at the time of the decision of the agency of original jurisdiction on appeal.

(2) The evidentiary record before the Board for cases described in paragraph (1) shall include each of the following, which the Board shall consider in the first instance:

(A) Evidence submitted by the appellant and his or her representative, if any, at the Board hearing.

(B) Evidence submitted by the appellant and his or her representative, if any, within 90 days following the Board hearing.

(c) CASES WITH NO REQUEST FOR A HEARING AND WITH A REQUEST FOR ADDITIONAL EVIDENCE.—(1) Except as provided in paragraph (2), for cases in which a hearing is not requested in the notice of disagreement but an opportunity to submit evidence is requested, the evidentiary record before the Board shall be limited to the evidence considered by the agency of original jurisdiction in the decision on appeal.

(2) The evidentiary record before the Board for cases described in paragraph (1) shall include each of the following, which the Board shall consider in the first instance:

(A) Evidence submitted by the appellant and his or her representative, if any, with the notice of disagreement.

(B) Evidence submitted by the appellant and his or her representative, if any, within 90 days following receipt of the notice of disagreement.

(Added Pub. L. 115–55, § 2(w)(1), Aug. 23, 2017, 131 Stat. 1114.)

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE

Section applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115–55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115–55, set out as an Effective Date of 2017 Amendment note under section 101 of this title, and bracketed note thereunder.

## CHAPTER 72—UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

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**Editorial Notes**

AMENDMENTS

2013—Pub. L. 112–260, title III, § 302(a)(2), Jan. 10, 2013, 126 Stat. 2425, which directed amendment of the table of sections for chapter 72 by adding item 7255 and striking out former item 7255 ''Offices'', without specifying the Code title to be amended, was executed to the table of sections for this chapter, to reflect the probable intent of Congress.

2008—Pub. L. 110–389, title VI, § 604(b), Oct. 10, 2008, 122 Stat. 4179, added item 7288.

2001—Pub. L. 107–103, title VI, §§ 604(c)(2), 605(b), Dec. 27, 2001, 115 Stat. 1000, substituted ''Practice and registration fees'' for ''Practice fee'' in item 7285 and added item 7287.

1999—Pub. L. 106–117, title X, §§ 1021(b), 1024(b), Nov. 30, 1999, 113 Stat. 1592, 1594, added items 7257 and 7299.

1998—Pub. L. 105–368, title V, § 512(a)(3), (4)(A), Nov. 11, 1998, 112 Stat. 3341, substituted ''APPEALS FOR VETERANS CLAIMS'' for ''VETERANS APPEALS'' in chapter heading, struck out ''of Veterans Appeals'' after ''Court'' in item 7286, substituted ''Court decision'' for ''United States Court of Veterans Appeals decision'' in item 7291, and struck out ''Court of Veterans Appeals'' before ''Retirement Fund'' in item 7298.

1991—Pub. L. 102–82, § 2(b), Aug. 6, 1991, 105 Stat. 375, added item 7286.

Pub. L. 102–40, title IV, § 402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 4051 to 4098 as 7251 to 7298, respectively.

1989—Pub. L. 101–94, title I, § 101(b), Aug. 16, 1989, 103 Stat. 625, added subchapter V heading and items 4096 to 4098.

### SUBCHAPTER I—ORGANIZATION AND JURISDICTION

### § 7251. Status

There is hereby established, under Article I of the Constitution of the United States, a court of record to be known as the United States Court of Appeals for Veterans Claims.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4113, § 4051; renumbered § 7251, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, § 511(b), Nov. 11, 1998, 112 Stat. 3341.)

**Editorial Notes**

AMENDMENTS

1998—Pub. L. 105–368 substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

1991—Pub. L. 102–40 renumbered section 4051 of this title as this section.

**Statutory Notes and Related Subsidiaries**

CHANGE OF NAME

Pub. L. 105–368, title V, § 511(a), Nov. 11, 1998, 112 Stat. 3341, provided that: ''The United States Court of Veterans Appeals is hereby renamed as, and shall hereafter be known and designated as, the United States Court of Appeals for Veterans Claims.''

Pub. L. 105–368, title V, § 512(c), Nov. 11, 1998, 112 Stat. 3342, provided that: ''Any reference in a law, regulation, document, paper, or other record of the United States to the United States Court of Veterans Appeals shall be deemed to be a reference to the United States Court of Appeals for Veterans Claims.''

EFFECTIVE DATE OF 2001 AMENDMENT; CONSTRUCTION

Pub. L. 107–103, title VI, § 603(c), (d), Dec. 27, 2001, 115 Stat. 999, provided that:

''(c) CONSTRUCTION.—The repeal in subsection (a) [repealing section 402 of Pub. L. 100–687, formerly set out as a note below] may not be construed to confer upon the United States Court of Appeals for Veterans Claims jurisdiction over any appeal or other matter not within the jurisdiction of the Court as provided in section 7266(a) of title 38, United States Code.

''(d) APPLICABILITY.—The repeals made by subsections (a) and (b) [repealing section 402 of Pub. L. 100–687, formerly set out as a note below, and section 403 of Pub. L. 100–687, formerly set out as a note under section 5904 of this title] shall apply to any appeal filed with the United States Court of Appeals for Veterans Claims—

''(1) on or after the date of the enactment of this Act [Dec. 27, 2001]; or

''(2) before the date of the enactment of this Act but in which a final decision has not been made under section 7291 of title 38, United States Code, as of that date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–368, title V, § 513, Nov. 11, 1998, 112 Stat. 3342, provided that: ''This subtitle [subtitle B (§§ 511–513) of title V of Pub. L. 105–368, see Tables for classification], and the amendments made by this subtitle, shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act [Nov. 11, 1998].''

EFFECTIVE DATE

Pub. L. 100–687, div. A, title IV, § 401, Nov. 18, 1988, 102 Stat. 4122, as amended by Pub. L. 101–94, title III, § 301, Aug. 16, 1989, 103 Stat. 628, provided that:

''(a) GENERAL EFFECTIVE DATE.—Except as otherwise provided in this section, this division (and the amendments made by this Act) [div. A (§§ 1–403) of Pub. L. 100–687, known as the 'Veterans' Judicial Review Act', see Tables for classification] shall take effect on September 1, 1989.

''(b) EFFECTIVE DATE FOR CERTAIN TRANSITION PROVISIONS.—The amendment made by section 201(a) [amending section 4001 [now 7101] of this title] shall take effect on February 1, 1989.

''(c) DATE OF ENACTMENT.—Sections 201 (other than subsection (a)), 208, 209, 302, and 303, and the amendments made by those sections [see Tables for classification], shall take effect on the date of the enactment of this Act [Nov. 18, 1988].

