

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as an Effective Date note under section 377 of this title.

## EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 203 of Pub. L. 99-651, set out as an Effective Date of 1986 Amendment note under section 155 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 374, 376, 377, 631, 636 of this title.

**§ 376. Annuities for survivors of certain judicial officials of the United States**

(a) For the purposes of this section—

(1) “judicial official” means:

(A) a Justice or judge of the United States, as defined by section 451 of this title;

(B) a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands;

(C) a Director of the Administrative Office of the United States Courts, after he or she has filed a waiver under subsection (a) of section 611 of this title;

(D) a Director of the Federal Judicial Center, after he or she has filed a waiver under subsection (a) of section 627 of this title;

(E) an administrative assistant to the Chief Justice of the United States, after he or she has filed a waiver in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

(F) a full-time bankruptcy judge or a full-time United States magistrate judge; or

(G) a judge of the United States Court of Federal Claims;

who notifies the Director of the Administrative Office of the United States Courts in writing of his or her intention to come within the purview of this section within six months after (i) the date upon which he or she takes office, (ii) the date upon which he or she marries, (iii) January 1, 1977, (iv) October 1, 1986, (v) the date of the enactment of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States magistrate judge in active service on that date, (vi) the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990, in the case of a full-time judge of the Court of Federal Claims in active service on that date, or (vii) the date of the enactment of the Federal Courts Administration Act of 1992;

(2) “retirement salary” means:

(A) in the case of a Justice or judge of the United States, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title;

(B) in the case of a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands, (i) an annuity paid under subsection (a) of section 373 of this title or (ii) compensation paid under paragraph (4) of subsection (c) of section 373 of this title;

(C) in the case of a Director of the Administrative Office of the United States Courts, an annuity paid under subsection (b) or (c) of section 611 of this title;

(D) in the case of a Director of the Federal Judicial Center, an annuity paid under subsection (b) or (c) of section 627 of this title;

(E) in the case of an administrative assistant to the Chief Justice of the United States, an annuity paid in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

(F) in the case of a bankruptcy judge or United States magistrate judge, an annuity paid under section 377 of this title; and

(G) in the case of a judge of the United States Court of Federal Claims, an annuity paid under section 178 of this title;

(3) “widow” means the surviving wife of a “judicial official”, who:

(A) has been married to him for at least one year on the day of his death; or

(B) is the mother of issue by that marriage;

(4) “widower” means the surviving husband of a “judicial official”, who:

(A) has been married to her for at least one year on the day of her death; or

(B) is the father of issue by that marriage;

(5) “child” means:

(A) an unmarried child under eighteen years of age, including (i) an adopted child and (ii) a stepchild or recognized natural child who lived with the judicial official in a regular parent-child relationship;

(B) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable educational institution. A child whose twenty-second birthday occurs before July 1, or after August 31, of a calendar year, and while he or she is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July immediately following that birthday. A child who is a student is deemed not to have ceased being a student during an interim period between school years, if that interim period lasts no longer than five consecutive months and if that child shows, to the satisfaction of the Director of the Administrative Office of the United States Courts, that he or she has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester, or other period into which the school year is divided, immediately following that interim period; or

(C) such unmarried child, regardless of age, who is incapable of self-support because of a mental or physical disability incurred either (i) before age eighteen, or (ii) in the case of a child who is receiving an annuity as a full-time student under paragraph (5)(B) of this subsection, before the termination of that annuity;

(6) “former spouse” means a former spouse of a judicial official if the former spouse was married to such judicial official for at least 9 months; and

(7) “assassinated” and “assassination” mean the killing of a judicial official described in paragraph (1)(A), (B), (F), or (G) of this subsection that is motivated by the performance by that judicial official of his or her official duties.

(b)(1) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

(A) of a justice or judge of the United States retired from regular active service under section 371(b) or section 372(a) of this title,

(B) of a judge of the United States Court of Federal Claims retired under section 178 of this title, or

(C) of a judicial official on recall under section 155(b), 373(c)(4), 375, or 636(h) of this title, shall be an amount equal to 2.2 percent of retirement salary.

(2) A judicial official who is not entitled to receive an immediate retirement salary upon leaving office but who is eligible to receive a deferred retirement salary on a later date shall file, within 90 days before leaving office, a written notification of his or her intention to remain within the purview of this section under such conditions and procedures as may be determined by the Director of the Administrative Office of the United States Courts. Every judicial official who files a written notification in accordance with this paragraph shall be deemed to consent to contribute, during the period before such a judicial official begins to receive his or her retirement salary, a sum equal to 3.5 percent of the deferred retirement salary which that judicial official is entitled to receive. Any judicial official who fails to file a written notification under this paragraph shall be deemed to have revoked his or her election under subsection (a) of this section.

(3) The amounts deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be covered into the Treasury of the United States and credited to the “Judicial Survivors’ Annuities Fund” established by section 3 of the Judicial Survivors’ Annuities Reform Act. Such fund shall be used for the payment of annuities, refunds, and allowances as

provided by this section. Payment of such salary less such deductions (and any deductions made under section 178 or 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5) shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such judicial official during the period covered by such payment, except the rights to those benefits to which such judicial official, or his or her survivors, shall be entitled under the provisions of this section (and under section 178 or 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5).

(c)(1) There shall also be deposited to the credit of the Judicial Survivors’ Annuities Fund, in accordance with such procedures as the Comptroller General of the United States may prescribe, amounts required to reduce to zero the unfunded liability of the Judicial Survivors’ Annuities Fund: *Provided*, That such amounts shall not exceed the equivalent of 9 percent of salary or retirement salary. Such deposits shall, subject to appropriations Acts, be taken from the fund used to pay the compensation of the judicial official, and shall immediately become an integrated part of the Judicial Survivors’ Annuities Fund for any use required under this section.

(2) For purposes of paragraph (1), the term “unfunded liability” means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Judicial Survivors’ Annuities Fund, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of judicial officials; plus

(B) the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this paragraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, United States Code, with respect to the judicial survivors’ annuities plan established by this section.

(3) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(d) Each judicial official shall deposit, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the “Judicial Survivors’ Annuities Fund”:

(1) a sum equal to 3.5 percent of that salary, including “retirement salary”, which he or she has received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section prior to the date upon which he or she filed notice of an intention to come within the purview of this section with the Director of the Administrative Office of the United States Courts; and

(2) a sum equal to 3.5 percent of the basic salary, pay, or compensation which he or she has received for serving as a Senator, Representative, Delegate, or Resident Commissioner in Congress, or for serving as an “em-

ployee", as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

The interest otherwise required by this subsection shall not be required for any period during which a judicial official was separated from all such service and was not receiving any retirement salary.

Each such judicial official may elect to make such deposits in installments, during the continuance of his or her service in those offices designated in paragraph (1) of subsection (a) of this section, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts: *Provided*, That, in each instance in which a judicial official does elect to make such deposits in installments, the Director shall require (i) that the first installment payment made shall be in an amount no smaller than that amount necessary to cover at least the last eighteen months of prior creditable civilian service, and (ii) that at least one additional installment payment shall be made every eighteen months thereafter until the total of all such deposits have been made.

