

including interpreting constitutional and statutory provisions. The court shall hold unlawful and set aside any regulation or any interpretation thereof (other than a determination as to a factual matter) that was relied upon in the decision of the Court of Appeals for Veterans Claims that the Court of Appeals for the Federal Circuit finds to be—

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege, or immunity;
- (C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or
- (D) without observance of procedure required by law.

(2) Except to the extent that an appeal under this chapter presents a constitutional issue, the Court of Appeals may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.

(e)(1) Upon such review, the Court of Appeals for the Federal Circuit shall have power to affirm or, if the decision of the Court of Appeals for Veterans Claims is not in accordance with law, to modify or reverse the decision of the Court of Appeals for Veterans Claims or to remand the matter, as appropriate.

(2) Rules for review of decisions of the Court of Appeals for Veterans Claims shall be those prescribed by the Supreme Court under section 2072 of title 28.

(Added Pub. L. 100-687, div. A, title III, §301(a), Nov. 18, 1988, 102 Stat. 4120, §4092; amended Pub. L. 101-94, title III, §302(b), Aug. 16, 1989, 103 Stat. 628; renumbered §7292, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(e)(5), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §§4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107-330, title IV, §402(a), Dec. 6, 2002, 116 Stat. 2832.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-330 inserted “a decision of the Court on a rule of law or of” after “the validity of” in first sentence.

1998—Subsecs. (a), (b), (d)(1), (e). Pub. L. 105-368 substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals” wherever appearing.

1991—Pub. L. 102-40 renumbered section 4092 of this title as this section.

Subsec. (a). Pub. L. 102-83, §5(c)(1), substituted “1155” for “355”.

Subsec. (b)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Subsec. (c). Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “United States Court” for “United States Courts”.

1989—Subsec. (d)(1). Pub. L. 101-94 struck out “statute or” before “regulation”.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-330, title IV, §402(b), Dec. 6, 2002, 116 Stat. 2832, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to any appeal—

“(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act [Dec. 6, 2002]; or

“(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-94 effective as if included in Pub. L. 100-687, div. A, see section 302(c) of Pub. L. 101-94, set out as a note under section 5701 of this title.

SUBCHAPTER V—RETIREMENT AND SURVIVORS ANNUITIES

§ 7296. Retirement of judges

(a) For purposes of this section:

- (1) The term “Court” means the United States Court of Appeals for Veterans Claims.
- (2) The term “judge” means a judge of the Court.

(b)(1) A judge who meets the age and service requirements set forth in the following table may retire:

The judge has attained age:	And the years of service as a judge are at least
65	15
66	14
67	13
68	12
69	11
70	10

(2) A judge who is not reappointed following the expiration of the term for which appointed may retire upon the completion of that term if the judge has served as a judge of the Court for 15 years or more.

(3) A judge who becomes permanently disabled and as a result of that disability is unable to perform the duties of the office shall retire.

(c)(1)(A) A judge who is appointed on or after the date of the enactment of the Veterans’ Benefits Improvement Act of 2008 and who retires under subsection (b) and elects under subsection (d) to receive retired pay under this subsection shall (except as provided in paragraph (2)) receive retired pay as follows:

(i) In the case of a judge who is a recall-eligible retired judge under section 7257 of this title, the retired pay of the judge shall (subject to section 7257(d)(2) of this title) be the rate of pay applicable to that judge at the time of retirement, as adjusted from time to time under subsection (f)(3).

(ii) In the case of a judge other than a recall-eligible retired judge, the retired pay of the judge shall be the rate of pay applicable to that judge at the time of retirement.

(B) A judge who retired before the date of the enactment of the Veterans’ Benefits Improvement Act of 2008 and elected under subsection (d) to receive retired pay under this subsection, or a judge who retires under subsection (b) and elects under subsection (d) to receive retired pay under this subsection, shall (except as provided in paragraph (2)) receive retired pay as follows:

(i) In the case of a judge who is a recall-eligible retired judge under section 7257 of this title or who was a recall-eligible retired judge under that section and was removed from recall status under subsection (b)(4) of that section by reason of disability, the retired pay of the judge shall be the pay of a judge of the court.