''(d) BOARD OF VETERANS' APPEALS.—Sections 202, 203, 205, 206, and 207 [see Tables for classification] shall take effect as of January 1, 1989. Section 204 [amending section 4004 [now 7104] of this title] shall take effect on September 1, 1989.

''(e) COMMENCEMENT OF OPERATION OF COURT OF VETERANS APPEALS.—Notwithstanding subsection (a), the United States Court of Veterans Appeals [now United States Court of Appeals for Veterans Claims] established pursuant to chapter 72 of title 38, United States Code (as added by section 301) shall not begin to operate until at least three judges have been appointed to the court.''

CHAPTER APPLICABLE TO CLAIMS ALLEGING PREVIOUS DETERMINATION THE PRODUCT OF CLEAR AND UNMISTAKABLE ERROR

Pub. L. 105–111, § 1(c)(2), Nov. 21, 1997, 111 Stat. 2272, provided that: ''Notwithstanding section 402 of the Veterans Judicial Review Act (38 U.S.C. 7251 note), chapter 72 of title 38, United States Code, shall apply with respect to any decision of the Board of Veterans' Appeals on a claim alleging that a previous determination of the Board was the product of clear and unmistakable error if that claim is filed after, or was pending before the Department of Veterans Affairs, the Court of Veterans Appeals [now Court of Appeals for Veterans Claims], the Court of Appeals for the Federal Circuit, or the Supreme Court on the date of the enactment of this Act [Nov. 21, 1997].''

CHAPTER APPLICABLE TO CASES FILED ON OR AFTER NOVEMBER 18, 1988

Pub. L. 100–687, div. A, title IV, § 402, Nov. 18, 1988, 102 Stat. 4122, as amended by Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239, which provided that this chapter applied to any case in which a notice of disagreement was filed under section 7105 of this title on or after Nov. 18, 1988, was repealed by Pub. L. 107–103, title VI, § 603(a), Dec. 27, 2001, 115 Stat. 999.

## § 7252. Jurisdiction; finality of decisions

(a) The Court of Appeals for Veterans Claims shall have exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. The Secretary may not seek review of any such decision. The Court shall have power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.

(b) Review in the Court shall be on the record of proceedings before the Secretary and the Board. The extent of the review shall be limited to the scope provided in section 7261 of this title. The Court may not review the schedule of ratings for disabilities adopted under section 1155 of this title or any action of the Secretary in adopting or revising that schedule.

(c) Decisions by the Court are subject to review as provided in section 7292 of this title.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4113, § 4052; renumbered § 7252 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, § 14(e)(3), 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.)

**Editorial Notes**

AMENDMENTS

1998—Subsec. (a). 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 4052 of this title as this section.

Subsec. (a). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator''.

Pub. L. 102–54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102–40 by substituting ''Court'' for ''court'' in last sentence.

Subsec. (b). Pub. L. 102–83, § 5(c)(1), substituted ''1155'' for ''355''.

Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator'' in two places.

Pub. L. 102–40, § 402(d)(1), substituted ''7261'' for ''4061''.

Subsec. (c). Pub. L. 102–40, § 402(d)(1), substituted ''7292'' for ''4092''.

**Statutory Notes and Related Subsidiaries**

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.

## § 7253. Composition

(a) COMPOSITION.—The Court of Appeals for Veterans Claims is composed of at least three and not more than seven judges, one of whom shall serve as chief judge in accordance with subsection (d).

(b) APPOINTMENT.—The judges of the Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. A person may not be appointed to the Court who is not a member in good standing of the bar of a Federal court or of the highest court of a State. Not more than the number equal to the next whole number greater than one-half of the number of judges of the Court may be members of the same political party.

(c) TERM OF OFFICE.—The term of office of the judges of the Court of Appeals for Veterans Claims shall be 15 years. A judge who is nominated by the President for appointment to an additional term on the Court without a break in service and whose term of office expires while that nomination is pending before the Senate may continue in office for up to 1 year while that nomination is pending.

(d) CHIEF JUDGE.—(1) The chief judge of the Court is the head of the Court. The chief judge of the Court shall be the judge of the Court in regular active service who is senior in commission among the judges of the Court who—

(A) have served for one or more years as judges of the Court;

(B) have at least 3 years remaining in term of office; and

(C) have not previously served as chief judge.

(2)(A) In any case in which there is no judge of the Court in regular active service who meets the requirements under paragraph (1), the judge of the Court in regular active service who is senior in commission and meets subparagraph (A) or (B) and subparagraph (C) of paragraph (1) shall act as the chief judge.

(B) In any case under subparagraph (A) of this paragraph in which there is no judge of the Court in regular active service who meets subparagraph (A) or (B) and subparagraph (C) of paragraph (1), the judge of the Court in regular active service who is senior in commission and meets subparagraph (C) shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the Court shall serve as the chief judge under paragraph (1) for a term of five years or until the judge becomes age 70, whichever occurs first. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, that judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of the term prescribed by paragraph (3) if—

(i) the chief judge leaves regular active service as a judge of the Court; or

(ii) the chief judge notifies the other judges of the Court in writing that such judge desires to be relieved of the duties of chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform the duties of chief judge, those duties shall be performed by the judge of the Court in active service who is present, able and qualified to act, and is next in precedence.

(6) Judges who have the same seniority in commission shall be eligible for service as chief judge in accordance with their relative precedence.

(e) SALARY.—Each judge of the Court shall receive a salary at the same rate as is received by judges of the United States district courts.

(f) REMOVAL.—(1) A judge of the Court may be removed from office by the President on grounds of misconduct, neglect of duty, engaging in the practice of law, or violating section 7255(c) of this title. A judge of the Court may not be removed from office by the President on any other ground.

(2) Before a judge may be removed from office under this subsection, the judge shall be provided with a full specification of the reasons for the removal and an opportunity to be heard.

(g) RULES.—(1) The Court shall prescribe rules, consistent with the provisions of chapter 16 of title 28, establishing procedures for the filing of complaints with respect to the conduct of any judge of the Court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, the Court shall have the powers granted to a judicial council under such chapter.

(2) The provisions of sections 354(b) through 360 of title 28, regarding referral or certification to, and petition for review in, the Judicial Conference of the United States and action thereon, shall apply to the exercise by the Court of the powers of a judicial council under paragraph (1) of this subsection. The grounds for removal from office specified in subsection (f)(1) shall provide a basis for a determination pursuant to section 354(b) or 355 of title 28, and certification and transmittal by the Conference shall be made to the President for consideration under subsection (f).

