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The Military Survivor Benefit Plan: A Description of Its Provisions

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Summary

The military Survivor Benefit Plan (SBP) was created in 1972. Since its creation, it has been subjected to a number of substantial legislative changes. This report describes the basic provisions of the military Survivor Benefit Plan and all relevant changes or modifications that have occurred.

Specifically, the military Survivor Benefit Plan is described and explained in terms of its eligibility provisions, costs, benefits, and its integration with other federal programs (including social security and Veterans' Administration Dependency and Indemnity Compensation) for members and retirees of active duty military service and the Reserve Components (both the reserves and National Guard). In addition, tables and work sheets are provided to assist the reader in computing the costs and benefits available under this program.

Nearly every Congress since 1972 has, in some way, modified the provisions of the military Survivor Benefit Plan. These modifications have had a significant effect on current and prospective participants and beneficiaries. In nearly every instance, these changes have made the SBP more generous. Furthermore, these modifications involve complex issues and processes, and are, therefore, a source of numerous requests for information from constituents to their congressional representatives.

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Introduction

This report outlines the purpose and legislative background of providing benefits to the surviving dependents of a deceased member/retiree of the uniformed services. In certain cases, individuals other than dependents can be designated recipients of survivor benefits. This report describes the categories of beneficiaries eligible for survivor benefits under the military Survivor Benefit Plan (SBP), the formulas used in computing the income level (including the integration of SBP benefits with other federal benefits), and the costs of SBP participation incurred by the retiree and/or the beneficiary.¹

Under the SBP, a military retiree can have a portion of his or her monthly retired pay withheld in order to provide, after his or her death, a monthly survivor benefit (55% of base² amount of military retired pay at the time of the retiree's death) to a surviving spouse or other eligible recipient(s). The cost of this protection is shared by the retiree (in the form of reductions from monthly military retired pay after retirement), the government, and possibly the beneficiary (under certain types of coverage). The original intended purpose of the SBP (and its antecedents) is to "insure that the surviving dependents of military personnel who die in retirement or after becoming eligible for retirement will continue to have a reasonable level of income."³ Coverage was later expanded to active duty personnel as well.

¹ Retirees of the uniformed services (Army, Navy, Marine Corps, Air Force and Coast Guard), as well as retirees of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA) are eligible to participate in the Survivor Benefit Plan. This report emphasizes the provisions of the SBP as they relate to members or retirees of the Armed Forces.

² Base retired pay is that amount of retired pay that the retiree selects to be used in determining the SBP benefit and cost. This amount may not be greater than total monthly retired pay and may not be less than (1) \$595 monthly as of January 1, 2004, or (2) total retired pay, if smaller than \$595 monthly. This 55% maximum may include amounts received from other federal sources.

³ U.S. Department of Defense, Office of the Secretary of Defense, Military Compensation Background Papers. Compensation Elements and Related Manpower Cost Items: Their Purposes and Legislative Backgrounds, 5th Edition, November 1996: 683.

The Survivor Benefit Plan was created by legislation enacted on September 21, 1972,⁴ and has been modified by later legislation. The SBP replaced the Retired Serviceman's Family Protection Plan (RSFPP).⁵ The RSFPP was replaced because it had a number of unpopular features which made it unattractive. The RSFPP could be expensive for the retiree; the cost was approximately \$0.23 of deducted retired pay per dollar of survivor benefits for a retired member age 45 who elected to provide coverage for a spouse who was 5 full years younger. The RSFPP was intended to be actuarially neutral in terms of costs — in other words, the cost of this program was fully paid for by its participants. The decision to elect RSFPP coverage had to be made by the prospective military retiree before his or her 18th year of military service. Furthermore, the methods used in computing the RSFPP's cost and benefit could change between the time at which the servicemember elected to provide coverage and the time at which the member actually retired. Thus, the costs and benefits remained an unknown quantity, limiting the ability of the retiree to make future financial plans. During its 19-year history, participation in the RSFPP never exceeded more than 15% of eligible military retirees. It was expected — and has largely been proven — that the SBP would be a significant improvement over the RSFPP, in terms of participation rates, costs to the retiree, and benefits for the survivors. It also entails higher costs to taxpayers because the SBP costs are shared with the government in most cases.

Major Provisions of the Survivor Benefit Plan

Coverage for Military Members Retired from an Active Duty Career

Six separate types of coverage are available under the SBP for military members retired from an active duty military career, characterized according to the relationship of the beneficiary or beneficiaries to the military retiree:⁶

1. Spouse Only;
2. Spouse and Child(ren);
3. Child(ren) Only;
4. Persons with an Insurable Interest;
5. Former Spouse;
6. Former Spouse and Child(ren).

The type of coverage and the amount of coverage provided are factors used in determining the cost to the military retiree. Generally, a retiree is automatically enrolled in the SBP upon retirement at the maximum level of coverage to his or her respective surviving spouse and surviving dependent children, unless the retiree

⁴ P.L. 92-425, 10 U.S.C. 1447 et seq.

⁵ Originally known as the Uniformed Services Contingency Option Plan of 1953, P.L. 83-239, 67 Stat. 501, 1953; name changed by P.L. 87-381, 75 Stat. 810, 1961.

⁶ In certain instances, the annuity may be paid to the representative of a legally incompetent survivor (P.L. 102-190; 105 Stat. 1389; December 5, 1991).

elects not to participate, to participate at a lesser level of coverage, elects other than spouse coverage, or is ordered by a court to provide such benefits to a former spouse. To participate at a reduced level of coverage, the retiree elects to have his or her **base** amount of retired pay — that amount of monthly retired pay the retiree selects to be used in determining the SBP benefit and cost — be less than his or her total retired pay subject to a \$300 minimum. The maximum SBP benefit is 55% of base amount of military retired pay, when the base amount and total retired pay are the **same**. Reduced coverage consists of 55% of the base amount of retired pay when the retiree elects a base amount that is **less** than total retired pay.⁷

If a retiree elects not to participate, or to participate at a reduced level of coverage, the retiree's spouse must be notified, and in the case of such an election made on or after March 1, 1986, the spouse must concur with the election for it to be effective.⁸ Any decision not to participate or to participate at a reduced level is usually irrevocable. However, under certain circumstances, a retiree who is unmarried at the time of his or her retirement and who elects not to participate in the SBP, but who marries after his or her retirement, may elect within one year of marriage to provide SBP benefits for the new spouse. This election takes effect only after a one-year waiting period. With the enactment of P.L. 99-145 (November 8, 1985, effective March 1, 1986), the spouse of a post-military-retirement marriage must be notified if the retiree does not elect to provide an SBP benefit, or elects to provide an SBP benefit at a reduced level.

Spouse Only Coverage

In order to be eligible for Spouse Only coverage, the intended SBP beneficiary must be a widow or widower who was (1) married to the retiree at the time of retirement, (2) married to the deceased retiree for at least one year prior to the retiree's death, or (3) the parent of a child born of a post-retirement marriage. The benefit (considering income from all federal sources — including social security and veterans' benefits — attributable to military service) was intended to be at least 55% of the base amount of retired pay the retiree was receiving at the time of death — which, for maximum coverage, is the same as total retired pay.

Computational Formulas. The computational formula for determining the amount of retired pay withheld is based on the date the member entered the service and/or the type of retirement the service member is entitled to receive. The formulas are discussed below as the “Original Computational Formula” and the “Flat-Rate Formula.” Military personnel who entered the service on or after March 1, 1990, **and** who are not entitled to retired pay under either Chapter 61 of title 10 U.S. Code (Retirement or Separation for Physical Disability), or Chapter 67 (Retired Pay for Non-Regular Service), i.e., “Disability Retired Pay” or “Reserve Retired Pay,” will

⁷ The maximum coverage of 55% of base retired pay is subject to a reduction when certain survivors reach age 62. An explanation of these reductions is provided in the sections below entitled “The Integration of the Survivor Benefit Plan and Social Security Benefits” and “The Two-Tier Survivor Benefit Plan.” Use of the “55% maximum coverage” in this report applies to those survivors discussed in the sections below who have not reached age 62.

⁸ Public Law 99-145; November 8, 1985; 99 Stat. 676, 677.

have their withholdings computed under the “Flat-Rate” method. Those military personnel who first became a member before March 1, 1990, or those who have their retired pay computed under either Chapter 61 or 67 (regardless of the date of retirement) will have their SBP withholdings computed under whichever alternative (Original or Flat-Rate) is more financially advantageous.⁹ The reduction in retired pay does not apply during any month in which there is no eligible spouse (or former spouse) beneficiary. (Reductions to retired pay are not considered taxable income.)