(ii) In the case of a judge who at the time of retirement did not provide notice under section 7257 of this title of availability for service in a recalled status, the retired pay of the judge shall be the rate of pay applicable to that judge at the time of retirement.

(iii) In the case of a judge who was a recall-eligible retired judge under section 7257 of this title and was removed from recall status under subsection (b)(3) of that section, the retired pay of the judge shall be the pay of the judge at the time of the removal from recall status.

(2) An individual who serves as a judge for less than 10 years and who retires under subsection (b)(3) of this section and elects under subsection (d) of this section to receive retired pay under this subsection shall receive retired pay at a rate equal to one-half of the rate of pay in effect at the time of retirement.

(3) Retired pay under this subsection shall begin to accrue on the day following the day on which the individual's salary as judge ceases to accrue and shall continue to accrue during the remainder of the individual's life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge.

(d)(1) A judge may elect to receive retired pay under subsection (c) of this section. Such an election—

(A) may be made only while an individual is a judge (except that, in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, the election may be made at any time before the date after the day on which the individual's successor takes office); and

(B) may not be revoked after the retired pay begins to accrue.

(2) In the case of a judge other than the chief judge, such an election shall be made by filing notice of the election in writing with the chief judge. In the case of the chief judge, such an election shall be made by filing notice of the election in writing with the Director of the Office of Personnel Management.

(3) The chief judge shall transmit to the Director of the Office of Personnel Management a copy of each notice filed with the chief judge under this subsection.

(e) If an individual for whom an election to receive retired pay under subsection (c) is in effect accepts compensation for employment with the United States, the individual shall, to the extent of the amount of that compensation, forfeit all rights to retired pay under subsection (c) of this section for the period for which the compensation is received.

(f)(1) Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply

with respect to service as a judge as if this section had not been enacted.

(2) In the case of any individual who has filed an election to receive retired pay under subsection (c) of this section—

(A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as judge or otherwise) except as authorized by section 8440d of title 5;

(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retired pay payable to that individual under subsection (c) of this section or from any other salary, pay, or compensation payable to that individual, for any period beginning after the day on which such election is filed; and

(C) such individual shall be paid the lump-sum credit computed under section 8331(8) or 8401(a) of title 5, whichever applies, upon making application therefor with the Office of Personnel Management.

(3)(A) A cost-of-living adjustment provided by law in annuities payable under civil service retirement laws shall apply to retired pay under this section only in the case of retired pay computed under paragraph (1)(A)(i) or (2) of subsection (c).

(B) If such a cost-of-living adjustment would (but for this subparagraph) result in the retired pay of a retired judge being in excess of the annual rate of pay in effect for judges of the Court as provided in section 7253(e) of this title, such adjustment may be made only in such amount as results in the retired pay of the retired judge being equal to that annual rate of pay (as in effect on the effective date of such adjustment).

(g)(1) A judge who becomes permanently disabled and as a result of that disability is unable to perform the duties of the office shall certify to the President in writing that such permanent disability exists. If the chief judge retires for such a disability, the retirement of the chief judge shall not take effect until concurred in by the President. If any other judge retires for such a disability, the chief judge shall furnish to the President a certificate of disability signed by the chief judge.

(2) Whenever the President finds that a judge has become permanently disabled and as a result of that disability is unable to perform the duties of the office, the President shall declare that judge to be retired. Before a judge may be retired under this paragraph, the judge shall be provided with a full specification of the reasons for the retirement and an opportunity to be heard.

(h)(1) An individual who has filed an election to receive retired pay under subsection (c) of this section may revoke such election at any time before the first day on which retired pay would (but for such revocation) begin to accrue with respect to such individual.

(2) Any revocation under this subsection shall be made by filing a notice of the election in writing with the Director of the Office of Personnel Management. The Office of Personnel Management shall transmit to the chief judge a copy of each notice filed under this subsection.