Notwithstanding the failure of any such judicial official to make all such deposits or installment payments, credit shall be allowed for the service rendered, but the annuity of that judicial official's widow or widower shall be reduced by an amount equal to 10 percent of the amount of such deposits, computed as of the date of the death of such judicial official, unless such widow or widower shall elect to eliminate such service entirely from credit under subsection (k) of this section: *Provided*, That no deposit shall be required from any such judicial official for any honorable active duty service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or for any other creditable service rendered prior to August 1, 1920.

(e) The amounts deducted and withheld in accordance with subsection (b) of this section, and the amounts deposited in accordance with subsection (d) of this section, shall be credited to individual accounts in the name of each judicial official from whom such amounts are received, for credit to the "Judicial Survivors' Annuities Fund".

(f) The Secretary of the Treasury shall invest, from time to time, in interest bearing securities of the United States or Federal farm loan bonds, those portions of the "Judicial Survivors' Annuities Fund" which in his judgment may not be immediately required for the payment of annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of such fund for the purposes of paying annuities and carrying out the provisions of subsections (g), (h), (m), (o), (p), and (q) of this section.

(g) If any judicial official leaves office and is ineligible to receive a retirement salary or leaves office and is entitled to a deferred retirement salary but fails to make an election under subsection (b)(2) of this section, all amounts credited to his or her account established under subsection (e), together with interest at 4 per-

cent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, minus a sum equal to 2.2 percent of salary for service while deductions were withheld under subsection (b) or for which a deposit was made by the judicial official under subsection (d), shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this section, a "reasonable period of time" shall be presumed to be no longer than 1 year following the date upon which such judicial official relinquishes his or her office.

(h) Annuities payable under this section shall be paid only in accordance with the following provisions:

(1) In any case in which a judicial official dies while in office, while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section (A) after having completed at least eighteen months of creditable civilian service, as computed in accordance with subsection (k) of this section, for the last eighteen months of which the salary deductions provided by subsection (b) of this section or, in lieu thereof, the deposits required by subsection (d) of this section have actually been made, or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made—

(i) if such judicial official is survived by a widow or widower, but not by a child, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section; or

(ii) if such judicial official is survived by a widow or widower and a child or children, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to:

(I) 10 percent of the average annual salary determined under subsection (l)(1) of this section; or

(II) 20 percent of such average annual salary, divided by the number of children;

whichever is smallest; or

(iii) if such judicial official leaves no surviving widow or widower, but does leave a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to:

(I) the amount of the annuity to which the judicial official's widow or widower would have been entitled under clause (i) of this paragraph, had such widow or widower survived the judicial official, divided by the number of children; or

(II) 20 percent of the average annual salary determined under subsection (l)(1) of this section; or

(III) 40 percent of such average annual salary amount, divided by the number of children;

whichever is smallest.

(2) An annuity payable to a widow or widower under clause (i) or (ii) of paragraph (1) of this subsection shall be terminated upon his or her death or remarriage before attaining age 55.

(3) An annuity payable to a child under this subsection shall terminate:

(A) if such child is receiving an annuity based upon his or her status under paragraph (5)(A) of subsection (a) of this section, on the last day of the month during which he or she becomes eighteen years of age;

(B) if such child is receiving an annuity based upon his or her status under paragraph (5)(B) of subsection (a) of this section, either (i) on the first day of July immediately following his or her twenty-second birthday or (ii) on the last day of the month during which he or she ceases to be a full-time student in accordance with paragraph (5)(B) of subsection (a) of this section, whichever occurs first: *Provided*, That if such child is rendered incapable of self-support because of a mental or physical disability incurred while receiving that annuity, that annuity shall not terminate, but shall continue without interruption and shall be deemed to have become, as of the date of disability, an annuity based upon his or her status under clause (ii) of paragraph (5)(C) of subsection (a) of this section;

(C) if such child is receiving an annuity based upon his or her status under paragraph (5)(C) of subsection (a) of this section, on the last day of the month during which he or she ceases to be incapable of self-support because of mental or physical disability; or

(D) on the last day of the month during which such child dies or marries.

(4) An annuity payable to a child or children under paragraph (1)(ii) of this subsection shall be recomputed and paid as provided in paragraph (1)(iii) of this subsection upon the death, but not upon the remarriage, of the widow or widower who is receiving an annuity under paragraph (1)(ii) of this subsection.

(5) In any case in which the annuity of a child is terminated, the annuity of each remaining child which is based upon the service of the same judicial official shall be recomputed and paid as though the child whose annuity has been terminated had not survived that judicial official.

(6) In the case of the survivor or survivors of a judicial official to whom paragraph (1)(B) applies, there shall be deducted from the annuities otherwise payable under this section an amount equal to the amount of salary deductions that would have been made if such deductions had been made for 18 months prior to the judicial official's death.

(i)(1) All questions of dependency and disability arising under this section shall be deter-

mined by the Director of the Administrative Office of the United States Courts, subject to review only by the Judicial Conference of the United States, and the decision of the Judicial Conference of the United States shall be final and conclusive. The Director may order or direct at any time such medical or other examinations as he deems necessary to determine the facts relative to the nature and degree of disability of any child who is an annuitant, or an applicant for an annuity, under this section, and may suspend or deny any such annuity for failure to submit to any such examination.

(2) The Director of the Administrative Office of the United States Courts shall determine whether the killing of a judicial official was an assassination, subject to review only by the Judicial Conference of the United States. The head of any Federal agency that investigates the killing of a judicial official shall provide information to the Director that would assist the Director in making such determination.

(j) In any case in which a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability, as determined by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary of such claimant by the laws of the State of residence of such claimant, or to any other person who is otherwise legally vested with the care of the claimant or of the claimant's estate, and need not be made directly to such claimant. The Director of the Administrative Office of the United States Courts may, at his or her discretion, determine whether such payment is made directly to such claimant or to such guardian, fiduciary, or other person legally vested with the care of such claimant or the claimant's estate. Where no guardian or other fiduciary of such minor or such person under legal disability has been appointed under the laws of the State of residence of such claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or of the claimant's estate.

(k) The years of service rendered by a judicial official which may be creditable in calculating the amount of an annuity for such judicial official's widow or widower under subsection (l) of this section shall include—

(1) those years during which such judicial official served in any of the offices designated in paragraph (1) of subsection (a) of this section, including in the case of a Justice or judge of the United States those years during which he or she continued to hold office following retirement from regular active service under section 371 or subsection (a) of section 372 of this title;

(2) those years during which such judicial official served as a Senator, Representative, Delegate, or Resident Commissioner in Congress, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;

(3) those years during which such judicial official honorably served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, prior to as-

suming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section: *Provided*, That those years of such military service for which credit has been allowed for the purposes of retirement or retired pay under any other provision of law shall not be included as allowable years of such service under this section;

(4) those years during which such judicial official served as an "employee", as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section,<sup>1</sup> and

(5) those years during which such judicial official had deductions withheld from his or her retirement salary in accordance with subsection (b)(1) or (2) of this section.

