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97TH CONGRESS
1ST SESSION

S. 888

To provide effective programs to assure equality of economic opportunities for women and men, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, FEBRUARY 16), 1981

Mr. DURENBERGER (for himself, Mr. PACKWOOD, Mr. HATFIELD, Mrs. KASSEBAUM, Mr. LEVIN, Mr. HEINZ, Mr. MOYNIHAN, Mr. MELCHER, Mr. MATSUNAGA, Mr. TSONGAS, and Mr. PRESSLER) introduced the following bill; which was read twice and referred to the Committee on Finance + Labor

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A BILL

To provide effective programs to assure equality of economic opportunities for women and men, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Economic Equity Act".

TITLE I—TAX AND RETIREMENT MATTERS

DEDUCTION FOR CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS

SEC. 101. (a) GENERAL RULE.—Paragraph (2) of section 219(c) of the Internal Revenue Code of 1954 (relating to married individuals) is amended to read as follows:

"(2) MARRIED INDIVIDUALS.—

"(A) COMPUTATION OF MAXIMUM DEDUCTION.—The maximum deduction under subsection (b)(1) shall be computed separately for each individual who is married (within the meaning of section 143(a)).

"(B) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.

"(C) HIGHER COMPENSATION USED.—In the case of a married individual who has no compensation or whose compensation is less than that of the individual's spouse, the maximum deduction under subsection (b)(1) shall be determined as if such individual's compensation were the same as that of such individual's spouse.".

(b) TREATMENT OF ALIMONY AS COMPENSATION.—Paragraph (1) of section 219(c) of such Code (defining compensation) is amended by inserting before the period at the end thereof the following: "and periodic payments includible in gross income under section 71".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1980.

JOINT AND SURVIVOR ANNUITY REQUIREMENTS

SEC. 102. (a) AMENDMENTS TO ERISA.—

(1) Section 205 of the Employee Retirement Income Security Act of 1974 (relating to joint and survivor annuity requirement) is amended by striking out subsections (b) and (c) and inserting in lieu thereof the following:

"(b) A plan which provides that the normal form of benefit is an annuity shall, with respect to any participant who under the plan is credited with at least 10 years of service for vesting purposes under section 203 and who dies before the annuity starting date, provide a survivor's annuity for the participant's spouse—

"(1) which begins on the annuity starting date (determined as if the participant had lived until the earliest retirement age under the plan, or the participant's actual date of death if later, and had retired on such date prior to death), if the spouse is living on such date, and

"(2) the payments under which are not less than the payments which would have been made under the survivor's annuity to which such spouse would have been entitled if the participant had terminated employment on his date of death, had survived and retired on such annuity starting date, and had died on the day following such date.".

(2) Subsection (e) of section 205 of such Act is amended to read as follows:

"(e) A plan shall not be treated as satisfying the requirements of this section unless, under the plan—

"(1) each participant has a reasonable period (as prescribed by the Secretary of the Treasury by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subsection) not to take such joint and survivor annuity,

"(2) such an election will not be effective unless the spouse of the individual (as of the time such election is made) consents in writing to such an election and such consent is witnessed by a plan representative or a notary public.".

(3) Subsection (f) of section 205 of such Act is hereby repealed.

(b) AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1954.—

(1) Paragraph (11) of section 401(a) of the Internal Revenue Code of 1954 (relating to qualified pension, profit-sharing, and stock-bonus plans) is amended by striking out subparagraphs (B) and (C) and inserting in lieu thereof the following:

"(B) A plan which provides that the normal form of benefit is an annuity shall, with respect to any participant who under the plan is credited with at least 10 years of service for vesting purposes under section 411(a) and who dies before the annuity starting date, provide a survivor's annuity for the participant's spouse—

"(i) which begins on the annuity starting date (determined as if the participant had lived until the earliest retirement age under the plan, or the participant's actual date of death if later, and had retired on such date prior to death), if the spouse is living on such date, and

"(ii) the payments under which are not less than the payments which would have been made under the survivor's annuity to which such spouse would have been entitled if the participant had terminated employment on his date of death, had survived and retired on such annuity starting date, and had died on the day following such date.".

(2) Subparagraph (E) of section 401(a)(11) of such Code is amended to read as follows:

"(E) A plan shall not be treated as satisfying the requirements of this section unless, under the plan—

"(i) each participant has a reasonable period (as prescribed by the Secretary by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this paragraph) not to take such joint and survivor annuity,

"(ii) such an election will not be effective unless the spouse of the individual (as of the time such election is made) consents in writing to such an election and such consent is witnessed by a plan representative or a notary public.".

(3) Subparagraph (F) of section 401(a)(11) of such Code is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning more than one year after the date of the enactment of this Act.

