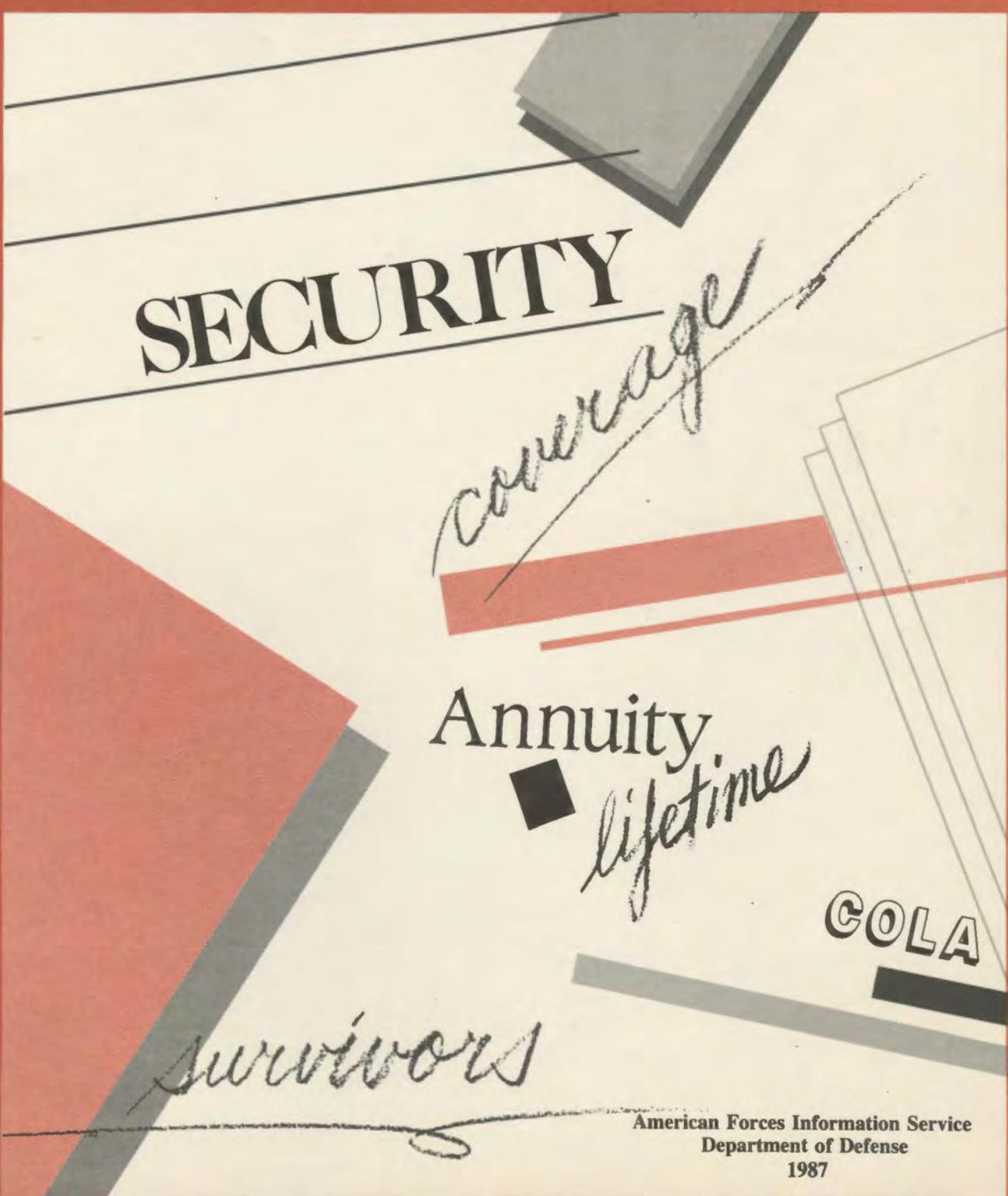


SBP Made Easy

The Survivor Benefit Plan



SECURITY

coverage

Annuity



lifetime

COLA

survivors

American Forces Information Service
Department of Defense
1987

Survivor Benefit Plan For The Uniformed Services

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Prepared especially for military personnel soon to retire from active service and retired personnel who have elected to participate in the Survivor Benefit Plan.

A NEW VOLUNTARY SYSTEM of survivor benefits for present and future retirees was created Sept. 21, 1972, when Congress enacted Public Law 92-425. As a result, more than 100,000 surviving spouses whose retiree spouses elected to participate in the program today receive monthly checks. Called the Survivor Benefit Plan, the program as it presently exists is the evolutionary outgrowth of a system that first began on Aug. 15, 1951, when Congressman Paul J. Kilday called to order an Armed Services Special Subcommittee on Survivor Benefits. He said, as part of his opening statement:

"It is rather amazing that in this day and age, when industry, labor and government are all so security conscious, that we find one large group of persons without adequate protection.

"I am referring to the fact that no planned protection is afforded the survivors of deceased members of the armed forces. Almost every state has workmen's compensation benefits involving survivor benefits, much of the nation is contributing to Social Security benefits, the federal civil service has a survivor benefits program, large industry group insurance plans and other forms of protection have been established for the survivors of deceased breadwinners, federal employees compensation benefits protect the survivors of government employees who die in line of duty, but there is no planned survivor benefit program for service personnel."

Two years later, Congress enacted the Uniformed Services Contingency Option Act of 1953, which for the first time enabled retired uniformed services personnel to reduce their retired pay to provide a monthly annuity for their surviving dependents. The cost (monthly premium) and proceeds payable were established by Congress and based, in part, on actuarial reports furnished by the Department of Defense, the Life Insurance Association of America, the National Association of Life Underwriters and the American Life Convention. A service member was required to elect or reject participation before completing 18 years of service. Several options were offered. The member could elect an annuity based on one-half, one-fourth or one-eighth of retired pay. The service member could also choose to pay a slightly higher premium, which enabled the service member to stop the deduction if a spouse predeceased the service member or a divorce occurred. Cost was based on the ages of the retiree, spouse and, if children were to be included, the youngest child.

Reaction to the Contingency Option Act was favorable. It was especially well received by persons already retired who had until April 1954 (later extended to November) to file an election of



options. However, for several reasons, the initial popularity subsequently waned and participation began to decline. Congress amended the law in 1961 to make it more attractive and changed the name to the "Retired Serviceman's Family Protection Plan."

Despite these efforts, it soon became apparent that RSFPP was not the answer. The law was too complex; service members were not receiving proper counseling before they had to make a decision; the cost was quite high, and the annuity, when payable, was at a fixed amount with no automatic cost-of-living escalator. Few people participated.

Nevertheless, efforts to improve the plan continued. Effective January 1966, the cost (deductions from retired pay) became tax free. This was a significant improvement! Then, additional amendments made in August 1968 allowed automatic discontinuance of deductions from retired pay for personnel enrolling after that time and who subsequently were either divorced or whose spouses predeceased them.

Even with these improvements, however, participation in the plan never exceeded 16 percent of those eligible, and by 1969, it was obvious a new plan was necessary.

In July 1970, a special subcommittee of the House Armed Services Committee began to hold hearings. Appropriately, its task was entitled

"Inquiry into Survivor Benefits." Congressman Otis G. Pike, chairman of the subcommittee, opened the hearing with two succinct questions: "Is the level of present benefits for active duty survivors adequate? Should there be any survivorship rights in retired pay for the widows of retired personnel?"

Some 17 years had elapsed since the Contingency Option Act of 1953 became law. By October 1970, a dozen bills to establish a new survivor benefit plan had been introduced!

The successful civil service survivor benefit program, which had a participation rate of about 90 percent, soon became a model as the lawmakers moved to design a comparable military program. Finally, a comprehensive bill was developed. On Sept. 21, 1972, the Survivor Benefit Plan, best known as SBP, became PL 92-425.

Under the basic SBP law, a survivor would receive 55 percent of the "base" amount of retired pay elected. If the retiree had active duty or active duty for training after Dec. 31, 1956, then the annuity is subject to a Social Security offset when

GLOSSARY

IN AN ATTEMPT to ease the reader's burden with a multiplicity of terms and acronyms used in the text that may not be readily known to everyone, the following are briefly noted. Each is discussed in detail within the text.

Annuity—SBP monthly payment in the context of this booklet.

Base Amount—gross retired pay or any amount down to \$300 upon which the SBP annuity is based.

COLA—acronym for cost-of-living adjustment, based on increases in the Consumer Price Index, used to keep pace with inflation.

Contingency Option Act—the shortened form of the Uniformed Services Contingency Option Act of 1953.

CPI—acronym for Consumer Price Index.

DIC—acronym for Dependency and Indemnity Compensation paid by the Veterans Administration.

Former Spouse—former wife or husband of a military member or military retiree.

Insurable Interest—relative (other than spouse or children) or other person who has an insurable interest in a retiree.

a surviving spouse reaches age 62. This offset is based solely on the value of Social Security wage credits earned during active military service or active duty for training after Dec. 31, 1956. Numerous subsequent modifications in the basic SBP law significantly improved the overall program; however, milestone legislation impacting on SBP was passed on Nov. 8, 1985.

The Defense Authorization Act of 1986 (PL 99-145) established a two-tier SBP system and eliminated the Social Security offset. Under the "new" plan, a survivor receives 55 percent of the "base" amount of retired pay until age 62, after which it is reduced to 35 percent. This change affects all future retirees and those members eligible to retire after Oct. 1, 1985. If it is to their financial advantage, all others continue under the original provisions of the modified 1972 SBP law. The "old" and the "new" SBP are what this booklet is all about.

The goal? That current and future retirees and their spouses who read this booklet will be able to say, "I now better understand SBP."

RSFPP—acronym for the Retired Serviceman's Family Protection Plan; the immediate forerunner of SBP. The original title of the RSFPP was the Uniformed Services Contingency Option Act of 1953.

SBP—acronym for the Survivor Benefit Plan.

Two-tier SBP—55 percent of the base amount to age 62 and 35 percent at age 62 and thereafter (PL 99-145).

Uniformed Service—Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the U.S. Public Health Service and Commissioned Corps of the National Oceanic and Atmospheric Administration.

VA Total Disability—a total service-connected disability for VA purposes requires that a veteran be rated at 100 percent statutorily or be authorized to draw compensation at the 100 percent rate because of unemployability.

Future Retirees

IF YOU ARE about to retire from the military, we want to help you understand SBP. Since the decision on whether or not to participate in SBP involves a major financial undertaking, it should not be taken lightly. Every service member must make that decision and should base it on a complete understanding of SBP. Recognizing the complexity of the statute, we have attempted to present it in simple, easy-to-understand language.

SBP While on Active Duty

Although you may not realize it, you are already in the Survivor Benefit Plan! It's true. If you are now on active duty, are married or have dependent children and have completed 20 years of active service, you have SBP. If you are not yet eligible, your SBP coverage will begin when you complete 20 years of active service and qualify for retirement. One good thing about having SBP while on active duty is *you don't have to pay for it*. Here is how it works:

Assume that you became eligible for retirement after March 1, 1986. You are killed in an automobile accident. What would your surviving spouse's SBP annuity be? First you compute what your retired pay would be had you been retired when death occurred. If you are pay grade O-5, it might have amounted to \$1,800 a month. The SBP annuity would be 55 percent of that, or \$990 a month. However, the annuity is reduced by Dependency and Indemnity Compensation payments, automatically payable by the Veterans Administration because of death while on active duty (unless a determination of misconduct is made.) For the surviving spouse of an officer who served on active duty for a period of at least six months in the grade O-5, DIC is currently \$811 a month and is tax-free. Consequently, your surviving spouse's net SBP would be \$179 a month.