Original Computational Formula. Under this method, the retiree’s contribution to the total cost of providing the SBP benefit is computed as 2.5% of the first \$595 of the base amount of retired pay plus 10% of the remaining base amount of retired pay. This contribution is withheld from the retiree’s total monthly retired pay.¹⁰ For example, a hypothetical retiree (E-5, with 20 years of service in 2004) receives a monthly base amount of military retired pay of \$1,183 (see Table 1). The cost of providing survivor protection for this retiree is \$73.67. In other words, \$73.67 is deducted from this hypothetical retiree’s base amount of monthly retired pay of \$1,183 to insure that upon the retiree’s death, his or her surviving spouse will receive a monthly survivor benefit of 55% of his or her base amount of retired pay, or \$650 per month, if the retiree dies while receiving the \$1,183 amount. If the retiree received more than \$1,183 per month in total military retired pay — say as an E-8 with 20 years of service, or \$1,907 — but elected to provide less than the maximum coverage (by using \$1,183, rather than total retired pay, as the base amount), the computation of costs and benefits would remain the same. If an individual’s retired pay increases as the result of cost-of-living adjustments (COLAs), the amount deducted from his or her retired pay, and the potential SBP benefit to his or her designated survivor (in this case, his or her spouse), usually will increase proportionately as well. The costs of SBP protection and benefits are computed on the basis of retired pay rates at the time of retirement [including any adjustments made to the base (\$595) amount]. All subsequent post-retirement changes are a result of cost-of-living adjustments to retired pay.¹¹

⁹ Members with base amounts of \$1,275 or more who retire on or after January 1, 2004, will have their contributions determined using the “Flat-Rate” method.

¹⁰ If total retired pay is less than \$595 per month — i.e., \$7,140 per year — the base amount must be equal to total retired pay. As of September 30, 2003, only 6.5% of military retirees received less than \$7,000 gross yearly (FY2003 DOD Statistical Report on the Military Retirement System, Office of the Actuary, Defense Manpower Data Center: 177-178). Sec. 714 of P.L. 99-145, the FY1986 DOD Authorization Act, provided that the then-\$300 base shall be increased by the same percentage amount and at the same time as across-the-board increases in military basic pay after October 1, 1985. The basic pay index will apply only to retirees whose retired pay is computed on the basis of basic pay rates in effect on or after the date of the basic pay increase. As of January 1, 2004, the base amount had been indexed to \$595.

¹¹ The Omnibus Budget Reconciliation Act (OBRA) of 1993 delayed nondisability retirees’ COLA until April 1, 1994. The OBRA did not delay the increase in SBP costs to each nondisability retiree enrolled in the SBP. Therefore, SBP premiums were increased for the three months of retired pay payable on January 1, February 1 and March 1, 1994. Because DOD could not reprogram its retired pay computers to accommodate the new law by January 1, 1994, the three months’ of increased SBP premiums were taken out of the retired pay (continued...)

Table 1. Computation of Survivor Benefit Plan Costs to a Hypothetical Retiree for Spouse Only Coverage

1.	Enter base amount of retired pay.	<u>\$1,183.00</u>
2.	Enter \$595, or total retired pay if less than \$595 (see footnote 10).	<u>\$595.00</u>
3.	Multiply the figure in line two by 2.5%.	<u>\$14.87</u>
4.	Subtract \$595 from line one. If line one is less than \$595 enter zero.	<u>\$588.00</u>
5.	Multiply line four by 10%.	<u>\$58.80</u>
6.	Add lines three and five.	<u>\$ 73.67</u>

Line six is the cost of survivor protection under the Spouse Only coverage. The payment to the beneficiary is 55% of base amount military retired pay, or \$650. Note: The base \$595 is indexed for inflation. **Worksheets are available at the end of this report.**

Flat-Rate Formula. P.L. 101-189 (November 29, 1989, 103 Stat. 1577 et seq.) revised and simplified the computational formula for determining SBP withholdings.¹² Under this new formula, SBP withholdings are computed to be 6.5% of the base amount of retired pay. A retiree who used \$1,670 (E-7, 20 years of service) as the amount of the base amount of retired pay would have \$108.55 (\$1,670 x 0.065) withheld in order to provide the same level of protection under the Flat-Rate method.

The basic benefit is not affected by the type of computational formula used. (See *Computational Formulas* section on prior page for an explanation of who is eligible to use the Flat-Rate method.)¹³

Remarriage. Regardless of which formula is used, a surviving spouse (or eligible former spouse) may become ineligible to receive SBP benefits if he or she remarries. Eligibility for SBP benefits when remarriage occurs is dependent upon the

¹¹ (...continued)
received on April 1, 1994.

¹² This legislation also provided for the recomputation of survivor annuities in the case of a member who dies on active duty while qualified to apply for retired pay, or who serves at least 20 years, but is not eligible to receive retired pay as a commissioned officer because he/she has not served at least 10 years as a commissioned officer. Under this language, effective March 1, 1990, the survivor annuity would be computed based on the grade in which the member was serving at the time of death, unless he/she would have been entitled to be retired in a higher grade.

¹³ For those individuals retiring on or after January 1, 2004 with base amounts of \$1,275 or greater, their premiums are computed using the more generous 6.5% method, regardless of when they entered the service.

age at remarriage and the date that such a remarriage occurs. A surviving spouse (or eligible former spouse) becomes ineligible to receive SBP benefits if he or she remarries prior to reaching age 60, if such a remarriage took place **prior to** November 14, 1986 (remarriage after age 60 does not affect receipt of an SBP benefit). A surviving spouse (or eligible former spouse) becomes ineligible to receive SBP benefits if he or she remarries prior to reaching age 55 if such a remarriage took place **on or after** November 14, 1986 (remarriage after age 55 for these beneficiaries does not affect receipt of SBP payments). If the second marriage is terminated (by death, annulment, or divorce), the original SBP benefit can be reinstated (subject to certain restrictions). The surviving spouse of two or more deceased military retirees (each a participant in the SBP) may select and receive the more financially advantageous benefit.

“Paid-Up” Provisions. In 1999, Congress further expanded the generosity of the SBP by enacting the so-called “paid-up” provision. Under this language, reductions in retired pay made to cover the retiree’s share cease when two conditions are met: (1) the retiree reaches age 70, and (2) the retiree has participated in the SBP for 360 months. As enacted, these provisions become effective October 1, 2008.¹⁴

Spouse and Child(ren) Coverage¹⁵

Under Spouse and Child(ren) coverage, upon the retiree’s death, SBP benefits are first paid to the surviving spouse. If the surviving spouse predeceases the retiree, dies after becoming eligible to receive SBP benefits, or becomes ineligible to receive SBP benefits (through remarriage, for example), the SBP benefits will then be paid directly to the designated child or children. If there is more than one child, the SBP benefits are paid in equal shares to each child for as long as he or she remains eligible.

¹⁴ P.L. 105-261, 112 Stat. 2045 October 17, 1998. P.L. 106-65; 113 Stat. 667; October 5, 1999; This law extended this provision to participants in the RSFPP. Furthermore, P.L. 105-261; 112 Stat. 2045, October 17, 1998, created an open enrollment that allowed persons not currently participating in the SBP to enroll subject to certain restrictions. P.L. 106-65 extended the paid-up provision to these “late” enrollees, provided they paid the total premiums that would have been withheld from their retired pay, had they been participating since they first became eligible. In addition, from April 1, 1992 through March 31, 1993, retirees who initially rejected coverage were afforded a one-year opportunity to enroll. This late enrollment required greater withholdings on retired pay. (See P.L. 102-190; 105 Stat.1388; December 5, 1991) Lastly, P.L. 105-85; 111 Stat. 1797; November 18, 1997, created a one-year opportunity for participants to discontinue SBP coverage, subject to certain restrictions.

¹⁵ The term “child” includes an adopted child, a stepchild, foster child, or recognized natural child who lived with the participant in a regular parent-child relationship. It may be necessary for the child to prove dependency in order to be eligible to receive an SBP annuity.

The cost of this coverage is additive to that of Spouse Only coverage, and is determined on an actuarial¹⁶ basis, taking into account the age of the retiree, the spouse, and the youngest child. For example, a retiree who is 45 years old, with a spouse who is 40 years old (i.e., 5 full years younger than the retiree) and a child age 10, would have to pay an additional 0.10% of the base amount of retired pay in order to cover a child or children in addition to the amount paid for Spouse Only coverage. The hypothetical retiree mentioned above under Spouse Only coverage who has \$108.55 per month withheld from his or her retired pay (see Flat-Rate formula, p. 5) to provide an SBP benefit for his or her spouse, would thus have an additional \$1.67 ($\$1,670 \times 0.10\%$) withheld per month in order to provide Spouse and Child(ren) coverage.¹⁷ The reduction in retired pay that represents the cost of child protection continues only for as long as there is at least one eligible child.