(3)(A) In conducting hearings pursuant to paragraph (1), the Court may exercise the authority provided under section 1821 of title 28 to pay the fees and allowances described in that section.

(B) The Court shall have the power provided under section 361 of title 28 to award reimbursement for the reasonable expenses described in that section. Reimbursements under this subparagraph shall be made from funds appropriated to the Court.

(h) TEMPORARY EXPANSION OF COURT.—(1) During the period from January 1, 2002, through August 15, 2005, the authorized number of judges of the Court specified in subsection (a) is increased by two.

(2)(A) Of the two additional judges authorized by this subsection—

(i) only one may be appointed pursuant to a nomination made in 2002; and

(ii) only one may be appointed pursuant to a nomination made in 2003.

(B) If a judge is not appointed under this subsection pursuant to a nomination made in 2002, a judge may be appointed under this subsection pursuant to a nomination made in 2004. If a judge is not appointed under this subsection pursuant to a nomination made in 2003, a judge may be appointed under this subsection pursuant to a nomination made in 2004. In either case, such an appointment may be made only pursuant to a nomination made before October 1, 2004.

(3) The term of office and the eligibility for retirement of a judge appointed under this subsection, other than a judge described in paragraph (4), are governed by the provisions of section 1012 of the Court of Appeals for Veterans Claims Amendments of 1999 (title X of Public Law 106–117; 113 Stat. 1590; 38 U.S.C. 7296 note) if the judge is one of the first two judges appointed to the Court after November 30, 1999.

(4) A judge of the Court as of December 27, 2001, who was appointed to the Court before January 1, 1991, may accept appointment as a judge of the Court under this subsection notwithstanding that the term of office of the judge on the Court has not yet expired under this section. The term of office of an incumbent judge who receives an appointment as described in the preceding sentence shall be 15 years, which includes any period remaining in the unexpired term of the judge. Any service following an appointment under this subsection shall be treated as though served as part of the original term of office of that judge on the Court.

(5) Notwithstanding paragraph (1), an appointment may not be made to the Court if the appointment would result in there being more than seven judges on the Court who were appointed after January 1, 1997. For the purposes of this paragraph, a judge serving in recall status under section 7257 of this title shall be disregarded in counting the number of judges appointed to the Court after such date.

(i) ADDITIONAL TEMPORARY EXPANSION OF COURT.—(1) Subject to paragraph (2), effective as of December 31, 2009, the authorized number of judges of the Court specified in subsection (a) is increased by two.

(2) Effective as of January 1, 2026, an appointment may not be made to the Court if the appointment would result in there being more judges of the Court than the authorized number of judges of the Court specified in subsection (a).

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4114, § 4053; amended Pub. L. 101–94, title I, § 102(c), Aug. 16, 1989, 103 Stat. 626; renumbered § 7253, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–82, § 3, Aug. 6, 1991, 105 Stat. 375; Pub. L. 102–585, title VIII, § 801, Nov. 4, 1992, 106 Stat. 4980; Pub. L. 105–368, title V, §§ 501, 512(a)(1), Nov. 11, 1998, 112 Stat. 3340, 3341; Pub. L. 106–117, title X, §§ 1031, 1032(a), 1033, Nov. 30, 1999, 113 Stat. 1594, 1595; Pub. L. 107–103, title VI, § 601, Dec. 27, 2001, 115 Stat. 998; Pub. L. 107–273, div. C, title I, § 11043(f), Nov. 2, 2002, 116 Stat. 1856; Pub. L. 108–454, title VIII, § 802, Dec. 10, 2004, 118 Stat. 3625; Pub. L. 109–233, title V, § 503(15), June 15, 2006, 120 Stat. 417; Pub. L. 110–389, title VI, § 601, Oct. 10, 2008, 122 Stat. 4176; Pub. L. 112–260, title III, § 302(b), Jan. 10, 2013, 126 Stat. 2425; Pub. L. 114–315, title II, §§ 201(a), 204(a), Dec. 16, 2016, 130 Stat. 1548, 1549; Pub. L. 116–159, div. E, title II, § 5205, Oct. 1, 2020, 134 Stat. 750.)

**Editorial Notes**

AMENDMENTS

2020—Subsec. (i)(2). Pub. L. 116–159 substituted ''January 1, 2026'' for ''January 1, 2021''.

2016—Subsec. (d)(1)(B), (C). Pub. L. 114–315, § 204(a)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(2). Pub. L. 114–315, § 204(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In any case in which there is no judge of the Court in regular active service who has served as a judge of the Court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.''

Subsec. (i)(2). Pub. L. 114–315, § 201(a), substituted ''January 1, 2021'' for ''January 1, 2013''.

2013—Subsec. (f)(1). Pub. L. 112–260, which directed substitution of ''engaging in the practice of law, or violating section 7255(c) of this title'' for ''or engaging in the practice of law'' in section 7253(f)(1), without specifying the Code title to be amended, was executed to subsec. (f)(1) of this section, to reflect the probable intent of Congress.

2008—Subsec. (i). Pub. L. 110–389 added subsec. (i).

2006—Subsec. (d)(5). Pub. L. 109–233 substituted ''Court'' for ''court''.

2004—Subsec. (d)(1). Pub. L. 108–454, § 802(a), inserted ''The chief judge of the Court is the head of the Court.'' after ''(1)''.

Subsec. (d)(4)(A). Pub. L. 108–454, § 802(b), substituted ''Court'' for ''court'' in cls. (i) and (ii).

Subsec. (h)(4). Pub. L. 108–454, § 802(c), substituted ''December 27, 2001,'' for ''the date of the enactment of this subsection''.

2002—Subsec. (g)(1). Pub. L. 107–273, § 11043(f)(1), substituted ''chapter 16'' for ''section 372(c)'' and ''such chapter'' for ''such section''.

Subsec. (g)(2). Pub. L. 107–273, § 11043(f)(2), substituted ''sections 354(b) through 360'' for ''paragraphs (7) through (15) of section 372(c)'' and ''section 354(b) or 355'' for ''paragraph (7) or (8) of section 372(c)''.

Subsec. (g)(3)(B). Pub. L. 107–273, § 11043(f)(3), substituted ''361'' for ''372(c)(16)''.

2001—Subsecs. (b), (c), (f), (g). Pub. L. 107–103, § 601(b), inserted subsec. headings.

Subsec. (h). Pub. L. 107–103, § 601(a), added subsec. (h).

1999—Subsec. (a). Pub. L. 106–117, § 1031, inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Court of Appeals for Veterans Claims shall be composed of a chief judge and at least two and not more than six associate judges.''

Subsec. (d). Pub. L. 106–117, § 1032(a), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: ''The chief judge is the head of the Court''.