(3) In the case of a revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election to receive retired pay under subsection (c) of this title; and

(B) for purposes of section 7297 of this title—

(i) the individual shall be treated as not having filed an election under section 7297(b) of this title, and

(ii) section 7297(e) of this title shall not apply and the amount credited to such individual's account (together with interest at 3 percent per year, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to the individual;

(C) no credit shall be allowed for any service as a judge of the Court unless with respect to such service either there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest;

(D) the Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (d); and

(E) if subparagraphs (C) and (D) of this paragraph are complied with, service on the Court shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(i)(1) Beginning with the next pay period after the Director of the Office of Personnel Management receives a notice under subsection (d) of this section that a judge has elected to receive retired pay under this section, the Director shall deduct and withhold 1 percent of the salary of such judge. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Court of Appeals for Veterans Claims Judges Retirement Fund. Deductions under this subsection from the salary of a judge shall terminate upon the retirement of the judge or upon the completion of 15 years of service for which either deductions under this subsection or a deposit under subsection (j) of this section has been made, whichever occurs first.

(2) Each judge who makes an election under subsection (d) of this section shall be considered to agree to the deductions from salary which are made under paragraph (1) of this subsection.

(j) A judge who makes an election under subsection (d) of this section shall deposit, for service on the Court performed before the election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for the first years, not exceeding 15 years, of that service. Retired pay may not be allowed until a deposit required by this subsection has been made.

(k) The amounts deducted and withheld under subsection (i) of this section, and the amounts deposited under subsection (j) of this section,

shall be deposited in the Court of Appeals for Veterans Claims Retirement Fund for credit to individual accounts in the name of each judge from whom such amounts are received.

(Added Pub. L. 101-94, title I, §101(a), Aug. 16, 1989, 103 Stat. 617, §4096; renumbered §7296 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-82, §5(c)(1), Aug. 6, 1991, 105 Stat. 376; Pub. L. 102-198, §7(c)(4)(D), Dec. 9, 1991, 105 Stat. 1625; Pub. L. 105-368, title V, §512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 106-117, title X, §§1022, 1035(2), Nov. 30, 1999, 113 Stat. 1592, 1595; Pub. L. 107-103, title VI, §602, Dec. 27, 2001, 115 Stat. 999; Pub. L. 110-389, title VI, §603(b)(1), (2), Oct. 10, 2008, 122 Stat. 4177, 4178.)

REFERENCES IN TEXT

The date of the enactment of the Veterans' Benefits Improvement Act of 2008, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 110-389, which was approved Oct. 10, 2008.

The Civil Service Retirement and Disability Fund, referred to in subssecs. (f)(2)(B) and (h)(3)(C), (D), is provided for in section 8348 of Title 5, Government Organization and Employees.

AMENDMENTS

2008—Subsec. (c)(1). Pub. L. 110-389, §603(b)(1), added par. (1) and struck out former par. (1), which related to retirement pay structure for retired judges based on recall status.

Subsec. (f)(3)(A). Pub. L. 110-389, §603(b)(2), substituted "paragraph (1)(A)(i) or (2)" for "paragraph (2)".

2001—Subsec. (b)(2). Pub. L. 107-103 struck out at end: "In order to retire under this paragraph, a judge must, not earlier than 9 months preceding the date of the expiration of the judge's term of office and not later than 6 months preceding such date, advise the President in writing that the judge is willing to accept reappointment to the Court."

1999—Subsec. (a)(2). Pub. L. 106-117, §1035(2), substituted "a judge" for "the chief judge or an associate judge".

Subsec. (c)(1). Pub. L. 106-117, §1022(a), substituted "as follows:" for "at the rate of pay in effect at the time of retirement." and added subpars. (A) to (C).

Subsec. (f)(3). Pub. L. 106-117, §1022(b), added par. (3).

1998—Subsecs. (a)(1), (i)(1), (k). Pub. L. 105-368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102-40, §402(b)(1), renumbered section 4096 of this title as this section.