PROHIBITION AGAINST ASSIGNMENT NOT TO APPLY IN DIVORCE, ETC., PROCEEDINGS

SEC. 103. (a) AMENDMENT OF ERISA.—Subsection (d) of section 206 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(3) Paragraph (1) shall not apply in the case of a judgment, decree, or order (including an approval of a property settlement agreement) relating to child support, alimony payments, or marital property rights, pursuant to a State domestic relations law (whether of the common law or community property type), which—

"(A) creates or recognizes the existence of an individual's right to receive all or a portion of the benefits to which a participant's designated beneficiary would otherwise be entitled under a pension plan,

"(B) clearly identifies such participant, the amount or percentage of such benefits to be paid to such individual, the number of payments to which such judgment, decree, or order applies, and the name and mailing address of such individuals, and

"(C) does not require such plan to alter the effective date, timing, form, duration, or amount of any benefit payments under the plan or to honor any election which is not provided for under the plan or which is made by a person other than a participant or beneficiary.".

(b) AMENDMENT OF THE INTERNAL REVENUE CODE OF 1954.—Paragraph (13) of section 401(a) of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply in the case of any judgment, decree, or order pursuant to a State domestic relations law if such judgment, decree, or order is described in section 206(d)(3) of the Employee Retirement Income Security Act of 1974.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

LOWERING OF AGE LIMITATION FOR MINIMUM PARTICIPATION STANDARDS

SEC. 104. (a) AMENDMENT OF ERISA.—Subparagraphs (A)(i) and (B)(ii) of section 202(a)(1) of the Employee

Retirement Income Security Act of 1974 are each amended by striking out "25" and inserting in lieu thereof "21".

(b) AMENDMENT OF THE INTERNAL REVENUE CODE OF 1954.—Subparagraphs (A)(i) and (B)(ii) of section 410(a)(1) of the Internal Revenue Code of 1954 are each amended by striking out "25" and inserting in lieu thereof "21".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning more than 90 days after the date of the enactment of this Act.

ACCRUALS CONTINUE WHILE INDIVIDUAL ON APPROVED MATERNITY OR PATERNITY LEAVE

SEC. 105. (a) AMENDMENT OF ERISA.—Subsection (b) of section 202 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new paragraph:

"(5)(A) For purposes of this section and sections 203 and 204, for each week of an approved maternity or paternity leave, the individual shall be deemed to have performed 20 hours of service for the employer.

"(B) For purposes of subparagraph (A), the term 'approved maternity or paternity leave' means any period (not to exceed 52 weeks) during which the individual is absent from work if—

"(i) such absence is by reason of the birth of a child of the individual or for purposes of caring for a child of the individual, and

"(ii) such absence is approved by the employer.

"(C) Subparagraph (A) shall not apply unless the individual continues to perform service for the employer after the end of the approved maternity or paternity leave or offers to do so but is not reemployed by the employer.".

(b) AMENDMENT OF THE INTERNAL REVENUE CODE OF 1954.—Subsection (a) of section 410 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new paragraph:

"(6) APPROVED MATERNITY OR PATERNITY LEAVE.—

"(A) IN GENERAL.—For purposes of this section and section 411, for each week of an approved maternity or paternity leave, the individual shall be deemed to have performed 20 hours of service for the employer.

"(B) APPROVED MATERNITY OR PATERNITY LEAVE DEFINED.—For purposes of subparagraph (A), the term 'approved maternity or paternity leave' means any period (not to exceed 52 weeks) during which the individual is absent from work if—

"(i) such absence is by reason of the birth of a child of the individual or for purposes of caring for a child of the individual, and

"(ii) such absence is approved by the employer.

"(C) INDIVIDUAL MUST CONTINUE TO PERFORM SERVICES AFTER THE LEAVE.—Subparagraph (A) shall not apply unless the individual continues to perform service for the employer after the end of the approved maternity or paternity leave or offers to do so but is not reemployed by the employer.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning more than 1 year after the date of the enactment of this Act.

ZERO BRACKET AMOUNT FOR HEADS OF HOUSEHOLDS

SEC. 106. (a) IN GENERAL.—Subsection (d) of section 63 of the Internal Revenue Code of 1954 (relating to zero bracket amount) is amended to read as follows:

"(d) ZERO BRACKET AMOUNT.—For purposes of this subtitle, the term 'zero bracket amount' means—

"(1) $3,400 in the case of—

"(A) a joint return under section 6013,

"(B) a surviving spouse (as defined in section 2(a)), or

"(C) the head of a household (as defined in section 2(b)),

"(2) $2,300 in the case of an individual who is not married, who is not a surviving spouse (as so defined), and who is not the head of a household (as so defined),

"(3) $1,700 in the case of a married individual filing a separate return, and

"(4) zero in any other case.".

