. When the level of SBP coverage is increased, the member must pay the difference between the present premium and the premium that would have been incurred had the higher level of coverage been elected originally, plus interest. Interest is compounded monthly using a factor equal to the 12th root of 1 plus the annual interest rate used by the DoD Board of Actuaries to calculate the retirement accrual costs. The current compounding factor is 1.00526. Interest is to be compounded monthly on the accumulated difference existing prior to any computation month. If payment of cost plus interest is not completed before spouse becomes an eligible beneficiary, the election becomes null and void and a refund of cost and interest and reinstatement of original election coverage occurs. Cost plus interest will be paid to member's estate should the member die before refund is completed.

4. If a member has spouse or spouse and child coverage and elects not to resume SBP participation for the spouse, the spouse is notified and any SSBP coverage is terminated. An election to terminate spouse coverage is irrevocable. If the member elects to increase the level of spouse coverage to an amount less than full retired pay, the spouse is notified.

B. If, on September 21, 1973, for the pre-September 21, 1972, retiree, or on date of retirement, for the post-September 21, 1972, retiree, the member:

1. Has no eligible beneficiaries and declines to participate, the declination does not prohibit the later election for spouse and/or children; or

2. Has no eligible spouse and elected for children only, he or she may, within 1 year after marriage or remarriage, include the spouse with coverage previously elected for the children.

3. Has no eligible children and elected for spouse only, he or she may, within 1 year of acquisition of children, include the children with coverage previously elected for the spouse.

4. Elects coverage for a former spouse or former spouse and children, or elects coverage for a natural person with an insurable interest, the member may later change the election to spouse and/or children. The member is not required to change the election to spouse and/or children; however, if such a change is made, it permanently terminates the eligibility of the former spouse or the natural person with insurable interest. It is not necessary that maximum level coverage be elected for the spouse and/or children. See paragraph 430703, below, for additional information concerning changes in former spouse coverage.

430702. Change From Spouse or Spouse and Children. A member who elected spouse or spouse and child coverage may terminate that election and provide an SBP annuity for a former spouse or former spouse and child, provided the child resulted from the member's marriage to that former spouse. A member who elects to provide former spouse coverage at the maximum

level may elect SSBP coverage. If the member is married when the former spouse election is made, that spouse is notified (See subparagraph 430501.G, above). A former spouse may request that an election be deemed by the Secretary of the Military Department concerned (or designee).

A. The Secretary concerned shall notify the former spouse of any changes in election.

B. Changes to a Former Spouse Election

1. If a member was required to elect former spouse coverage by a court order, incident to a proceeding of divorce, dissolution, or annulment, the member may change to spouse or child coverage if the member furnishes, to the Secretary of the Military Department concerned (or designee) a certified copy of a court order. The court order, regular on its face, modifies the provisions of all previous court orders relating to the former spouse election so that the member is permitted to change the election. The member certifies to the Secretary concerned that the court order is valid and in effect. These same restrictions apply to the member who elected former spouse coverage pursuant to a written agreement that was incorporated in, or ratified or approved by, a court order.

2. In the case of a written agreement that has not been incorporated or ratified or approved by a court order, the member shall furnish, to the Secretary concerned, a statement (in a format prescribed by that Secretary), signed by the member and the former spouse that evidences the former spouse's agreement to an election change. The member must certify that the statement is current and in effect.

430703. Change to Former Spouse Coverage Under Insurable Interest. Members were allowed to change an election for former spouse coverage under the insurable interest category to former spouse coverage under the spouse category during the period November 8, 1985, through November 7, 1986. A member also could add child coverage to former spouse coverage provided the child was the result of the member's marriage to that former spouse and if member is providing coverage for the former spouse under the spouse category. These election changes apply to elections effective before March 1, 1986.

430704. Changed Retirement Eligibility. If a member elects RCSBP coverage and subsequently becomes eligible for retirement under another law, thereby losing eligibility under 10 U.S.C., Chapter 1223, (reference (c)), the RCSBP election remains effective until the member actually retires. A member then may make a new election as any other retiring member.

430705. Open Enrollment Periods

A. Public Law 97-35 (reference (bq)) allowed certain members to enroll in the SBP, to increase a reduced level of coverage, or to add spouse coverage to child coverage. The open enrollment period was October 1, 1981, through September 30, 1982. See section 4309, below. Public Law 97-252 (reference (ei)) allowed certain Reservists to participate in an open enrollment period October 1, 1982, through September 30, 1983.