Subsec. (f)(2)(A). Pub. L. 102-198 substituted "8440d" for "8440c".

Pub. L. 102-82 inserted before semicolon at end "except as authorized by section 8440c of title 5".

Subsec. (h)(3)(B). Pub. L. 102-40, §402(d)(1), substituted "7297" for "4097" in introductory provisions, "7297(b)" for "4097(b)" in cl. (i), and "7297(e)" for "4097(e)" in cl. (ii).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1035(2) of Pub. L. 106-117 effective Nov. 30, 1999, with savings provision for incumbent chief judge, see section 1036 of Pub. L. 106-117, set out as a note under section 7253 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of this title.

TRANSITIONAL PROVISIONS TO STAGGER TERMS OF JUDGES

Pub. L. 106-117, title X, §1002, Nov. 30, 1999, 113 Stat. 1588, provided that: "In this title [see Short Title of

1999 Amendments note set out under section 101 of this title], the term 'Court' means the United States Court of Appeals for Veterans Claims."

Pub. L. 106-117, title X, §§1011, 1012, Nov. 30, 1999, 113 Stat. 1588, 1590, provided that:

"SEC. 1011. EARLY RETIREMENT AUTHORITY FOR CURRENT JUDGES.

"(a) **RETIREMENT AUTHORIZED.**—One eligible judge may retire in accordance with this section in 2000 or 2001, and one additional eligible judge may retire in accordance with this section in 2001.

"(b) **ELIGIBLE JUDGES.**—For purposes of this section, an eligible judge is a judge of the Court (other than the chief judge) who—

"(1) has at least 10 years of service creditable under section 7296 of title 38, United States Code;

"(2) has made an election to receive retired pay under section 7296 of such title;

"(3) has at least 20 years of service described in section 7297(l) of such title; and

"(4) is at least 55 years of age.

"(c) **MULTIPLE ELIGIBLE JUDGES.**—If for any year specified in subsection (a) more than one eligible judge provides notice in accordance with subsection (d), the judge who has the greatest seniority as a judge of the Court shall be the judge who is eligible to retire in accordance with this section in that year.

"(d) **NOTICE.**—An eligible judge who desires to retire in accordance with this section with respect to any year covered by subsection (a) shall provide to the President and the chief judge of the Court written notice to that effect and stating that the judge agrees to the temporary service requirements of subsection (j). Such notice shall be provided not later than April 1 of that year and shall specify the retirement date in accordance with subsection (e). Notice provided under this subsection shall be irrevocable.

"(e) **DATE OF RETIREMENT.**—A judge who is eligible to retire in accordance with this section shall be retired during the calendar year as to which notice is provided pursuant to subsection (d), but not earlier than 30 days after the date on which that notice is provided pursuant to subsection (d).

"(f) **APPLICABLE PROVISIONS.**—Except as provided in subsections (g) and (j), a judge retired in accordance with this section shall be considered for all purposes to be retired under section 7296(b)(1) of title 38, United States Code.

"(g) **APPLICABILITY OF RECALL STATUS AUTHORITY.**—The provisions of section 7257 of this title shall apply to a judge retired in accordance with this section as if the judge is a judge specified in subsection (a)(2)(A) of that section.

"(h) **RATE OF RETIRED PAY.**—The rate of retired pay for a judge retiring in accordance with this section is—

"(1) the rate applicable to that judge under section 7296(c)(1) of title 38, United States Code, multiplied by

"(2) the fraction (not in excess of 1) in which—

"(A) the numerator is the number of years of service of the judge as a judge of the Court creditable under section 7296 of such title; and

"(B) the denominator is 15.

"(i) **ADJUSTMENTS IN RETIRED PAY FOR JUDGES AVAILABLE FOR RECALL.**—Subject to section 7296(f)(3)(B) of title 38, United States Code, an adjustment provided by law in annuities payable under civil service retirement laws shall apply to retired pay under this section in the case of a judge who is a recall-eligible retired judge under section 7257 of such title or who was a recall-eligible retired judge under that section and was removed from recall status under subsection (b)(4) of that section by reason of disability.