For the purposes of this subsection the term "years" shall mean full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month which numbers less than fifteen full days and including, as one full month, any fractional part of a month which numbers fifteen full days or more. Nothing in this subsection shall be interpreted as waiving or canceling that reduction in the annuity of a widow or widower which is required by subsection (d) of this section due to the failure of a judicial official to make those deposits required by subsection (d) of this section.

(l) The annuity of a widow or widower of a judicial official shall be an amount equal to the sum of—

(1) 1.5 percent of the average annual salary, including retirement salary, which such judicial official received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section (i) during those three years of such service, or during those three years while receiving a retirement salary, in which his or her annual salary or retirement salary was greatest, or (ii) if such judicial official has so served less than three years, then during the total period of such service prior to his or her death, multiplied by the total of:

(A) the number of years of creditable service tabulated in accordance with paragraph (1) of subsection (k) of this section; plus

(B) the number of years of creditable service tabulated in accordance with paragraph (2) of subsection (k) of this section; plus

(C) the number of years of creditable service tabulated in accordance with paragraph (3) of subsection (k) of this section; plus

(D) the number of years during which the judicial official had deductions withheld from his or her retirement salary under subsection (b)(1) or (2) of this section; plus

(E) the number of years up to, but not exceeding, fifteen of creditable service tabulated in accordance with paragraph (4) of subsection (k) of this section,

plus:

(2) three-fourths of 1 percent of such average annual salary, multiplied by the number of years of any prior creditable service, as tab-

ulated in accordance with subsection (k) of this section, not applied under paragraph (1) of this subsection;

except that such annuity shall not exceed an amount equal to 50 percent of such average annual salary, nor be less than an amount equal to 25 percent of such average annual salary. Any annuity determined in accordance with the provisions of this subsection shall be reduced to the extent required by subsection (d) of this section, and by the amount of any annuity payable to a former spouse under subsection (t).

(m) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, each annuity payable from the Judicial Survivors' Annuities Fund shall be increased at the same time by the same percentage by which annuities are increased under that section.

(n) Each annuity authorized under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. No annuity authorized under this section shall be assignable, either in law or in equity, except as provided in subsections (s) and (t), or subject to execution, levy, attachment, garnishment, or other legal process.

(o)(1) In any case in which a judicial official dies while in office, while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section, and;

(A) subject to paragraph (2) of this subsection, before having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which the salary deductions provided by subsection (b) of this section or the deposit required by subsection (d) of this section have actually been made; or

(B) after having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which all such deductions or deposits have been made, but without a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section; or

(C) the rights of all persons entitled to receive the annuity benefits provided by subsection (h) or (t) of this section terminate before a valid claim therefor has been established;

the total amount credited to the individual account of that judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

First, to the beneficiary or beneficiaries whom that judicial official may have designated in a writing received by the Administrative Office of the United States Courts prior to his or her death;

<sup>1</sup> So in original. Comma probably should be a semicolon.

Second, if there be no such beneficiary, to the widow or widower of such judicial official;

Third, if none of the above, to the child or children of such judicial official and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of such judicial official or the survivor of them;

Fifth, if none of the above, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such judicial official;

Sixth, if none of the above, to such other next of kin of such judicial official, as may be determined by the Director of the Administrative Office of the United States Courts to be entitled to such payment, under the laws of the domicile of such judicial official, at the time of his or her death.

Such payment shall be a bar to recovery by any other person. For the purposes of this subsection only, a determination that an individual is a widow, widower, or child of a judicial official may be made by the Director of the Administrative Office of the United States Courts without regard to the definitions of those terms contained in paragraphs (3), (4), and (5) of subsection (a) of this section.

(2) In cases in which a judicial official dies as a result of assassination and leaves a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) or (t) of this section, paragraph (1)(A) of this subsection shall not apply.

(p) In any case in which all the annuities which are authorized by this section and based upon the service of a given official terminate before the aggregate amount of annuity payments received by the annuitant or annuitants equals the total amount credited to the individual account of such judicial official, established under subsection (e) of this section with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, the difference between such total amount, with such interest, and such aggregate amount shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (o) of this section.

(q) Any accrued annuity benefits remaining unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to that annuitant. Any accrued annuity benefits remaining unpaid upon the death of an annuitant shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

First, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such annuitant;

Second, if there is no such executor, executrix, administrator, or administratrix, payments shall be made, after the expiration of sixty days from the date of death of such annuitant, to such individual or individuals as may appear, in the judgment of the Director of the Administrative Office of the United States Courts, to be legally entitled thereto, and such

payment shall be a bar to recovery by any other individual.

(r) Nothing contained in this section shall be interpreted to prevent a widow or widower eligible for an annuity under this section from simultaneously receiving such an annuity while also receiving any other annuity to which such widow or widower may also be entitled under any other law without regard to this section: *Provided*, That service used in the computation of the annuity conferred by this section shall not also be credited in computing any such other annuity.

(s) A judicial official who has a former spouse may elect, under procedures prescribed by the Director of the Administrative Office of the United States Courts, to provide a survivor annuity for such former spouse under subsection (t). An election under this subsection shall be made at the time of retirement, or, if later, within 2 years after the date on which the marriage of the former spouse to the judicial official is dissolved. An election under this subsection—

(1) shall not be effective to the extent that it—

(A) conflicts with—

(i) any court order or decree referred to in subsection (t)(1), which was issued before the date of such election, or

(ii) any agreement referred to in such subsection which was entered into before such date; or

(B) would cause the total of survivor annuities payable under subsections (h) and (t) based on the service of the judicial official to exceed 55 percent of the average annual salary (as such term is used in subsection (l)) of such official; and

(2) shall not be effective, in the case of a judicial official who is then married, unless it is made with the spouse's written consent.

The Director of the Administrative Office of the United States Courts shall provide by regulation that paragraph (2) of this subsection may be waived if the judicial official establishes to the satisfaction of the Director that the spouse's whereabouts cannot be determined, or that, due to exceptional circumstances, requiring the judicial official to seek the spouse's consent would otherwise be inappropriate.

(t)(1) Subject to paragraphs (2) through (4) of this subsection, a former spouse of a deceased judicial official is entitled to a survivor annuity under this section if and to the extent expressly provided for in an election under subsection (s), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2) The annuity payable to a former spouse under this subsection may not exceed the difference between—

(A) the maximum amount that would be payable as an annuity to a widow or widower under subsection (l), determined without taking into account any reduction of such annuity caused by payment of an annuity to a former spouse; and

(B) the amount of any annuity payable under this subsection to any other former

spouse of the judicial official, based on an election previously made under subsection (s), or a court order previously issued.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

(i) the day after the judicial official dies, or

(ii) the first day of the second month beginning after the date on which the Director of the Administrative Office of the United States Courts receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Director may prescribe,

whichever is later, and

(B) shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

(4) For purposes of this section, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

(A) if such modification is made after the retirement of the judicial official concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(u) In the case of a judicial official who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of title 5 for any year would exceed the current salary for that year of the office of the judicial official.