(b) CONFORMING AMENDMENTS.—

(1) TAX RATE TABLE.—Subsection (b) of section 1 of such Code (relating to tax imposed on heads of households) is amended by striking out the table therein and inserting in lieu thereof the following new table:

"If taxable income is:	The tax is:
Not over $3,400	No tax.
Over $3,400 but not over $5,500	14% of excess over $3,400.
Over $5,500 but not over $7,600	$294, plus 16% of excess over $5,500.
Over $7,600 but not over $9,800	$630, plus 18% of excess over $7,600.
Over $9,800 but not over $12,900	$1,026, plus 22% of excess over $9,800.
Over $12,900 but not over $16,100	$1,708, plus 24% of excess over $12,900.
Over $16,100 but not over $19,300	$2,476, plus 26% of excess over $16,100.
Over $19,300 but not over $24,600	$3,308, plus 31% of excess over $19,300.
Over $24,600 but not over $29,900	$4,951, plus 36% of excess over $24,600.
Over $29,900 but not over $35,200	$6,859, plus 42% of excess over $29,900.
Over $35,200 but not over $45,800	$9,085, plus 46% of excess over $35,200.

"If taxable income is:	The tax is:
Over $45,800 but not over $61,700	$13,961, plus 54% of excess over $45,800.
Over $61,700 but not over $82,900	$22,547, plus 59% of excess over $61,700.
Over $82,900 but not over $109,400....	$35,055, plus 63% of excess over $82,900.
Over $109,400 but not over $162,400..	$51,750, plus 68% of excess over $109,400.
Over $162,400	$87,790, plus 70% of excess over $162,400.".

(2) WITHHOLDING.—Paragraph (1) of section 3402(f) of such Code (relating to withholding exemptions) is amended—

(A) by striking out "and" at the end of subparagraph (F),

(B) by striking out the period at the end of subparagraph (G) and inserting in lieu thereof a semicolon and the word "and",

(C) by adding at the end thereof the following new subparagraph:

"(H) in the case of an employee who is the head of a household (as defined in section 2(b)) and who elects the application of this subparagraph, an additional zero bracket allowance.", and

(D) by inserting "or (H)" after "(G)" in the last sentence thereof.

(3) FILING.—Paragraph (1) of section 6012(a) of such Code (relating to persons required to make returns of income) is amended—

(A) by inserting ", is not the head of a household (as defined in section 2(b))," immediately before "and" in subparagraph (A)(i),

(B) by striking out "or" at the end of subparagraph (A)(ii),

(C) by striking out the period at the end of clause (iii) and inserting in lieu thereof a comma and "or", and

(D) by inserting immediately after clause (iii) of subparagraph (A) the following new clause:

"(iv) who is the head of a household (as defined in section 2(b)) and for the taxable year has gross income of less than $5,400.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1980.

MILITARY RETIREMENT

SEC. 107. (a)(1) Chapter 73 of title 10, United States Code, relating to annuities based on retired or retainer pay, is amended by adding after subchapter II the following new subchapter:

"SUBCHAPTER III—FORMER SPOUSE SHARE OF RETIRED OR RETAINER PAY

"Sec.
"1461. Definitions.
"1462. Former spouse share of retired or retainer pay.
"1463. Reduction in retired or retainer pay.
"1464. Spousal agreements and court orders.
"1465. Nonpreemption of State law.

"§ 1461. Definitions

"In this subchapter and in subchapter II of this chapter:

"(1) 'Former spouse' means a former wife or husband of a member or former member who was married to that member or former member for not less than ten years during which that member or former member performed creditable service.

"(2) 'Court' means a court of a State or of the District of Columbia.

"(3) 'Court order' means a court decree of divorce or annulment, or a court order or court approved property settlement agreement incident to a final court decree of divorce or annulment, which orders that a portion of the retired or retainer pay of a member or former member, or a survivor annuity based on the service of such member or former member, be paid to a former spouse by the member or former member, by the Secretary concerned, or by the Government.

"(4) 'Pro rata share', in the case of a former spouse of a member or former member entitled to retired or retainer pay, means the percentage that is equal to the percentage that (A) the number of years during which the former spouse was married to the member or former member during the creditable service of that member or former member is of (B) the total number of years of such creditable service.

"(5) 'Spousal agreement' means any written agreement between a member or former member and that member or former member's spouse or former spouse which is in writing and acknowledged before a notary public.

"(6) 'Creditable service' means service credited to a member or former member for the purpose of determining the eligibility of that member or former member for retired or retainer pay.

"§ 1462. Former spouse share of retired or retainer pay

"(a) Unless otherwise expressly provided by any spousal agreement or court order described in section 1464 of this title, a former spouse of a member or former member who is entitled to retired or retainer pay is entitled to an annuity—

"(1) if married to the member or former member throughout the creditable service of the member or former member, equal to 50 percent of the retired or retainer pay of the member or former member; or

"(2) if not married to the member or former member throughout the creditable service of the member or former member, equal to the former spouse's pro rata share of 50 percent of the retired or retainer pay of the member or former member.

"(b) The amount of retired or retainer pay used for the computation of an annuity under this section shall be determined after any reduction in such retired or retainer pay required under section 1452 of this title.

"(c) A former spouse is not qualified for an annuity under this section if before the commencement of the annuity the former spouse remarries before becoming 60 years of age.

"(d)(1) An annuity of a former spouse under this section commences on the later of the day after the member or former member upon whose service the annuity is based becomes entitled to retired or retainer pay or the first day of the month in which the divorce or annulment involved becomes final.

