



MANPOWER AND  
RESERVE AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
1500 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-1500

November 6, 2023

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(MILITARY PERSONNEL)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(MILITARY MANPOWER AND PERSONNEL)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(FORCE MANAGEMENT)  
UNITED STATES COAST GUARD DIRECTOR OF MILITARY  
PERSONNEL  
UNITED STATES PUBLIC HEALTH SERVICE DIRECTOR OF  
DIVISION OF COMMISSIONED PERSONNEL  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
DIRECTOR OF CORPS OPERATIONS

SUBJECT: Clarification of Policy — 2023 Survivor Benefit Plan Open Season

This memorandum clarifies the use of certain terminology in the Deputy Assistant Secretary of Defense for Military Personnel Policy (DASD(MPP)) memorandum “Implementing and Procedural Guidance for Section 643 of Public Law 117-263, December 23, 2022, Survivor Benefit Plan Open Season,” of March 9, 2023, attached.

Section 643 of Public Law 117-263 establishes a Survivor Benefit Plan (SBP) open season election period during which eligible retired members (including members of the Fleet Reserve or Fleet Marine Corps Reserve) may make an election to either to enroll in SBP if not “currently participating” or discontinue participation if currently participating. The DASD(MPP) memorandum of March 9, 2023 implements the provisions.

The terms “participating”, “currently participating”, and “participant”, as used in the DASD(MPP) memorandum, include those retired members who previously elected to participate in SBP and have not terminated participation in any way allowed under title 10, chapter 73, subchapter II of the United States Code (10 U.S.C. Ch 73), even if they no longer have an eligible beneficiary. This can occur when a beneficiary who was previously elected undergoes a life change. For example, a (previously elected) child beneficiary may reach adulthood, a (previously elected) spouse beneficiary may obtain a divorce, or a (previously elected) beneficiary may die. Unless otherwise terminated under one of the provisions allowed by law (e.g., electing to discontinue participation under the provisions of 10 U.S.C. § 1448a), an SBP participant without an eligible beneficiary is placed in a “suspended” status. The participant does not pay premiums, but their participation is not terminated. As participants, (even in a suspended status) such members are not eligible to make an election to enroll during the open season period authorized by Section 643 of Public Law 117-263.

This definition of participation in SBP is well established both by law and by past decisions based on the law. It is clear, under 10 U.S.C. § 1448, that a “participant” continues to be a

participant even after the beneficiary that the member elected “loses” eligibility. For example, 10 U.S.C. § 1448(a)(6) provides the following:

“Election out of plan by person with spouse coverage who remarries.-

(A) General rule.-A person-

(i) who is a participant in the Plan and is providing coverage under the Plan for a spouse (or a spouse and child);

(ii) who does not have an eligible spouse beneficiary under the Plan; and

(iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.”

In other words, if a retired member elected to cover a spouse at retirement and that spouse later died, the member is in a situation where he or she continues to be a participant in the plan even without an eligible spouse beneficiary (including the situation in which, as a consequence, the retired member no longer pays SBP premiums). If that member subsequently remarries, the member may elect not to provide SBP coverage for the new spouse. However, absent any election to decline coverage for the new spouse, the member’s participation in the plan with coverage for the spouse continues.

The example above speaks specifically to a member with a covered spouse, but this same principle holds true in other circumstances as well. For example, if a member elects SBP coverage for a child beneficiary, and that child beneficiary subsequently reaches adulthood (i.e., “ages out” of SBP coverage), the member continues to be a participant even after the child beneficiary “loses” eligibility. The member’s participation in the plan with coverage for “child(ren)” continues (and if the member has any future children they are covered under the plan).

The principle, as stated in Defense Office of Hearings and Appeals (DOHA) Claims Case Number 02120406, and echoed in other DOHA and Comptroller General decisions, is that “once a member is an SBP participant, he continues to be considered a participant, even during a period when he has no eligible beneficiary, and no premiums are being deducted from his retired pay.”

J.B. Busch  
Director, Military Compensation Policy  
(Military Personnel Policy)

Attachment:  
As stated

cc:  
HQDA G-1 (MP)  
HQMC (MP)  
CNO (N13)  
HQAF (A1P)  
HQSF (S1P)  
DFAS