Added to the \$811 DIC payment, the total jumps to \$990. For some pay grades, DIC is actually more than the SBP would have been. For example, the DIC for the widow of an E-7 is \$616, whereas the SBP would have been approximately \$550. More about this on pages 10, 11. In the unlikely event that you and your spouse should die, SBP would then be paid to your eligible dependent children. While this may seem like putting the cart before the horse, it really isn't. It simply emphasizes the point that if you are married or have children, are on active duty and have completed 20 years of active service, you already are in SBP. You're covered right now!



"Make SBP your first stop..."

Making the SBP Decision: Beneficiaries, Cost and Annuities Payable

Whether or not you continue your SBP coverage into retirement is a vital decision only you and your spouse can make. Moreover, it is a decision that will have a profound impact on you and your family in the years ahead. Because of that fact, *the law states that your spouse must concur in writing if you do not elect SBP coverage or if you elect a base amount less than your gross retired pay*. Sadly, some couples act impulsively and shortsightedly in this matter, living to regret a decision made without a complete understanding of the facts and consequences involved.

It is important that you look at SBP as an integral part of your total estate planning. As such, decisions involving your participation deserve family discussions, based on the advice of qualified personnel officers, retirement services counselors, retired affairs officers, an experienced bank trust officer or others qualified in estate planning. Study this booklet carefully, then discuss the subject with one or more of those people. That way you can be more certain of making a wise decision—and the only wise decision is the *right* decision.

One excellent way to understand the factors of SBP is to assume you are having a preretirement counseling session with your personnel officer.

Say you're 43 years old and have completed 20 years active service sometime after Oct. 1, 1985. Your spouse is two years younger, and you have three children, ages 10, 12 and 15. Some of the SBP language you'll hear will be base amount, CPI increases, cost factors for children coverage, DIC and—well, it goes on and on. Let's take them apart one at a time, then put them back together, starting with the fundamentals.

Members Eligible to Retire after Oct. 1, 1985—The Two-Tier System

This section is for those active duty service members who completed 20 years active service and became eligible to retire after Oct. 1, 1985.

Amount of Annuity

Although the original SBP law was enacted in 1972, the Defense Authorization Act of 1986 (PL 99-145), which became effective on March 1, 1986, introduced a new two-tier system of SBP. This system applies to those who become retirement eligible (20 years active service) after Oct. 1, 1985. The two-tier system provides an SBP annuity of 55 percent of the base amount until age 62 and 35 percent of the base amount at age 62 and after. For those of you who became retirement eligible before Oct. 2, 1985, please read "Members Eligible to Retire Before Oct. 2, 1985" on page 12.

The SBP annuity is always either 55 percent (up to age 62) or 35 percent (age 62 and after) of what is referred to as a "base" amount. The maximum base amount is the gross monthly retired pay. But the base does not have to be that high—it can be as low as \$300. The retiree can make the choice of what the base amount is to be. Some examples follow:

Gross Monthly Retired Pay	Base Amount Retiree Elects	Monthly SBP Annuity
\$1,000	\$1,000 × 55% = (maximum)	\$550 (until age 62)
	\$1,000 × 35% =	\$350 (age 62 and after)
\$1,000	\$500 × 55% = (less than maximum)	\$275 (until age 62)
	\$500 × 35% =	\$175 (age 62 and after)
\$1,000	\$300 × 55% = (minimum)	\$165 (until age 62)
	\$300 × 35% =	\$105 (age 62 and after)



Spouse-Only Coverage—Cost of Annuity

Computing the cost is as easy as determining the base amount. There is a simple formula. Take the most common annuity first—coverage for a spouse only. Assume you want your spouse to receive the maximum—55 percent of your gross retired pay—and assume that your gross retired pay will be \$1,000 a month.

Here is the way it works:

Base	Monthly Annuity	Monthly Cost
\$1,000 × 55% =	\$550	\$77.50
The first \$300 of the base amount is at the rate of 2.5 percent. The remainder is at the rate of 10 percent.		
Base	\$1,000	
First	-\$ 300 × 2.5% = \$ 7.50	
Remainder	\$ 700 × 10% = \$70.00	
Total Cost	\$77.50

Other Cost Considerations

The \$300 low-cost base (cost 2.5 percent) is increased by the same percent as active duty pay. This applies to members first becoming SBP participants on or after March 1, 1986, whose retired pay is based on basic pay tables that were

effective after Sept. 30, 1985. What this means is that the first \$300 of the base amount will be increased by the percent of active duty pay raises and thus make the total SBP cost less. If, for example, these pay raises amount to 3 percent in 1987 and 5 percent in 1988, the \$300 base will have increased to \$324.45. The low cost 2.5 percent will then be applied to the \$324.45 figure instead of the original \$300.

The cost, whatever it may be, is exempt from federal income tax.

Cost Not Taxable?

Right! Section 122 of the Internal Revenue Code exempts the cost of SBP from income tax. Consequently, your gross taxable retired pay is reduced by the cost of SBP, and only the remainder will be subject to federal income tax. Further, in nearly all states, the cost is exempt from state income tax (refer to Appendix A).

This income tax benefit does *not* apply to those members who pay their monthly *cost* for SBP by direct remittance to their finance center. Stated another way, there is no tax advantage if you pay by direct payment.

Payment of Annuity

In the event of your death, the SBP annuity (plus cost-of-living increases we will discuss later) will be paid as long as your surviving spouse lives. Should remarriage occur before age 55, however, the annuity will end. But if and when *that* marriage terminates, the annuity would again be payable. If remarriage occurs after age 55, the annuity continues uninterrupted.

Let's now compute the cost of spouse and children coverage, the next option available to you.

Spouse and Children Coverage

The additional cost for children is based on the ages of the youngest child and both spouses and therefore varies. In our example of a retiree, 43, a spouse, 41, and a youngest child, 10, the cost factor is .0005. Multiply this factor by the base amount, and you get the additional cost for child coverage. Again, assuming gross retired pay of \$1,000 a month (maximum coverage), this is the way it would be computed:

Base	Monthly Annuity	Monthly Cost
Spouse Only \$1,000 × 55% =	\$550	\$77.50
Children coverage: Cost factor .0005 × \$1,000 =		.50
Total Cost		\$78.00

As in spouse coverage, SBP proceeds would be paid to your surviving spouse. Only when the surviving spouse is no longer eligible by reason of remarriage before age 55 or death are payments made to the unmarried children. When there is more than one child, the proceeds are shared equally by all eligible children. Payments will be made to unmarried children until they reach age 18; if attending school on a full-time basis and still unmarried, then payments may be continued until age 22. There is no age limit for payment to eligible, incapacitated children. This includes unmarried children who are mentally or physically incapable of self-support because of a condition that existed before age 18 (before age 22 if in school). For such children, the annuity remains at 55 percent of the base amount regardless of age (i.e. no reduction at age 62). Deductions for child coverage stop when there is no longer an eligible child beneficiary.

Children-Only Coverage

Cost for the children-only coverage is based on your age and the age of the youngest child. But the annuity payable is always 55 percent of the base amount. With the same base amount and ages, we've been using, here's how you compute the annuity:

Base	Monthly Annuity	Monthly Cost
\$1,000 × 55% =	\$550	\$3.80



With your age of 43 and your youngest child's age of 10, the cost factor is .0038. This multiplied by the base amount is \$3.80. In the event of your death, the annuity would be shared equally by your eligible children. Deductions from retired pay stop when there is no longer an eligible beneficiary.

And, as mentioned in the example of spouse and children coverage, the annuity is payable to unmarried children until the youngest child is 18 (22 if in school). Again, there is no age limit for eligible, incapacitated children.

Let's do a double take on part of that last sentence "... no age limit for eligible, incapacitated children." This is extremely important for a retiree who has a child in that situation because, if the retiree's disabled son or daughter is older than 18, the cost is based on a child of 17. Thus, with a sponsor who is 43, the cost factor would be .0012. For the same \$550 annuity, the deduction from retired pay would be only \$1.20 a month. If a disabled child is under age 17, the cost factors previously described are used. In any case, coverage for an incapacitated child should not be overlooked.

Persons With Insurable Interest

What about SBP coverage for retirees who have neither spouse nor eligible children? Does SBP have anything for them? Indeed it does!

The Persons with Insurable Interest feature of SBP is different from the others. It can be elected by an unmarried retiree who has no dependent children and who may want to provide for a relative or other person with an insurable interest in the retiree. The cost of insurable interest participation is considerably higher than the basic spouse-only cost. It is 10 percent of the gross retired pay plus an additional 5 percent of that pay for each full five years the beneficiary is younger than the retiree. The total cost, however, may not exceed 40 percent of the retired pay. The annuity is 55 percent of the retired pay remaining after the cost has been deducted (there is *no* reduction at age 62 to 35 percent).

If you elect this coverage, you can change it to cover a spouse and/or children acquired after retirement. For example, an unmarried member age 45, about to retire, has a sister age 42 and wants to elect SBP coverage for her. Gross retired pay will be \$1,000 a month. This is how the cost and annuity could be computed:

The base amount is gross retired pay:

Retired Pay: \$1,000
Cost: $\$1,000 \times 10\% = \100.00
Base: $\$1,000 - \100.00 cost = $\$900.00$
 $\$900.00 \times 55\% = \495.00
Monthly Annuity: \$495.00



Those members who wish to change this election to cover a newly acquired spouse or child must do so within one year after marriage or acquiring a child anytime during that year. A written request for this change should be submitted to the member's military finance center.

Spousal Concurrence

Your decision to elect or not to elect SBP obviously is important to your family as a whole but especially to your spouse, who is the longest potential financial beneficiary of your decision. Congress, in its passage of the SBP law in 1972, recognized this by requiring written spousal notification of the SBP election made. In its 1986 SBP revision, Congress took further note of the importance of the decision. Section 721 of the Defense Authorization Act of 1986 requires that effective March 1, 1986, a married member must be enrolled with spouse coverage based on full retired pay at the time of retirement unless that spouse has concurred in writing to another election requested by the member. 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, even when the member has requested child-only coverage, full spouse and child coverage will be implemented. If spousal concurrence is not obtained as a result of some administrative error, the member should request an administrative correction of records.

The requirement for spousal concurrence does 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 current spouse's concurrence is not required; however, the current spouse must be notified of that election as previously required when spouse coverage was declined. In other words, a married member who has a former spouse may elect SBP for that former spouse without the current spouse's concurrence. Spousal concurrence is not required in any case if the member establishes to the satisfaction of the service finance center concerned that either the spouse's whereabouts cannot be determined or that, due to exceptional circumstances, the requirement of the member to seek the spouse's concurrence would be otherwise inappropriate. Such exceptional circumstances are evaluated on a case-by-case basis. When a member claims the spouse's whereabouts are unknown, the member must sign a statement to that effect.

In sum, spousal concurrence or notification in case of a former spouse election is required for any member eligible to provide a SBP annuity.

Former Spouse Coverage

Enactment on Sept. 8, 1982, of Section 1003, PL 97-252, popularly known as the "Former Spouse Protection Act" as later modified by Section 941, PL 98-94, Sept. 14, 1983; Section 644, PL 98-525, Oct. 9, 1984; Sections 716, 723 and 724, PL 99-145, Nov. 8, 1985; and Sections 641 and 645, PL 99-661, Nov. 14, 1986, made major changes to the SBP by authorizing the election of a former spouse as an eligible beneficiary under the plan.

The election to provide SBP coverage for a former spouse as well as the revocation of such an election are each subject to several rigid and complicated requirements. In the interest of brevity, these complex details are not included in this part of the booklet. Those members who want more information on this subject may refer to Appendix D.

Remarriage

There are several options available to a retiree initially participating in SBP for spouse or spouse and child coverage when that marriage ends in death, divorce or annulment and the retiree remarries. These are: resume spousal coverage; increase base amount coverage up to and including full retired pay (with increase in cost from date of election of such increase) and the member paying the service finance center the difference between the SBP costs incurred and the costs that would have been incurred if the new level of participation had been elected originally; or elect

not to have the spouse portion of coverage resumed.

No Dependents

If you are not married and do not have dependent children at the time you retire, you can enroll in SBP later. Just remember that you must file the SBP election within one year after your marriage or acquisition of a dependent child.