"(j) **DUTY OF ACTUARY.**—[Amended section 7298 of this title.]

"(k) **TRANSITIONAL SERVICE OF JUDGE RETIRED UNDER THIS SECTION.**—(1) A judge who retires under this section shall continue to serve on the Court during the period beginning on the effective date of the judge's re-

tirement under subsection (e) and ending on the earlier of—

"(A) the date on which a person is appointed to the position on the Court vacated by the judge's retirement; and

"(B) the date on which the judge's original appointment to the court would have expired.

"(2) Subsections (f) and (g) of section 7253 of title 38, United States Code, shall apply with respect to the service of a judge on the Court under this section.

"(3) Notwithstanding any other provision of law, a person whose service as a judge of the Court continues under this section shall be paid for the period of service under this subsection at the rate that is the difference between the current rate of pay for a judge of the Court and the rate of the judge's retired pay under subsection (g).

"(4) Amounts paid under paragraph (3)—

"(A) shall not be treated as—

"(i) compensation for employment with the United States for purposes of section 7296(e) of title 38, United States Code, or any provision of title 5, United States Code, relating to the receipt or forfeiture of retired pay or retirement annuities by a person accepting compensation for employment with the United States; or

"(ii) pay for purposes of deductions or contributions for or on behalf of the person to retired pay under subchapter V of chapter 72 of title 38, United States Code, or under chapter 83 or 84 of title 5, United States Code, as applicable; but

"(B) may, at the election of the person, be treated as pay for purposes of deductions or contributions for or on behalf of the person to a retirement or other annuity, or both, under subchapter V of chapter 72 of title 38, United States Code, or under chapter 83 or 84 of title 5, United States Code, as applicable.

"(5) Amounts paid under paragraph (3) shall be derived from amounts available for payment of salaries and benefits of judges of the Court.

"(6) The service as a judge of the Court under this subsection of a person who makes an election provided for under paragraph (4)(B) shall constitute creditable service toward the judge's years of judicial service for purposes of section 7297 of title 38, United States Code, with such service creditable at a rate equal to the rate at which such service would be creditable for such purposes if served by a judge of the Court under chapter 72 of that title. For purposes of subsection (k)(3) of that section, the average annual pay for such service shall be the sum of the judge's retired pay and the amount paid under paragraph (3) of this subsection.

"(7) In the case of such a person who makes an election provided for under paragraph (4)(B), upon the termination of the service of that person as a judge of the Court under this subsection, the retired pay of that person under subsection (g) shall be recomputed to reflect the additional period of service served under this subsection.

"(l) **TREATMENT OF POLITICAL PARTY MEMBERSHIP.**—For purposes of determining compliance with the last sentence of section 7253(b) of title 38, United States Code, the political party membership of a judge serving on the Court under subsection (j) shall not be taken into account.

"SEC. 1012. MODIFIED TERMS FOR NEXT TWO JUDGES APPOINTED TO THE COURT.

"(a) **MODIFIED TERMS.**—The term of office of the first two judges appointed to the Court after the date of the enactment of this Act [Nov. 30, 1999] shall be 13 years (rather than the period specified in section 7253(c) of title 38, United States Code).

"(b) **ELIGIBILITY FOR RETIREMENT.**—(1) For purposes of determining the eligibility to retire under section 7296 of title 38, United States Code, of the two judges of the Court whose term of office is determined under subsection (a)—

"(A) the age and service requirements in the table in paragraph (2) shall apply to those judges rather

than the otherwise applicable age and service requirements specified in the table in subsection (b)(1) of that section; and

“(B) the minimum years of service applicable to those judges for eligibility to retire under the first sentence of subsection (b)(2) of that section shall be 13 years instead of 15 years.