A child becomes ineligible for an SBP benefit upon reaching age 18 (or 22, if a full-time student).¹⁸ A child who marries becomes ineligible to receive SBP benefits regardless of age.¹⁹ An eligible child who becomes incapacitated (either physically or mentally) may continue to receive SBP benefits for the duration of the incapacitation if the condition existed prior to the child's 18th birthday.

Child(ren) Only Coverage

Under Child(ren) Only coverage, SBP benefits are paid directly to the surviving child(ren) of a deceased military retiree regardless of whether or not there is a surviving spouse. Eligibility under this coverage is subject to the same restrictions as a child is, or children are, under Spouse and Child(ren) coverage. (Under certain circumstances, spouse coverage can be restored if a spouse later becomes eligible.) The cost of this coverage is also computed on an actuarial basis (and therefore subject to modification). For example, a military retiree who is 45 years old, has a child age 10, and elects maximum coverage, would have approximately 2.5% of his or her base amount of retired pay withheld in order to provide, at the time of his or her death, an SBP survivor benefit for the surviving child. In other words, in the example mentioned above under Spouse Only coverage, \$41.75 ($\$1,670 \times 2.5\%$) would be withheld from a retiree's retired pay in order to provide his or her surviving child(ren) with a benefit of \$918 per month. (Child Only coverage is less expensive due to the limitation on the number of years — until age 18 or 22 under most circumstances — a beneficiary remains eligible to receive SBP benefits.)

¹⁶ Costs that are actuarially determined are based on probabilities of known life expectancy rates, as well as interest and inflation assumptions.

¹⁷ Since the cost of coverage is computed on an actuarial basis, the cost used in this example is subject to change. Actuarial figures provided by L. Giesecke, Office of the Actuary, Defense Manpower Data Center, March 31, 1992.

¹⁸ A child who becomes ineligible because he or she reaches age 18 and then later becomes a full-time student prior to reaching age 22 may become eligible to receive SBP benefits while a full-time student.

¹⁹ A married child who, prior to being married, was eligible to receive SBP benefits will not become eligible to receive these benefits anew if the marriage ends by divorce. If, however, the marriage is terminated as the result of an annulment, SBP eligibility may be reinstated.

Persons with an Insurable Interest

Insurable Interest coverage may be selected only if there is neither a spouse nor a dependent child at the time of retirement. Under this coverage a beneficiary is defined as “a natural person with an insurable interest”²⁰ in the retiree. Included in this category are relatives of the retiree, such as a parent, sibling, or a child who may not qualify for SBP beneficiary status under Spouse Only, Spouse and Child(ren), or Child(ren) Only provisions. Non-relatives, such as a business partner, may also be covered. Unlike other SBP options, Insurable Interest must be elected at the maximum level.

The cost of Insurable Interest coverage is (1) 10% of the base amount of military retired pay **plus** (2) 5% of total base amount of retired pay for each **full** 5 years that the named beneficiary is younger than the retiree. Insurable Interest coverage is thus more expensive than other types of coverage. However, the total cost to the retiree of this coverage cannot exceed 40% of total military retired pay. In other words, a retiree who wishes to provide Insurable Interest coverage to a person 30 or more years younger would have the maximum of 40% of the base amount of military retired pay withheld.

For example, a retiree who is 50 years old and receives \$1,670 per month as the base amount of military retired pay, elects to provide protection to a person 10 full years younger. This retiree would have the cost of this protection computed as follows: 10% of the base amount of retired pay (or \$167) plus 5% for each full 5 years the beneficiary is younger (in this case the beneficiary is age 40) than the retiree. The SBP costs would thus be \$334 (see Table 2).

Table 2. Computation of SBP Costs under Persons with an Insurable Interest Coverage

1. The amount of base military retired pay.	<u>\$1,670.00</u>
2. Multiply line one by 10%.	<u>\$167.00</u>
3. Age of the retiree at his/her last birthday.	<u>50</u>
4. Age of prospective beneficiary as of the date of the retiree's last birthday.	<u>40</u>
5. Subtract line three from line four.(If line 3 is less than line 4, enter zero.)	<u>10</u>
6. Divide the sum in line five by the number 5 and round the quotient to the lower whole number.	<u>2</u>
7. Multiply 5% by line six.	<u>10%</u>
8. Multiply line one by line seven.	<u>\$167.00</u>
9. Add line two and line eight.	<u>\$334.00</u>
10. Multiply line one by 40%.	<u>\$668.00</u>
11. Compare lines nine and ten: enter the lesser.	<u>\$334.20</u>

²⁰ 10 U.S.C. 1448(b)(1).

Line eleven is the cost of survivor protection under the Persons with an Insurable Interest category of coverage. The payment to the beneficiary is 55% of the base amount of military retired pay less the premium, or $(\$1,670-334) \times 55\% = \734 . **Worksheets are available at the end of this report.**

According to language contained in the National Defense Authorization Act for FY1995, Insurable Interest coverage could be voluntarily discontinued (except in those cases where a former spouse is being covered). Retirees discontinuing this coverage, who later remarry or acquire dependents, may again participate in the SBP under another allowable beneficiary category.²¹

Former Spouse Coverage²²

A military member may choose, or may be required by a court order, to provide SBP coverage for a former spouse, depending on when the divorce occurred. This election can occur as part of or incident to a divorce-related property settlement. For divorces occurring before November 14, 1986, federal law explicitly states that **no court was authorized to order** a member or retiree to provide SBP protection to a former spouse. If a retiree voluntarily decides, **in writing**, to provide benefits to a former spouse, this decision must be honored by the retiree. The retiree who elected Spouse Only or Spouse and Child(ren) coverage, and was subsequently divorced before November 14, 1986, may switch to Former Spouse coverage for the (now) ex-spouse. This latter change in coverage must be elected within one year of the date the divorce decree becomes final.

If a divorce occurs on or after November 14, 1986, however, **a court may order** a member or retiree to provide SBP protection as part of or incident to a divorce. According to changes in law implemented by the FY1987 DOD Authorization Act (P.L. 99-661, November 14, 1986), “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).”²³ This language does not require courts to make such an order but gives them the freedom to do so.

The FY1986 DOD Authorization Act (P.L. 99-145, November 8, 1985) included a change in Former Spouse coverage which provided that military retirees and “former spouses ... covered under the insurable interest category (could) ... elect jointly to switch to spouse coverage at the maximum level within one year (and it provided) current participants who had the option of electing Former Spouse coverage in the past and chose not to do so, the option of electing Former Spouse

²¹ U.S. Congress. House. Conference Committee, National Defense Authorization Act for Fiscal Year 1995, H.Rept. 103-701, 103d Cong., 2d Sess., S. 2182, August 12, 1994: 132-133. (P.L. 103-336) It is expected that this change will affect approximately 3,000 of the more than SBP 900,000 participants. Maze, Rick, Survivor Benefit Plan ..., *Air Force Times*, September 12, 1994: 20.

²² For more information on issues affecting former spouses, see CRS Report RL31663, *Military Benefits for Former Spouse: Legislation and Policy Issues*, by David F. Burrelli.

²³ 10 U.S.C. 1550(f)(4).

coverage.”²⁴ Those electing Former Spouse coverage after March 1, 1986, have the cost of this coverage and benefit amount computed in the same manner as in the case of Spouse Only coverage.

Because a retiree may provide only one type of SBP coverage for one category of beneficiary, election of coverage for a former spouse can have the effect of denying SBP protection to a second or future spouse. However, it is not clear whether courts have the authority to divide SBP benefits between a former spouse and current/subsequent spouse. In other words, although the services will provide SBP benefits to only one category of beneficiary (former spouse, for example), it is not clear whether or not a court, as part of an equitable divorce property settlement, has the authority to divide SBP benefits between a former spouse (designated to receive them in this example) and a current/subsequent spouse.

The FY2000 National Defense Authorization Act provided for the “effectuation of intended SBP annuity for [a] former spouse when not elected by reason of [the] untimely death of [the] retiree.”²⁵ This language pertains to any retiree who, on or after August 21, 1983, agreed to (or was required by a court to) provide SBP coverage to a former spouse, but who died within 21 days of making such an agreement (or being so required). Under this language, the former spouse of such a retiree is deemed to have been covered effective November 5, 1999.

Former Spouse and Child(ren) Coverage

Coverage for a former spouse and child(ren) became available on March 1, 1986.²⁶ This coverage is provided on the same terms as Spouse and Child(ren) coverage described above.

Coverage for Military Members Retired from the Reserve Components

As with the Survivor Benefit Plan for active duty retirees, retirement eligible members of the reserves (Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve and Coast Guard Reserve) and National Guard (Army National Guard and Air National Guard) may elect to provide SBP protection for their survivors. However, because members of the Reserve Components²⁷ are not eligible to receive Reserve Component retired pay until age 60, regardless of the age at which they actually retire, the structure of the Reserve Component SBP (RCSBP) is different from that applicable to active duty members.