Death of Retirement-Eligible Parent

The 1986 Defense Authorization Act (PL 99-145) as amended by PL 99-661 (Nov. 14, 1986) also contains a provision stating that children are eligible for an SBP annuity if they have a retirement-eligible parent on active duty (or a parent who completed 20 years of active service but before becoming eligible to retire as a commissioned officer because the parent did not have 10 years of active commissioned service) and whose retirement-eligible parent dies leaving no surviving spouse or whose surviving spouse subsequently dies. This applies only to claims arising on or after March 1, 1986.

Cost-of-Living Adjustments

You're well aware that retired pay is adjusted periodically to keep pace with inflation. These cost-of-living adjustments are based on increases in the Consumer Price Index.



We'll now assume that you're a retired lieutenant colonel and your gross retired pay is \$1,800 a month. You've also decided on spouse-only SBP coverage based on your gross retired pay. We'll assume a 5 percent increase in retired pay has been authorized. Here's how that will work:

Before the raise:

Base Amount	Monthly Annuity
\$1,800 × 55% =	\$990

Monthly Cost

\$157.50 (2.5% of first \$300 base amount plus 10% of remainder)

After the 5 percent increase in retired pay:

New Base	Monthly Annuity
\$1,890 × 55% =	\$1,039.50

New Monthly Cost:

Previous cost	\$157.50
Plus 5%	7.88
Total	\$165.38

It's easy to see what a 5 percent increase in retired pay will do. In this example, a \$990 annuity is now worth \$1039.50. And the cost also increases from \$157.50 to \$165.38. Now is the time to emphasize another important point: Surviving spouses who are receiving SBP annuities get the same 5 percent increase.

Of the thousands of surviving spouses now receiving a monthly SBP annuity, a sizable number of them lost their marital partners shortly after the law was passed in 1972. Some surviving spouses have had a 154 percent cost-of-living increase in their annuities during the 15 years before the current printing of this booklet. Just think—an SBP annuity that was \$500 in late 1972 had increased to \$1,270 by December 1986. Consider this seriously when you discuss SBP with your spouse, your personnel officer, your retirement services officer and other persons knowledgeable in financial and estate planning.

Dependency and Indemnity Compensation

Here we go with a real tongue twister. What's it all about, and why is it involved with SBP? Is it really important? Should a healthy 43-year-old about to retire from active service be concerned with this? Yes, it *could* be an important benefit to your spouse and children.

You should know that DIC is payable when death occurs on active duty, unless a determination of misconduct is made. It is also payable when death occurs after release from active duty provided the cause of death is attributable to an injury or disease incurred while on active duty. Legislation enacted in 1978 also authorizes DIC payments if death is not due to service-connected causes, provided a total service-connected disability rating awarded by the VA is in effect on date of death and has been held for 10 or more continuous years before death or five continuous years beginning with the date of last release from active duty. A total service-connected disability for VA purposes requires that a veteran be rated by VA at 100 percent statutorily or be authorized by VA to draw compensation at the 100 percent rate because of unemployability. DIC is administered by the Veterans Administration.

If you have any indication of a service-connected disability, you should arrange for an evaluation by the VA at the time of retirement. It is important that any kind of service-connected condition be made a matter of record. It will make things much easier for your surviving spouse in the event a claim for DIC is possible. The amount of a surviving spouse's DIC payment depends on the highest grade the member satisfactorily held on active duty for at least six months. As of Dec. 1, 1986, the monthly rates for each grade are:

DIC Monthly Payments

Officers	Warrant Officers	Enlisted			
O-1	\$ 630	W-1	\$630	E-1	\$498
O-2	650	W-2	655	E-2	513
O-3	696	W-3	674	E-3	526
O-4	736	W-4	714	E-4	560
O-5	811			E-5	574
O-6	914			E-6	587
O-7	988			E-7	616
O-8	1,083			E-8	650
O-9	1,162			E-9	679
O-10	1,274				

An additional \$58 is payable for each child under 18, and \$149 is payable to a surviving spouse who requires aid and attendance.

DIC is important whether or not a retiree is enrolled in SBP. It is tax-free compensation to a surviving spouse, not a pension for the needy. It's not connected with any kind of an earnings test. It's payable to a surviving spouse regardless of any other income.

Now, let's get back to SBP. Suppose the VA does authorize DIC payments after your death. For ease of computation, we'll use a monthly retired pay of \$1,800. According to the rates in the table, your surviving spouse's DIC, based on your

active duty grade of lieutenant colonel, would be \$811 a month.

If your surviving spouse were under 62, \$811 DIC would be deducted from the SBP annuity of \$990 (\$1,800 × 55 percent) leaving a net annuity of \$179. However, to compensate for this reduction, your surviving spouse would receive a cash refund of those SBP premiums you paid to provide for the amount of DIC (\$811) now being deducted from the annuity. In the event the DIC payment is greater than the SBP annuity, no annuity will be payable, and the surviving spouse will receive a refund of all the money paid into SBP.

If your surviving spouse were age 62 or older, the \$811 DIC exceeds the SBP payment of \$630 (\$1,800 × 35 percent); therefore, no SBP annuity would be payable. Again, the surviving spouse would receive a cash refund of those SBP premiums you paid to provide for the amount of the annuity (\$630) now not payable. The 35 percent annuity payment referred to above applies because we are still talking about active duty members who become retirement eligible after Oct. 1, 1985.

There is no reduction of the SBP annuity for DIC paid on behalf of dependent children.

But what happens to a surviving spouse who remarries after 55? What effect does this have on SBP and DIC? As we noted earlier, a surviving spouse drawing an SBP annuity who remarries after 55 will have the SBP annuity continued without interruption. The same is not true for DIC.

A surviving spouse loses entitlement to DIC upon remarriage, regardless of age. If this happens after the surviving spouse becomes 55, the SBP annuity can be readjusted to the amount that would have been in effect had the DIC not been awarded; however, the surviving spouse must repay any cost premiums refunded before any adjustment can take place.

This repayment provision has been modified by Section 717, PL 99-145. Under this change, the full SBP annuity is payable when DIC terminates and not after the refund has been paid back. A surviving spouse can repay the refund cost premiums in either a lump sum or in installments. If the surviving spouse elects to make repayments in installments, those installment payments will be deducted from the SBP annuity payable.

SBP and Civil Service

If you elect SBP coverage and are planning to become a federal civil service employee who could waive military retired pay in favor of a combined military/civil service retirement payment, you will have the following SBP options at time of retirement: drop SBP and elect coverage under the civil service survivor plan; or keep SBP by declining civil service survivor coverage.

If you don't waive military retired pay, you can have survivor coverage under both SBP and civil service.

Social Security Entitlements

Many military people, secure in their own prospective retirement and benefits programs, give scant attention to Social Security and what it can provide. But when dependents become survivors, they become acutely aware of the relationship of certain Social Security benefits to those of the military programs. One of these, of course, is the entitlement to Social Security benefits at 62 and its effect on SBP. Stated in other words, SBP is integrated with Social Security.

For the surviving spouse at 62, it is then that the SBP annuity is reduced from 55 percent of the base amount elected to 35 percent. Why? When? How much? Let's discuss the "Why" first.

Why: Congress' goal in creating SBP was to ensure that survivors of military retirees would be provided reasonable and continuous income replacement—something that Social Security alone does not provide because of the gaps in years of coverage until the surviving spouse reaches 62. When survivors of deceased military retirees become eligible to receive Social Security payments or any other payment resulting from government service, Congress intended that the value of Social Security and other entitlements be considered when determining whether reasonable income replacement was achieved.



"Even with an offset, SBP, together with Social Security, will guarantee at least 55 percent of present and future value of retired pay."

A second reason for integrating SBP with Social Security recognizes that the government—as the employer—contributes to both systems on the member's behalf. To not in some way offset the payment from one program against the payment from the other would undervalue the substantial contributions made by the government, provide more than the intended level of benefits to some recipients and increase program costs significantly. The added costs would have to be made up by either greater subsidy from the taxpayers or higher contributions by the retiree. Social Security integration is a common feature of private sector retirement and survivor plans for similar reasons.

When: The reduction takes place when the surviving spouse reaches 62. If, by chance, you should die before your spouse is 62, the SBP annuity will not be reduced before your surviving spouse reaches that age.

How much: The amount of a surviving spouse's SBP annuity paid is straightforward, 35 percent of the base amount elected instead of the 55 percent. Again, this is in recognition of entitlement to Social Security benefits at 62.

Members Eligible to Retire Before Oct. 2, 1985

Until now you have read about active duty people who completed 20 years active service and became eligible to retire after Oct. 1, 1985. We now would like to talk to those of you, still on active duty, who became retirement eligible before Oct. 2, 1985.

What does SBP have for you? Do you get a better deal than the younger active duty person? The answer is that your SBP coverage will be "grandfathered." You will have the SBP coverage that will be most favorable, under the original law or under the new two-tier system.

For the sake of brevity, we will not repeat all the details of the various items discussed in "Members Eligible to Retire After Oct. 1, 1985" on page 6. Instead, we'll briefly refer to them, but please be patient. Refer back to each one so there will not be any misunderstanding.

- Amount of Annuity—see page 6.
- Cost of Annuity—see pages 6 and 7.
- Cost Not Taxable—see page 7.
- Payment of Annuity—see page 7.
- Spouse and Children Coverage—see page 7.
- Children-Only Coverage—see pages 7 and 8.
- Person With Insurable Interest—see page 8.
- Spousal Concurrence—see page 8.
- Former Spouse Coverage—see page 9 and Appendix D.
- Remarriage—see page 9.
- No Dependents—see page 9.
- Death of Retirement Eligible Parent—see page 9.
- Dependency and Indemnity Compensation—see page 10 and 11.

Social Security Offset

On page 11, we discussed how Social Security benefits tie in with an SBP annuity. On pages 28 and 31 in Appendix F, a more detailed explanation of the integration of Social Security payments with SBP is provided. This is important to those who were retirement eligible before Oct. 2, 1985. Again, your surviving spouse's SBP annuity will be 55 percent of the base amount you elected until age 62 and after age 62 will be either: 35 percent of the base amount (two-tier system) or the reduction of the SBP based on your active duty after Dec. 31, 1956 (Social Security offset).

The amount payable will be the method most favorable. This is the "grandfather" protection you have!

Current Retirees

HERE ARE now more than 800,000 retirees enrolled in SBP, and more than 104,000 surviving families receive monthly SBP checks. This part of our booklet is concerned with the military retiree now participating in SBP. Perhaps the most important questions include:

- What happens if my spouse dies before I do?
- What happens if my spouse and I are divorced?
- What happens to deductions from my retired pay when children are covered but are no longer eligible?
- What will the annuity amount to?
- What must my surviving spouse do to collect the annuity after I die?
- What happens to the annuity upon my surviving spouse's remarriage?
- What federal and state income taxes must be paid on the annuity?
- What federal and state inheritance or estate taxes must be paid?
- How about the reduction in the annuity when the surviving spouse becomes eligible for Social Security benefits?
- Can I elect coverage for a former spouse?
- What is the impact of the new two-tier SBP system on my annuity?
- In other words, what am I paying for?

There are other questions. We'll try to cover them all.

Grandfathering

In Part I, we discussed SBP for personnel on active duty with emphasis on the new two-tier system for SBP as passed by PL 99-145 effective March 1, 1986. All military personnel who are retirement eligible after Oct. 1, 1985, are under this new two-tier SBP system. However, current retirees, current SBP beneficiaries and military personnel who were retirement eligible on or before Oct. 1, 1985, are also affected by the new two-tier SBP system. How?