(v) Subject to the terms of a decree, court order, or agreement described in subsection (t)(1), if any judicial official ceases to be married after making the election under subsection (a), he or she may revoke such election in writing by notifying the Director of the Administrative Office of the United States Courts. The judicial official shall also notify any spouse or former spouse of the application for revocation in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that the notification requirement may be waived with respect to a spouse or former spouse if the judicial official establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.

(w) The Comptroller General of the United States shall, at the end of each 3-fiscal year period, determine whether the contributions by judicial officials under subsection (b) during that 3-year period accounted for 50 percent of the costs of the Judicial Survivors' Annuities Fund and if not, then what adjustments in the contribution rates under subsection (b) should be

made to achieve that 50 percent figure. The Comptroller General shall report the results of each determination under this subsection to the Congress.

(Added Aug. 3, 1956, ch. 944, §2, 70 Stat. 1021; amended Pub. L. 85-508, §12(n), July 7, 1958, 72 Stat. 348; Pub. L. 90-219, title II, §202, Dec. 20, 1967, 81 Stat. 668; Pub. L. 90-466, §1(a), Aug. 8, 1968, 82 Stat. 662; Pub. L. 92-397, §2, 3(c), Aug. 22, 1972, 86 Stat. 579, 580; Pub. L. 94-554, §2, Oct. 19, 1976, 90 Stat. 2603; Pub. L. 95-598, title II, §211, Nov. 6, 1978, 92 Stat. 2661; Pub. L. 99-336, §2(a), (d)(1)-(3), (e), June 19, 1986, 100 Stat. 633, 635-637; Pub. L. 99-396, §21(b), Aug. 27, 1986, 100 Stat. 846; Pub. L. 100-659, §3(a), Nov. 15, 1988, 102 Stat. 3917; Pub. L. 100-702, title X, §1017(a), Nov. 19, 1988, 102 Stat. 4670; Pub. L. 101-650, title III, §§306(b), 321, 322(a)-(f), (g)[(h)], Dec. 1, 1990, 104 Stat. 5109, 5117-5120; Pub. L. 102-572, title II, §201(a)-(i), title IX, §902(b), Oct. 29, 1992, 106 Stat. 4508-4510, 4516; Pub. L. 104-317, title III, §§302, 308, Oct. 19, 1996, 110 Stat. 3851, 3853; Pub. L. 106-518, title III, §312(b), Nov. 13, 2000, 114 Stat. 2421.)

#### REFERENCES IN TEXT

The date of the enactment of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (a)(1)(v), is the date of the enactment of Pub. L. 100-659, which was approved Nov. 15, 1988.

The date of the enactment of the Federal Courts Study Committee Implementation Act of 1990, referred to in subsec. (a)(1)(vi), is the date of enactment of Pub. L. 101-650, which was approved Dec. 1, 1990.

The date of the enactment of the Federal Courts Administration Act of 1992, referred to in subsec. (a)(1)(vii), is the date of enactment of Pub. L. 102-572, which was approved Oct. 29, 1992.

Section 3 of the Judicial Survivors' Annuities Reform Act, referred to in subsec. (b)(3), is section 3 of Pub. L. 94-554, which is set out as a note below.

#### AMENDMENTS

2000—Subsec. (a)(1)(D). Pub. L. 106-518, §312(b)(1), substituted "subsection (a)" for "subsection (b)".

Subsec. (a)(2)(D). Pub. L. 106-518, §312(b)(2), substituted "subsection (b) or (c)" for "subsection (c) or (d)".

1996—Subsec. (b)(1). Pub. L. 104-317, §308, amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary, a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

"(A) of a justice or judge of the United States retired from regular active service who is described in section 371(b)(1) of this title,

"(B) of a justice or judge of the United States retired under section 372(a) of this title who is willing and able to perform judicial duties in accordance with section 294 of this title,

"(C) of a judge of the United States Court of Federal Claims retired under section 178(a) or (b) of this title who meets the requirements of section 178(d) of this title, or

"(D) of a judicial official on recall under section 155(b), 797, 373(c)(4), 375, or 636(h) of this title, shall be an amount equal to 2.2 percent of retirement salary."

Subsec. (o)(1). Pub. L. 104-317, §302, substituted "while receiving retirement salary, or after filing an

election and otherwise complying with the conditions under subsection (b)(2) of this section.” for “or while receiving ‘retirement salary,’” in introductory provisions.

1992—Subsec. (a)(1). Pub. L. 102-572, §§ 201(a), 902(b)(2), in concluding provisions substituted “Court of Federal Claims” for “Claims Court” in cl. (vi) and added cl. (vii).

Subsec. (a)(1)(G), (2)(G). Pub. L. 102-572, § 902(b)(1), substituted “United States Court of Federal Claims” for “United States Claims Court”.

Subsec. (b). Pub. L. 102-572, § 201(b), designated first sentence as par. (1), substituted “a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary.” and second sentence for “including any ‘retirement salary,’ a sum equal to 5 percent of that salary.”, added par. (2), designated last 3 sentences as par. (3), and substituted “deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection” for “so deducted and withheld from the salary of each such judicial official”.

Subsec. (d)(1), (2). Pub. L. 102-572, § 201(c), substituted “3.5 percent” for “5 percent”.

Subsec. (g). Pub. L. 102-572, § 201(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: “If any judicial official resigns from office without receiving any ‘retirement salary,’ all amounts credited to his or her individual account, together with interest at 4 percent per annum to December 31, 1947; and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this subsection a ‘reasonable period of time’ shall be presumed to be no longer than one year following the date upon which such judicial official relinquished his or her office.”

Subsec. (h)(1). Pub. L. 102-572, § 201(e), substituted “while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section” for “or while receiving ‘retirement salary,’”.

Subsec. (k)(5). Pub. L. 102-572, § 201(f), added par. (5).

Subsec. (l)(1). Pub. L. 102-572, § 201(g), substituted “, or during those three years while receiving a retirement salary, in which his or her annual salary or retirement salary” for “in which his or her annual salary” in cl. (i) of introductory provisions, added subpar. (D), and redesignated former subpar. (D) as (E).

Subsec. (v). Pub. L. 102-572, § 201(h), added subsec. (v).

Subsec. (w). Pub. L. 102-572, § 201(i), added subsec. (w). 1990—Subsec. (a)(1). Pub. L. 101-650, § 306(b)(1), added subpar. (G) and cl. (vi) before semicolon at end.

Subsec. (a)(2)(G). Pub. L. 101-650, § 306(b)(2), added subpar. (G).