²⁴ U.S. Congress. House. Conference Committee. Department of Defense Authorization Act, 1986. S.Rept. 99-235, S. 1160. 99th Cong., 1st Sess., July 29, 1985: 443. (Hereafter cited as Conference Committee, DOD 1986 Authorization.)

²⁵ P.L. 106-65; 113 Stat. 668; November 5, 1999.

²⁶ Conference Committee, DOD 1986 Authorization: 96.

²⁷ “Reserve Components” refers to both Reserve and National Guard personnel.

Prior to 1978, Reserve Component personnel could not provide survivor protection for an eligible beneficiary until they were eligible to draw retired pay at age 60. Legislation passed in 1978²⁸ allows Reserve Component members to decide whether or how they will participate in the RCSBP when they are notified of retirement eligibility (not yet eligible to receive retired pay) — in almost all cases, many years before reaching age 60.

Reserve Component members who are not yet 60 years old and who are retirement eligible may elect to provide SBP protection under one of three options. The costs and amount of coverage available depend on the option selected and the category of beneficiary. A prospective Reserve Component retiree must select one of the following RCSBP options within 90 days of being notified of retirement eligibility:

Option A - The retiree may decline RCSBP protection. Should the retiree die before reaching age 60, no RCSBP benefit will be paid. The retiree will again be offered the opportunity to participate in the SBP upon reaching age 60.

Option B - The retiree may elect RCSBP coverage such that survivor payments will begin on (1) the date of the retiree's death or (2) the date the retiree would have turned 60, whichever is later.

Option C - The retiree may elect, under this option, to provide an RCSBP benefit that would begin immediately following the death of the retiree, regardless of the retiree's age at the time of death.

Under option A, the costs and types of coverage available once the retiree reaches age 60 are the same as under the active duty SBP. Under options B and C, the cost of RCSBP protection is shared by the retiree, the Government, and the beneficiary. The retiree's portion is paid through deductions in retired pay beginning at age 60. The beneficiary's or beneficiaries' share is paid through benefit reductions. The costs under options B and C are dependent upon the type of coverage (see active duty retirees), as well as the age of the retiree and selected beneficiary(ies).

Under certain circumstance, an RCSBP benefit may be paid to the eligible surviving spouse, dependent child(ren), or former spouse of a member of the Reserve Components who dies

(1) before being notified that he or she had completed the years of service required to be eligible for Reserve Component retired pay; or

(2) during the 90-day period beginning on the date of notification that the member had completed the years of service required for eligibility for Reserve Component retired pay, if he or she had not already rejected participation in the RCSBP.

²⁸ P.L. 95-397, 92 Stat. 843, September 30, 1978.

The income payable is equal to 55% of retired pay which the member would have been entitled to receive had the service member been retired and at least age 60 at the time of death (less any Veterans' Administration Dependency and Indemnity Compensation payable, see below).

“Forgotten Widow” Coverage

In 1997, Congress created a special annuity of then-\$165, now \$197.51, (subject to cost of living adjustments) payable monthly to certain surviving spouses. These widows were married to certain retired or retirement-eligible members who died without electing SBP coverage. Subject to certain restrictions on remarriage and the receipt of certain other government-sponsored compensation, the eligible surviving spouse must have been married to a member who

- (A) became entitled to retired or retainer pay before September 21, 1972, died before March 21, 1974, and was entitled to retired or retainer pay on the date of death; or
- (B) died before October 1, 1978, and at the time of his death would have been entitled to retired pay under chapter 67 [Retired Pay for Non-Regular Service] of title 10, United States Code (as in effect before December 1, 1994), but for the fact that he was under 60 years of age.²⁹

Coverage for Military Members Serving on Active Duty

Under the original SBP, an SBP benefit may be paid to an eligible spouse, dependent child(ren), eligible former spouse, or eligible former spouse and dependent child(ren) following the death of an active duty member. This benefit will be paid if the deceased active duty service member, at the time of death,

- (1) was eligible to receive retired pay; or
- (2) was a commissioned officer, had completed 20 years of service, but was not yet eligible to retire as a commissioned officer.³⁰

The SBP benefit payable to the survivor of such a deceased active duty member is equal to 55% of the amount of retired pay (less any amount received on the basis of Department of Veterans' Affairs (VA) Dependency and Indemnity Compensation or DIC; see section below on VA DIC) that the deceased service member would have been eligible for had he or she elected maximum coverage and retired on the day of his or her death.

²⁹ P.L. 105-85; 111 Stat. 1800; November 18, 1997 as amended by P.L. 106-65; 113 Stat. 668; November 5, 1999 as amended by P.L. 107-314; sec. 634; December 2, 2002.

³⁰ Former enlisted personnel or warrant officers who are commissioned must complete at least 10 years of active duty as commissioned officers before they are allowed to retire as commissioned officers. Section 523, P.L. 101-510, November 5, 1990, reduced the ten-year minimum to eight years, through October 1, 1995, to assist in the drawdown of the Armed Forces.

Recent legislation³¹ has expanded the coverage to the survivors of individuals who die while on active duty and who are **not** retirement-eligible, effective September 10, 2001. Under these provisions, the surviving spouses of active duty personnel who die are provided an annuity. This annuity for an active duty (non-retirement-eligible member) is determined by assuming the individual would have been eligible to retire under Sec. 1201, Title 10 USC,³² with a total disability. The surviving spouse's annuity is based on the amount of disability retired pay the servicemember would have received under Sec. 1201. The spouse's share is 55% of that amount of the member's disability retired pay if the surviving spouse is under age 62, and 35% if age 62 or over. Depending on when the individual entered the service, the amount used may be either the terminal monthly basic pay (for those who entered service on or before September 7, 1980) or the average basic pay for the 36-month period (i.e. "high three" years) the member earned the highest rate of basic pay (for those who entered the service after September 7, 1980).³³ The amount of monthly disability pay is computed either by multiplying the determined amount of basic pay by the percentage disability or by computing 2.5% of basic pay times the member's years of service up to 75%, whichever is higher. Since the legislation assumes the level of disability is 100%, the amount of basic pay (or "high three") used would be multiplied by 75%.

Survivor Benefit Plan and Social Security

The relationship between benefits received from the Survivor Benefit Plan and social security is complicated and has been subjected to periodic changes. For this reason, the following three sections describe how military personnel are covered under social security, the relationship between SBP and social security benefits (**integration**) that existed before enactment of the FY1986 DOD Authorization Act,³⁴ and the changes in the SBP which affected the interaction of the two benefit systems that were made by this latter act and others.

Social Security Coverage for Military Personnel

Active duty military personnel have been fully covered by social security and have paid social security taxes since January 1, 1957. In addition to providing monthly benefits to civilian retirees and retired military personnel age 62 or older, social security provides benefits to the widows or widowers of deceased military and civilian retirees.

³¹ P.L. 107-107, 115 Stat. 1151 et seq.; December 28, 2001.

³² Under these provisions, the member's disability may not be the result of intentional neglect of misconduct.

³³ P.L. 108-375, sec. 641, October 28, 2004 modified the computation of retired pay for reservist who die on active duty "by calculating the average monthly basic pay for purposes of ... annuity payments as if they had been entitled to basic pay for the 36 months preceding their retirement [or active duty death] regardless of whether the member served the entire period on active duty." Congressional Record, October 8, 2004: H9544.

³⁴ P.L. 99-145; 99 Stat. 666 et seq.; November 8, 1985.

The surviving spouse or former spouse of a military retiree is entitled to receive social security survivor benefits based on the deceased retiree's active duty basic military pay.³⁵ Persons eligible for social security survivor benefits may **also** be entitled to social security retirement benefits based on **their own** employment. However, this “dual entitlement” is **prohibited under social security law**. People always receive social security benefits that they themselves earned as a result of their own employment. If those benefits **exceed** the amount of social security survivor benefits, the latter are not payable. However, if the survivor's own social security retirement benefits are **less than** the social security survivor benefits, the difference between the two is paid in addition to the survivor's own social security retirement benefits.

For example, assume that A and B are both surviving spouses of military retirees and are both entitled to social security benefits — based on the military service of their deceased spouses — of \$400 per month.³⁶ Assume further that both surviving spouses have been employed and are entitled to their own social security retirement benefits based on that employment. Survivor A is entitled to \$450 per month in social security retirement benefits based on his or her own employment. Because survivor A's own social security retirement benefit of \$450 per month **exceeds** the social security survivor entitlement of \$400 per month, only the \$400 retirement benefit is payable. Survivor B, on the other hand, is entitled to \$350 per month in social security retirement benefits based on his or her own employment. Because B's social security retirement benefit (\$350) is **less than** the social security survivor benefit (\$400), the full \$350 retirement benefit is payable, plus the \$50 difference between the two, for a total of \$400 per month in social security benefits.