B. See subparagraphs 430503.A., B. and C., above, for open periods under Public Laws 98-94 (reference (aj)), 98-525 (reference (ej)), 99-145 (reference (fc)), and 99-661 (reference (ek)) involving elections for a former spouse. Members who elected SBP (or RCSBP) during the period October 19, 1984, through November 8, 1985 could elect to withdraw November 8, 1985 through November 7, 1986, with a refund of cost plus interest.

C. Public Law 100-180 (reference (fd)) provided an open season withdrawal. A member with spouse or spouse and child coverage who remarried before March 1, 1986, and at a time when that person was a participant in SBP could, with the spouse's consent, withdraw from the Plan. The withdrawal period was March 3, 1988, through March 2, 1989. Premiums and coverage stop on the first day of the month following receipt of the withdrawal request. There is no refund of SBP premiums.

D. Public Laws 101-189 (reference (fb)) and 101-510 (reference (el)) provided an open season April 1, 1992, through March 31, 1993. A member who was not participating in SBP could have elected into the SBP program. A member who elected SBP coverage for spouse or former spouse at the maximum level during open season also could elect SSBP. A member could add spouse coverage or increase the base amount of coverage during open season. A member who already was participating in SBP with maximum coverage for a spouse or former spouse could have elected SSBP during open season.

430706. Mental Incompetency. If a mentally incompetent member later is determined to be mentally competent, he or she may, within 180 days after such determination, change or revoke the SBP, or SBP and SSBP election made on his or her behalf. The change or revocation shall be effective on the date of the member's request.

430707. Correction of Administrative Error. The Secretary of the Military Department concerned (or designee) may correct any election or any change or revocation of an election when the Secretary considers it necessary to correct an administrative error. See paragraph 420307 of this volume.

4308 DISCONTINUANCE OF PARTICIPATION★430801. Withdrawal by a Totally Disabled Member

★A. Any person who elects to participate in SBP with a service-connected disability rated by the Department of Veterans Affairs (VA) as totally disabling and is so rated for 10 or more continuous years (or, if so rated for a lesser period, at least 5 years from the date of last

discharge or release from active duty) may request to discontinue participation in the Plan by submitting a request to the Secretary of the Military Department concerned (or designee). The initial date for determining the 5- or 10-year period is the effective date of the VA rating of total disability. Validation must be obtained from the VA if not available from the individual.

1. The request for discontinuance must be with the written consent of the beneficiary or beneficiaries under the Plan. Should that beneficiary be a dependent child or children, written consent may be accepted from a parent, stepparent, foster parent, guardian, or an individual appointed by a court of competent jurisdiction.

2. The Secretary concerned shall furnish a written statement of the advantages of participating and the possible disadvantages of discontinuing participation or the provisions of 10 U.S.C. 1452(g) (reference (c)) to each person requesting discontinuance.

3. A person may withdraw the discontinuance request within 30 days of submission to the Secretary concerned.

4. Participation in the Plan and cost of SBP and SSBP coverage is discontinued on the first day of the month after receipt of the request by the Secretary concerned. This provision is effective December 1, 1980.

5. If a member dies after the date that the request for withdrawal has been received by the Secretary concerned, but before the effective date of that request, the beneficiary is entitled to the annuity.

★B. Upon the death of a person who has discontinued participation in the Plan under this section, a refund of SBP and SSBP amounts deducted from retired or retainer pay without interest shall be made to the widow or widower.

★C. Any person who has discontinued participation in the Plan may again elect to participate if the VA reduces the disability rating to less than total and the person applies within 1 year to participate in the Plan and includes the required information determined by the Secretary concerned.

1. Participation in the Plan and reduction in pay is effective the first day of the month after receipt of the application to the Secretary concerned on DD Form 1883 (SBP Election Certificate). Documentation attesting to the less than total disability rating must accompany the application.

2. If the member applies for resumption of participation, but dies before the effective date, the beneficiary is entitled to an annuity on the date the election would have been effective.

3. Resumption of participation shall be limited to the type and level of coverage initially elected allowing for beneficiary changes as otherwise provided for in Chapters 42 through 57.

★430802. Voluntary Termination of Coverage for a Natural Person With an Insurable Interest

A. A member who is participating in SBP with coverage for a natural person with an insurable interest (not a former spouse) voluntarily may terminate his or her participation in SBP. No request for termination is effective before November 1, 1994.

B. If a member is considering termination of an insurable interest coverage, he or she should contact the responsible agent: DFAS-Cleveland Center, or the Military Service Reserve Component Personnel Center for members not yet age 60 (or an appropriately determined office for non-DoD Uniformed Services).

C. A member who is eligible and wants to terminate coverage may send a written request to the responsible agent identified in subparagraph 430802.B., above. The request, signed by the member, must identify the member and state that the member wants to terminate SBP participation. A request for information is not a request to terminate SBP participation.