Subsec. (e). Pub. L. 106–117, § 1033, inserted heading and amended text of subsec. (e) generally. Prior to amendment, text read as follows:

''(e)(1) The chief judge of the Court shall receive a salary at the same rate as is received by judges of the United States Courts of Appeals.

''(2) Each judge of the Court, other than the chief judge, shall receive a salary at the same rate as is received by judges of the United States district courts.''

1998—Subsec. (a). Pub. L. 105–368, § 512(a)(1), substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

Subsec. (c). Pub. L. 105–368, § 512(a)(1), substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

Pub. L. 105–368, § 501, inserted at end ''A judge who is nominated by the President for appointment to an additional term on the Court without a break in service and whose term of office expires while that nomination is pending before the Senate may continue in office for up to 1 year while that nomination is pending.''

1992—Subsec. (g). Pub. L. 102–585 designated existing provisions as par. (1) and added pars. (2) and (3).

1991—Pub. L. 102–40 renumbered section 4053 of this title as this section.

Subsec. (g). Pub. L. 102–82 added subsec. (g).

1989—Subsec. (f)(1). Pub. L. 101–94 inserted ''or'' before ''engaging'' and substituted ''law'' for ''law, or physical or mental disability which, in the opinion of the President, prevents the proper execution of the judge's duties''.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–315, title II, § 204(b), Dec. 16, 2016, 130 Stat. 1550, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the selection of a chief judge occurring on or after January 1, 2020.''

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–260 effective on the date that is 180 days after Jan. 10, 2013, see section 302(c)(1) of Pub. L. 112–260, set out as a note under section 7255 of this title.

Pub. L. 112–260, title III, § 302(c)(2), Jan. 10, 2013, 126 Stat. 2426, provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to judges confirmed on or after January 1, 2012.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–117, title X, § 1036, Nov. 30, 1999, 113 Stat. 1595, provided that:

''(a) EFFECTIVE DATE.—The amendments made by this subtitle [subtitle C (§§ 1031–1036) of title X of Pub. L. 106–117, amending this section and sections 7254, 7281, 7296, and 7297 of this title] shall take effect on the date of the enactment of this Act [Nov. 30, 1999].

''(b) SAVINGS PROVISION FOR INCUMBENT CHIEF JUDGE.—The amendments made by this subtitle shall not apply while the individual who is chief judge of the Court [United States Court of Appeals for Veterans Claims] on the date of the enactment of this Act [Nov. 30, 1999] continues to serve as chief judge. If that individual, upon termination of service as chief judge, provides notice under section 7257 of title 38, United States Code, of availability for service in a recalled status, the rate of pay applicable to that individual under section 7296(c)(1)(A) of such title while serving in a recalled status shall be at the rate of pay applicable to that individual at the time of retirement, if greater than the rate otherwise applicable under that section.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 512(a)(1) of 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.

INITIAL APPOINTMENT OF JUDGES TO COURT OF VETERANS APPEALS

Section 302 of Pub. L. 100–687 prohibited President from appointing associate judges of the United States Court of Veterans Appeals under subsec. (b) of this section, until the chief judge of such Court has been appointed and that judges could be appointed after Feb. 1, 1989.

## § 7254. Organization

(a) The Court of Appeals for Veterans Claims shall have a seal which shall be judicially noticed.

(b) The Court may hear cases by judges sitting alone or in panels, as determined pursuant to procedures established by the Court. Any such panel shall have not less than three judges. The Court shall establish procedures for the assignment of the judges of the Court to such panels and for the designation of the chief of each such panel.

(c)(1) A majority of the judges of the Court shall constitute a quorum for the transaction of the business of the Court. A vacancy in the Court shall not impair the powers or affect the duties of the Court or of the remaining judges of the Court.

(2) A majority of the judges of a panel of the Court shall constitute a quorum for the transaction of the business of the panel. A vacancy in a panel of the Court shall not impair the powers or affect the duties of the panel or of the remaining judges of the panel.

(d) PRECEDENCE OF JUDGES.—The chief judge of the Court shall have precedence and preside at any session that the chief judge attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(e) Judges of the Court shall have the authority to administer oaths.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4114, § 4054; amended Pub. L. 101–94, title IV, § 402, Aug. 16, 1989, 103 Stat. 628; Pub. L. 101–237, title VI, § 602(b), Dec. 18, 1989, 103 Stat. 2095; renumbered § 7254, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, § 14(e)(4), June 13, 1991, 105 Stat. 287; Pub. L. 102–82, § 8(3), Aug. 6, 1991, 105 Stat. 377; Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 106–117, title X, § 1034, Nov. 30, 1999, 113 Stat. 1595.)

**Editorial Notes**

AMENDMENTS

1999—Subsec. (d). Pub. L. 106–117 inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: ''In the event of a vacancy in the position of chief judge of the Court, the associate judge senior in service on the Court shall serve as acting chief judge unless the President designates one of the other associate judges to serve as acting chief judge, in which case the judge so designated shall serve as acting chief judge.''

1998—Subsec. (a). Pub. L. 105–368 substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

1991—Pub. L. 102–40 renumbered section 4054 of this title as this section.

Subsecs. (d), (e). Pub. L. 102–54 amended section as in effect immediately before the enactment of Pub. L. 102–40, and Pub. L. 102–82 amended section, identically, by redesignating the second subsec. (d), relating to authority to administer oaths as, (e).

1989—Subsec. (d). Pub. L. 101–237 added subsec. (d) relating to authority to administer oaths.

Pub. L. 101–94 added subsec. (d) relating to acting chief judge in event of vacancy.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by 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.

## § 7255. Offices, duty stations, and residences

(a) PRINCIPAL OFFICE.—The principal office of the Court of Appeals for Veterans Claims shall be in the Washington, D.C., metropolitan area, but the Court may sit at any place within the United States.

(b) OFFICIAL DUTY STATIONS.—(1) Except as provided in paragraph (2), the official duty station of each judge while in active service shall be the principal office of the Court of Appeals for Veterans Claims.

(2) The place where a recall-eligible retired judge maintains the actual abode in which such judge customarily lives shall be considered the recall-eligible retired judge's official duty station.

(c) RESIDENCES.—(1) Except as provided in paragraph (2), after appointment and while in active service, each judge of the Court of Appeals for Veterans Claims shall reside within 50 miles of the Washington, D.C., metropolitan area.

(2) Paragraph (1) shall not apply to recall-eligible retired judges of the Court of Appeals for Veterans Claims.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4114, § 4055; renumbered § 7255, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 108–454, title VIII, § 801, Dec. 10, 2004, 118 Stat. 3625; Pub. L. 112–260, title III, § 302(a)(1), Jan. 10, 2013, 126 Stat. 2425.)