Social security survivor benefits based on a spouse's or former spouse's employment (including military service) are first payable at age 60 (at age 50, if the surviving spouse is totally disabled, or at any age if and as long as there are children under the age of 16), and social security retirement benefits based on one's own employment are first payable at age 62.

Integration of the Survivor Benefit Plan and Social Security Benefits

The SBP was (and for certain beneficiaries, is) “integrated” with social security: SBP benefits are reduced or “offset” when the survivor reaches age 62. **The rationale for this integration was (1) the SBP was intended to provide a specific portion of a deceased military retiree's retired pay to the retiree's surviving spouse or former spouse, and (2) to recognize the government's employer contribution under both social security and SBP.** It was, therefore, considered appropriate by the Congress that **all** sources of survivor benefits attributable to

³⁵ The surviving spouse might also be entitled to additional social security benefits based on any civilian employment of the deceased retiree. For ease of explanation, however, this report only discusses the entitlement to survivor benefits based on the retiree's military service.

³⁶ All amounts are hypothetical and used only for purposes of example.

military service — DOD and non-DOD — be considered in the computation of this specific portion of a deceased retiree’s retired pay. The cost of the SBP as well as the benefit received by the survivor(s), therefore, reflect this offset.³⁷ The offset occurs at age 62 regardless of when the survivor actually begins to draw social security benefits.³⁸

The 1972 legislation which established the SBP provided that those social security survivor benefits which a surviving spouse or former spouse of a deceased retiree is eligible to receive, based solely on the military service of the retiree, are subtracted from the survivor’s SBP payment. The legislative history of the SBP statute indicates that the sum of (1) the reduced SBP payments, plus (2) social security benefits earned as a result of the retiree’s military service (computed assuming the retiree lived to age 65 and the surviving spouse begins to draw social security survivor benefits at age 62), and other sources as well, would provide the desired 55% of the base amount of retired pay. The aggregate of these integrated benefits are used in determining the 55%. In other words, this plan was designed to provide coverage at a rate no less than what the survivor was entitled to on the basis of social security survivor benefits earned as a result of military service. However, the eligible survivor may be too young to receive social security survivor benefits at the time the member or retiree dies. Therefore, the SBP provides a larger benefit until the eligible survivor reaches age 62 (in recognition of eligibility for social security benefits regardless of the age when a survivor begins to draw such benefits).

The Comptroller General has noted that it was the intention of Congress that the combined total of the offset SBP benefit and the social security survivor benefit would not be less than the pre-offset SBP benefit. The Comptroller General, noting congressional intention, stated that:

The method of computing the offset was intended to be a “most generous formula ... to assure that a widow will receive at least 55 percent of the man’s military retired pay.” H.Rept. 92-481, 92d Cong., 1st Sess., September 16, 1971, accompanying H.R. 1067, at page 14. Similar statements appear on pages 30, 31 and 53 of S.Rept. 92-1089, 92d Cong., 2d Sess., September 6, 1972.

It is clear, therefore, that Congress did not intend to authorize an offset which would amount to more than the comparable social security benefit. We do not find that the statutory language of the Survivor Benefit Plan requires or permits that result.³⁹

³⁷ In the legislative history of P.L. 92-425, (S.Rept. 92-1089), it was noted that “Adding a survivor benefit plan, similar to the one available to civil service retirees, on top of the survivor benefits available from social security would provide a plan superior to plans available to other government employees . . . [T]he proposed benefit program is designed to build upon the income-maintenance foundation of the social security system.”

³⁸ A surviving spouse or former spouse who is the parent of a child of the deceased may also receive social security mother’s or father’s benefits at any age, as long as the child is under age 16. The SBP offset also applies to these mother’s or father’s benefits if there is only one such child, but does not apply if there are two or more children under age 16.

³⁹ Office of the Comptroller General of the United States. Vol. 62, B-203393, Matter of: (continued...)

Thus, it was the intent of Congress that (1) the SBP benefit alone, or (2) the offset SBP benefit and social security survivor benefit combined, would be at least equal to 55% of the base amount of retired pay.

However, the amount of social security survivor benefits can vary based on a variety of factors. These include (1) the survivor's age when he or she begins to receive benefits, (2) the age of the military retiree at the time of death, and (3) whether or not the retiree had begun to receive social security benefits before death. The actual social security benefit due to some or all of these factors may therefore be less than the hypothetical benefit computed under the assumptions of the SBP statute, and on which the SBP offset is based.

As an example of the integration of the SBP and social security, assume a survivor is receiving an SBP income of \$600 per month. The survivor is also entitled to social security survivor benefits of \$100 (based on the military service of his or her deceased spouse or former spouse). Because of the survivor's own employment, this same survivor is eligible to receive social security retirement benefits of \$150 per month (see Table 3). Because the social security survivor benefit is **less than** the social security retirement benefit (and therefore not payable) the survivor only receives his or her own earned social security retirement benefit of \$150. However, because the survivor was entitled to a social security survivor benefit of \$100 based on the military service of the deceased spouse, the SBP payment is reduced or offset by \$100 when the survivor reaches age 62. Thus, the survivor's final monthly income is computed as follows:

Table 3. Breakdown of Pre-Integration Monthly Benefits of a Hypothetical SBP Beneficiary

SBP benefit	\$600
Social Security Survivor Benefits	\$100
Social Security Benefits based on the Survivor's own employment	\$150

(The SBP benefit minus the social security survivor benefit) plus the social security retirement benefit equals the total sum received from both social security and the SBP,
or

$$(\$600 - \$100) + \$150 = \$650.$$

In 1980, legislation was enacted that limited the reduction of SBP income due to social security benefits to 40%.⁴⁰ For example, assume a survivor receives a monthly SBP benefit of \$600 and becomes entitled to social security survivor payments (based on the member's military service) of \$300 per month. The social security survivor benefit is therefore 50% of the SBP income. However, because the

³⁹ (...continued)

Dora M. Lambert, June 15, 1983: 472-473.

⁴⁰ P.L. 96-402, Oct. 9, 1980. See U.S. Congress. Senate. Uniformed Services Survivor Benefits Amendment of 1980. S.Rept. 96-748, 96th Cong., 2d Sess., Sept. 29, 1980.

offset can be no more than 40% of the SBP income, the SBP benefit will be offset or reduced, at age 62, by the maximum of 40% ($\$600 \times 40\% = \240) and not by the entire \$300 from social security. The total amount the survivor will receive is \$660, or (1) \$300 of social security benefits plus (2) $\$600 - \$240 = \$360$ of the reduced SBP income.

Two-Tier Survivor Benefit Plan

In title VII of the FY1986 DOD Authorization Act (P.L. 99-145, November 8, 1985),⁴¹ Congress modified the Survivor Benefit Plan so that retirees and their prospective spouse survivors would know the exact amount of the SBP benefit that would be paid upon the retiree's death. Congress did this by eliminating the integration with social security. The House Armed Services Committee report on the legislation stated the rationale for such a change regarding the social security offset:

The principal problems associated with the social security offsets are twofold:
 (1) the offset is not calculated until the time of death; hence military members cannot predict the impact of the offset at the time of retirement when the decision to participate in the plan is made;
 (2) the provision is difficult to explain and to understand; hence many perceive that an earned benefit is unfairly taken away.⁴²

The new plan was labeled the "two-tier" SBP. Under the two-tier SBP, a surviving spouse of a deceased military retiree will receive 55% of the base amount of military retired pay as a survivor benefit (as was the case under the original plan). Upon reaching age 62, the SBP benefit will be reduced **automatically** to 35% of the base amount of military retired pay for any surviving spouse or former spouse covered under the two-tier SBP. Since it is expected that benefits for those eligible for the two-tier plan would have been subjected to the full 40% social security offset (i.e., a reduction from 55% to 33% in SBP benefits at age 62), 35% was considered an appropriate approximation. Under the two-tier SBP, a spouse or former spouse who becomes a widow or widower **after** age 62 will receive an SBP payment equal to 35% of the base amount of military retired pay. For example, assume a military retiree receives \$1,183 per month in military retired pay at the time of his or her death and has elected to provide the maximum SBP coverage of 55% of total — and base — retired pay (see Table 1). The retiree's surviving spouse or former spouse will receive a \$650 per month SBP payment if under age 62 at the time the retiree dies, as was the case before enactment of the two-tier system. When the surviving spouse or former spouse reaches age 62, the SBP payment will be reduced to \$414 per month (or 35% of the original base amount military retired pay of \$1,183 per month). This reduction from 55% to 35% occurs at age 62 and is not affected by the receipt of social security benefits.⁴³ The two-tier plan thus allowed retirees and their

⁴¹ See Conference Committee, DOD 1986 Authorization: 88-100.