Subsec. (a)(5)(C). Pub. L. 101-650, § 322(g)(2), substituted “paragraph” for “subparagraph”.

Subsec. (a)(7). Pub. L. 101-650, § 322(b), added par. (7).

Subsec. (b). Pub. L. 101-650, § 306(b)(3), substituted “section 178 or 377” for “section 377” in two places.

Subsec. (h)(1). Pub. L. 101-650, § 322(a)(1)–(4), inserted “(A)” before “after having completed”, inserted “, or (B) if the death of such judicial official was by assassination, before having satisfied the requirements of clause (A) if, for the period of such service, the deductions provided by subsection (b) or, in lieu thereof, the deposits required by subsection (d) have actually been made” after “have actually been made”, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, in cl. (ii) redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, in cl. (iii) redesignated former cls. (i) to (iii) as subcls. (I) to (III), respectively, and in subcl. (I) substituted “clause (i) of this paragraph” for “subparagraph (1)(A) of this subsection”.

Subsec. (h)(2). Pub. L. 101-650, § 322(g)(1)(A), substituted “clause (i) or (ii) of paragraph (1)” for “subparagraphs (1)(A) or (1)(B)”.

Subsec. (h)(3). Pub. L. 101-650, § 322(g)(1)(B), substituted “paragraph” for “subparagraph” wherever appearing.

Subsec. (h)(4). Pub. L. 101-650, § 322(g)(1)(C), substituted “paragraph (1)(ii)” for “subparagraph (1)(B)” in two places and “paragraph (1)(iii)” for “subparagraph (1)(C)”.

Subsec. (h)(6). Pub. L. 101-650, § 322(a)(5), added par. (6).

Subsec. (i). Pub. L. 101-650, § 322(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (l)(1)(ii). Pub. L. 101-650, § 322(d), struck out “but more than eighteen months,” after “less than three years,”.

Subsec. (o). Pub. L. 101-650, § 322(e), inserted “(1)” after “(o)”, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, inserted “subject to paragraph (2) of this subsection,” before “before having completed” in subpar. (A), and added par. (2).

Subsec. (u). Pub. L. 101-650, § 322(f), added subsec. (u).

1988—Subsec. (a)(1). Pub. L. 100-659, § 3(a)(1), added subpar. (F) and substituted “, (iv) October 1, 1986, or (v) the date of the enactment of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States magistrate in active service on that date;” for “; or (iv) October 1, 1986;” in concluding provisions.

Subsec. (a)(2)(F). Pub. L. 100-659, § 3(a)(2), added subpar. (F).

Subsec. (b). Pub. L. 100-659, § 3(a)(3), inserted “(and any deductions made under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)” after “deductions” and “(and under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)” before period at end of last sentence.

Subsec. (m). Pub. L. 100-702 amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: “Whenever the salary paid for service in one of the offices designated in paragraph (1) of subsection (a) of this section is increased, each annuity payable from the ‘Judicial Survivors’ Annuities Fund’, which is based, in whole or in part, upon a deceased judicial official having rendered some portion of his or her final eighteen months of service in that same office, shall also be increased. The actual amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each 5 percent by which such salary has been increased. In the event that such salary is increased by less than 5 percent, there shall be no increase in such annuity.”

1986—Subsec. (a)(1). Pub. L. 99-336, § 2(a)(1), substituted “she marries, (iii) January 1, 1977; or (iv) October 1, 1986” for “she marries, or (iii) the date upon which the Judicial Survivors’ Annuities Reform Act becomes effective” in concluding provision.

Subsec. (a)(1)(B). Pub. L. 99-336, § 21(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands;”.

Subsec. (a)(2)(B). Pub. L. 99-336, § 21(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “in the case of a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, salary paid after retirement from office (i) by resignation on salary under section 373 of this title or (ii) by removal or failure of reappointment after not less than ten years’ judicial service;”.

Subsec. (a)(6). Pub. L. 99-336, § 2(d)(1), added par. (6). Subsec. (b). Pub. L. 99-336, § 2(a)(2), substituted “4.5 percent” for “4.5 percent”.

Subsec. (c). Pub. L. 99-336, § 2(a)(3), in amending subsec. (c) generally, designated existing provisions as par. (1), substituted provisions which related to amounts deposited to credit of Judicial Survivors’ Annuities Fund



to reduce unfunded liability of Fund to zero, for provisions which related to deposit of amounts matching those deducted and withheld in accordance with subsec. (b), and added pars. (2) and (3).

Subsec. (d). Pub. L. 99-336, §2(a)(2), substituted “5 percent” for “4.5 percent” in pars. (1) and (2).

Subsec. (h)(1)(B). Pub. L. 99-336, §2(a)(4)(A), substituted “10 percent of the average annual salary determined under subsection (l)(1) of this section” for “\$1,548” in cl. (i) and “20 percent of such average annual salary” for “\$4,644” in cl. (ii).

Subsec. (h)(1)(C). Pub. L. 99-336, §2(a)(4)(B), substituted “20 percent of the average annual salary determined under subsection (l)(1) of this section” for “\$1,860” in cl. (ii) and “40 percent of such average annual salary amount” for “\$5,580” in cl. (iii).

Subsec. (h)(2). Pub. L. 99-336, §2(a)(4)(C), inserted “before attaining age 55” after “or remarriage”.

Subsec. (k)(1). Pub. L. 99-336, §2(e), struck out “under subsection (b) of” before “section 371”.

Subsec. (l). Pub. L. 99-336, §2(a)(5)(C), (d)(3)(A), substituted provisions which set annuity limit not to exceed 50 percent of, nor be less than 25 percent of, average annual salary, for provisions which set annuity limit not to exceed 40 percent of average annual salary, and inserted provision that annuity determined in accordance with provisions of subsec. (l) be reduced by the amount of any annuity payable to a former spouse under subsection (t).

Subsec. (l)(1). Pub. L. 99-336, §2(a)(5)(A), substituted “1.5 percent” for “1¼ percent”.

Subsec. (l)(2). Pub. L. 99-336, §2(a)(5)(B), substituted “of this subsection;” for “of this subsection:”.

Subsec. (n). Pub. L. 99-336, §2(d)(3)(B), inserted “except as provided in subsections (s) and (t),” after “in equity,” in last sentence.

Subsec. (o)(2), (3). Pub. L. 99-336, §2(d)(3)(C), inserted “or (t)” after “subsection (h)”.

Subsecs. (s), (t). Pub. L. 99-336, §2(d)(2), added subsecs. (s) and (t).

1978—Subsec. (a)(2)(A). Pub. L. 95-598 directed the amendment of subpar. (A) by adding cl. (iii) relating to bankruptcy judges, which amendment did not become effective pursuant to section 402(b) of Pub. L. 95-598, as amended, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

1976—Pub. L. 94-554 amended section generally so as to reform and update the existing judicial survivors’ annuity program providing benefits for surviving spouses and children of all Federal Justices and judges who elect to join the program by placing the program in an actuarially sound fiscal condition, providing more liberal eligibility standards and reasonable increases in existing annuity amounts made necessary by increases in the cost of living since existing annuities were commenced, and by establishing a method for providing future periodic increases in annuity amounts by keying them into increases in judicial salaries.

