



**Comptroller General
of the United States**

Washington, D.C. 20548

B-221968

March 8, 1988

To the Congress of the United States:

Pursuant to 31 U.S.C. § 3702(d), we submit the following report on the claim of _____ for a Survivor Benefit Plan annuity. We believe this matter deserves the consideration of the Congress as a meritorious claim.

Mrs. _____ claim for the survivor's annuity is based on her status as the former wife of Lieutenant Commander _____, USN (Retired) (Deceased). They were married in 1958, and they remained husband and wife during the following 20 years while he pursued a full-time career in the naval service. Upon his retirement from the Navy in 1978, Commander _____ elected to participate in the Survivor Benefit Plan with spouse coverage, thus electing to receive military retired pay at a reduced rate in order to provide an annuity for her if she survived him as his widow.

On August 19, 1983, Commander _____ and Mrs. _____ were divorced. In their separation agreement, which was incorporated in the divorce decree, he agreed to maintain Survivor Benefit Plan annuity coverage for her, if legislation which was then pending were to be enacted to allow him to provide annuity coverage for her as his former spouse. He died on September 4, 1983, just 3 weeks before the enactment of the legislation on September 24, 1983, which would have authorized him to elect former spouse coverage for her. The full details of the matter are set forth in our decision B-221968, December 29, 1987, copy enclosed.


As stated in the decision, Mrs. _____ claim for a Survivor Benefit Plan annuity may not be paid under existing law because Commander _____ died before the date he would have become eligible to elect annuity coverage for her as his former spouse. We are of the opinion, however, that her claim is exceptional and contains such elements of equity as to be deserving of the consideration of the Congress as a meritorious claim, due to the following combination of circumstances: (1) Mrs. _____ was Commander _____ wife during most of his active duty Navy career; (2) he elected and paid for Survivor Benefit Plan annuity coverage for her

as his wife following his retirement from active duty; (3) he agreed to maintain annuity coverage for her at the time of their separation; and (4) under the laws governing the administration of the Survivor Benefit Plan, such coverage would have been automatically extended to her if he had lived another 3 weeks until September 24, 1983.

Provided the Congress concurs in our recommendation, it is our view that enactment of a statute in substantially the following language will accomplish the relief recommended:

"Be it enacted by the Senate and the House of Representatives of the United States in Congress assembled, that for purposes of determining entitlement to an annuity under the Survivor Benefit Plan, sections 1447-1455 of title 10, United States Code, Lieutenant Commander _____, USN (Retired) (Deceased), 416-50-4900, shall be deemed to have made an election on September 24, 1983, under 10 U.S.C. § 1448(b)(3), to provide a standard annuity at the maximum rate authorized to _____ of Lynchburg, Virginia, notwithstanding the occurrence of his death on September 4, 1983.

"Sec. 2. For purposes of chapter 73 of title 10, United States Code, the entitlement of _____ to a survivor annuity by reason of the first section of this Act shall be effective September 24, 1983. The aggregate amount to which _____ is so entitled for the period before the date of the enactment of this Act shall be paid in a lump sum."

for 
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Enclosure