"(2) Such annuity and the right to such annuity terminate—

"(A) on the last day of the month before the former spouse dies or remarries before becoming 60 years of age; or

"(B) on the date the retired or retainer pay of the member or former member upon whose service the annuity is based dies.

"(e) A former spouse is not entitled to an annuity under this subchapter based upon the service of a member or former member unless the former spouse elects to receive it instead of any other annuity to which the former spouse may be entitled under this chapter or any retirement system for Government employees on the basis of a marriage to someone other than the member or former member.

"§ 1463. Reduction in retired or retainer pay

"The retired or retainer pay of a member or former member shall be reduced by the amount of an annuity under this subchapter paid to a former spouse of that member or former member based on the service of that member or former member. Such reduction shall be disregarded in calculating any annuity under subchapter II of this chapter and in calculating any reduction in retired or retainer pay under section 1452 of this title.

"§ 1464. Spousal agreements and court orders

"(a)(1)(A) In the case of any member or former member who has a former spouse who is covered by a court order or who is a party to a spousal agreement—

"(i) any right of the former spouse to an annuity under section 1462 of this title in connection with the retired or retainer pay of the member or former member, and the amount of any such annuity; and

"(ii) any right of the former spouse to a survivor annuity under subchapter II of this chapter, and the amount of any such annuity, shall be determined in accordance with that spousal agreement or court order, if and to the extent expressly provided for in the terms of that spousal agreement or court order.

"(B) This paragraph shall not apply in the case of any spousal agreement or court order which, as determined by the Secretary concerned is inconsistent with the requirements of this chapter.

"(2) Except with respect to obligations between members or former members and former spouses, payments under this chapter which would otherwise be made to a member or former member based upon that member or former member's service shall be paid (in whole or in part) by the Secretary concerned to another natural person to the extent expressly provided for in the terms of any order or any court decree of legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

"(3) Paragraphs (1) and (2) shall apply only to payments made under this chapter for periods beginning after the date of receipt by the Secretary concerned of written notice of such decree, order, or agreement, and such additional information and such documentation as the Secretary concerned may require.

"(b) Any payment under this subsection to any person bars recovery by any other person.

"(c) No spousal agreement or court order involving a member or former member may provide for an annuity or any combination of annuities under this subchapter which exceeds the amount of the retired or retainer pay of the member or former member, nor may any such court order relating to an annuity under this subchapter be given effect if it is issued more than 12 months after the date the divorce or annulment involved becomes final.

"(d) After the death of a member or former member, a court order may not adjust the amount of the annuity of a former spouse under this subchapter or subchapter II of this chapter.

"§ 1465. Nonpreemption of State law

"The 10-year requirement of section 1461(1) of this title, or any other provision of this chapter, shall not be construed to affect the rights any spouse or person formerly married to a member or former member may have, under any law or rule of law of any State or the District of Columbia, with respect to the retired or retainer pay of the member or former member.".

(2) The table of subchapters at the beginning of chapter 73 of title 10, United States Code, is amended by adding at the end thereof the following new item:

"III. Former Spouse Share of Retired or Retainer Pay .... 1461".

(b) Section 1447 of title 10, United States Code, relating to definitions applicable to the Survivor Benefit Plan, is amended—

(1) by striking out "by the person providing the annuity" in paragraph (2) and inserting in lieu thereof "in accordance with section 1448(a)(3) of this title"; and

(2) by adding at the end thereof the following new paragraph:

"(6) 'Former spouse', 'pro rata share', 'spousal agreement', 'court order', and 'creditable service' have the meanings given such terms in section 1461 of this title.".

(c)(1) Subsection (a) of section 1448 of title 10, United States Code, relating to the application of the Survivor Benefit Plan, is amended—

(A) in paragraph (2)—

(i) by inserting "except to the extent otherwise provided under paragraph (3)," in clause (A) before "to a person";

(ii) by striking out "is married" both places it appears and inserting in lieu thereof "is married, has a former spouse,"; and

(iii) by striking out ", unless he elects" in clause (A) and all that follows through "that pay";

(B) by inserting "except to the extent otherwise provided under paragraph (4)," in clause (B) after "(iii)"; and

(C) by striking out paragraphs (3) and (4) and inserting in lieu thereof the following:

"(3)(A) Before becoming eligible for retired or retainer pay, a married person eligible under paragraph (1)(A) to participate in the Plan and such person's spouse may jointly elect not to participate in the Plan, to participate in the Plan at a reduced level, or to provide an annuity for a dependent child but not for the spouse. Any such election shall be in writing and shall be acknowledged before a notary public. In the event the marriage is dissolved following an election to participate at such a reduced level and the spouse qualifies as a former spouse, the base amount used in calculating an annuity as a former spouse under section 1450 of this title may not exceed the base amount designated under this subparagraph. An election under this subparagraph not to participate in the Plan is irrevocable if not revoked before the date on which the person first becomes entitled to retired or retainer pay.