Title VII of PL 99-145 in effect establishes only one SBP annuity, and that annuity is computed utilizing the two-tier system (55 percent of the base amount until age 62 and 35 percent thereafter). However, the original SBP law (PL 92-425) enacted on Sept. 21, 1972, established an SBP annuity based solely on 55 percent of the base amount (together with any Social Security offset applicable). Most retirees are enrolled in the SBP



"Counting Social Security, retirement, disability and survivor benefits, nearly one out of every seven Americans receives monthly entitlement checks."

program under the provisions of the original SBP law. The basic question is: Will the SBP annuity for these retirees be paid under the provisions of the original SBP law or the new two-tier system?

For military personnel who were retirement eligible on or before Oct. 1, 1985, and their future survivors, or military personnel retired on or before Oct. 1, 1985, and their future survivors and current beneficiaries, "grandfathering" of their SBP annuity will apply if the survivor or beneficiaries would have been subject to the provisions of the Social Security offset. Under "grandfathering," survivors (or current beneficiaries) will receive the annuity most financially favorable to them, either under the law as it was before March 1, 1986, or the new two-tier system. The service finance center will compute this after the retiree's death. Current surviving spouse beneficiaries who were 62 or older before March 1, 1986, had the comparison made for the March 1986 entitlement. Current surviving spouse beneficiaries younger than 62 as of March 1, 1986, will have the comparison made in the first month of entitlement after becoming 62.

Changes in Coverage

Except as indicated below, participation in SBP cannot be changed or modified once your application becomes effective. Deductions from your retired pay continue as long as you have an eligible beneficiary for the annuity. If your spouse dies before you do, you are granted a divorce or

your marriage is annulled, deductions from your retirement pay will be discontinued. To stop the SBP deduction, you need only send a copy of the death certificate or divorce/annulment decree to your finance center together with a cover letter providing your complete name, Social Security number and an explanation of your request. What really happens in this situation is the SBP coverage is merely suspended.

This is a clear way of putting it because if and when a retiree remarries, the new spouse automatically assumes the same SBP coverage that was in effect for the previous spouse. (For those personnel remarrying on or after March 1, 1986, the retiree has the option not to provide coverage for the new spouse. The member's new spouse must be notified, and the option must be exercised within one year after remarriage.) Liability for deductions from retired pay begin one year after the marriage, at which time the new spouse becomes an eligible beneficiary. An earlier date applies if a child is born of that marriage. If you remarry your former spouse, the one-year wait is not applicable and costs with coverage are effective with the date of remarriage.

If you've elected spouse and children coverage, the additional cost will be discontinued when the youngest child reaches age 18 (22 if unmarried student). The same rule applies if you elected child-only coverage. Simply send a note to your finance center when you no longer have a child eligible for SBP benefits. Also, if you have combined spouse-children coverage and are divorced or your spouse dies, the cost for the children's coverage (if still eligible) will be recalculated, which may result in a higher premium rate than you previously were paying for their coverage; however, the total premium rate will be much less because the spouse is dropped from coverage.

If you elected SBP coverage and are a federal civil service employee who waives military retired pay in favor of a combined military/civil service retirement payment, you may drop SBP and elect coverage under the civil service survivor plan or keep SBP by declining civil service survivor coverage.

If you don't waive your military retired pay, you can have survivor coverage under both SBP and civil service.

If you had no eligible dependents at the time of retirement and elected SBP coverage for a person with an insurable interest, you can later change that coverage to spouse and/or child coverage. But remember, you must file the change within one year of marriage or acquisition of a dependent child.

Children are eligible for an SBP annuity if they had a retirement-eligible parent on active duty (or a parent who completed 20 years of active service but before becoming eligible to retire as a commissioned officer because the parent did not

have 10 years of active commissioned service) and whose retirement-eligible parent dies leaving no surviving spouse or whose surviving spouse subsequently dies. Eligible children are those under age 18 (22 if unmarried students) or those who were physically disabled or mentally incapacitated before age 18 (22 if students). This applies only to claims arising on or after March 1, 1986.

As explained on page 10, if you have held a VA total service-connected disability rating for 10 or more years immediately before death or continuously since release from active duty for at least five years, your eligible dependents will become entitled to DIC payments even if your death should be due to non-service-connected causes. In this situation, a retiree has the option, with the written consent of the retiree's SBP beneficiary, of suspending participation in SBP. When this is done, SBP cost deductions from retired pay end. The beneficiary is no longer eligible for the SBP annuity. However, upon the death of the retiree, the surviving spouse would receive a cost refund of all SBP premium deductions from the retiree's retired pay. In the event the VA total disability rating is reduced after the retiree withdrew from participation in SBP, the retiree has the option of reinstating the SBP coverage. Deductions from retired pay would then resume, and the retiree's beneficiary again becomes eligible for the SBP annuity.

If your SBP annuity is greater than DIC, you must weigh carefully the decision to suspend SBP participation. Chances are you will want to continue SBP participation.

Former Spouse Coverage

Enactment on Sept. 8, 1982, of Section 1003, PL 97-252, popularly known as the "Former Spouses' Protection Act" as later modified by Section 941, PL 98-94, dated Sept. 14, 1983; PL 98-525, Oct. 9, 1984; Sections 716, 723 and 724, PL 99-145, Nov. 8, 1985; and Sections 641 and 645, PL 99-661, Nov. 14, 1986, made major changes to the Survivor Benefit Plan by authorizing the election of a former spouse as an eligible beneficiary under the plan.

The election to provide SBP coverage for a former spouse as well as the revocation of such an election are each subject to several rigid and complex requirements. For further information, refer to Appendix D.

Payment of the SBP Annuity

In Part I, we discussed the SBP base amount and how it is adjusted whenever retired pay is increased. We also stated that once a beneficiary starts to receive the annuity, it is also adjusted at the same rate retired pay is increased.

elected former spouse coverage, the children would receive the SBP annuity in the event of your death. It will be paid under the same rules mentioned above.

If you have children-only coverage, the annuity would be payable until the youngest eligible child is age 18 (22 if in school). Also, there is no age limit for an incapacitated child.

If you were not married when you retired and had no dependent children, you may have elected SBP for a person with an insurable interest. In this situation, the annuity is payable to that person for life.

As pointed out earlier, the SBP annuity is automatically increased by the same percentage and at the same time that cost-of-living adjustments in retired pay are granted.

Taxes and Their Inevitability

Taxes are unavoidable, so you need a clear understanding of the tax status of your surviving spouse's annuity.

Federal Income Tax

First, remember the big tax advantage of SBP. The monthly SBP premium is not subject to federal income tax and therefore reduces the taxability of your gross retired pay.

Annuity payments to your surviving spouse, however, will be fully taxable by the federal government including any refund of SBP costs because of receipt of DIC. At the end of each year, your finance center will send your surviving spouse a W-2P Form, which will show the amount of the annuity paid. It will also show the amount withheld for tax purposes.

Exceptions

It seems exceptions are as inevitable as taxes. But here are a few excellent ones—even though they do not apply to many surviving spouses.

One exception applies to surviving spouses whose spouses were retired from the military by reason of physical disability and died before reaching "statutory retirement age" (Appendix E has a listing of such ages). In these cases, the first \$5,000 a surviving spouse receives in SBP payments can be excluded from federal income tax. Specific details on claiming this exclusion also are found in Appendix E.

The other exception applies to retirees who have waived payment of their retired pay in favor of another federal benefit and who continue their SBP participation by making direct payments each month to the finance center. Here the annuity will



For example, if you elected SBP coverage based on gross retired pay of \$1,000 (base amount) and your pay has now been increased to \$1,200, your surviving spouse's initial SBP payment would be \$660 a month (55 percent of \$1,200). The amount is increased thereafter by the same percentage retired pay is raised.

Applying for the Annuity

As soon as the finance center that pays your retired pay receives notification of your death, your surviving spouse will be sent a form to claim the SBP annuity. The form is simple to complete, and when it is returned to the finance center, the SBP account will be established.

How Long Will the SBP Annuity Be Paid?

The annuity will be payable as long as your surviving spouse lives. However, should remarriage occur before age 55, the annuity will be suspended. It would again be payable upon termination of that marriage.

If a surviving spouse remarries after age 55, the annuity continues uninterrupted. If you have spouse and children coverage and your surviving spouse dies or remarries before age 55, the children would receive the annuity until the youngest eligible child is 18 (22 if in school). There is no age limit for an incapacitated child.

If you are divorced and have spouse and children coverage and have not remarried or

be exempt from federal income tax until the annuitant recovers the total of the retiree's direct payments.

Federal Estate Tax

The federal estate tax treatment depends upon a member's specific SBP election and, in some cases, upon the date of the member's military retirement.

1. For "spouse-only" elections, the value of any survival annuity includable in the decedent's gross estate that passes solely to decedent's spouse will qualify for the marital deduction and thus is not subject to the federal estate tax.

2. For "spouse and child" elections in which one or more eligible children survive the decedent, the qualified terminable interest provision in the tax law will allow the value of the annuity to pass free of estate taxation provided the estate qualifies through a qualifying irrevocable election on the federal estate tax return.

3. In the case of decedents dying after Dec. 31, 1984, the value of the SBP added to all other survivor annuities under qualified retirement plans and individual retirement accounts but limited to an aggregate of \$100,000 could be excluded from the decedent's gross estate provided the decedent:

a. had made an irrevocable election under the SBP prior to July 18, 1984, and did not have the capacity to change the election after that date, and

b. had been retired from active service no later than Dec. 31, 1984.

4. The full value of the SBP annuity will be included in the estate of a decedent who had one of the following SBP elections in effect on the date of death:

a. a "spouse and child" election in which one or more eligible children survived the decedent once a qualifying irrevocable election was not made on the decedent's federal estate tax return (see 2. above).

b. a child/children election.

c. a former spouse election.

d. an election of a person holding an insurable interest in the decedent.

Federal Gift Tax

The election upon retirement by a retiree to provide for a survivor benefit annuity is not considered as a transfer subject to the gift tax where the election is made under the retirement plan described in Chapter 73 of Title 10 of the U.S. Code. However, if any portion of the value of the survivor annuity is attributable to amounts paid or controlled (deposits) by the military member under Section 1438 or 1452(d) (both dealing with periods of time that a retiree was not

entitled to retired pay), such portion is treated as a gift and subject to the federal gift tax.

Non-resident Alien SBP/RSFPP Tax

Non-resident alien SBP/RSFPP beneficiaries living in a foreign country are subject to a withholding tax by the U.S. government on their monthly SBP/RSFPP payment (26 USC 1441(a)). The withholding tax rate is 30 percent of the payable annuity and is not refundable.

The taxed levy is not part of the SBP/RSFPP laws but results from individual tax treaties between the U.S. government and various foreign countries. The 30 percent is a fixed tax that must be withheld by the paying military finance center.

State Income Tax and State Inheritance/Estate Taxes

Whether or not your surviving spouse's SBP annuity is subject to state income tax depends on the laws of the taxing state. Inheritance, gift or estate tax laws vary from state to state. For specific information, contact state tax authorities directly.

Social Security Offset

In Part I, we briefly discussed Social Security entitlements. We noted that a retiree can start to receive Social Security retirement benefits at 62 or



later. For the surviving spouse at 62, one of two courses of action takes place concerning the SBP annuity. Either the spouse could receive an annuity change under the two-tier system (reduction to 35 percent of the base amount) or be subject to a Social Security offset to the SBP annuity if the retiree had active duty or active duty for training after Dec. 31, 1956. The final determination hinges on which computation provides an annuity most financially favorable to the surviving spouse. We've explained the two-tier system in Part I. Now let's discuss the "Social Security offset" to the original SBP law.

Of all the features of the original SBP law, the Social Security offset is the most misunderstood and confusing to the members. Basically, a surviving spouse's SBP annuity is reduced after 62 if the surviving spouse is entitled to Social Security benefits based on the retiree's Social Security earnings. The reduction of the annuity is based solely on the value of Social Security wage credits earned during active duty or active duty for training after Dec. 31, 1956. For a complete discussion of the offset including the why, when and how much, refer to Appendix F.

