



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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APR 3 1978

The Honorable John C. Stennis
Chairman, Committee on Armed Services
United States Senate

Dear Mr. Chairman:

In our continuing effort to render assistance to Congress, we wish to invite your Committee's attention to an additional problem recently presented to this Office regarding the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455, which we believe the Congress did not foresee.

The situation involved a retired member who, following retirement and election of spouse coverage under the SBP, accepted employment in the Foreign Service. At the time of his retirement from the Foreign Service, he waived receipt of military retired pay so that his service time could be included in the computation of an annuity under that system. In addition, he elected a survivor annuity on behalf of his spouse under that system.

The questions presented for our resolution were whether the member was required to continue to contribute to the SBP, notwithstanding his waiver of retired pay and if so, whether his spouse would be entitled to receive both the survivor annuity under the Foreign Service system and the survivor annuity under the SBP upon his death.

In the analysis of the laws governing the matter, the following provisions of the SBP and their related legislative histories were considered.

Section 1452 of title 10, United States Code, provides in pertinent part:

"(d) If a person who has elected to participate in the Plan has been awarded retired or retainer pay and is not entitled to that pay for any period, he must deposit

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in the Treasury the amount that would otherwise have been deducted from his pay for that period, except when he is called or ordered to active duty for a period of more than 30 days.

"(e) When a person who has elected to participate in the Plan waives his retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, he shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(i) of title 5, he has notified the Civil Service Commission that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of title 5."

Additionally, section 1450 of the same title provides in part:

"(d) If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of his retired or retainer pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(i) of title 5, he notified the Civil Service Commission that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title."

In Report No. 92-1089, Committee on Armed Services, United States Senate, dated September 6, 1972, on pages 23-24, it is stated with respect to the foregoing that:

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"* * * [It] would permit a retiree, who waives his military retired pay in order to combine his military service and civil service retirement credits for purposes of calculating and receiving civil service retired pay, to retain coverage under the new Plan or to participate in the civil service survivorship Plan but not both. If he participated in the civil service survivorship plan, contributions would be waived under the new Plan. * * * It would also be both fair to the government (duplicate benefits based on the same period of Federal service would not be paid) and to the individual (duplicate contributions would not be required). At the same time, it would not be possible for a retiree, who is a member of the new Plan, to avoid participation in a Federal survivorship plan; he would be required to have continuous participation either in the new Plan or the civil service plan."

And on page 26, thereof:

"The committee agrees that duplication of benefits should be precluded; however, it further believes that duplication of contributions should also be precluded. * * * When a military retiree waives his military retired pay to increase civil service retirement benefits and elects to join the civil service retirees survivor benefit plan, he would cease to contribute to the military plan during the time his waiver is in effect. * * *"

We found nothing in the SBP or its legislative history which recognized a similar interface between the SBP and the Foreign Service Retirement and Disability System for the

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purpose of avoidance of duplicate contributions. As a result, in decision B-188932, dated December 23, 1977, copy enclosed, we were compelled to conclude that in the absence of another provision in the SBP comparable to 10 U.S.C. 1452(e) (permitting termination or suspension of SBP participation for Civil Service survivor annuity purposes), a retired military member who waives receipt of retired pay for purpose of receiving an annuity from the Foreign Service Retirement and Disability System, and who elects to receive survivor annuity protection thereunder, would be required to continue his SBP participation and make the deposits required by 10 U.S.C. 1452(d).

Having so concluded and finding nothing in the provisions of either the SBP or the Foreign Service Act of 1946, as amended by the Foreign Service Retirement Amendments of 1976 (Title V, Public Law 94-350, approved July 12, 1976, 90 Stat. 834), which would prohibit duplication of survivor annuity benefits in such a case, we took the position that receipt of survivor benefits under the Foreign Service system would not preclude the receipt of an elected SBP annuity by the same survivor.

Thus, we now have a situation in which a surviving spouse of a retired military member who was subsequently employed by and retired from the Foreign Service, could be eligible to receive two survivor annuities, both based in part on the same military service. As noted above, the surviving spouse of a retired military member who was subsequently employed by and retired from the Civil Service would be eligible to receive but a single survivor annuity.

While the case decided was one of first impression we understand that there are more instances in which the problem could arise. The Civil Service Retirement and Survivor Annuity system is, by force of numbers, the most notable example of a Federal retirement system which permits the use of military service for purposes of

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computing a retirement annuity thereunder and ultimately, survivor benefits and perhaps the Foreign Service Retirement and Disability System is the second most notable. However, as a result of an ongoing study by this Office concerning the feasibility of unifying the various Federal retirement programs, it has been determined that there are a number of other Federal retirement systems which permit a similar crediting of military service for purposes of establishing a retirement annuity and survivor benefits, without contribution on the part of the employee.

We believe that all Federal retirement systems which permit use of military service time to increase annuities thereunder, which in turn serve as a basis for increased survivor annuities under such systems, should treat survivors equally. Duplication of contributions and benefits have been prevented by the Congress in the case of a retired military member, who is subsequently employed by the Civil Service and is retired under that system, by requiring him to choose either his SBP coverage or survivor annuity coverage under the Civil Service Retirement system if he waives receipt of military retired pay upon that latter retirement. It is our view that a similar requirement should be imposed regarding all other Federal retirement systems which permit crediting of military service time towards an annuity computation under those systems.

Enclosed is draft of legislation which would amend existing law to provide the change discussed above. A similar letter has been addressed to the Honorable Melvin Price, Chairman, Committee on Armed Services, House of Representatives. Copies of that letter were furnished to the Secretary of State and the Secretary of Defense.

Sincerely yours,
(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosures - 2

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A BILL

To amend subchapter II, chapter 73, title 10, United States Code, the Survivor Benefit Plan, and for other purposes:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subchapter II of chapter 73 of title 10, United States Code, is amended as follows:

- (1) Section 1450 of title 10, United States Code, is amended by striking subsection (d), and inserting in lieu thereof:

"(d) If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of his retired or retainer pay for the purpose of receiving an annuity under any other Federal retirement system, an annuity under this section shall not be payable unless, in accordance with the law governing that retirement system, he notified its administrator that he did not desire any spouse surviving him to receive an annuity under that system."

- (2) Section 1452 of title 10, United States Code, is amended by striking subsection (e), and inserting in lieu thereof:

"(e) When a person who has elected to participate in the Plan waives his retired or retainer pay for the purpose of receiving an annuity under any other Federal retirement system, he shall not be required to make the deposit otherwise required by subsection (d) of this section as long as that waiver is in effect unless, in accordance with the law governing that retirement system, he has notified its administrator

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that he does not desire any spouse surviving him to receive any annuity under that system."

Sec. 2. The amendments made by this Act will be effective on the first day of the month following the month in which this Act is enacted.