"(B) A person eligible under paragraph (1)(B) to participate in the Plan who is married may not make an election under subclause (iii) of such paragraph to participate in the Plan at a reduced level or to provide an annuity for a dependent child but not for the spouse without the agreement of the spouse. Any such agreement shall be in writing and shall be acknowledged before a notary public. In the event the marriage is dissolved following an election for participation in the Plan at a reduced level and the spouse qualifies as a former spouse, the base amount used in calculating any annuity of the former spouse under section 1450 of this title may not exceed the base amount designated under this subparagraph. An election under this subparagraph is irrevocable if not revoked before the end of the 90-day period referred to in such paragraph.

"(C) If a person who is eligible to participate in the Plan has a former spouse, the person and such former spouse may jointly elect by spousal agreement under section 1464 of this title not to participate in the Plan with respect to an annuity under section 1450 of this title for that former spouse if the election is made (i) before the end of the 12-month period after the divorce or annulment involving that former spouse becomes final, or (ii) at the time the person becomes eligible to participate in the Plan, whichever occurs first. Such an election is irrevocable after the expiration of the time described in the preceding sentence for the making of such election.

"(4) Regulations prescribed under section 1455 of this title may authorize a person eligible to participate in the Plan to make an election under paragraph (3) without the person's spouse or former spouse if the person establishes to the satisfaction of the Secretary concerned that the person does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse or former spouse.".

(2) Subsection (b) of such section is amended by striking out "who is not married" and inserting in lieu thereof "who is not married, does not have a former spouse,".

(3) Subsection (d) of such section is amended by striking out "to which the otherwise eligible spouse" and all that follows and inserting in lieu thereof "which the member would have received if he had been eligible for that pay on the day before he died, based upon his years of active service. If such a member has a former spouse at the time of death, the Secretary concerned shall pay to the former spouse an annuity equal to 55 percent of the amount of the annuity which would have been payable to the former spouse under section 1462 if the member had been eligible for retired or retainer pay on the day before he died, and the annuity of the surviving spouse under the preceding sentence shall be reduced by the amount of the annuity paid to the former spouse.".

(4) Such section is further amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of any person providing an annuity under the Plan for a former spouse—

"(A) such person may elect, or

"(B) a spousal agreement or court order may provide for,

an additional annuity under the Plan for any other former spouse or spouse surviving the person, if the person satisfactorily passes a physical examination as prescribed by the Secretary concerned.

"(2) Neither the total amount of annuity or annuities under this subsection with respect to any person participating in the Plan, nor the annuity or annuities for any one surviving spouse or former spouse of such person under the Plan, may exceed 55 percent of the full amount of the person's retired or retainer pay.

"(3)(A) In accordance with regulations prescribed under section 1455 of this title, the person involved may provide for an annuity under this subsection—

"(i) by a reduction in the retired or retainer pay or an allotment from the basic pay of the person,

"(ii) by a lump sum payment or installment payments, or

"(iii) by any combination thereof.

"(B) The present value of the total amount to accrue to the United States under subparagraph (A) to provide an annuity under this subsection shall be actuarially equivalent value to such annuity, as calculated upon such tables of mo tality as may from time to time be prescribed for such pu pose under section 1455 of this title.

"(C) If a former spouse predeceases the person involv or remarries before attaining age 60 (or, in the case of spouse, the spouse does not qualify as a former spouse up dissolution of the marriage)—

"(i) if a reduction in retired or retainer pay or a lotment of basic pay under subparagraph (A) is effect for that spouse or former spouse, the retired retainer pay shall be recomputed and paid as if it h not been reduced or the basic pay allotment termin ed, as the case may be, and

"(ii) any amount accruing to the United Stat under subparagraph (A) shall be refunded, but only the extent that such amount may have exceeded th actuarial cost of providing benefits under this subse tion for the period such benefits were provided, as d termined under regulations prescribed under secti 1455 of this title.

"(D) Under regulations prescribed under section 1455 this title, retired or retainer pay shall be recomputed (or allotment of basic pay terminated or adjusted), and a refu provided (if appropriate), in a manner comparable to that p vided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection for a spouse in the event a former spouse of the person involved dies or remarries before attaining age 60 and an increased annuity is provided for that spouse in accordance with this chapter.

"(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the person dies and shall terminate on the last day of the month before the spouse or former spouse's death or remarriage before attaining age 60.

"(5) Section 1451(c) of this title shall not apply to any annuity under this subsection, unless authorized under regulations prescribed under section 1455 of this title.".