**Editorial Notes**

AMENDMENTS

2013—Pub. L. 112–260, which directed the general amendment of section 7255 without specifying the Code title to be amended, was executed by amending this section generally, to reflect the probable intent of Congress. Prior to amendment, text read as follows: "The principal office of the Court of Appeals for Veterans Claims shall be in the Washington, D.C., metropolitan area, but the Court may sit at any place within the United States."

2004—Pub. L. 108–454 substituted "Washington, D.C., metropolitan area" for "District of Columbia".

1998—Pub. L. 105–368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102–40 renumbered section 4055 of this title as this section.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–260, title III, § 302(c)(1), Jan. 10, 2013, 126 Stat. 2425, provided that: "Subsection (c) of section 7255 [probably means 38 U.S.C. 7255(c)], as added by subsection (a), and the amendment made by subsection (b) [amending section 7253 of this title] shall take effect on the date that is 180 days after the date of the enactment of this Act [Jan. 10, 2013]."

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.

FACILITIES FOR COURT OF APPEALS FOR VETERANS CLAIMS

Pub. L. 101–94, title II, § 201, Aug. 16, 1989, 103 Stat. 626, as amended by Pub. L. 105–368, title V, § 512(c), Nov. 11, 1998, 112 Stat. 3342, provided that:

"(a) SPACE IN THE DISTRICT OF COLUMBIA.—The Administrator of General Services shall provide suitable building space in the District of Columbia for the United States Court of Appeals for Veterans Claims as the Court's principal place of business. The Administrator shall, if necessary, arrange for temporary space for the Court if permanent space is not immediately available for the Court. The Administrator shall place a high priority on the provision of such temporary and permanent space for the Court.

"(b) APPROVAL BY COURT.—Any space to be provided for the Court of Appeals for Veterans Claims under subsection (a) must be acceptable to the Court.

"(c) ADDITIONAL REQUIREMENT.—Any building space provided to the Court under subsection (a) shall be adjacent to additional building space (in an amount acceptable to the Court) that can be made available to the Court in the future if needed for expansion of the facilities of the Court."

Pub. L. 100–687, div. A, title III, § 303, Nov. 18, 1988, 102 Stat. 4121, provided for the initial location of the principal office of the Court of Veterans Appeals.

## § 7256. Times and places of sessions

The times and places of sessions of the Court of Appeals for Veterans Claims shall be prescribed by the chief judge.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4115, § 4056; renumbered § 7256, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

**Editorial Notes**

AMENDMENTS

1998—Pub. L. 105–368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102–40 renumbered section 4056 of this title as this section.

**Statutory Notes and Related Subsidiaries**

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.

## § 7257. Recall of retired judges

(a)(1) A retired judge of the Court may be recalled for further service on the Court in accordance with this section. To be eligible to be re-

called for such service, a retired judge must at the time of the judge's retirement provide to the chief judge of the Court (or, in the case of the chief judge, to the clerk of the Court) notice in writing that the retired judge is available for further service on the Court in accordance with this section and is willing to be recalled under this section. Such a notice provided by a retired judge to whom section 7296(c)(1)(B) of this title applies is irrevocable.

(2) For the purposes of this section—

(A) a retired judge is a judge of the Court of Appeals for Veterans Claims who retires from the Court under section 7296 of this title or under chapter 83 or 84 of title 5; and

(B) a recall-eligible retired judge is a retired judge who has provided a notice under paragraph (1).

(b)(1) The chief judge may recall for further service on the Court a recall-eligible retired judge in accordance with this section. Such a recall shall be made upon written certification by the chief judge that substantial service is expected to be performed by the retired judge for such period, not to exceed 90 days (or the equivalent), as determined by the chief judge to be necessary to meet the needs of the Court.

(2) A recall-eligible retired judge may not be recalled for more than 90 days (or the equivalent) during any calendar year without the judge's consent.

(3) If a recall-eligible retired judge is recalled by the chief judge in accordance with this section and (other than in the case of a judge who has previously during that calendar year served at least 90 days (or the equivalent) of recalled service on the court) declines (other than by reason of disability) to perform the service to which recalled, the chief judge shall remove that retired judge from the status of a recall-eligible judge. This paragraph shall not apply to a judge to whom section 7296(c)(1)(A) or 7296(c)(1)(B) of this title applies and who has, in the aggregate, served at least five years of recalled service on the Court under this section.

(4) A recall-eligible retired judge who becomes permanently disabled and as a result of that disability is unable to perform further service on the Court shall be removed from the status of a recall-eligible judge. Determination of such a disability shall be made pursuant to section 7253(g) or 7296(g) of this title.

(c) A retired judge who is recalled under this section may exercise all of the judicial powers and duties of the office of a judge in active service.

(d)(1) The pay of a recall-eligible retired judge to whom section 7296(c)(1)(B) of this title applies is the pay specified in that section.

(2) A judge who is recalled under this section who retired under chapter 83 or 84 of title 5 or to whom section 7296(c)(1)(A) of this title applies shall be paid, during the period for which the judge serves in recall status, pay at the rate of pay in effect under section 7253(e) of this title for a judge performing active service, less the amount of the judge's annuity under the applicable provisions of chapter 83 or 84 of title 5 or the judge's annuity under section 7296(c)(1)(A) of this title, whichever is applicable.

(e)(1) Except as provided in subsection (d), a judge who is recalled under this section who retired under chapter 83 or 84 of title 5 shall be considered to be a reemployed annuitant under that chapter.

(2) Nothing in this section affects the right of a judge who retired under chapter 83 or 84 of title 5 to serve as a reemployed annuitant in accordance with the provisions of title 5.

(Added Pub. L. 106–117, title X, § 1021(a), Nov. 30, 1999, 113 Stat. 1590; amended Pub. L. 110–389, title VI, § 603(a), (b)(3)–(c), Oct. 10, 2008, 122 Stat. 4177, 4178.)

**Editorial Notes**

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–389, § 603(b)(4), amended last sentence generally. Prior to amendment, last sentence read as follows: ''Such a notice provided by a retired judge is irrevocable.''

Subsec. (b)(2). Pub. L. 110–389, § 603(a), struck out ''or for more than a total of 180 days (or the equivalent) during any calendar year'' before period at end.

Subsec. (b)(3). Pub. L. 110–389, § 603(c), inserted at end ''This paragraph shall not apply to a judge to whom section 7296(c)(1)(A) or 7296(c)(1)(B) of this title applies and who has, in the aggregate, served at least five years of recalled service on the Court under this section.''