⁴² U.S. Congress. House. Committee on Armed Service. Department of Defense Authorization Act, 1986. H.Rept. 99-81, H.R. 1872. 99th Cong., 1st Sess., May 10, 1985: 251.

⁴³ Under the social security offset the benefit of a spouse or former spouse in this example (continued...)

prospective surviving spouses or former spouses to predict what their survivors' future SBP payments will be upon a retiree's death and/or when the survivors reach age 62.

Two selected groups will have their SBP payments calculated under **either** the pre-two-tier plan (including the social security offset) **or** the two-tier plan, depending upon which is more financially advantageous to the survivor. The first group includes those beneficiaries (widow or widowers) who were receiving an SBP benefit on October 1, 1985. The second group includes the spouses or former spouses of military personnel who were qualified for or were already receiving military retired pay on October 1, 1985.⁴⁴ The spouses or former spouses of military personnel who were **not** qualified to receive military retired pay on October 1, 1985 (i.e., those who had not been on active duty with 20 or more years of service or completed 20 or more years of creditable Reserve Component service as of October 1, 1985) will have their SBP payments computed using the two-tier method.

Participation rates have increased since the introduction of the two-tier plan. Of those retiring in FY1984, 54% elected to participate in the SBP. Of those retiring in FY1990 and FY1993, 60 and 58% elected to participate, respectively. (Some of those retiring in FY1990 may be eligible to have the benefits for their survivors calculated under either the two-tier or social security offset method.)⁴⁵ In other words, the change to the two-tier benefit has been associated with an increase in participation over the social security offset method.

Comparison of the Social Security Offset and Two-Tier SBP

The complicated nature of the social security offset was not fully understood by many servicemembers, retirees, or widow(er)s. Thus, when the two-tier SBP was introduced, with its straight forward reduction of benefits at age 62, many felt that the two-tier SBP represented a reduction in their benefits or potential benefit over what was available under the social security offset SBP. Table 4 provides a comparison of both plans computed for an active duty service member (E-7) who retires from the military at age 42 with 20 years of service. Upon retirement from the military, the retiree is enrolled in the SBP at the maximum level of coverage (i.e., base pay equals \$1,076). This retiree then accepts civilian employment (including social security deductions) for another 15 years. In this case, the above noted retiree has SBP withholdings computed under the Flat-Rate formula, $\$1,670 \times 6.5\% = \108.55 . (For the purposes of this example, cost of living adjustments are not used. All numbers represent reasonable approximations.)

⁴³ (...continued)

could be reduced from \$650 per month to \$690 per month at age 62 (i.e., a 40% offset).

⁴⁴ "Retirement qualified" includes those members of the Reserve Components who are qualified to receive military retired pay except for the fact that they are under age 60 and, therefore, may not begin to draw reserve retired pay.

⁴⁵ Department of Defense, Office of the Actuary, RCS No. DDM (A) 1375, DOD Statistical Report on the Military Retirement System, FY1984: 215 and RCS No. DD-FM&P (Q) 1375, FY1990: 233; DOD Statistical Report, FY1993: 247.

At age 59, the retiree dies. The surviving spouse begins receiving a military Survivor Benefit equal to 55% of base military retired pay or $\$1,670 \times 55\% = \918 per month.

In addition, the retiree's spouse was employed and earned social security benefits of \$500 per month from this employment. Since the military retiree made social security payments both in the service and in the subsequent civilian employment, the surviving spouse is eligible to receive social security survivor benefits of \$631 per month based on the retiree's entire career. For the sake of this example, \$378 of the \$631 are attributed to the social security contributions made during military service. (It is this \$378 per month that will be taken into account under the offset plan.)

Table 4. Comparison of Monthly SBP and Social Security Benefits Computed Using the Two-Tier and Offset Formulas

	Social Security Offset	Two-Tier
Base retired pay (1994, E-7, with 20 years of service)	\$1,670	\$1,670
SBP monthly withholdings (Flat-Rate or 6.5% of base pay)	\$108.55	\$108.55
SBP benefit for a spouse under age 62 (55% of base pay)	\$918	\$918
Social security benefits of the surviving spouse		
Based on the surviving spouse's career	\$500	\$500
Based on the retiree's civilian and military career	\$631	\$631
	(\$378 attributable to military service only)	
Total social security benefit (spouse's \$500 plus \$131 [631-500] from the member's career)	\$631	\$631
SBP benefits at age 62	\$550 (\$918 less \$378 or 40%, whichever is less)	\$584 (35% or base)
Total survivor income from both SBP and social security	\$1,181 (\$550 + \$631)	\$1,215 (\$584 + \$631)

As described above, a person (in this case the surviving spouse) receives his/her own earned social security benefits first. Thus, this spouse will receive \$500 per month in social security benefits. In addition, since the social security survivor benefit is greater (\$631) than the spouse's earned benefit (\$500), the spouse will also receive the difference ($\$631 - \$500 = \$131$) added to his/her own earned benefit (\$131

+ \$500) for a total social security benefit of \$631 per month. In this example, the spouse begins receiving these benefits at age 62.

Under the two-tier formula, the military SBP amount is reduced from 55 to 35% of base military retired pay or from \$918 to ($\$1,670 \times 35\% =$) \$584 per month at age 62. When the social security benefit is added, the surviving spouse's income is ($\$584 + \$631 =$) \$1,215 per month. In other words, prior to age 62, the surviving spouse receives \$918 per month from the military Survivor Benefit Plan. Assuming the spouse begins receiving social security benefits at age 62, total income for the spouse (from both the reduced military SBP and social security) increases to \$1,215 per month.

Turning to SBP benefits computed under the offset method, prior to age 62, this spouse receives the same SBP benefit of 55% of base military retired pay (\$918 per month). At age 62, however, the SBP is offset — reduced — by social security benefits attributable to the member's military service, (\$378), subject to the 40% limit on the offset. Under law, this offset occurs regardless of whether or not the spouse is actually receiving these benefits. Since the \$378 of social security benefits based on the service member's career is greater than 40% of the SBP (40% of \$918 is rounded to \$367), the SBP is offset by 40% or \$367 rather than by entire social security benefit attributable to the member's military service (i.e., $\$918 - \$367 =$ \$551). Thus, at age 62, the surviving spouse's SBP benefit is reduced from \$918 to \$551 per month. When the total social security benefit is added in, the surviving spouse's total income is $\$551 + \631 for a total of \$1,182 per month.

In other words, prior to age 62, a spouse receives the same SBP benefit under either the two-tier or original offset formula SBP (\$918). However, as this example shows, at age 62, monthly benefits from both SBP and social security are greater under the two-tier method (\$1,215) than under the offset formula (\$1,182).

This example can only allude to some of the possible effects and interactions of the SBP and social security. The amount of SBP benefits and the final income of the surviving spouse are dependent upon a number of factors including, but not limited to, the retiree's years of service, rank at retirement, year in which the retirement occurred, social security payments made by the retiree, the work history of the surviving spouse and the eligibility for VA benefits (as described below).

Supplemental Survivor Benefit Plan

Established under Public Law 101-189,⁴⁶ the Supplemental Survivor Benefit Plan provides SBP participants an opportunity to avoid or limit any reductions in SBP benefits that would occur at age 62 for a spouse or former spouse. This legislation also created an open season that would allow certain retirees to enroll in the SBP, increase SBP coverage, and opt to participate in the new Supplemental SBP.

⁴⁶ 103 Stat. 1577, et seq., November 29, 1989; as amended by Public Law 101-510, 104 Stat. 1580, November 5, 1990.

Participation in the new Supplemental SBP is voluntary and not automatic. In order to be eligible, retirees must be participants in the two-tier SBP. Those eligible to have their benefits computed under either the Social Security offset method or the two-tier method had an opportunity to make an irrevocable switch to the two-tier method in order to participate in the Supplemental SBP. (Such a shift may not be a wise change for all retirees — particularly for those who retired before or around 1957 or who may also be civil service retirees. In certain instances, the social security offset would be less than that which would occur under the two-tier plan. Such a limited reduction may negate the need for purchasing supplemental benefits.) Members who are retirement-eligible may elect to participate in the Supplemental SBP prior to actually retiring. Should the member die while retirement-eligible (but before actually retiring) that member's designated spouse or former spouse would be provided benefits under SBP without the Supplemental. Actual eligibility for Supplemental benefits begins only after retired pay is withheld. Should a retirement-eligible member elect to participate in the Supplemental before retiring and later refuse SBP participation at retirement, the Supplemental SBP would be voided. Those members who are participants without an eligible spouse and who remarry, may elect to participate in the Supplemental SBP. Such an election is irrevocable and must be made within one year of the remarriage.