(d) Section 1450 of title 10, United States Code, relating to beneficiaries under the Survivor Benefit Plan, is amended—

(1) in subsection (a)—

(A) in clause (1), by inserting after "or widower" the following: "and any eligible former spouse"; and

(B) in clause (2), by striking out "if the eligible widow or widower is dead, dies, or otherwise becomes ineligible" and inserting in lieu thereof "if the eligible widow or widower and any eligible former spouse are dead, die, or otherwise become ineligible";

(2) in subsection (b), by inserting "or former spouse" after "widow or widower" each place it appears; and

(3) by striking out the first two sentences of subsection (e) and inserting in lieu thereof "If no annuity under this section is payable to a widow or widower because of subsection (c), any amount deducted from the retired or retainer pay of the deceased under section 1452 of this title shall be refunded to the widow or widower. If, because of subsection (c), the annuity payable to the widow or widower is less than the amount established under section 1451 of this title, the annuity shall be recalculated under that section.".

(e)(1) Paragraph (1) of subsection (a) of section 1451 of title 10, United States Code, relating to the amount of annuities under the Survivor Benefit Plan, is amended to read as follows:

"(1)(A)(i) Subject to paragraphs (2) and (3), the monthly annuity payable to a widow or widower who is entitled under section 1450(a)(1) of this title to an annuity shall be—

"(I) 55 percent of the base amount, as adjusted from time to time under section 1401a of this title, the annuity is provided by virtue of eligibility under section 1448(a)(1)(A) of this title; or

"(II) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the base amount, as adjusted from time to time under section 1401a of this title, on or after the date the person becomes entitled to retired pay under chapter 67 of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

"(ii) Notwithstanding clause (i), the amount of an annuity calculated under clause (i) for a widow or widower in a case in which there is also a surviving former spouse who qualifies for an annuity under section 1450(a)(1) of this title may not exceed 55 percent (or the applicable percentage determined in accordance with subsection (d)) of the portion (if any) of the base amount that remains available under subection (e)(2).

"(B) Subject to paragraphs (2) and (3), the monthly annuity payable to a former spouse who is entitled under section 1450(a)(1) of this title to an annuity shall be a pro rata share of the amount of an annuity of a widow or widower computed under the first sentence of subparagraph (A)(i).

"(C) The monthly annuity payable to a dependent child who is entitled under section 1450(a) of this title to an annuity shall be—

"(i) 55 percent of the base amount, as adjusted from time to time under section 1401a of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(A) of this title; or

"(ii) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the base amount, as adjusted from time to time under section 1401a of this title, on or after the date the person becomes entitled to retired pay under chapter 67 of this title, if the annuity is provided by virtue of eligibility under section 1448(a)(1)(B) of this title.".

(2) Paragraph (2) of such subsection is amended by inserting "female former spouse" after "widow" both places it appears.

(3) Paragraph (3) of such subsection is amended by striking out "widow or widower" each place it appears and inserting in lieu thereof "widow, widower, or former spouse".

(4) Subsection (c) of such section is amended by striking out "section, or section 1448(d) of this title," and inserting in lieu thereof "subchapter".

(5) Such section is further amended by adding at the end thereof the following new subsection:

"(e)(1) Except for an annuity provided by virtue of section 1448(f) of this title, the maximum annuity or combination of annuities under this section (or under section 1448(d) of this title) with respect to any member or former member may not exceed 55 percent of the full amount of the member or former member's retired or retainer pay.

"(2) Once an annuity has been provided for under the Plan for any former spouse, an annuity may thereafter be provided for under the Plan with respect to a member or former member only for that portion (if any) of the maximum base amount of the member or former member which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.".

(f) Section 1452 of title 10, United States Code, relating to reductions in retired or retainer pay, is amended—

(1) in subsection (a)—

(A) by striking out "a spouse and a dependent child" in the first sentence and inserting in lieu thereof "a former spouse" and by inserting "and former spouse (if any)" after "in favor of his spouse";

(B) by inserting "or an eligible former spouse and a dependent child" in the second sentence after "an eligible spouse and a dependent child"; and

(C) by inserting "or former spouse" in the third sentence after "eligible spouse";

(2) in subsection (b), by inserting "or former spouse" after "spouse" each place it appears;

(3) in subsection (e), by inserting "or former spouse" after "spouse"; and

(4) by adding after subsection (h) the following new subsection:

"(i)(1) For each full month after a former spouse of a member or former member dies or remarries before attaining age 60, the retired or retainer pay of the member or former member, if reduced to provide an annuity for the former spouse under the Plan, shall be recomputed and paid as if the annuity had not been so reduced, unless an election is in effect under paragraph (2).

"(2) Subject to section 1451(e) of this title, the member or former member may elect in writing within one year after receipt of notice of the death or remarriage of the former spouse to continue the reduction in order to provide a higher annuity under the Plan for a spouse of the member or former member.".

(g) Section 1455 of title 10, United States Code, relating to regulations to carry out the Survivor Benefit Plan, is amended—

(1) by inserting "and subchapter III of this chapter" after "this subchapter";

(2) by striking out paragraph (1) of such section and inserting in lieu thereof the following:

"(1) provide that the member and the spouse and former spouse (if any) of the member shall, before the date the member becomes entitled to retired or retainer pay, be informed of the elections available under section 1448(a) of this title and the effects of such elections; and".