APPENDIX A

State Tax Information—SBP Annuities

Based on information provided by each state, the District of Columbia and the Commonwealth of Puerto Rico, the following chart shows whether

annuities under SBP are subject to state income tax. For specific details, consult a qualified tax consultant or write to state tax authorities.

State	Income Tax	State	Income Tax
Alabama	Yes ⁸	Nebraska	Yes
Alaska	None ¹	Nevada	None ¹
Arizona	Yes	New Hampshire	None ¹
Arkansas	Yes ¹¹	New Jersey	Yes
California	Yes	New Mexico	Yes ¹⁰
Colorado	Yes ³	New York	Yes
Connecticut	None ¹	North Carolina	Yes
Delaware	Yes	North Dakota	Yes ²
Florida	None ¹	Ohio	Yes ⁷
Georgia	Yes	Oklahoma	Yes
Hawaii	No	Oregon	Yes ¹³
Idaho	Yes ⁶	Pennsylvania	No
Illinois	No	Puerto Rico	Yes ¹⁵
Indiana	Yes ⁹	Rhode Island	Yes
Iowa	Yes	South Carolina	Yes ¹⁴
Kansas	Yes	South Dakota	None ¹
Kentucky	Yes	Tennessee	None ¹
Louisiana	Yes ¹⁶	Texas	None ¹
Maine	Yes	Utah	Yes
Maryland	Yes	Vermont	Yes
Massachusetts	Yes	Virginia	Yes
Michigan	Yes ¹²	Washington	None ¹
Minnesota	Yes	West Virginia	No
Mississippi	Yes ⁴	Wisconsin	Yes
Missouri	Yes	Wyoming	None ¹
Montana	Yes ⁵	Washington, D.C.	Yes

Footnotes:

¹No tax imposed.

²\$5,000 exemption at 60 (reduced by Social Security benefits) on Form 37 only (no exemption on Form 37-S).

³\$20,000 annual exemption.

⁴\$5,000 annual exemption.

⁵\$3,600 annual exemption.

Continued on page 18

Legislative Amendments

The SBP law (PL 92-425) was approved on Sept. 21, 1972. Persons retired on or before that date were given one year to apply for enrollment in the plan. But, as the one-year deadline approached, it became clear that more time was required—the SBP word hadn't been received by all retirees, and equally important, there was a need for additional information explaining the plan. For these reasons, a six-month extension was granted by PL 93-155 changing the enrollment deadline to March 20, 1974, for pre-September 1972 retirees. PL 93-406, dated Sept. 2, 1974, granted special tax treatment for SBP. Briefly, it exempted the member's cost from inclusion in the respective taxable retired pay.

The next SBP amendment (PL 94-496) occurred on Oct. 14, 1976, and it made meaningful changes to the basic law. As originally enacted, deductions from retired pay were required even though a spouse predeceased the retiree or if they were divorced. The 1976 amendment corrected this. Since that time, SBP deductions from retired pay have been discontinued when there is no eligible beneficiary. In addition, the original law's requirement of a two-year waiting period or remarriage before a second spouse became an eligible beneficiary was reduced to one year.

Substantial changes were made on Sept. 30, 1978, by PL 95-397. They eliminated the Social Security offset in the case of a "working widow" not eligible to receive Social Security benefits because of "her" income from employment. This amendment also permits surviving spouses remarrying after 60 who had their SBP annuities reduced due to DIC to receive full SBP benefits upon repayment of the SBP refund paid when DIC was awarded. In addition, the 1978 law authorized automatic cost-of-living increases to Retired Serviceman's Family Protection Plan

spouses who lost their retiree spouses on or before March 20, 1974, and authorized continuation of RSFPP payments to surviving spouses remarried after 60. However, the most significant amendment in PL 95-397 was a new Reserve Components Survivor Benefit Plan for those reservists who will qualify for retired pay upon reaching 60. This law also required spousal notification if a retiree elected not to participate or elected child-only coverage. Details about this plan are in *Reserve Components Survivor Benefit Plan* (DoD RC-1, DA Pam 360-540, AFP 45-18, NAVMC 2732).

The law was again amended on Oct. 9, 1980, when PL 96-402 was approved. Five important changes were made, which became effective on Dec. 1, 1980:

1. The increased cost of SBP whenever retired pay is raised has been placed under the same system as the federal civil service survivor plan. Future SBP cost increases will simply reflect the percentage of the retired pay adjustment.

2. The Social Security offset requirement has been modified. A surviving spouse is now guaranteed to receive at least 60 percent of the SBP annuity.

3. Surviving spouses whose retirement-eligible spouses died on active duty before Sept. 21, 1972, are now entitled to SBP, reduced by the amount of DIC payable by the Veterans Administration and, if applicable, by an RSFPP annuity.

4. Retirees who have held a total VA service-connected disability rating for 10 continuous years or more or for at least five continuous years since the date of last release from active duty may now voluntarily suspend SBP participation.

5. Lastly, wage credits earned by reservists during periods of active duty for less than 30

Continued from page 17

⁶Variable exemption at 65 (62 if disabled). See current state instructions.

⁷Graduated tax credit up to \$200. See current state instructions.

⁸\$10,000 annual exemption.

⁹\$2,000 exemption at 60.

¹⁰\$6,000 exemption if retiree would have been 62 or older during the tax year.

¹¹\$6,000 annual exemption.

¹²Exemption to the extent included in federal adjusted gross income or \$7,500 for a single return or \$10,000 on a joint return, whichever is smaller.

¹³Up to \$43,400 exemption subjected to certain conditions. See current state instruction.

¹⁴\$3,000 annual exemption.

¹⁵\$2,500 annual exemption up to 60; \$4,000 annual exemption for 60 or older.

¹⁶\$6,000 exemption for persons 65 or older.

Note: Annuities under the Retired Serviceman's Family Protection Plan are taxed the same as SBP.

SBP Cost Deductions from Retired Pay

In Alabama, Arkansas and Mississippi, taxable retired pay is not reduced by the cost of SBP participation. Gross taxable retired pay (before deduction on annuity cost) is subject to state income tax.

In all other states, taxable retired pay is reduced by the annuity cost, the same as on federal income tax returns (reported on Form W-2P). Forms W-2P issued by the finance centers show net taxable retired pay (after deduction of the annuity cost).

Note: To the best of our knowledge, these summaries of state tax information are correct. However, frequent changes occur; the information for any particular state should be confirmed with the appropriate tax authorities.

consecutive days performed after Dec. 1, 1980, for which they receive a refund of Social Security taxes paid because civilian income exceeds the maximum Social Security earnings, do not affect their surviving spouse's annuities.

A further amendment was made on Aug. 13, 1981, when PL 97-35 authorized a one-year SBP open enrollment period from Oct. 1, 1981, to Sept. 30, 1982. During this period, eligible retirees were allowed to enroll initially in the plan, change current base amount to a higher level (up to gross retired pay) or change current children-only coverage to include coverage for spouse.

Provision for former spouse coverage under SBP was added by PL 97-252, Sept. 8, 1982; PL 98-94, Sept. 14, 1983; PL 98-525, Oct. 19, 1984; and Sections 716, 723 and 724 of PL 99-145, Nov. 8, 1985.

In PL 98-525, a change in the Social Security offset rules was included that prescribes no SBP offset to the extent the Social Security benefit is based on the beneficiary's own earnings (the so-called Thurmond Amendment). This was to have become effective Oct. 1, 1985; however, it was repealed by PL 99-145, Nov. 8, 1985, effective Sept. 1, 1985. As such, the offset is to be applied whether the Social Security benefit is based completely or partially on the beneficiary's own wage record or on the wage record of the surviving spouse.

Major changes in the SBP law were effected by the enactment of the Defense Authorization Act of 1986 (PL 99-145) approved on Nov. 8, 1985:

1. The Social Security offset was eliminated and replaced by a two-tier system. Under the new plan, a survivor will receive 55 percent of the "base" amount of retired pay elected, as increased by COLAs until time of retiree's death, until 62, after which it is reduced to 35 percent of the base amount for life. The law includes a "grandfathering" provision that ensures military personnel who were retirement eligible on or before Oct. 1, 1985, and their future survivors or military personnel already retired on or before Oct. 1, 1985, and their future survivors, as well as current beneficiaries (if the survivor or beneficiary would have been subject to the provisions of the Social Security offset), will receive the annuity most favorable to them, either under the original law or the new two-tier system. Military personnel who were retirement eligible on or after Oct. 2, 1985, are under the new two-tier system.

2. The Thurmond Amendment, a law that was to be effective Oct. 1, 1985, and would have eliminated the Social Security offset for surviving spouses who earn Social Security in their own right, was repealed, effective Sept. 1, 1985. Members who elected to participate in the SBP between Oct. 19, 1984, (date of enactment of the Thurmond Amendment) and Nov. 8, 1985, (the date of enactment of the SBP changes) may withdraw from the plan within one year with a

refund of contributions.

3. The \$300 minimum base will increase by the same percent as active duty basic pay. This provision applies only to persons whose retired pay is based on rates of basic pay effective on or after Oct. 1, 1985.

4. SBP is extended to children of retirement-eligible personnel who die on active duty (or a parent who completed 20 years of active service but before becoming eligible to retire as a commissioned officer because the parent did not have 10 years of active commissioned service) if the member and spouse die in a common accident. This change applies to survivors of members who died following enactment of the SBP in 1972 as well as those who die in the future. For those deaths between Sept. 21, 1972, and Oct. 1, 1985, payments will begin the month after the application is received by the service finance center (no retroactive payments are authorized). Eligible unmarried children are those under age 18 (22 if students) or those who were physically disabled or mentally incapacitated before age 18 (22 if students). The service finance centers must receive such requests from dependent children before Oct. 1, 1988. For those deaths after Oct. 1, 1985, payments will begin on the day after the date of death or March 1, 1986, whichever is later.

5. Spousal consent is required before a member can decline SBP, elect less than the maximum coverage or elect SBP coverage for a child only.

6. Upon remarriage, a retiree has the option to elect whether or not to reinstate SBP coverage for a new spouse. Spousal consent is unnecessary. The only requirement is that the new spouse be notified of the decision.

7. Former spouse coverage is expanded to include former spouse-child coverage if the child was born of that marriage. In addition, a retiree who previously elected former spouse coverage may add child coverage within one year from Nov. 8, 1985.

8. Instead of being covered under the insurable interest category, former spouses named as beneficiaries after Nov. 8, 1985, will be covered in the spouse-coverage category. Also, those former spouses originally covered under the insurable interest category could elect jointly (with the retiree) to switch to spouse coverage at the maximum level up to Nov. 8, 1986.

9. Current participants who had the option of electing former spouse coverage in the past and chose not to do so could elect former spouse coverage up to Nov. 8, 1986.

10. The new law covers reservists who died after the enactment of the Reserve Component Survivor Benefit Plan in 1978 and during the 90-day notification period under SBP as well as reservists who die during the 90-day notification period in the future.

11. The secretary of defense is required to

submit a plan for establishing a needs-based survivor annuity program for surviving spouses of reservists who died after enactment of SBP in 1972 and Sept. 30, 1978, after completing 20 years of service but before reaching 60.

Further substantial changes to the SBP law were effected by the enactment of the National Defense Authorization Act for Fiscal Year 1987 (PL 99-661) approved on Nov. 14, 1986.

1. State courts have the option of ordering military service members to participate in the SBP and to designate a former spouse as beneficiary as part of a divorce agreement. This applies to court orders issued on or after Nov. 14, 1986.

2. The payment of survivor benefits is authorized to the surviving dependent children of a retirement-eligible active duty member who dies if no surviving spouse exists or if the surviving spouse subsequently dies. This applies only to claims arising on or after March 1, 1986.

APPENDIX C

Some Questions and Answers

Recently Married

I did not have any dependents when I retired three years ago. However, I have recently married. Is my spouse eligible for SBP coverage, and if so, when must I apply?

Yes. Application must be filed with your finance center within one year of the date you were married.