D. When the responsible agent receives a request from an SBP participant eligible to terminate coverage, the agent will determine whether the request is for information or actually is a request to terminate participation. In either case, the member will be mailed two fact sheets that explain: the procedures for terminating participation; and the advantages and disadvantages of participation and the disadvantages of terminating participation. If the request is determined to be a request for termination, the member will be advised in the cover letter that a request for termination can be withdrawn within 30 days of the date of that letter.

E. No premiums are refunded as a result of terminating coverage. No premiums will be charged after the effective date of termination unless the member had Reserve Component Survivor Benefit Plan (RCSBP) coverage. See paragraph 560305 of this volume for recomputation of the original "add-on" portion of the RCSBP premium when member terminates coverage before age 60.

F. A member who wishes to withdraw the request to terminate participation must notify the Secretary of the Military Department concerned (or designee) using a legible, signed written notice to the member's responsible agent in subparagraph 430802.B., above. The notice must identify the member's name and social security number and state that the member no longer wants to discontinue SBP participation. If the member withdraws the request to discontinue participation within the prescribed 30-day period, the SBP participation is not terminated. If the withdrawal notice is received after the prescribed date, it has no effect and the member is so notified within 30 days. However, if the member provides proof of the date of the mailing and such date is favorable to honoring the member's withdrawal request, that date of mailing serves as the date submitted. If the member effectively withdraws a request to discontinue participation, the member is notified within 30 days. If participation already was discontinued, it will be reinstated as if no break in coverage occurred. Any premiums not collected or paid, or premiums that were refunded, will be collected from the member and the member notified of the final action concerning participation.

G. The member may only resume SBP participation by electing coverage for a spouse or dependent child within one year of acquiring a family member.

#### 4309 OPEN ENROLLMENT PERIODS

430901. Eligible members from each Military Service were notified of Public Law 97-35 (reference (bq)), which provided an open enrollment period for SBP from October 1, 1981, through September 30, 1982. Public Law 97-252 (reference (ei)) authorized an open enrollment period for certain Reservists October 1, 1982, through Sep 30, 1983.

A. An eligible member was a member or former member of the Uniformed Services who was entitled to retired or retainer pay on or before August 13, 1981. If a member discontinued participation in the SBP program under provisions of Public Law 96-402 (reference (fe)) for the totally disabled before August 13, 1981, that member could re-enroll during the open enrollment period or resume participation under paragraph 430801, above. The Secretaries of the Military Departments were permitted to make elections on behalf of mentally incompetent members. A member who did not have an eligible beneficiary during the open enrollment period could not elect into SBP later except under subparagraphs 430501.D and E, above. Also, a member who previously did not have an eligible beneficiary to make an election for, could be able to elect coverage for that beneficiary under subparagraphs 430501.D and E.

B. An eligible member could elect to:

1. Enroll in the SBP if not presently participating (an initial election for former spouse coverage could be made from September 8, 1982, through September 30, 1982);
2. Change the current level of coverage to a higher level; and/or
3. Change the current children only coverage to include coverage for spouse. Election information can be accepted in writing rather than on the approved form.

C. A member could only elect or change SBP once during the open enrollment period.

D. The election was effective when received by the Secretary of the Military Department concerned. The postmark of the envelope could be used when beneficial to the member or survivor. An annuity was not payable under the open enrollment election for a period of 2 years. The 2-year waiting or penalty period began on the effective date of the open enrollment election and ended 2 years from that date.

1. If a member died before the end of the 2-year waiting period:

a. The open enrollment election was void and premiums attributed to that election were refunded to or on behalf of the beneficiary(ies) designated in the open enrollment election. If the member had no prior coverage and elected for spouse and

children, the total refund was made to the eligible spouse beneficiary. If the eligible spouse beneficiary was no longer living, premiums were refunded without interest, to the remaining eligible beneficiary(ies). If the member had an election in effect before the open enrollment election, the premium was recalculated under the earlier election and deducted from the refund of the premiums due the eligible beneficiary(ies) for the open enrollment election.

b. An annuity was established to the eligible beneficiary(ies) under the terms of the earlier election.

c. If a member made an initial election to provide spouse coverage during the open enrollment period, changed that election made under paragraph 430702, above, during the 2-year waiting period, and died before the end of the 2-year waiting period, no annuity was payable to the former spouse. Premiums attributed to the open enrollment election were refunded to or on behalf of the beneficiary(ies) of that election; premiums attributed to the changed election were refunded to the former spouse. If the member had an election in effect before the open enrollment election, the premium was recalculated under the earlier election and deducted from the refund of premiums due the former spouse.