Subsec. (d). Pub. L. 110–389, § 603(b)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(d)(1) The pay of a recall-eligible retired judge who retired under section 7296 of this title is specified in subsection (c) of that section.

''(2) A judge who is recalled under this section who retired under chapter 83 or 84 of title 5 shall be paid, during the period for which the judge serves in recall status, pay at the rate of pay in effect under section 7253(e) of this title for a judge performing active service, less the amount of the judge's annuity under the applicable provisions of chapter 83 or 84 of title 5.''

## SUBCHAPTER II—PROCEDURE

### § 7261. Scope of review

(a) In any action brought under this chapter, the Court of Appeals for Veterans Claims, to the extent necessary to its decision and when presented, shall—

(1) decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions, and determine the meaning or applicability of the terms of an action of the Secretary;

(2) compel action of the Secretary unlawfully withheld or unreasonably delayed;

(3) hold unlawful and set aside decisions, findings (other than those described in clause (4) of this subsection), conclusions, rules, and regulations issued or adopted by the Secretary, the Board of Veterans' Appeals, or the Chairman of the Board found 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; and

(4) in the case of a finding of material fact adverse to the claimant made in reaching a de-

cision in a case before the Department with respect to benefits under laws administered by the Secretary, hold unlawful and set aside or reverse such finding if the finding is clearly erroneous.

(b) In making the determinations under subsection (a), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title and shall—

(1) take due account of the Secretary's application of section 5107(b) of this title; and

(2) take due account of the rule of prejudicial error.

(c) In no event shall findings of fact made by the Secretary or the Board of Veterans' Appeals be subject to trial de novo by the Court.

(d) When a final decision of the Board of Veterans' Appeals is adverse to a party and the sole stated basis for such decision is the failure of the party to comply with any applicable regulation prescribed by the Secretary, the Court shall review only questions raised as to compliance with and the validity of the regulation.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4115, § 4061; amended Pub. L. 101–237, title VI, § 602(c), Dec. 18, 1989, 103 Stat. 2095; renumbered § 7261, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–54, § 14(e)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102–83, § 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107–330, title IV, § 401(a), (b), Dec. 6, 2002, 116 Stat. 2832.)

**Editorial Notes**

AMENDMENTS

2002—Subsec. (a)(4). Pub. L. 107–330, § 401(a), inserted "adverse to the claimant" after "material fact" and "or reverse" after "and set aside".

Subsec. (b). Pub. L. 107–330, § 401(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "In making the determinations under subsection (a) of this section, the Court shall take due account of the rule of prejudicial error."

1998—Subsec. (a). Pub. L. 105–368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals" in introductory provisions.

1991—Pub. L. 102–40 renumbered section 4061 of this title as this section.

Subsec. (a)(1) to (3). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (a)(4). Pub. L. 102–83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102–83, § 4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (c). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102–54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102–40 by substituting "Court" for "court".

Subsec. (d). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

1989—Subsec. (a)(2). Pub. L. 101–237 inserted "or unreasonably delayed" after "withheld".

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–330, title IV, § 401(c), Dec. 6, 2002, 116 Stat. 2832, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 6, 2002].

"(2) The amendments made by this section shall apply with respect to any case pending for decision before the United States Court of Appeals for Veterans Claims other than a case in which a decision has been entered before the date of the enactment of this Act."

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.

## § 7262. Fee for filing appeals

(a) The Court of Appeals for Veterans Claims may impose a fee of not more than $50 for the filing of any appeal with the Court. The Court shall establish procedures under which such a fee may be waived in the case of an appeal filed by or on behalf of a person who demonstrates that the requirement that such fee be paid will impose a hardship on that person. A decision as to such a waiver is final and may not be reviewed in any other court.

(b) The Court may from time to time adjust the maximum amount permitted for a fee imposed under subsection (a) of this section based upon inflation and similar fees charged by other courts established under Article I of the Constitution.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4115, § 4062; renumbered § 7262, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

**Editorial Notes**

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–368 substituted "Court of Appeals for Veterans Claims" for "Court of Veterans Appeals".

1991—Pub. L. 102–40 renumbered section 4062 of this title as this section.

**Statutory Notes and Related Subsidiaries**

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.

## § 7263. Representation of parties; fee agreements

(a) The Secretary shall be represented before the Court of Appeals for Veterans Claims by the General Counsel of the Department.

(b) Representation of appellants shall be in accordance with the rules of practice prescribed by the Court under section 7264 of this title. In addition to members of the bar admitted to practice before the Court in accordance with such rules of practice, the Court may allow other persons to practice before the Court who meet standards of proficiency prescribed in such rules of practice.

(c) A person who represents an appellant before the Court shall file a copy of any fee agreement between the appellant and that person

with the Court at the time the appeal is filed. The Court, on its own motion or the motion of any party, may review such a fee agreement.

(d) In reviewing a fee agreement under subsection (c) of this section or under section 5904(c)(2) of this title, the Court may affirm the finding or order of the Board and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable. An order of the Court under this subsection is final and may not be reviewed in any other court.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4116, § 4063; renumbered § 7263 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

**Editorial Notes**

AMENDMENTS

1998—Subsec. (a). 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 4063 of this title as this section.

Subsec. (a). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator''.

Pub. L. 102–83, § 4(a)(3), (4), substituted ''Department'' for ''Veterans' Administration''.

Subsec. (b). Pub. L. 102–40, § 402(d)(1), substituted ''7264'' for ''4064''.

Subsec. (d). Pub. L. 102–40, § 402(d)(1), substituted ''5904(c)(2)'' for ''3404(c)(2)''.

**Statutory Notes and Related Subsidiaries**

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.

## § 7264. Rules of practice and procedure

(a) The proceedings of the Court of Appeals for Veterans Claims shall be conducted in accordance with such rules of practice and procedure as the Court prescribes.

(b) The mailing of a pleading, decision, order, notice, or process in respect of proceedings before the Court shall be held sufficient service of such pleading, decision, order, notice, or process if it is properly addressed to the address furnished by the appellant on the notice of appeal filed under section 7266 of this title.

(c) Section 455 of title 28 shall apply to judges and proceedings of the Court.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4116, § 4064; renumbered § 7264 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–82, § 4, Aug. 6, 1991, 105 Stat. 376; Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

**Editorial Notes**

AMENDMENTS

1998—Subsec. (a). 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 4064 of this title as this section.

Subsec. (b). Pub. L. 102–40, § 402(d)(1), substituted ''7266'' for ''4066''.

Subsec. (c). Pub. L. 102–82 added subsec. (c).

**Statutory Notes and Related Subsidiaries**

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.