An eligible participant may voluntarily elect to provide Supplemental coverage for a former spouse. The service secretary concerned must be provided with a statement (in a manner prescribed by the secretary) setting forth whether such an agreement is part of or incident to a divorce settlement and, if so, whether it has been voluntarily incorporated in the court order. This documentation must be provided to the secretary within one year of the date of the court order or filing invoice. With the receipt of the appropriate documentation, such an election is deemed to have been made.

Costs and Benefits of Supplemental Coverage

Under current two-tier SBP rules, 6.5% of pre-tax base amount retired pay is withheld (as described above under "Flat-Rate"). A surviving spouse or former spouse is eligible to receive 55% of the base amount of retired pay until reaching age 62 when benefits are reduced to 35%. Under the Supplemental SBP, the change that occurs at age 62 can be reduced or eliminated. The cost of this coverage depends on the age of the retiree at sign-up time, as well as the amount of coverage to be provided to the survivor at age 62.

Table 5 provides a breakdown of costs by level of coverage. According to this breakdown, a retiree who enrolls in the SBP under the two-tier option (benefits of 55% of the base amount of retired pay until age 62, then reduced to 35%) will have 6.5% of the base amount of retired pay withheld regardless of the retiree's age at the time of enrollment. Should this same retiree enroll at age 46 and opt to limit the age-62-reduction to 45% of the base amount of retired pay, 9.48% of the base amount of retired pay will be withheld. Conversely, a retiree who enrolls at age 45 and opts to

Table 5. SBP Supplemental Benefits and Costs by Age

Sign Up Age	Percentage Coverage at Age 62				
	35%	40%	45%	50%	55%
37	6.5	7.62	8.74	9.86	10.98
38	6.5	7.63	8.76	9.89	11.02
39	6.5	7.67	8.84	10.01	11.18
40	6.5	7.72	8.94	10.16	11.38
41	6.5	7.77	9.04	10.31	11.58
42	6.5	7.78	9.06	10.34	11.62
43	6.5	7.81	9.12	10.43	11.74
44	6.5	7.87	9.24	10.61	11.98
45	6.5	7.93	9.36	10.79	12.22
46	6.5	7.99	9.48	10.97	12.46
47	6.5	8.06	9.62	11.18	12.74
48	6.5	8.12	9.74	11.36	12.98
49	6.5	8.17	9.84	11.51	13.18
50	6.5	8.24	9.98	11.72	13.46
51	6.5	8.30	10.10	11.90	13.70
52	6.5	8.38	10.26	12.14	14.02
53	6.5	8.47	10.44	12.41	14.38
54	6.5	8.57	10.64	12.71	14.78
55	6.5	8.67	10.84	13.01	15.18
56	6.5	8.77	11.04	13.31	15.58
57	6.5	8.87	11.24	13.61	15.98
58	6.5	8.98	11.46	13.94	16.42
59	6.5	9.10	11.70	14.30	16.90
60	6.5	9.12	11.74	14.36	16.98
61	6.5	9.37	12.24	15.11	17.98
62	6.5	9.52	12.54	15.56	18.68
63	6.5	9.66	12.82	15.98	19.14
64	6.5	9.81	13.12	16.43	19.74
65	6.5	9.96	13.42	16.88	20.34
66	6.5	10.12	13.74	17.36	20.98
67	6.5	10.30	14.10	17.90	21.70
68	6.5	10.45	14.40	18.35	22.30
69	6.5	10.63	14.76	18.89	23.02
70	6.5	10.80	15.10	19.40	23.70
71	6.5	11.00	15.50	20.00	24.50
72	6.5	11.24	15.98	20.72	25.46
73	6.5	11.45	16.40	21.35	26.30
74	6.5	11.68	16.86	22.04	27.22
75	6.5	11.88	17.26	22.64	28.02
76	6.5	12.14	17.78	23.42	29.06
77	6.5	12.40	18.30	24.20	30.10
78	6.5	12.63	18.76	24.89	31.02
79	6.5	12.92	19.34	25.76	32.18
80	6.5	13.18	19.86	26.54	33.22

eliminate entirely the age-62-reduction will have 12.22% of the base amount of retired pay withheld.⁴⁷

Elimination of the Two-Tier and Social Security Offset Computational Formulas

The FY2005 National Defense Authorization Act⁴⁸ contained language that would make a substantial change in the computation of the SBP benefit for those age 62 and over. Simply stated, this law phases out the two-tier and Social Security offset formulas discussed above. The actual mechanics of this process will vary depending on various scenarios.

Generally speaking, this language raises the minimum SBP benefit for those age 62 and over as follows: On October 1, 2005, the minimum SBP benefit for those survivors age 62 and older will be 40%. This amount will increase to 45% on April 1, 2006, 50% on April 1, 2007, and 55% on April 1, 2008. In other words, a survivor who is age 62 or over and receiving 35% of base retired pay under the two-tier method will see the benefit increase over the next few years to 55%. This increase occurs without any additional cost to the retiree or the survivor and therefore represents a substantial increase for many.

A survivor who turns 62 during the scheduled increase will have the benefit computed to the amount that is applicable in the above schedule. For example, consider a covered widow receiving 55% of base retired pay prior to reaching age 62. If this widow turns 62 on April 30, 2007, the benefit will be reduced to 50% of base retired pay. On April 1, 2008, according to the schedule, the SBP benefit will be returned to the 55% level.

For those individuals who purchased Supplemental SBP coverage prior to the enactment of this law, they will see their benefits increase as well after reaching age 62. For example, a 62 year old widow who is receiving 45% of base retired pay (i.e. 35% under the two-tier computation plus 10% in supplemental coverage), will have the benefit increase to 50% on October 1, 2005 and finally to 55% on April 1, 2006. (Note: Effective October 28, 2004, reductions in retired pay used to cover the supplemental benefit are terminated; however, the supplemental coverage remains in effect.)

As noted, certain individuals had the opportunity to remain under the Social Security offset computational formula. These individuals will likewise see their benefits increase under the above schedule, ultimately reaching 55% on April 1, 2008. The increase in these benefits will occur when the scheduled increases pass their current benefit level. For example, a widow receiving say 48% of base retired pay (as computed under the Social Security offset method) will see no change in benefits until April 1, 2007 when the benefit will increase in 50%, and again to 55%

⁴⁷ Maze, Rick, Face-lift yields five SBP options, Army Times, October 28, 1991: 10.

⁴⁸ P.L. 108-375; 118 Stat. 1811; Secs. 644-645; October 28, 2004.

on April 1, 2008. In other words, these beneficiaries will have their benefits computed either under the Social Security offset method or according to the above schedule, depending on which is more financially advantageous.

In enacting the above language, Congress also created an open-enrollment period or “open season” to allow certain retirees to begin SBP participation or to increase their current level of coverage. The open season begins on October 1, 2005 and lasts one year. Those who take advantage of the open season must participate for at least two years from the date of making such an election in order to qualify their survivors for these new benefits. If the retiree dies before the end of this two-year period, amounts deducted from retired pay to effectuate the benefits resulting from the open season will be returned to the designated survivor. Premiums charged “would be calculated based on the total amount of the premium, plus interest, by which the members’ retired pay would have been reduced if they had elected to participate in the SBP at the first opportunity that they had been afforded.”⁴⁹

In addition, those opting for supplemental coverage during the open season will see the supplemental premiums phased out by April 1, 2008. Critics have raised doubts about the wisdom of participating in this open season supplemental coverage given the two-year participation minimum imposed under law. Critics note that a retiree who signs up for supplemental coverage on the first day of the open season (October 1, 2005) must contribute to the supplemental for two years. Should the retiree die two years after making the election (on October 1, 2007), the SBP benefit will already be increased to 50% under the above schedule for those survivors over age 62, and will reach the 55% level 6 months later. In other words, a retiree will make 2 or more years worth of supplemental payments in order to effectuate a 6-month or less benefit. Furthermore, a retiree who waits until April 1, 2006 of the open season (or later) to sign up for supplemental coverage, or one whose survivor will not turn 62 until after April 1, 2008, will see no benefit in electing the supplemental coverage during the open season. For these reasons, it has been suggested that retirees consider the limited benefits and additional costs of such an election before deciding to participate in the supplemental SBP during the open season and for the same reasons, DOD may elect not to offer supplemental coverage during this period.

Survivor Benefit Plan and Veterans’ Affairs Dependency and Indemnity Compensation

Department of Veterans’ Affairs (VA) Dependency and Indemnity Compensation (DIC) was established in 1956 by the Servicemen’s and Veteran’s Survivor Benefit Act.⁵⁰ “Under this Act, as amended, DIC is paid to the survivors ... of servicemen or veterans who died on or after January 1, 1957, from: (1) a disease or injury incurred or aggravated in line of duty while on active duty or active

⁴⁹ Congressional Record, October 8, 2004: H9544.