(h)(1) Any member of the uniformed services who on the effective date of this Act has a former spouse shall receive retired pay at a reduced rate and provide a survivor annuity for such former spouse under subchapter II of chapter 73 of title 10, United States Code, as amended by this Act, if—

(A) the member so elects by means of a spousal agreement, or

(B) a court order so provides.

(2)(A) If the member has not become entitled to retired pay on or before the effective date of this Act, an election under subsection (h)(1)(A) may be made, or a court order under subsection (h)(1)(B) may be issued, at any time before the member becomes so entitled.

(B) If the member is entitled to retired pay on or before the effective date of this Act, an election under subsection (h)(1)(A) may be made, or a court order under subsection (h)(1)(B) may be issued, within such period after such effective date as the Secretary concerned may prescribe.

(C) In any case in which a member is married and has been married for more than one year, an election under subsection (h)(1)(A) may only be made with the written concurrence of the spouse of the member.

(D) For purposes of applying chapter 73 of title 10, any such election or court order shall be treated the same as if it were a spousal agreement or court order under section 1464 of such title.

(3)(A) An election under subsection (h)(1)(A) may provide for a survivor benefit based on all or any portion of that part of the retired pay of the member which is not designated or committed as a base amount (as such term is defined in section 1447(2) of such title) for survivor benefits for a spouse or any other former spouse of the member. The member and the spouse of the member may make an election under paragraph (3) of section 1448(a) of such title before the member becomes eligible to participate in the Survivor Benefit Plan under such section for the purpose of allowing survivor benefits to be provided under this subsection.

(B) A court order under subsection (h)(1)(B) may provide for an annuity for a former spouse which does not exceed that former spouse's pro rata share of 55 percent of the full amount of the retired pay of the member.

(4) The amount of the reduction in the retired pay of the member under this subsection shall be determined in accordance with section 1452 of such title and shall be effective as of—

(A) the commencing date of the retired pay in the case of an election under subsection (h)(2)(A); or

(B) the effective date of this Act, in the case of an election under subsection (h)(2)(B).

(5) In the case of a member who died before the effective date of this Act after becoming entitled to retired pay and who—

(A) at the time the member became entitled to retired pay was married and did not elect not to participate in the Survivor Benefit Plan;

(B) subsequently was divorced from the spouse who was the member's beneficiary under the Survivor Benefit Plan at such time; and

(C) died without a beneficiary under the Survivor Benefit Plan,

the individual to whom the member was married at the time the member became entitled to retired pay shall be entitled to an annuity under the Survivor Benefit Plan as if married to the member at the time of death if the individual is qualifed as a former spouse.

(6) For the purposes of this subsection:

(A) The terms "former spouse", "spousal agreement", "court order", and "State court" have the meanings given such terms in section 1461 of title 10, United States Code.

(B) The terms "uniformed services" and "Secretary concerned" have the meanings given such terms in section 101 of title 37, United States Code.

(C) The term "member" includes a former member entitled to retired pay.

(D) The term "retired pay" includes retainer pay.

(i)(1) This section and the amendments made by this section shall take effect at the end of the 120-day period beginning on the date of the enactment of this Act.

(2)(A) Subchapter III of chapter 73 of title 10, United States Code, as added by this section, shall apply in the case of any individual who after the effective date of this section becomes a former spouse (as defined in section 1461(1) of such title) of an individual who becomes entitled to retired or retainer pay after the effective date of this section.

(B) Except to the extent provided in subsection (h), the provisions of the Survivor Benefit Plan (subchapter II of such chapter) regarding the rights of former spouses to receive survivor annuities shall apply in the case of any individual who after the effective date of this section becomes a former spouse (as defined in section 1461(1) of title 10, United States Code) of a member or former member of the uniformed services.

CIVIL SERVICE SPOUSE RETIREMENT PROVISIONS

SEC. 108. (a)(1) Section 8331 of title 5, United States Code, relating to definitions for purposes of civil service retirement, is amended by adding at the end thereof the following new paragraphs:

"(23) 'court' means any court of any State or of the District of Columbia;

"(24) 'court order' means any court decree of divorce or annulment, or any court order or court approved property settlement agreement incident to any court decree of divorce or annulment which orders that a portion of the annuity of an employee or Member, or survivor benefit based on the service of such employee or Member, be paid to that spouse by such employee or Member, the Director of the Office of Personnel Management, or the Government;

"(25) 'former spouse' means a former wife or husband of an individual who was married to such individual for not less than 10 years during periods of service by that individual which are creditable under section 8332 of this title;

"(26) 'pro rata share', in the case of any former spouse of any individual, means a percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the individual during the creditable service of that individual is of (B) the total number of years of such creditable service; and

"(27) 'spousal agreement' means any agreement between an individual and that individual's spouse or former spouse which is in writing and acknowledged before a notary public.".

(2) Such section 8331 of title 5, United States Code, is further amended—

(A) by striking out "and" at the end of paragraph (21), and

(B) by striking out the period at the end of paragraph (22) and inserting in lieu thereof a semicolon.