INTERIM RULES OF COURT OF VETERANS APPEALS

Pub. L. 101–94, title II, § 203, Aug. 16, 1989, 103 Stat. 627, provided that the Federal Rules of Appellate Procedure (28 U.S.C. App.) would be interim rules of United States Court of Veterans Appeals unless otherwise provided by the Court in accordance with this chapter, and if there was a conflict between a provision of Federal Rules of Appellate Procedure and procedures set forth in this chapter, procedures set forth in this chapter would apply.

## § 7265. Contempt authority; assistance to the Court

(a) The Court shall have power to punish by fine or imprisonment such contempt of its authority as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(b) The Court shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for a district in which the Court is sitting shall, if requested by the chief judge of the Court, attend any session of the Court in that district.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4116, § 4065; renumbered § 7265, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

**Editorial Notes**

AMENDMENTS

1991—Pub. L. 102–40 renumbered section 4065 of this title as this section.

## § 7266. Notice of appeal

(a) In order to obtain review by the Court of Appeals for Veterans Claims of a final decision of the Board of Veterans' Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is issued pursuant to section 7104(e) of this title.

(b) An appellant shall file a notice of appeal under this section by delivering or mailing the notice to the Court.

(c) A notice of appeal shall be deemed to be received by the Court as follows:

(1) On the date of receipt by the Court, if the notice is delivered.

(2) On the date of the United States Postal Service postmark stamped on the cover in

which the notice is posted, if the notice is properly addressed to the Court and is mailed.

(d) For a notice of appeal mailed to the Court to be deemed to be received under subsection (c)(2) on a particular date, the United States Postal Service postmark on the cover in which the notice is posted must be legible. The Court shall determine the legibility of any such postmark and the Court's determination as to legibility shall be final and not subject to review by any other Court.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4116, § 4066; renumbered § 7266 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 103–446, title V, § 511(a), Nov. 2, 1994, 108 Stat. 4670; Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107–103, title V, § 507, Dec. 27, 2001, 115 Stat. 997; Pub. L. 117–168, title VIII, § 807(a)(8), Aug. 10, 2022, 136 Stat. 1806.)

**Editorial Notes**

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–168 substituted ''issued'' for ''mailed''.

2001—Pub. L. 107–103 struck out ''(1)'' before ''In order to'', redesignated par. (2) of subsec. (a) as subsec. (b), redesignated par. (3) of subsec. (a) as subsec. (c) and subpars. (A) and (B) thereof as pars. (1) and (2), respectively, redesignated par. (4) of subsec. (a) as subsec. (d) and substituted ''subsection (c)(2)'' for ''paragraph (3)(B)'', and struck out former subsec. (b) which read as follows: ''The appellant shall also furnish the Secretary with a copy of such notice, but a failure to do so shall not constitute a failure of timely compliance with subsection (a) of this section.''

1998—Subsec. (a)(1). Pub. L. 105–368 substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

1994—Subsec. (a). Pub. L. 103–446 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In order to obtain review by the Court of Veterans Appeals of a final decision of the Board of Veterans' Appeals, a person adversely affected by that action must file a notice of appeal with the Court. Any such notice must be filed within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.''

1991—Pub. L. 102–40, § 402(b)(1), renumbered section 4066 of this title as this section.

Subsec. (a). Pub. L. 102–40, § 402(d)(1), substituted ''7104(e)'' for ''4004(e)''.

Subsec. (b). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator''.

**Statutory Notes and Related Subsidiaries**

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 1994 AMENDMENT

Pub. L. 103–446, title V, § 511(b), Nov. 2, 1994, 108 Stat. 4670, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 2, 1994] and shall apply to notices of appeal that are delivered or mailed to the United States Court of Veterans Appeals [now United States Court of Appeals for Veterans Claims] on or after that date.''

RULE OF CONSTRUCTION

Amendment by Pub. L. 117–168 not to be construed to apply section 5104(a) of this title to decisions of the Board of Veterans' Appeals under chapter 71 of this title, see section 807(b) of Pub. L. 117–168, set out as a note under section 5100 of this title.

INTERIM PROVISION FOR FILING NOTICES OF APPEAL

Pub. L. 101–94, title II, § 202, Aug. 16, 1989, 103 Stat. 626, provided that in the case of a person adversely affected by a final decision of the Board of Veterans' Appeals that was made before the date on which the United States Court of Veterans Appeals published in the Federal Register a notice by the Court that it had commenced operations, the period prescribed under this section within which a notice of appeal had to be filed with the Court was to be extended to the end of the 30-day period beginning on the date such notice was published, if the end of that period was later than the date that would otherwise be applicable under this section.

## § 7267. Decisions

(a) A decision upon a proceeding before the Court of Appeals for Veterans Claims shall be made as quickly as practicable. In a case heard by a panel of the Court, the decision shall be made by a majority vote of the panel in accordance with the rules of the Court. The decision of the judge or panel hearing the case so made shall be the decision of the Court.

(b) A judge or panel shall make a determination upon any proceeding before the Court, and any motion in connection with such a proceeding, that is assigned to the judge or panel. The judge or panel shall make a report of any such determination which constitutes the judge or panel's final disposition of the proceeding.

(c) The Court shall designate in its decision in any case those specific records of the Government on which it relied (if any) in making its decision. The Secretary shall preserve records so designated for not less than the period of time designated by the Archivist of the United States.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4117, § 4067; renumbered § 7267, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–82, §§ 1, 8(1), Aug. 6, 1991, 105 Stat. 375, 377; Pub. L. 102–83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

**Editorial Notes**

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–368 substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

1991—Pub. L. 102–40 renumbered section 4067 of this title as this section.

Subsec. (a). Pub. L. 102–82, § 1(3), struck out before period at end ''except as provided in subsection (d) of this section''.

Subsec. (b). Pub. L. 102–82, § 1(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''The Court shall include in its decision a statement of its conclusions of law and determinations as to factual matters.''

Subsec. (c). Pub. L. 102–83 substituted ''Secretary'' for ''Administrator''.

Pub. L. 102–82, § 8(1), substituted ''Archivist of the United States'' for ''Administrator of the National Archives and Records Administration''.

Pub. L. 102–82, § 1(2), redesignated subsec. (e) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 102–82, § 1(1), struck out subsec. (d) which read as follows:

''(1) In the case of a proceeding determined by a single judge of the Court, the decision of the judge shall become the decision of the Court unless before the end of the 30-day period beginning on the date of the decision by the judge the Court, upon the motion of either party or on its own initiative, directs that the decision be reviewed by a panel of the Court. In such a case, the decision of the judge initially deciding the case shall not be a part of the record.