⁵⁰ P.L. 84-881, 70 Stat. 862, 867.

duty training; or (2) an injury incurred or aggravated in line of duty while on inactive duty training; or (3) a disability compensable under laws administered by the VA.”⁵¹

A service member can, for example, (1) contract a disease or incur an injury during active duty or active duty training, (2) recover and return to active duty, (3) retire from an active duty or Reserve Component military career and participate in the SBP, and (4) subsequently die because of complications resulting from the original service-related disease or injury. The surviving spouse or former spouse of the retiree is then entitled to DIC payments from the VA. In this situation, however, the surviving spouse or former spouse of the retiree is **not entitled to receive the combined total of full SBP and DIC benefits**. Instead, the SBP benefit is offset by the amount of DIC received (with certain limitations).⁵² This offset occurs regardless of the retiree’s enrollment in the SBP Supplemental.

The total of DIC and offset SBP payments combined is, at least, equal to the full SBP benefit. A surviving spouse or former spouse who remarries loses his or her entitlement to Dependency and Indemnity Compensation payments. Upon losing Dependency and Indemnity Compensation, however, the remarried spouse or former spouse has his or her full SBP benefit restored, provided the remarriage — in accordance with SBP restrictions — occurs after age 60 or age 55 if the remarriage occurs after November 14, 1986. Also, if the DIC is paid to an SBP-eligible surviving spouse or former spouse, a percentage of the deceased retiree’s original contributions to the SBP offset by DIC will be returned to the surviving spouse or former spouse. In other words, if the SBP is offset by DIC, that proportion of deductions from the deceased retiree’s retired pay which financed the offset portion of the SBP will be refunded to the surviving spouse or former spouse. SBP payments can be restored, if the beneficiary becomes ineligible for DIC and remains eligible for SBP, provided that the refunded SBP payments are returned.

“Concurrent Receipt”

In recent years, Congress has addressed an issue concerning the payment of military retired pay to retirees who qualify for disability compensation from the Department of Veteran’s Affairs (VA). In 1891, Congress passed language prohibiting what it regarded as “dual compensation” for either past or current service and a disability pension.⁵³ As modified in 1941, the law prevented the concurrent receipt of both military nondisability retired pay and VA disability compensation.

⁵¹ Military Compensation Background Papers: 457.

⁵² The amount of DIC payable to a surviving spouse is contained in one section of law — title 38 U.S.C. 411(a). Under three other sections — 38 U.S.C. if, for example, the spouse 1) is supporting a dependent child or children, 2) is in a nursing home, blind or requiring aid or assistance from another person, or, 3) is, because of a disability, housebound or institutionalized in a ward or clinic. SBP annuities are only offset by the amount of DIC received under 38 U.S.C. 411(a) and not by any increase to this amount as a result of eligibility under 38 U.S.C. 411(b)-(d).

⁵³ See CRS Report 95-469, *Military Retirement and Veterans’ Compensation: Concurrent Receipt Issues*, by Robert L. Goldich and Carolyn L. Merck, April 7, 1995: 3-4.

For those eligible for both, military retired pay was offset or reduced, dollar for dollar, by VA disability benefits.

Numerous attempts to address this issue over the past few years have resulted in the creation of “Combat Related Special Compensation” for certain disabled military retirees as well as a 10-year phase in allowing concurrent receipt (from 2004 to 2013) for those whose disability is rated at 50% or more. However, 100% disabled retirees will be entitled to immediate concurrent receipt effective January 1, 2005.⁵⁴

Although such a change would not affect the receipt of an SBP annuity, some have claimed that if concurrent receipt or “special pays” for military retirees are allowed, such should also be afforded their survivors. Under this reasoning, if a military retiree is allowed to receive both military retired pay and VA disability payments or other “special pay”, it is only fair that the surviving spouse also receive both the SBP annuity and DIC benefits. Critics contend that concurrent receipt was originally barred because Congress viewed it as “double dipping” or paying someone twice for the same period of service. These critics reason that allowing concurrent receipt to the retiree or the retiree’s survivor are forms of “double dipping” that are inherently unfair to the taxpayer.

Retiree and Government Contributions to SBP

As noted above, the cost of the SBP is shared by the government and the retirees. The amount paid by a particular retiree varies depending on level of coverage, years of payments, years the survivor receives an annuity, etc. For active duty personnel who make no contributions, the benefit is essentially free. Certain retirees and organizations representing their interests have claimed that, as originally structured, withholdings from retired pay for SBP were expected, on average, 40% of the cost of this benefit. Further it is claimed that since retirees are living longer and since the government has manipulated the withholdings formula, the retirees’ share has increased to more than 73%.⁵⁵ These claims are made in an effort to increase government payments into the SBP in hopes of increasing benefits (particularly with regard to the apparently successful effort of eliminating the reduction in benefits that occurs when the surviving spouse reaches age 62).

In reviewing these claims, a number of points may be considered. First, as noted, there is no legal mandate for any ratio of retiree to government contributions. Second, such claims of a shift in the retiree/government share appear to be based on a selective use of retiree data. Third, the claim that retirees are living longer and paying more ignores the obvious point that survivors, too, are living longer and collecting more. Fourth, the above history of this benefit shows that Congress has expanded eligibility (including ‘free’ benefits to “forgotten widows” and active duty

⁵⁴ See CRS Issue Brief IB85159, *Military Retirement: Major Legislative Issues*, by Robert L. Goldich, updated regularly.

⁵⁵ Lazorchak, Mike, SBP still a good program, but ratio has changed, *Navy Times*, January 15, 2001: 18.

survivors), increased benefits, reduced costs, will eliminate withholdings under the “paid-up provision” afforded supplemental coverage, etc. At no time did Congress reduce the benefit. As such, the claims that the government’s contribution to SBP have been reduced are unreliable. Nor do such claims rationalize the increase of benefits at age 62 for surviving spouses (a change that arguably creates a superior benefit relative to those available to the survivors of other federal employees).

It is noteworthy that after the SBP was introduced, the FY1973 cost to retirees was \$36,145,000 with a fiscal year payment to families of only \$5,700,000. This is due to the relatively small number of participants who died shortly after signing up. Ten years later, as more retirees signed up and more died, the FY1983 cost to retirees grew to \$652,536,000 while the payment to families grew to \$406,887,000. In FY1993, as participant deaths increased, the cost to retirees was \$822,955,000 with payments to families reaching \$1,177,185,000. Finally, in FY2003, costs to retirees was reported to be \$1,053,500,000 while payments to families surged to \$2,088,143,000. The cost to retiree/family payment gap will likely grow as the age 62 reduction is phased out and the “paid-up provision” is implemented.⁵⁶

⁵⁶ 2004 Retired Military Almanac: 220.

Table 6A. Computation of Original Survivor Benefit Plan Cost to the Retiree for Spouse Only Coverage (Work Sheet)

1. Enter base amount of retired pay. If base amount is \$1,275 or more, use Table 6B below.	\$ _____
2. Enter \$595 or total retired pay if less than \$595 (see footnote 10). Do not enter less than \$300.	\$ _____
3. Multiply the figure in line two by 2.5%.	\$ _____
4. Subtract \$595 from line one. If line one is less than \$595, enter zero.	\$ _____
5. Multiply line four by 10%.	\$ _____
6. Add line three and line five.	\$ _____

Line six is the cost of survivor protection under Spouse Only coverage.

Table 6B. Computation of Flat-Rate Survivor Benefit Plan Cost to the Retiree for Spouse Only Coverage (Work Sheet)

1. Enter base amount of retired pay	\$ _____
2. Multiply line one by 6.5%.	<u>x0.065</u>
3. Cost of Basic SBP protection.	\$ _____
****To compute supplemental coverage cost, please continue****	
4. Enter the factor that corresponds to the retiree's age and level of coverage desired at age 62 (see Table 5).	_____
5. Divide the factor from line four by 100.	_____
6. Multiply line one by line 5.	\$ _____

Line 6 is the cost of survivor supplemental protection under Spouse Only coverage.

Table 7. Computation of SBP Costs under Persons with an Insurable Interest Coverage (Work Sheet)

1. The amount of base military retired pay.	\$ _____
2. Multiply line one by 10%.	\$ _____
3. Age of the retiree at his/her last birthday.	\$ _____
4. Age of prospective beneficiary as of the date of the retiree's last birthday.	_____
5. Subtract line three from line four. (If line 3 is less than line 4, enter zero.)	_____
6. Divide the sum in line five by 5 and round the quotient to the lower whole number.	_____
7. Multiply 5% by line six.	_____ %
8. Multiply line one by line seven.	\$ _____
9. Add line two and line eight.	\$ _____
10. Multiply line one by 40%.	\$ _____
11. Compare lines nine and ten: enter the lesser.	\$ _____

Line eleven is the cost of survivor protection under the Persons with an Insurable Interest category of coverage.