1972—Subsecs. (a) to (c), (e) to (g), (i) to (k), (m), (o). Pub. L. 92-397 substituted “of justices and judges of the United States” for “of judges” in section catchline and substituted “justice or judge” for “judge” and “justice’s or judge’s” for “judge’s” wherever appearing.

1968—Subsec. (a). Pub. L. 90-466 struck out “(or within six months after the enactment of this section)” after “takes office” and authorized Federal judges to elect within six months of marriage to participate in the judicial survivors annuity system.

1967—Subsecs. (r), (s). Pub. L. 90-219 added subsecs. (r) and (s).

1958—Subsec. (q). Pub. L. 85-508 struck out provisions which related to the judge of the District Court for the Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

#### CHANGE OF NAME

Words “magistrate judge” and “United States magistrate judge” substituted for “magistrate” and “United States magistrate”, respectively, wherever ap-

pearing in subsec. (a) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Section 202 of title II of Pub. L. 102-572 provided that: “This title [amending this section and enacting provisions set out below] and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 29, 1992].”

Amendment by section 902(b) of Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT; TRANSITION PROVISIONS

Amendment by section 306(b) of Pub. L. 101-650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101-650, as amended, set out as a note under section 8331 of Title 5, Government Organization and Employees.

Section 322(g) of Pub. L. 101-650 provided that:

“(1) EFFECTIVE DATE.—Subject to paragraph (2), the amendments made by this Act [probably should be “section”, which amended this section] shall apply to all judicial officials assassinated on or after May 28, 1979.

“(2) RULES FOR RETROACTIVE APPLICATION.—(A) In the case of a judicial official who was assassinated on or after May 28, 1979, and before the date of the enactment of this Act [Dec. 1, 1990], if the salary deductions provided by subsection (b) of section 376 of title 28, United States Code, or the deposits required by subsection (d) of such section, have been withdrawn pursuant to subsection (o) of such section, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount so withdrawn, with interest on the amount withdrawn at 3 percent per annum compounded on December 31 of each year.

“(B) In the case of the survivor or survivors of a judicial official to whom this paragraph applies who had less than 18 months of service before being assassinated, there shall be deducted from the annuities otherwise payable to the survivor or survivors of such judicial official, and the payment authorized by subparagraph (C) of this paragraph, an amount equal to the amount of salary deductions that would have been made if such deductions [had] been made for 18 months before the judicial official’s death, plus interest as described in subparagraph (A).

“(C) Subject to subparagraphs (A) and (B), the survivor or survivors of a judicial official to whom this paragraph applies shall be entitled to the payment of annuities they would have received under section 376 of title 28, United States Code, for the period beginning on the date such judicial official was assassinated and ending the date of the enactment of this Act. The Secretary of the Treasury shall pay into the Judicial Survivors’ Annuities fund, out of any money in the Treasury not otherwise appropriated, the amount of the annuities to which the survivor or survivors are entitled under this subparagraph.

“(3) DEFINITION.—For purposes of this subsection, the term—

“(A) ‘assassinated’ has the meaning given that term in section 376(a)(7) of title 28, United States Code, as added by this section; and

“(B) ‘judicial official’ has the meaning given that term in section 376(a)(1)(A) and (B) of title 28, United States Code.”

#### EFFECTIVE DATE OF 1988 AMENDMENTS

Section 1017(c) of title X of Pub. L. 100-702 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to increases in annuities which are made under section 8340(b) of title 5, United States Code, on or after the date of enactment of this title [Nov. 19, 1988].”

Amendment by Pub. L. 100-659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as an Effective Date note under section 377 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-396 not to affect the amount payable to a judge who retired in accordance with the provisions of section 373 of this title in effect on the day before Aug. 27, 1986, see section 21(c) of Pub. L. 99-396, set out as a note under section 373 of this title.

Section 2(f) of Pub. L. 99-336 provided that: "This section [amending this section and enacting provisions set out below] shall take effect on October 1, 1986."

## EFFECTIVE DATE OF 1976 AMENDMENT

Section 8 of Pub. L. 94-554 provided: "That this Act [amending this section and enacting provisions set out below] shall become effective on the first day of the third month following the month in which it is enacted [Jan. 1, 1977], or on October 1, 1976, whichever occurs last."

## EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

## RETROACTIVE EFFECT OF 1967 AMENDMENT

The provisions of section 611(a) of this title, the first paragraph of section 611(b) of this title, and subsec. (s) of this section, as added by Pub. L. 90-219, applicable to a Director or former Director of the Administrative Office of the United States Courts who was first appointed prior to Dec. 20, 1967 if at the time such Director or former Director left or leaves such office he had, or shall have, attained the age of sixty-five years and completed fifteen years of service as Director of the Administrative Office of the United States Courts and if, on or before the expiration of six months following Dec. 20, 1967, he makes the election referred to in section 611(a) of this title or subsec. (s) of this section, or both, as the case may be, see section 205(b) of Pub. L. 90-219, set out as a Retroactive Effect note under section 611 of this title.

## SAVINGS PROVISION

Section 6 of Pub. L. 94-554 provided: "That the benefits conferred by this Act shall, on the date upon which this Act becomes effective [Jan. 1, 1977], immediately become available to any individual then receiving an annuity under section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended: *Provided*, That although the rights of any judicial official electing to come within the purview of section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective, shall be determined exclusively under the provisions of that section as amended by this Act, nothing in this Act shall be interpreted to cancel, abrogate, or diminish any rights to which an individual or his or her survivors may be entitled by virtue of that individuals having contributed to the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) as amended, before the date upon which this Act becomes effective."

## CREDIT FOR CONTRIBUTIONS PRIOR TO 1992 AMENDMENT AT HIGHER RATE

Section 201(j) of title II of Pub. L. 102-572 provided that: "Notwithstanding any other provision of law, the

contribution under section 376(b)(1) or (2) of title 28, United States Code (as amended by this section), of any judicial official who is within the purview of such section 376 on the effective date of this title [Oct. 29, 1992] shall be reduced by 0.5 percent for a period of time equal to the number of years of service for which the judicial official has made contributions or deposits before the enactment of this Act [Oct. 29, 1992] to the credit of the Judicial Survivors' Annuities Fund or for 18 months, whichever is less, if such contributions or deposits were never returned to the judicial official. For purposes of this subsection, the term 'years' shall mean full years and twelfth parts thereof."