Remarriage

My spouse died two years ago. I am 53 years old. Will my SBP annuity be discontinued if I remarry?

Yes. However, the annuity would be restored if your second marriage should be terminated. On the other hand, the annuity is not discontinued for spouses who remarry after 55.

Divorce

My spouse and I were recently divorced. How do I stop deductions from my retired pay for SBP for which the ex-spouse no longer qualifies? If I remarry, when will my second spouse be eligible for SBP?

3. Fifty-five percent of retired pay for life is provided to eligible incapacitated dependent children.

4. The age at which a surviving spouse may remarry without losing the entitlement to survivor benefits is lowered from 60 to 55 (applies to remarriages occurring on or after Nov. 14, 1986, but only with respect to payments for periods after Nov. 14, 1986).

5. Members who elected former spouse coverage under the SBP during the period Nov. 8, 1985, through Feb. 28, 1986, are authorized to convert to former spouse-child coverage within one year from Nov. 14, 1986.

We've come a long way since the first voluntary survivor program was approved for members of the uniformed services in November 1953. The complexities of legislating a survivor benefit plan that is equitable to present and future retirees is understood and appreciated.

Send a copy of the divorce decree to your finance center. (In the event of a spouse's death, send a copy of the death certificate.) Upon remarriage, your spouse will be an eligible beneficiary after you are married one year. An earlier date applies if a child is born sooner. However, effective March 1, 1986, a retiree remarrying has the option of resuming this coverage or not. Retirees remarrying before March 1, 1986, must resume the same coverage in effect for the previous spouse.

Income Tax

Should the cost (premiums) of the SBP be entered as a deduction on my federal income tax return?

No. Form W-2P issued to you by the finance center will show your net taxable retired pay after deducting the SBP cost.

I am eligible to receive an SBP annuity. Is it subject to federal income tax, and if so, how do I arrange for a monthly tax withholding from my payment?

Yes. Obtain Form W-4P from any IRS office, fill out and send to your finance center.

Military Survivor Benefits Payable

My spouse died several weeks ago. As a retired officer since 1973, my spouse had been receiving a monthly retirement check. Will I continue to receive this, will it be totally discontinued or what?

Your spouse's retired pay stops as of the date of his death. You will receive monthly survivor payments from the military finance center if your spouse elected an annuity for you under the SBP.

Social Security Offset

I retired from active service on Oct. 22, 1972, and realize that the annuity I elected for my spouse will be reduced after she is 62. This reduction will be required because of the entitlement to a spouse's Social Security benefit based on my wage credits. However, will my civilian Social Security-covered employment since my retirement from the Army in 1972 increase the amount of SBP deduction?

No. The Social Security offset against your spouse's SBP annuity will be based only on wage credits you earned during active service after 1956. Your civilian earned wage credits after Oct. 22, 1972, will add to your spouse's and your eventual Social Security benefits but will not affect the SBP offset.

Child (Children) Option

When SBP coverage is terminated for a dependent child age 18-22 for school non-attendance, can that coverage be reinstated if the child resumes school attendance?

Yes. Eligible beneficiaries under the SBP include plan participants' children between 18 and 22 who are full-time students. Children over 18 who are not attending school may become eligible for an annuity at any time until they reach 22 by undertaking a full-time course of study, since Congress, in establishing the plan, indicated that children between 18 and 22 who are students should be regarded as eligible dependents for purposes of annuity coverage (Comptroller General Decision B-221945, dated Aug. 4, 1986).

If a dependent child age 18-22 marries and subsequently divorces (before 22), can the SBP coverage be reinstated?

As a general rule, a valid marriage entered into by a Survivor Benefit Plan participant's child terminates the child's annuity eligibility for all time, because a valid marriage operates to end a child's dependence upon its parents, and the relationship of dependency cannot be renewed by a subsequent divorce. Nevertheless, if the marriage is ended not by an ordinary divorce but rather by annulment or there is otherwise a judicial decree rendered by a

court of competent jurisdiction declaring the marriage void, then there could be a proper basis for concluding the marriage was invalid and the child's annuity coverage could be reinstated (Comptroller General Decision B-221945 dated Aug. 4, 1986).

SBP and Civil Service

I elected SBP for my wife when I retired several years ago. My wife is currently employed in civil service. In discussions concerning her proposed retirement, she learned that her civil service retirement annuity will cause her to lose part of her Social Security survivor payment based on my Social Security work record. How does this affect the Social Security offset to her SBP annuity?

The Social Security offset reduction is mandatorily applied whenever a widow is entitled to Social Security survivor benefits based on a spouse's Social Security wage record. In the case of a widow who is eligible for both an SBP annuity and a civil service retirement annuity, a 1985 Comptroller General decision (B-215768) stated that no Social Security offset to the SBP annuity was applicable if the Social Security Administration determined that the widow was ineligible for Social Security survivor benefits based on her husband's wage account due to receipt of her civil service retirement annuity.

Left unanswered until recently was your wife's situation—partial entitlement to Social Security survivor benefits. A Jan. 29, 1986, Comptroller General decision (B-219162) ruled that in the case of a widow who is awarded a reduced Social Security survivor benefit because of entitlement to a civil service pension as the result of her own employment, the Social Security offset to be applied against her SBP annuity is to be based on the actual amount of the Social Security benefit determined to be payable to her, rather than a greater amount that might have been payable were she not in receipt of the civil service pension.

I retired from active service in June 1955. Will my wife's SBP annuity be reduced due to Social Security eligibility?

No. Because you did not serve on active duty after Dec. 31, 1956, your wife's SBP annuity will not be reduced.

Social Security Offset

I receive a Survivor Benefit Plan annuity based on my deceased husband's military service. I also receive a reduced surviving widow's Social Security benefit, which I began receiving at 60. My husband died before he was eligible to draw Social Security benefits. I have just reached 62 and have been advised by the finance center that my SBP

annuity is subject to the Social Security offset. The problem I have is that the Social Security offset exceeds the amount of the Social Security benefit I receive. Can this be right, or has there been an error in computation?

The Comptroller General ruled in a decision (B-222138) on Aug. 26, 1986, that the Social Security offset in cases such as yours may not exceed the actual amount of the Social Security benefits. This decision follows a similar ruling rendered in the Lambert Decision (62 Comptroller General 471 (1983)). The Lambert Decision ruled that the services may not calculate a Social Security offset against an SBP annuity as if the beneficiary

were receiving an unreduced Social Security benefit before reaching full eligibility at 65. The Aug. 26, 1986, decision similarly ruled that the services may not calculate the offset as if the beneficiary were receiving an unreduced Social Security payment, when the retired member had never received Social Security benefits, but the spouse of the retired member elected to receive reduced benefits prior to reaching full eligibility age.

You should contact your finance center and ask for a recomputation of the offset in accordance with Comptroller General Decision B-222138 of Aug. 26, 1986. A statement from Social Security documenting the receipt of a reduced benefit at 60 should accompany the request for recomputation.

APPENDIX D

Former Spouse Coverage—SBP

This appendix discusses the changes made to the SBP by Section 1003 of PL 97-252 (known as the "Former Spouses' Protection Act"), Section 941 of PL 98-94 (DoD Authorization Act, 1984), Section 644 of PL 98-525 (DoD Authorization Act, 1985), Sections 716, 723 and 724 of PL 99-145 (DoD Authorization Act, 1986) and Sections 641 and 645 of PL 99-661 (National Defense Authorization Act for Fiscal Year 1987).

This appendix is not intended as a definitive guide but as a source document to assist members in their discussions with lawyers, legal assistance officers, domestic law specialists, etc., concerning SBP and its interaction with the former spouse legislation.

Background

Section 1003 of the Former Spouses' Protection Act amended the basic SBP law to include former spouses. However, Section 1003 did not amend certain pre-existing characteristics of the SBP, most notably the irrevocability of SBP elections made by members upon retirement. As a result, DoD interpreted the Section 1003 SBP amendments as authorizing former spouse SBP elections only by military members who retired on or after Sept. 8, 1982, and who elected such former spouse SBP coverage upon retirement. Under that interpretation, members who retired before Sept. 8, 1982, or who became divorced after retirement regardless of the retirement date could not elect SBP for their respective former spouses.

With the enactment of Section 941 of PL 98-94

(Sept. 24, 1983), Section 644 of PL 98-525 (Oct. 19, 1984) and Sections 716, 723 and 724 of PL 99-145 (Nov. 8, 1985), Congress further amended the SBP to allow members to elect SBP coverage for former spouses in more types of situations, include a former spouse and child option if the child was born of that marriage and provide coverage for a former spouse under "spousal" costing rather than the "insurable interest" costing.

Section 641 of PL 99-661 (Nov. 14, 1986), provided state courts with the option of ordering military service members to participate in SBP and to designate a former spouse as beneficiary as part of a divorce agreement. This applies to court orders issued on or after Nov. 14, 1986. Section 645 authorizes members who elected former spouse coverage during the period Nov. 8, 1985, through Feb. 28, 1986, to convert to former spouse and child coverage by Nov. 14, 1987.

Members Who May Elect or Be Required to Elect SBP for Former Spouses

A member who has a former spouse upon becoming eligible to participate in the SBP, (i.e., upon retirement for most members) may elect to provide an SBP annuity to that former spouse (10 USC Section 1448 (b)(2)) or a court order may require a person to elect (or to enter into an agreement to elect) to provide an annuity to a former spouse or to both a former spouse and child

(10 USC Section 1450(f)). Such elections are subject to the following rules:

- If the member has a spouse or a dependent child by the spouse, the election of SBP coverage for the former spouse precludes payment of SBP to the spouse or child of that spouse (10 USC Section 1448(b)(2)), other than a child who is a beneficiary under the following paragraph.
- If a member elects coverage for a former spouse, he may elect coverage under that annuity for both the former spouse and a dependent child if the child resulted from the member's marriage to that former spouse (10 USC Section 1448(a)(4)).
- If the member has more than one former spouse, the member must designate which former spouse is to receive the annuity (10 USC Section 1448(b)(2)).
- If the member is married and elects SBP coverage for a former spouse, the member's present spouse must be notified of such election. (10 USC Section 1448(a)(3)).
- The member must, at the time of making the election for a former spouse, provide the service finance center with a written statement. It must be signed by both the member and the former spouse, setting forth whether the election is made pursuant to the requirement of a court order or whether the election is being made pursuant to a written agreement entered into voluntarily by the member as a part of, or incident to, a proceeding of divorce, dissolution or annulment and (if so) whether such voluntary written agreement has been incorporated in or ratified or approved by a court order (10 USC Section 1448(b)(5)).
- If a member makes a voluntary, written agreement of any election for SBP coverage for a former spouse, incident to a proceeding of divorce, dissolution or annulment, and such an agreement has been incorporated in, or ratified or approved by a court order, or if such a person is required by a court order to make such an election, and the member then fails or refuses to make the SBP election, such member shall be deemed to have made such an election if: The service finance center receives a written request from the former spouse concerned requesting that such an election be deemed to have been made; the service finance center also receives a copy of the court order, regular on its face, which incorporates, ratifies or approves the written agreement of the member; and the service finance center receives such a request within one year of the date of the court order involved (10 USC Section 1450(f)(3)).
- The election of SBP for the former spouse may be revoked only in accordance with 10 USC Section 1450(f) (explained below) (10 USC Section 1448(b)(3)(c)).

coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage) may elect to provide an SBP annuity to his former spouse and child of that marriage to the former spouse (10 USC Section 1448(b)(3)) or may be required by a court order to make such an election. Such elections by retired members are subject to the following rules:

- The former spouse must not have been the member's former spouse when the member became eligible to participate in the SBP (10 USC Section 1448(b)(3)(A)(iii)).
- Any such election for a former spouse terminates any previous SBP coverage (10 USC Section 1448(b)(3)).
- Any such election must be written, signed by the member and received by the service finance center within one year after the date of the decree of divorce, dissolution or annulment (10 USC Section 1448(b)(3)(A)).
- The election must not be for a former spouse whom the member married after becoming eligible for retired pay unless the member was married to the former spouse for at least one year, or the former spouse is the parent of issue by that marriage (10 USC Section 1448(b)(3)(B)).
- If the member is married, the member's spouse will be notified of the member's election to cover a former spouse (10 USC Section 1448(b)(3)(D)).
- The member must at the time of making the election for a former spouse, provide the service finance center with a written statement, signed by both the member and the former spouse, setting forth whether the election is being made pursuant to the requirements of a court order or whether the election is being made pursuant to a written agreement entered into by the member as a part of or incident to a proceeding of divorce, dissolution or annulment and (if so) whether such written agreement has been incorporated in, ratified or approved by a court order (10 USC Sections 1448(b)(4)).
- The election of SBP for the former spouse may be revoked only in accordance with 10 USC Section 1450(f) (explained below) (10 USC Section 1448(b)(3)(c)).