2. If the beneficiary died during the 2-year period, the premium was suspended on the first day of the month after death. If the member later acquired the same type of beneficiary, but during the 2-year waiting period, the premium was resumed for the remainder of the 2-year period. If the member acquired the beneficiary after the 2-year waiting period, the premium was resumed when the beneficiary became eligible for the annuity. See paragraphs 440101 and 440102 of this volume.

E. A member who wished to cancel RSFPP coverage to coincide with the election of SBP during the open enrollment period had to initiate separate action to withdraw from RSFPP under section 3402 of this volume.

F. The Military Services were not required to notify the beneficiary of a change in the member's election.

G. SBP cost for an open enrollment election was effective on the first day of the month after receipt of the election (by the Secretary of the Military Department concerned at the appropriate DFAS Center), except that costs for an initial election of former spouse coverage were effective February 1, 1983. See Table 45-2.

H. If a member increased the base amount (or level of coverage), the premiums were recalculated on the existing cost factor(s). If the member made an initial election which included children or added spouse coverage, premiums were calculated using cost factors that were based on ages on the date of election.

I. SBP costs were not refunded to a member who was discharged from the TDRL.

J. The cost for spouse coverage paid during the 2-year waiting period are included in any cost refund that results from a DIC award.

430902. Public Law 101-189 (reference (fb)), amended by Public Law 101-510 (reference (el)), provided an open enrollment period from April 1, 1992 through March 31, 1993. A member could make only one open season election. A member with suspended spouse or former spouse coverage could make any election otherwise allowable even if the premium resulting from the open season election was immediately in a suspended status.

A. Non-participants. A member or former member of the Uniformed Services who, on March 31, 1992, was not a participant in the SBP and was entitled to retired pay could elect SBP during the open enrollment period. A member could make an election for spouse, former spouse, spouse/former spouse and child, child only, or a natural person with an insurable interest. If the member elected spouse or former spouse coverage at the maximum level, the member could elect Supplemental SBP.

B. Existing participants:

1. A member with reduced SBP coverage could elect to increase the base amount of coverage.

2. A member could add spouse or former spouse coverage to child coverage. If adding spouse coverage, existing child coverage could not be dropped. An election for former spouse coverage terminated any previous coverage. If adding a former spouse, a member could drop coverage for children. A member could cover former spouse and children; however, the only children eligible were the children of the member-former spouse marriage. Thus, when a member with child coverage elected former spouse and child coverage, any children not the result of the member-former spouse marriage became ineligible and coverage for such children ceased.

3. A member could not change from spouse to former spouse coverage even if the spouse coverage and premium currently were suspended. A member could not change from former spouse to spouse coverage. A member with coverage for a natural person with an insurable interest (including a former spouse covered under the insurable interest category) could not change that election.

4. A member with spouse or former spouse coverage at the maximum level could elect Supplemental SBP.

C. No election could be deemed under the provisions of the open enrollment period.

D. An open enrollment election for a former spouse, by a member who is otherwise under a qualified court order to elect SBP coverage for a former spouse, is later subject to the provisions of that court order. This applies even though the open enrollment election was purely voluntary.

E. The open enrollment election was effective for premium purposes on the first day of the month after the election was received by the Secretary concerned, but not earlier than April 1, 1992. If the date received is prejudicial to the member, the postmark date is considered the date the election was received.

F. The premium for an open season election was established as though the member first became a participant in SBP at the time of election.

G. In addition to the SBP premium for an open enrollment election for spouse or former spouse, there is an additional premium charged on the basis of the number of years the member has been retired. The number of years was determined from the date of initial retirement through the date the election became effective. Months and days less than a full year were ignored. The additional premium percentage was applied to the full base amount or, if the member was previously providing reduced coverage for a spouse or former spouse, to the increase in the base amount over the annuity base amount that previously existed. The premium addition did not apply to any member making an open season election who was currently paying an RSFPP premium for spouse coverage or, who was electing SBP coverage for spouse and who previously participated in SBP but who later withdrew from participation under the provision for totally disabled members. The additional premium percentage charged for an open season election is not refunded when recalculating SBP premium due to DIC award.

H. An open season election became void if the member died before the end of the 2-year survival period beginning on the cost-effective date in subparagraph 430902.E., above, with the exception of the member who made an open enrollment election for a spouse and that spouse was entitled before November 1, 1990, to receive DIC based on a previous marriage to another member. If an open season election was void, the member's election reverted to any previously established coverage.

I. Any premium for the voided open enrollment election is refunded to the member's beneficiary under the open enrollment election. If the beneficiary predeceases the member, there is no refund of premium.