## REDEPOSIT OF CONTRIBUTIONS PRIOR TO 1992 AMENDMENT

Section 201(k) of Pub. L. 102-572 provided that: "Any judicial official as defined in section 376(a)(1) of title 28, United States Code, who makes an election under section 376(b) of title 28, United States Code, may make a redeposit, as required by section 7 of Public Law 94-554 [set out below] and section 2(c)(2) of Public Law 99-336 [set out below], to the credit of the Judicial Survivors' Annuities Fund in installments, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts. If a judicial official elects to make a redeposit in installments—

"(1) the Director shall require that the first installment payment made shall be in an amount no smaller than the last 18 months of salary deductions or deposits previously returned to that judicial official in a lump-sum payment; and

"(2) the election under section 376(b) of title 28, United States Code, shall be effective upon payment of the first such installment."

## AUDIT BY GENERAL ACCOUNTING OFFICE

Section 201(l) of Pub. L. 102-572 provided that: "The Comptroller General shall—

"(1) conduct an audit of the judicial survivors['] annuities program under section 376 of title 28, United States Code, for the 3-year period beginning on the date of the enactment of this Act [Oct. 29, 1992]; and

"(2) report to the Congress, not later than 60 days after the end of that 3-year period, on the results of such audit, comparing such program to other survivors['] annuities programs within the Federal Government."

## INCREASE FOR EXISTING ANNUITANTS

Section 1017(b) of title X of Pub. L. 100-702 provided that: "Each annuity payable from the Judicial Survivors' Annuities Fund under section 376 of title 28, United States Code, on the date of the enactment of this title [Nov. 19, 1988] shall be increased by 10 percent, effective on such date of enactment."

## SURVIVORS' ANNUITIES FOR INCUMBENTS

Section 3(b) of Pub. L. 100-659, as amended by Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 517, provided that: "In the case of a bankruptcy judge or magistrate judge who elects an annuity under section 2(c) [28 U.S.C. 377 note], only service for which an annuity under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by section 2 of this Act, is calculated under section 2(c) may be used in the computation of an annuity under section 376 of title 28, United States Code, as amended by subsection (a) of this section."

## COVERED BENEFICIARIES UNDER PUB. L. 99-336

Section 2(b) of Pub. L. 99-336 provided that: "The benefits conferred by section 376 of title 28, United States Code, by reason of the amendments made by this section shall apply only to individuals who become eligible for annuities under such section on or after the effective date of this section [Oct. 1, 1986], except that—

"(1) such annuities shall be computed in accordance with the provisions of section 376 of title 28, United

States Code, as amended by this section, notwithstanding contributions or deposits made in accordance with applicable law at lower rates; and

“(2) no additional liability shall be created with respect to deposits made in accordance with applicable law before the effective date of this section, or after such effective date pursuant to an agreement entered into before such effective date.”

#### REVOCACTION OF ELECTION; ELIGIBILITY SUBSEQUENT TO REVOCACTION

Section 2(c) of Pub. L. 99-336 provided that:

“(1) Within 180 days after the effective date of this section [Oct. 1, 1986], any judicial official who, before such effective date, made an election under section 376 of title 28, United States Code, to come within the purview of that section, shall be entitled to revoke that election. Such revocation shall constitute a complete withdrawal from the judicial survivors' annuities program provided for in such section 376. No such revocation shall be effective unless it is submitted in writing to the Director of the Administrative Office of the United States Courts, and until such writing is received by the Director. Upon receipt by the Director of such writing, any rights to survivorship benefits for the survivors of such judicial official shall terminate, and all amounts credited to the individual account of such judicial official under section 376(e), together with interest at 3 percent per annum, compounded on December 31 of each year to such date of revocation, shall be returned to that judicial official in a lump-sum payment.

“(2) Any judicial official who makes a revocation under paragraph (1) of this subsection and who thereafter becomes eligible to make an election under section 376(b) of title 28, United States Code, may make such election only if such judicial official redeposits, to the credit of the Judicial Survivors' Annuities Fund, the full amount of the lump-sum payment made to such judicial official under paragraph (1) of this subsection, together with interest at 3 percent per annum, compounded on December 31 of each year from the date of such revocation until the date upon which that amount is so redeposited.

“(3) Any judicial official who fails to revoke an election in accordance with paragraph (1) of this subsection shall be deemed to have irrevocably waived the right to make that revocation.”

#### PAYMENT OF RETIREMENT SALARY PURSUANT TO COURT DECREE OF DIVORCE, ETC.

Section 2(d)(4) of Pub. L. 99-336 provided that: “Payments of retirement salary as defined in section 376(a)(2) of title 28, United States Code, which would otherwise be made to the judicial official upon whose service the retirement salary is based, shall be paid (in whole or in part) to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person. This paragraph shall apply only to payments made after the date of receipt by the Director of the Administrative Office of [the] United States Courts of written notice of such decree, order, or agreement, and such additional information and documentation as the Director may prescribe. As used in this paragraph, ‘court’ means any court of any State or the District of Columbia.”

#### ANNUITY PAYMENT TO SURVIVING SPOUSES OF JUDGES WHO DIED BEFORE OCTOBER 19, 1976

Pub. L. 96-504, § 3, Dec. 5, 1980, 94 Stat. 2741, provided that:

“(a) As of the first pay period beginning after the effective date of this Act [Dec. 5, 1980], a surviving spouse, other than a surviving spouse who has remarried, of any Justice of the United States (as defined by

section 451 of title 28, United States Code), who died before October 19, 1976, shall be paid an annuity in accordance with the provisions of section 376 of title 28, United States Code, at a rate of \$20,000 per year as if such Justice had elected to come within the provisions of, and having made the full deposit required by, section 376(d) of title 28, United States Code.

“(b) Notwithstanding the provisions of section 376(h) of title 28, United States Code, such annuity shall be payable as provided in section 376(m) of title 28, United States Code, until the date of the death of any such spouse.”

#### JUDICIAL SURVIVORS' ANNUITY FUND; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 96-504, § 4, Dec. 5, 1980, 94 Stat. 2742, required the Secretary of the Treasury in consultation with the Director of the Administrative Office of the United States Courts to determine as of Dec. 5, 1980, and deposit as soon as possible thereafter, the amount necessary to offset any actuarial deficiency in the Judicial Survivors Annuities Fund.

#### JUDICIAL SURVIVORS' ANNUITIES FUND

Section 3 of Pub. L. 94-554 provided: “That on the date upon which this Act becomes effective [Jan. 1, 1977] there shall be established on the books of the Treasury a fund which shall be known as ‘The Judicial Survivors' Annuities Fund, and all money credited to the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended, shall be transferred to the credit of the Judicial Survivors' Annuities Fund established by this section.”

#### COMPENSATION FOR ACTUARIAL DEFICIENCY IN THE ANNUITIES FUND

Section 4 of Pub. L. 94-554 provided: “That on the date upon which this Act becomes effective [Jan. 1, 1977] the Secretary of the Treasury shall ascertain from the Director of the Administrative Office of the United States Courts the amount of the actuarial deficiency in the fund transferred by section 3 of this Act [see Judicial Survivors' Annuities Fund note above] on the date of that fund's transfer and, at the earliest time thereafter at which appropriated funds in that amount shall become available, the Secretary shall deposit such funds, in a single payment, into the Judicial Survivors' Annuities Fund established by section 3 of this Act. Such funds as are necessary to carry out this section are hereby authorized to be appropriated.”