Revocation of Former Spouse SBP Coverage

A member who elects to provide an annuity to a former spouse or to both a former spouse and dependent child may, subject to statutory rules summarized below, change that election and provide an annuity to his spouse or dependent child.

- In all cases, the member's service is required to notify the former spouse of any such change in an SBP election (10 USC Section 1450(f)(1)).

If the member's previous election of SBP coverage for the former spouse (or to both a former spouse and dependent child) was made pursuant to a court order to provide such an annuity or if a member enters into a written agreement (whether voluntary or required by a court order) to make such an election pursuant to such an agreement, and the agreement *has* been incorporated in, ratified or approved by a court order, the member must furnish to the service finance center a certified copy of a court order that is regular on its face and modifies all previous court orders relating to the agreement to elect SBP coverage for the former spouse; *and* certify to the service finance center that the court order furnished under the above subparagraph is current and in effect (10 USC Section 1450 (f)(2)(A)).

If the member's previous election of SBP coverage for the former spouse was made pursuant to a written agreement with the former spouse entered into as a part of, or incident to, a proceeding of divorce, dissolution or annulment, but the agreement has not been incorporated in, ratified or approved by a court order, the member must furnish to the service finance center a statement signed by the former spouse evidencing the former spouse's agreement to the change in the election and certify to the service finance center that the former spouse's statement is current and in effect. (10 USC Section 1450(f)(2)(B)).

Change of Former Spouse SBP

A member who, before March 1, 1986, made an election to provide an annuity for a former spouse may elect to change that election so as to provide an annuity for the former spouse and the dependent children of the member. Such an election may be made even though the former spouse for whom the annuity was provided has died. Such an election must be made not later than March 1, 1987, in the case of a person who made the election to provide the annuity for a former spouse before Nov. 8, 1985; and not later than the end of the one-year period beginning Nov. 14, 1986, in the case of a person who made the election to provide an annuity for a former spouse during the period beginning on Nov. 8, 1985, and ending on Feb. 28, 1986 (10 USC Section 1448(b)(4)(b)).

Former Spouse SBP Costs

Costs and annuities for former spouse elections made before March 1, 1986, are computed by the same formula used to compute costs and annuities for insurable interest coverage. For former spouse elections effected on or after March 1, 1986, costs and annuities are computed by the same formula used to compute costs and annuities for spouse coverage (10 USC Section 1450(a)).

A member who before March 1, 1986, had elected former spouse coverage under the insurable interest provision, had until Nov. 8, 1986, to change to the spouse coverage and costing. Any such change was subject to the written concurrence of the former spouse (10 USC Section 1450(c)).

If a member before March 1, 1986, was a participant in SBP and did not elect to provide SBP for a former spouse, he could elect if the election was made before Nov. 8, 1986 (10 USC Section 1450(d)).

Potpourri

Former spouses are not automatically covered beneficiaries under SBP. A former spouse is covered under the SBP through a former spouse election under the insurable interest cost option or the spousal cost option made by the member concerned, provided that the member's election of former spouse coverage complies with the terms and conditions of Subchapter II of Chapter 73, Title 10, U.S. Code, regarding such elections or through a court order requiring such an election. Accordingly, a former spouse is not automatically a covered beneficiary if the member concerned dies without making a former spouse election, even if the member previously elected spouse coverage at a time when the former spouse was married to the member. Similarly, a former spouse is not a covered beneficiary if the member concerned declines, for whatever reason, to elect spouse coverage, even if the member has no other eligible SBP beneficiaries unless he is under a court order that confirms his election to provide SBP to a former spouse or he is under a court order requiring such an election and the former spouse requests or files a valid request for a deemed election.

Former spouse coverage is not affected by the remarriage of the former spouse under the insurable interest cost option. This means that a member cannot suspend former spouse coverage under this option on the basis of the remarriage of the former spouse. Payment of an SBP annuity to a former spouse under this option is not interrupted by the former spouse's remarriage. Likewise, a former spouse's SBP annuity is not subject to Social Security or DIC offsets under the insurable interest cost option.

Former spouse coverage under the spousal cost option generates all the restrictions inherent with a regular SBP spousal election. In effect this means that: Remarriage of the former spouse before 55 would revoke the SBP annuity; the annuity would be subject to the reduction to 35 percent of the base amount (under the two-tier system) at 62 and any DIC payable to the former spouse (as a result of another marriage) will be offset against the annuity.

Special SBP/RSFPP Income Tax Exclusion

Section 91103, Chapter 11 of the DoD Military Retired Pay Manual (DoD 1340.12-M) indicates that SBP beneficiaries are entitled to exclude up to \$5,000 from taxable SBP income if the member dies after Sept. 20, 1972, before reaching normal "retirement age" and the member was retired by reason of physical disability. (These exemptions are found in Sections 72(N) and 101(b), Internal Revenue Code.)

"*Retirement age*" is defined as an actual age or as a point in time in years of service from mandatory retirement according to the applicable laws for each of the service departments. Where years of service are used, it means the number of years of active service a military member would have completed had he not retired for disability but had remained on active duty until mandatory retirement on service. The various "retirement ages" for this purpose, based on age or length of service and depending on the member's military grade and branch of service, are listed later in this appendix.

The exclusion may be claimed on Lines 17a and 17b of Form 1040. (Line 17a indicates the total annuity while Line 17b shows the total less the \$5,000 exclusion.) A short statement should be attached explaining the nature of the exclusion. An example of such a statement follows:

Retirement for Age			
	Age	Mandatory	U.S. Code
All DoD Services			
Regular Commissioned Officers in Grades 0-9 and 0-10	64	yes	10 U.S.C. section 1251 (b)
Regular Commissioned Officers through Grade 0-8	62	Yes	10 U.S.C. section 1251(a)
Regular Warrant Officers	62	yes	10 U.S.C. section 1263
Army and Air Force			
Reserve Commissioned Officers in Grade 0-8	62	yes	10 U.S.C. section 3844 10 U.S.C. section 8844
Reserve Commissioned Officers in Grades below 0-8	60	yes	10 U.S.C. section 3843 10 U.S.C. section 8843
Navy and Marine Corps			
Reserve Commissioned Officers in Grades 0-7 and 0-8	64	yes	10 U.S.C. section 6391(b)
Regular Commissioned Officers in Grades 0-1 through 0-6	62	yes	10 U.S.C. section 6391(a)

"My late husband, an Army lieutenant colonel, was retired by reason of disability and died at 57 (before his statutory retirement age of 60). Under Sections 72(N) and 101(b) Internal Revenue Code, the first \$5,000 of the survivorship annuity I receive under 10 U.S. Code 1450 is excludable from federal income tax."

If a spouse were eligible for the exclusion in a prior year but made no claim, that spouse may file an amendment on the IRS Form 1040X if within the three-year statute of limitations.

A summary of eligibility requirements follows:

You must be retired by reason of physical disability. Receipt of disability compensation from the Veterans Administration does not qualify your surviving spouse for the exclusion if you were retired for reasons other than disability.

At least part of your retired pay must be subject to tax. If it is fully exempt, there is no taxable amount to be excluded.

You must not be employed by the federal government. Employment by a non-appropriated fund activity is considered as federal employment for this purpose.

You must not have reached "retirement age" at the time of death.

Retirement for Age

	Age	Mandatory	U.S. Code
Coast Guard			
Regular Commissioned Officers	62	yes	14 U.S.C. section 293
Reserve Commissioned Officers in Grades 0-7 and 0-8	64	yes	14 U.S.C. section 742(a)
Reserve Commissioned Officers in Grades 0-6 and below	62	yes	14 U.S.C. section 742(b)
Warrant Officers	62	yes	10 U.S.C. section 1263
Enlisted Personnel	62	yes	14 U.S.C. section 353
Public Health Service			
Regular Commissioned Officers—All Grades	64	yes	42 U.S.C. section 212(a)(1)
National Oceanic and Atmospheric Administration			
Regular Commissioned Officers in Grades 0-8 and above	62	yes	33 U.S.C. section 853k(b)
Regular Commissioned Officers in Grades below 0-8	60	yes	33 U.S.C. section 853k(a)

Retirement For Length of Service

	Years of Service	Mandatory	U.S. Code
Army and Air Force¹			
All Commissioned Officers	40	²	10 U.S.C. section 3924(a)
Regular Commissioned Officers 0-8	35 (or 5 years in grade)	yes	10 U.S.C. section 636
0-7	30 (or 5 years in grade)	yes	10 U.S.C. section 635
0-6	30	yes	10 U.S.C. section 634
0-5	28	yes	10 U.S.C. section 633
Reserve Commissioned Officers 0-8	35 (or 5 years in grade)	yes	10 U.S.C. section 3852
0-7	30 (or 5 years in grade)	yes	10 U.S.C. section 3851
0-6	30 (or 5 years in grade)	yes	10 U.S.C. section 3851

Retirement for Length of Service

	Years of Service	Mandatory	U.S. Code
Reserve Commissioned Officers (continued)			
0-5	28	yes	10 U.S.C. section 3848
All Warrant Officers	40	²	10 U.S.C. section 3924(b)
	30	²	10 U.S.C. section 1305
Enlisted Personnel	30 ³	²	10 U.S.C. section 3917
Navy and Marine Corps			
All Commissioned Officers	40	²	10 U.S.C. section 6321
Regular Commissioned Officers 0-8	35 (or 5 years in grade)	yes	10 U.S.C. section 636
0-7	30 (or 5 years in grade)	yes	10 U.S.C. section 635
0-6	30	yes	10 U.S.C. section 634
0-5	28	yes	10 U.S.C. section 633
Reserve Commissioned Officers 0-8	35 (or 5 years in grade)	yes	10 U.S.C. section 6389(f)(2)
0-7	30 (or 5 years in grade)	yes	10 U.S.C. section 6389(f)(1)
Regular Warrant Officers	40	²	10 U.S.C. section 6321
	30	²	10 U.S.C. section 1305
Enlisted Personnel	30	²	10 U.S.C. section 6326
Coast Guard			
Regular Commissioned Officers in Grade 0-6	30	yes	14 U.S.C. section 288(a)
Warrant Officers	30	²	10 U.S.C. section 1305
Public Health Service			
All Commissioned Officers	30	²	42 U.S.C. section 212(a)(2)

Footnotes:

¹The statutes cited here are those that pertain to the Army. Identical statutes that pertain to the Air Force have corresponding section numbers in the 8000 series of Title 10 which parallel the 3000 series section numbers for the Army.

²Absolute right.

³This is applicable to regulars only.

Social Security Offset

This appendix is applicable to surviving spouses drawing SBP annuities under the method in effect before Oct. 2, 1985.

For the surviving spouse at age 62 or upon the retiree's death if becoming a surviving spouse at a later age, the Social Security offset can alter the amount of the SBP annuity payable. Why? When? How much? Let's take the "why" first.

Why: The government, as the employer, contributes to the Social Security Fund for active duty personnel. Consequently, in enacting the SBP law, Congress insisted that a surviving spouse's annuity be reduced or offset by the value of the retiree's military-earned wage credits.