“(2) The age and service requirements in this paragraph are as follows:

“The judge has attained age:	And the years of service as a judge are at least
65	13
66	13
67	13
68	12
69	11
70	10.”

Pub. L. 106-117, title X, §1032(b), Nov. 30, 1999, 113 Stat. 1595, provided that: “A person serving as a judge of the Court under section 1011 may not serve as chief judge of the Court.”

§ 7297. Survivor annuities

(a) For purposes of this section:

(1) The term “Court” means the United States Court of Appeals for Veterans Claims.

(2) The term “judge” means a judge of the Court who is in active service or who has retired under section 7296 of this title.

(3) The term “pay” means salary received under section 7253(e) of this title and retired pay received under section 7296 of this title.

(4) The term “retirement fund” means the Court of Appeals for Veterans Claims Retirement Fund established under section 7298 of this title.

(5) The term “surviving spouse” means a surviving spouse of an individual who (A) was married to such individual for at least one year immediately preceding the individual’s death, or (B) is a parent of issue by the marriage.

(6) The term “dependent child” has the meaning given the term “child” in section 376(a)(5) of title 28.

(7) The term “Member of Congress” means a Representative, a Senator, a Delegate to Congress, or the Resident Commissioner of Puerto Rico.

(8) The term “assassination” as applied to a judge shall have the meaning provided that term in section 376(a)(7) of title 28 as applied to a judicial official.

(b) A judge may become a participant in the annuity program under this section by filing a written election under this subsection while in office or within six months after the date on which the judge marries if the judge has retired under section 7296 of this title. Any such election shall be made in such manner as may be prescribed by the Court.

(c) There shall be deducted and withheld each pay period from the pay of a judge who has made an election under subsection (b) of this section a sum equal to that percentage of the judge’s pay that is the same as provided for the deduction from the salary or retirement salary of a judge of the United States Court of Federal Claims for the purpose of a survivor annuity under section 376(b)(1)(B) of title 28. Amounts so

deducted and withheld shall be deposited in the retirement fund. A judge who makes an election under subsection (b) of this section shall be considered by that election to agree to the deductions from the judge’s pay required by this subsection.

(d)(1) A judge who makes an election under subsection (b) of this section shall deposit, with interest at 3 percent per year compounded on December 31 of each year, to the credit of the retirement fund, an amount equal to 3.5 percent of the judge’s pay and of the judge’s basic salary, pay, or compensation for service as a Member of Congress, and for any other civilian service within the purview of section 8332 of title 5. Each such judge may elect to make such deposits in installments during the judge’s period of service in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annual annuity of the surviving spouse of such judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death of such judge, unless the surviving spouse elects to eliminate such service entirely from credit under subsection (k) of this section. However, a deposit shall not be required from a judge for any year with respect to which deductions from the judge’s pay, or a deposit, were actually made (and not withdrawn) under the civil service retirement laws.

(2) The interest required under the first sentence of paragraph (1) shall not be required for any period—

(A) during which a judge was separated from any service described in section 376(d)(2) of title 28; and

(B) during which the judge was not receiving retired pay based on service as a judge or receiving any retirement salary as described in section 376(d)(1) of title 28.

(e) If the service of a judge who makes an election under subsection (b) of this section terminates other than pursuant to the provisions of section 7296 of this title, or if any judge ceases to be married after making the election under subsection (b) of this section and revokes (in a writing filed as provided in subsection (b) of this section) such election, the amount credited to the judge’s individual account (together with interest at 3 percent per year compounded on December 31 of each year to the date of the judge’s relinquishment of office) shall be returned to the judge. For the purpose of this section, the service of a judge making an election under subsection (b) of this section shall be considered to have terminated pursuant to section 7296 of this title if—

(1) the judge is not reappointed following expiration of the term for which appointed; and

(2) at or before the time of the expiration of that term, the judge is eligible for and elects to receive retired pay under section 7296 of this title.

(f)(1) If a judge who makes an election under subsection (b) of this section dies after having rendered at least 18 months of civilian service (computed as prescribed in subsection (l) of this