#### INCREASES IN WIDOWS' ANNUITIES PAID UNDER SECTION 2 OF ACT AUGUST 3, 1956

Section 5 of Pub. L. 94-554 provided: “That on the date upon which this Act becomes effective [Jan. 1, 1977] each annuity then being paid to a widow from the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021) [enacting this section], as amended, shall be increased by an amount equal to one-fifth of 1 percent of the amount of such annuity multiplied by the number of months which have passed since the commencement of that annuity. For the purposes of this section, any fractional part of a month which numbers less than fifteen full days shall be excluded from the computation of the number of months and any fractional part of a month which numbers fifteen full days or more shall be included in the computation as one full month. Such funds as are necessary to carry out this section are authorized to be appropriated and, upon appropriation, shall be deposited by the Secretary of the Treasury, in a single payment, to credit of the Judicial Survivors' Annuities Fund established by section 3 of this Act [see Judicial Survivors' Annuities Fund note above].”

#### REVOCACTION OF ELECTION TO PARTICIPATE IN ANNUITIES PROGRAM

Section 7 of Pub. L. 94-554 provided: “That, at any time within one hundred and eighty days after the date

upon which this Act becomes effective [Jan. 1, 1977], any judicial official who has, prior to that date, already participated in the judicial survivors annuity program created by the Act of August 3, 1956 (70 Stat. 1021) [enacting this section] as amended, shall be entitled to revoke his or her earlier election to participate in that program and thereby completely withdraw from participation in the judicial survivors' annuities program created by this Act: *Provided*, That (a) any such revocation may be effected only by means of a writing filed with the Director of the Administrative Office of the United States Courts, (b) any such writing shall be deemed to have become effective no sooner than the date upon which that writing is received by the Director, (c) upon receipt of such a writing by the Director, any and all rights to survivorship benefits for such judicial official's survivors shall terminate, and all amounts credited to such judicial official's individual account, together with interest at 3 percent per annum, compounded on December 31 of each year to that date of revocation, shall thereafter be returned to that judicial official in a lump-sum refund payment, and (d) any judicial official who effects such a revocation and who subsequently again becomes eligible and elects to join the judicial survivors annuities program created by this Act under the provisions of section 376 of title 28, United States Code as amended by this Act, shall be permitted to do so only upon the redeposit of the full amount of the refund obtained under this section plus interest at 3 percent per annum, compounded on December 31 of each year from the date of the revocation until the date upon which that amount is redeposited. Any judicial official who fails to effect a revocation in accordance with the right conferred by this section within one hundred and eighty days after the date upon which this Act becomes effective shall be deemed to have irrevocably waived the right to that revocation."

#### JUDGE TAKING OFFICE ON AUGUST 8, 1968

Section 1(b) of Pub. L. 90-466 provided that: "For the purpose of the amendment made by subsection (a) [amending subsec. (a) of this section], a judge who is in office on the date of enactment of this Act [Aug. 8, 1968] shall be deemed to have taken office on that date."

#### PRESERVATION OF RIGHTS OF JUDGES OF THE DISTRICT COURT FOR THE TERRITORY OF ALASKA

Section 12(n) of Pub. L. 85-508 provided in part that the amendment of subsec. (q) of this section by Pub. L. 85-508 shall not affect the rights under this section of any present or former judge of the District Court for the Territory of Alaska or his survivors.

#### APPROPRIATIONS

Section 5 of act Aug. 3, 1956, provided that: "Funds necessary to carry out the provisions of this Act [enacting this section and provisions set out as notes below, and amending sections 375, 604, and 605 of this title] may be appropriated out of any money in the Treasury not otherwise appropriated."

#### RESIGNED, REMOVED, AND RETIRED JUDGES

Section 6 of act Aug. 3, 1956, provided that: "A judge who resigned prior to the date of enactment of this Act [Aug. 3, 1956] and who on that date is receiving salary under section 371(a) of title 28, United States Code, or who resigned, was removed or failed of reappointment prior to the date of enactment of this Act and who on that date is receiving salary under section 373 of title 28, United States Code, shall be considered a judge within the meaning of section 376 of title 28, United States Code, as added by section 2 of this Act, and as such shall be entitled within six months after the date of enactment of this Act to make the election authorized by and to receive the benefits of that section. A judge who retired from regular active service under section 260 of the Judicial Code of 1911 or the Act of August 5, 1939, chapter 433, and who is living on the date of enactment of this Act shall be deemed for the pur-

poses of this Act to have retired from regular active service under section 371(b) or 372(a), as the case may be, of title 28, United States Code."

#### PRIOR DEATH OF JUDGE

Section 7 of act Aug. 3, 1956, provided that: "In the case of a living widow of a judge of the United States as defined in section 451 of title 28, United States Code, who died prior to the date of enactment of this Act [Aug. 3, 1956], an annuity shall be paid as provided in section 376 of title 28, United States Code, as added by section 2 of this Act, as if such judge had died on such date and had elected to bring himself within the purview of such section 376, but had not made the deposit provided for by subsection (c) of the said section: *Provided*, (a) That such widow has not remarried; and (b) that the amount of such annuity and the reduction therein because of such deposit not having been made shall be computed on the basis of the actual length of judicial and other allowable service of such judge: *And provided further*, That notwithstanding the provisions of subsection (g) of such section 376 such annuity shall be payable even though such judge had not rendered five years of civilian service prior to his death. In the case of a judge of the United States as defined in section 451 of title 28, United States Code, who dies within 6 months after the date of enactment of this Act after having rendered at least 5 years of civilian service computed as prescribed in subsection (o) of section 376 of title 28, United States Code, as added by section 2 of this Act, but without having made an election as provided in such section 376 to bring himself within the purview of that section, an annuity shall be paid to his widow and surviving dependent children as provided in such section 376 as if such judge had elected on the day of his death to bring himself within the purview of such section 376 but had not made the deposit provided for by subsection (c) of the said section. An annuity shall be payable under this section computed on the basis of the actual length of judicial and other allowable service of the judge and subject to the reduction required by subsection (c) of such section 376 even though no deposit has been made, as required by subsection (g) of such section 376, with respect to any of such service."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 178, 375, 377 of this title; title 5 section 8334; title 38 section 7297.

### § 377. Retirement of bankruptcy judges and magistrate judges

(a) **RETIREMENT BASED ON YEARS OF SERVICE.**—A bankruptcy judge or magistrate judge to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such bankruptcy judge or magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate judge's lifetime, an annuity equal to the salary being received at the time the judge or magistrate judge leaves office.

(b) **RETIREMENT UPON FAILURE OF REAPPOINTMENT.**—A bankruptcy judge or magistrate judge to whom this section applies, who is not reappointed following the expiration of the term of office of such judge or magistrate judge, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such bankruptcy judge's or magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—