When: The reduction begins when the surviving spouse reaches 62. If you should die before your spouse is 62, the SBP annuity will not be subjected to a Social Security offset before your surviving spouse reaches that age.

How much: The amount a surviving spouse's SBP annuity is reduced depends on the retiree's year of birth and the active military service performed after Dec. 31, 1956. Social Security wage credits earned through civilian employment have nothing to do with the reduction. It is based only on the calculated value of military-earned wage credits. Civilian employment covered by Social Security will obviously increase eventual Social Security benefits and will result in a surviving spouse's Social Security survivor payment being even greater than the amount of the SBP offset. Therefore, except in rare situations, the Social Security survivor payment will exceed the SBP reduction.

In January 1957, all active duty military personnel joined the contributory Social Security system. Since then, basic pay has been subject to Federal Insurance Contribution Act deductions; however, some startling changes have occurred since 1957. At that time, the maximum Social Security earnings base was \$4,200, and the Social Security tax (deduction from basic pay) was at the rate of 2.25 percent, with the government paying a like amount. This maximum earnings base, coupled with the tax rate, meant that the maximum contribution anyone on active duty was required to make for 1957 was \$94.50 ($\$4,200 \times 2.25\%$). In 1967, the maximum earnings base was \$6,600 and the FICA tax jumped to 4.4 percent, thus raising the maximum contribution to \$290.40. Ten years later these figures had climbed to \$16,500 (5.85 percent) and \$965.25. In 1987, the base rose to \$43,800, the tax rate to 7.15 percent and the maximum contribution to \$3,131.70.

For simplicity, we have tried to avoid the use of confusing statistical data. However, to come to

grasp with the Social Security aspect of the SBP law, it is essential that you have a basic understanding of Social Security benefits. That's the reason we included the various figures here. As you can see, the magnitude of the increase in the Social Security base and contributions during the past 30 years is something that boggles the mind. And so, too, is the rise in Social Security benefits, a fact that creates the biggest problem for SBP annuitants—the relationship between Social Security benefits and the annuity payable under the Survivor Benefit Plan.

If a married person has sufficient quarters of Social Security covered employment, the surviving spouse automatically will become entitled to a monthly Social Security survivor benefit. This benefit is payable as early as 60 (50 if the surviving spouse is disabled). The amount payable is based on the retiree's Social Security earnings record and varies with the surviving spouse's age at the time the surviving spouse begins receiving the benefit. For example, if a surviving spouse starts to receive benefits at 60, the surviving spouse receives 71.5 percent of the retiree's benefit. Payments starting at 61 are 77.2 percent of the retiree's benefit; 82.9 if they begin at 62; 88.6 at 63; 94.3 at 64 and 100 at 65 or later.

Surviving Spouse's Age	Retiree's S.S. Benefit	Percent Payable	Amount Payable
60	\$769	71.5%	\$549
61	769	77.2%	593
62	769	82.9%	637
63	769	88.6%	681
64	769	94.3%	725
65	769	100.0%	769

The above is, as indicated, the maximum payable at this time. Naturally, the lower the retiree's average earnings, the lower the benefits. But while these figures are interesting and provide some idea of the amounts involved, we're not too concerned here with trying to pinpoint specific dollar amounts. Our purpose, instead, is to show the important role Social Security plays in the total survivor benefit package.

We are now coming to the crux of the whole offset issue. When a surviving spouse is 62 or over and is entitled to a surviving spouse's Social Security survivor payment based on the retiree's covered employment or the surviving spouse's (assuming entitlement to retiree's), the original SBP law requires that the surviving spouse's SBP annuity be reduced by a Social Security offset

unless, because of "grandfathering," the new two-tier system provides a larger annuity. (Remember our earlier discussion of the conditions for "grandfathering" covered in Part II, page 13.) The Social Security offset rules follow, and we urge you to study them carefully. Remember, they only apply to SBP annuities under the original SBP law (not the two-tier system).

The reduction of the annuity is based solely on the value of wage credits earned during active military service after Dec. 31, 1956.

The annuity is not reduced if a retiree has no active military service after Dec. 31, 1956.

The so-called "Social Security Offset" means the amount by which a surviving spouse's SBP annuity is reduced.

Wage credits earned in civilian employment by the military member or spouse have nothing to do with reducing the SBP annuity because only active military service performed after 1956 is used for this purpose.

SBP does not reduce a surviving spouse's Social Security survivor payment.

A surviving spouse's SBP annuity will be reduced after age 62 even though the surviving spouse may not apply for Social Security survivor benefits. The fact that the surviving spouse is entitled to benefits based on the retiree's earnings makes the reduction mandatory.

If there is no entitlement to Social Security based on a retiree's earnings record (military and civilian), there is no offset.

If a retiree has earned sufficient Social Security wage credits in civilian covered employment to qualify for Social Security, the offset still does apply due to the value of military wage credits earned.

There is no reduction in the annuity if a surviving spouse is working and because of that income, is not eligible to receive Social Security benefits.

The SBP annuity is reduced in the case of surviving spouses of reserve retirees who did not serve on extended active duty after 1956 but who did perform short periods of active duty for training after that date. Active duty for training pay is subject to Social Security taxation the same as extended active duty pay. However, the reduction of the annuity is relatively small in these situations, ranging from about \$2 to \$4 per month for each week of such training duty. Wage credits earned during periods of active duty for training of less than 30 consecutive days performed after Dec. 1, 1980, do not affect a surviving spouse's annuity provided the reservist is refunded the Social Security tax paid on active duty for training pay because the reservist's civilian income exceeded the maximum covered earnings for the year concerned.

Here is a real break for many surviving spouses: Under an amendment to the SBP law on Oct. 9,

1980, the offset cannot exceed 40 percent of the annuity payable. For the most part, this amendment benefits those surviving spouses whose retiree spouses had considerable active service after 1956 but who had a low rate of retired pay or who elected less than maximum SBP coverage. Similarly, it benefits those SBP surviving spouses who are receiving DIC payments from the Veterans Administration.

The table on page 31 contains estimates of the amount a surviving spouse's SBP annuity is reduced per month if the surviving spouse is 62 or older and is entitled to a surviving spouse's Social Security survivor benefit. Note:

The table applies only to retirees who served on active duty after 1956.

The estimates shown apply to surviving spouses who are either 62 or 65 in 1987, when their spouse died.

As explained previously, the offset figures will be proportionately different if entitlement begins at 63 or 64.

The following circumstances are assumed:
a. Retiree's total wage credits (military and civilian) entitle the surviving spouse to Social Security survivor benefits.

b. All years of active duty (January 1957 to year retired) include basic pay that provided maximum Social Security wage credits. The offset will be proportionately less in the case of retirees whose basic pay for any year was less than the maximum wage credits allowable for such year. Those whose basic pay was insufficient for them to earn the maximum credit were given a free wage credit of up to \$100 per month for all active service after 1956.

Regardless of the amount of the offset as calculated by the standard formula, the SBP annuity cannot be reduced by more than 40 percent. The 40 percent rule will be applied against the net benefit after the reduction due to any entitlement to DIC.

Figures in the table assume the deceased member did not draw non-disability Social Security benefits before 65. If such benefits were drawn earlier than 65, the offset may be slightly less than the amount shown.

In summary, a surviving spouse whose retiree spouse served on active duty after 1956 has the annuity reduced after 62 if the surviving spouse is entitled to a Social Security survivor benefit based on the retiree's covered employment. The reduction is required even though the retiree may have earned sufficient credits in civilian employment alone to qualify for Social Security benefits.

The reduction of the SBP annuity is based solely on the value of Social Security wage credits earned while on active duty after Dec. 31, 1956.

Social Security wage credits earned in civilian employment do not affect a surviving spouse's SBP annuity.

Examples

The examples below will illustrate some representative situations that arise in the SBP Social Security relationship.

Please understand that these are estimates only. The actual reduction of a surviving spouse's SBP annuity is computed by the military finance centers based on Department of Defense instructions, which implement the SBP statute.

Situation	Approximate Reduction	Reason
Retired from active service for any reason before Jan. 1, 1957.	No reduction	Did not serve on active duty after 1956.
Served on active duty after 1956 but did not earn sufficient wage credits (military or civilian) to qualify for Social Security benefits.	No reduction	Surviving spouse not eligible for Social Security benefits based on retiree spouse's earnings.
Authorized reserve retired pay at 60 in 1966. Had a total of 10 weeks active duty for training after 1956.	About \$30 month	Short periods of active duty for training cause a reduction of the SBP amount of approximately \$2 to \$4 per month for each week of such duty after 1956.
Retired from active service in December 1961. Born 1916. Died 1981. Surviving spouse born 1916.	\$226 a month	Reduction based solely on retiree's age and active service after 1956.
A 63-year-old surviving spouse's gross annuity amounts to \$700 (base amount was \$1,272) and the estimated offset (page 31) is \$280 (with 40 percent maximum offset). Assume no DIC.	\$255 a month	Annuity after Social Security offset reduction ($\$420 = \$700 - \$280$) is less than application of two-tier 35 percent ($\$445 = \$1,272 \times 35\%$ percent); therefore surviving spouse would receive a \$445 annuity.
Using the preceding example but assuming the surviving spouse also receives DIC in the amount of \$616.	\$33.60 a month	The SBP payable before the Social Security offset would be \$84 ($\700 less \$616). In this situation, the surviving spouse would receive a net SBP annuity of \$50.40 (\$84 less 40 percent).

The computations are revised to reflect cost-of-living adjustments in Social Security benefits or COLA adjustments in the SBP annuity for surviving spouses.

Because civilian-earned Social Security wage credits are not used to compute the amount a surviving spouse's SBP annuity is reduced, it is important to understand that in almost all situations a surviving spouse's Social Security benefit will be greater than the amount deducted from the SBP annuity.

Social Security Offset—Surviving Spouse at Age 62 or 65

Year of Retirement	Retiree's Age at Time of Retirement							
	40 Offset at 62	40 Offset at 65	45 Offset at 62	45 Offset at 65	50 Offset at 62	50 Offset at 65	55 Offset at 62	55 Offset at 65
1957	50	60	40	48	46	56	69	83
58	95	115	80	96	91	110	129	156
59	134	162	122	148	136	164	186	225
60	170	205	158	191	172	207	232	280
61	209	252	190	229	218	263	251	302
1962	226	272	256	309	247	298	265	320
63	238	288	262	316	265	320	276	333
64	255	307	259	313	272	328	287	347
65	271	327	263	317	283	342	298	360
66	283	341	281	340	298	360	320	386
1967	293	353	297	358	347	418	341	411
68	304	367	312	377	353	425	368	444
69	313	378	331	400	346	417	382	461
70	327	394	350	422	347	418	398	481
71	340	410	358	432	363	438	408	493
1972	353	426	365	441	377	455	449	541
73	368	444	375	452	391	471	449	541
74	386	465	386	465	413	498	437	528
75	403	486	403	486	436	526	438	529
76	421	507	421	507	446	538	459	554
1977	439	529	439	529	456	550	477	575
78	444	536	456	551	465	561	491	593
79	453	547	478	576	478	576	517	624
80	462	557	500	603	500	603	545	657
81	472	569	522	630	522	630	557	672
1982	483	583	546	659	546	659	570	688
83	496	599	559	674	571	689	583	704
84	510	615	571	689	596	719	596	719
85	523	632	583	704	621	749	621	749
86	539	650	597	720	648	781	648	781
1987	553	667	612	739	675	815	675	815

Note: The reduction figures above the line are computed under the pre-1979 method of calculating Social Security benefits. The figures below the line are calculated under the new indexing system of averaging wage credits and apply to military members born after 1916. These are estimates only. Official computations are made by the respective military finance centers. This table assumes maximum Social Security credits from January 1957 to date of retirement. Currently, only officers in pay grade 0-5 (with 22 or more years of service) or higher will earn the maximum wage credit of \$43,800 for the year 1987.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	