(b)(1) Subchapter III of chapter 83 of title 5, United States Code, relating to civil service retirement, is amended by inserting after section 8341 the following new section:

"§ 8341A. Former spouse annuities

"(a)(1) Unless otherwise expressly provided by any spousal agreement or court order under section 8345(k) of this title, a former spouse of an employee or Member retired under this subchapter is entitled to an annuity—

"(A) if married to the employee or Member throughout that employee's or Member's period of creditable service, equal to 50 percent of the annuity (determined without regard to the reduction under paragraph (5) of this subsection) to which such employee or Member is entitled, or

"(B) if not married to the employee or Member throughout the period of creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

"(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

"(3) The annuity of a former spouse under this subsection commences on the later of the day the employee or Member upon whose service the annuity is based becomes entitled to an annuity under this subchapter or the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

"(A) the last day of the month before the former spouse dies or remarries before 60 years of age; or

"(B) the date the annuity of the employee or Member terminates (except in the case of an annuity subject to paragraph (5)(B)).

"(4) No spousal agreement or court order under section 8345(k) of this title involving any employee or Member may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the employee or Member, nor may any such court order relating to an annuity under this subsection be given effect if it is issued more than 12 months after the date the divorce or annulment involved becomes final.

"(5)(A) The annuity payable to any employee or Member shall be reduced by the amount of an annuity under this subsection paid to any former spouse based upon the service of that employee or Member. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this subchapter, and in calculating any reduction in the annuity of the employee or Member to provide survivor benefits under subsection (b) or section 8341(b)(1) of this title.

"(B) If any disability annuitant whose annuity is reduced under subparagraph (A) becomes reinstated or reappointed in the civil service, the pay of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Fund.

"(6) Notwithstanding paragraph (3), in the case of any former spouse of a disability annuitant—

"(A) the annuity of that former spouse shall commence on the date the employee or Member would qualify on the basis of the employee's or Member's creditable service for an annuity under this subchapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

"(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the employee or Member would otherwise so qualify.

"(b)(1) Subject to any election under section 8339(j) of this title and unless otherwise expressly provided by any spousal agreement or court order under section 8345(k) of this title, if a former employee or Member who is entitled to receive an annuity is survived by a former spouse, the former spouse shall be entitled to a survivor annuity—

"(A) if married to the employee or Member throughout the creditable service of the employee or Member, equal to 55 percent of the full amount of the employee's or Member's annuity, as computed under section 8339 of this title, or

"(B) if not married to the employee or Member throughout such creditable service, equal to that former spouse's pro rata share of 55 percent of the full amount of such annuity.

"(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

"(3) An annuity payable from the Fund to a surviving former spouse under this subsection shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

"(4)(A) The maximum survivor annuity or combination of survivor annuities under this section (and section 8341(b)) with respect to any employee or Member may not exceed 55 percent of the full amount of the employee's or Member's annuity, as calculated under section 8339 of this title.

"(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 8341(b)) with respect to an employee or Member only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

"(C) After the death of an employee or Member, a court order under section 8345(k) of this title may not adjust the amount of the annuity of any former spouse under this subsection.

"(5)(A) For each full month after a former spouse of an employee or Member dies or remarries before attaining age 60, the annuity of the employee or Member, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced, unless an election is in effect under subparagraph (B).

"(B) Subject to paragraph (4)(B), the employee or Member may elect in writing within one year after receipt of notice of the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 8341(b) of this title for any spouse of the employee or Member.

"(c)(1) In the case of any employee or Member providing a survivor annuity benefit under subsection (b) for a former spouse—

"(A) such employee or Member may elect, or

"(B) a spousal agreement or court order under section 8345(k) of this title may provide for,

an additional survivor annuity under this subsection for any other former spouse or spouse surviving the employee or Member, if the employee or Member satisfactorily passes a physical examination as prescribed by the Office of Personnel Management.

"(2) Neither the total amount of survivor annuity or annuities under this subsection with respect to any employee or Member, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such employee or Member under this section and section 8341 of this title, shall exceed 55 percent of the full amount of the employee's or Member's annuity, as computed under section 8339 of this title.

"(3)(A) In accordance with regulations which the Office shall prescribe, the employee or Member involved may provide for any annuity under this subsection—

"(i) by a reduction in the annuity or an allotment from the pay of the employee or Member,

"(ii) by a lump sum payment or installment payments to the Fund, or

"(iii) by any combination thereof.

"(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Office.

"(C) If a former spouse predeceases the employee or Member or remarries before attaining age 60 (or, in the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

"(i) if an annuity reduction or salary allotment under subparagraph (A) is in effect for that spouse or former spouse, the annuity shall be recomputed and paid as if it had not been reduced or the salary allotment terminated, as the case may be, and

"(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Office.

"(D) Under regulations prescribed by the Office, an annuity shall be recomputed (or salary allotment terminated or adjusted), and a refund provided (if appropriate), in a manner comparable to that provided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection for a spouse in the event a former spouse of