''(2) In the case of a proceeding determined by a panel of the Court, the decision of the panel shall become the decision of the Court unless before the end of the 30-day period beginning on the date of the decision by the panel the Court, upon the motion of either party or on its own initiative, directs that the decision be reviewed by an expanded panel of the Court (or the Court en banc). In such a case, the decision of the panel initially deciding the case shall not be a part of the record.''

Subsec. (e). Pub. L. 102–82, § 1(2), redesignated subsec. (e) as (c).

**Statutory Notes and Related Subsidiaries**

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.

## § 7268. Availability of proceedings

(a) Except as provided in subsection (b) of this section, all decisions of the Court of Appeals for Veterans Claims and all briefs, motions, documents, and exhibits received by the Court (including a transcript of the stenographic report of the hearings) shall be public records open to the inspection of the public.

(b)(1) The Court may make any provision which is necessary to prevent the disclosure of confidential information, including a provision that any such document or information be placed under seal to be opened only as directed by the Court.

(2) After the decision of the Court in a proceeding becomes final, the Court may, upon motion of the appellant or the Secretary, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, submitted to the Court or the Court may, on its own motion, make such other disposition thereof as it considers advisable.

(c)(1) The Court shall prescribe rules, in accordance with section 7264(a) of this title, to protect privacy and security concerns relating to all filing of documents and the public availability under this subsection of documents retained by the Court or filed electronically with the Court.

(2) The rules prescribed under paragraph (1) shall be consistent to the extent practicable with rules addressing privacy and security issues throughout the Federal courts.

(3) The rules prescribed under paragraph (1) shall take into consideration best practices in Federal and State courts to protect private information or otherwise maintain necessary information security.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4117, § 4068; renumbered § 7268, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102–82, § 8(2), Aug. 6, 1991, 105 Stat. 377; Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 110–389, title VI, § 602, Oct. 10, 2008, 122 Stat. 4177.)

**Editorial Notes**

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–389 added subsec. (c).

1998—Subsec. (a). Pub. L. 105–368 substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

1991—Pub. L. 102–40 renumbered section 4068 of this title as this section.

Subsec. (b)(2). Pub. L. 102–82 substituted ''may, upon motion of the appellant or the Secretary,'' for ''shall'' and ''or the Court'' for ''before the Court''.

**Statutory Notes and Related Subsidiaries**

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.

## § 7269. Publication of decisions

(a) The Court of Appeals for Veterans Claims shall provide for the publication of decisions of the Court in such form and manner as may be best adapted for public information and use. The Court may make such exceptions, or may authorize the chief judge to make such exceptions, to the requirement for publication in the preceding sentence as may be appropriate.

(b) Such authorized publication shall be competent evidence of the decisions of the Court of Appeals for Veterans Claims therein contained in all courts of the United States and of the several States without any further proof or authentication thereof.

(c) Such publications shall be subject to sale in the same manner and upon the same terms as other public documents.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4118, § 4069; renumbered § 7269, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

**Editorial Notes**

AMENDMENTS

1998—Subsecs. (a), (b). Pub. L. 105–368 substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

1991—Pub. L. 102–40 renumbered section 4069 of this title as this section.

**Statutory Notes and Related Subsidiaries**

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.

# SUBCHAPTER III—MISCELLANEOUS PROVISIONS

## § 7281. Employees

(a) The Court of Appeals for Veterans Claims may appoint a clerk without regard to the pro-

visions of title 5 governing appointments in the competitive service. The clerk shall serve at the pleasure of the Court.

(b) The judges of the Court may appoint law clerks and secretaries, in such numbers as the Court may approve, without regard to the provisions of title 5 governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

(c) The clerk, with the approval of the Court, may appoint necessary deputies and employees without regard to the provisions of title 5 governing appointments in the competitive service.

(d) The Court may fix and adjust the rates of basic pay for the clerk and other employees of the Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5. To the maximum extent feasible, the Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

(e) In making appointments under subsections (a) through (c) of this section, preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

(f) The Court may procure the services of experts and consultants under section 3109 of title 5.

(g) The chief judge of the Court may exercise the authority of the Court under this section whenever there are not at least two other judges of the Court.

(h) The Court shall not be considered to be an agency within the meaning of section 3132(a)(1) of title 5.

(i) The Court may accept and utilize voluntary services and uncompensated (gratuitous) services, including services as authorized by section 3102(b) of title 5 and may accept, hold, administer, and utilize gifts and bequests of personal property for the purposes of aiding or facilitating the work of the Court. Gifts or bequests of money to the Court shall be covered into the Treasury.

(j) For purposes of chapter 87 of title 5, a judge who is in regular active service and a judge who is retired under section 7296 of this title or under chapter 83 or 84 of title 5 shall be treated as an employee described in section 8701(a)(5) of title 5.

(k) Notwithstanding any other provision of law, the Court may pay on behalf of its judges, who are age 65 or older, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the chief judge of the Court in a manner consistent with such payment authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4118, § 4081; amended Pub. L. 101–94, title II, § 204(a), Aug. 16, 1989, 103 Stat. 627; renumbered § 7281, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–82, § 7, Aug. 6, 1991, 105 Stat. 377; Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 106–117, title X, § 1035(1), Nov. 30, 1999, 113 Stat. 1595; Pub. L. 114–315, title II, § 202(a), Dec. 16, 2016, 130 Stat. 1549.)

**Editorial Notes**

REFERENCES IN TEXT

The provisions of title 5 governing appointment in the competitive service, referred to in subsecs. (a) to (c), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

2016—Subsecs. (j), (k). Pub. L. 114–315 added subsecs. (j) and (k).

1999—Subsec. (g). Pub. L. 106–117 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The Chief Judge of the Court may exercise the authority of the Court under this section whenever there are not at least two associate judges of the Court.''

1998—Subsec. (a). Pub. L. 105–368 substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

1991—Pub. L. 102–40 renumbered section 4081 of this title as this section.

Subsec. (i). Pub. L. 102–82 added subsec. (i).

1989—Pub. L. 101–94 amended section generally. Prior to amendment, section read as follows: ''The Court of Veterans Appeals may appoint such employees as may be necessary to execute the functions vested in the Court. Such appointments shall be made in accordance with the provisions of title 5 governing appointment in the competitive service, except that the Court may classify such positions based upon the classification of comparable positions in the judicial branch. The basic pay of such employees shall be fixed in accordance with subchapter III of chapter 53 of title 5.''

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–315, title II, § 202(b), Dec. 16, 2016, 130 Stat. 1549, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any payment made on or after the first day of the first applicable pay period beginning on or after the date of the enactment of this Act [Dec. 16, 2016].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–94, title II, § 204(c), Aug. 16, 1989, 103 Stat. 627, provided that: ''Notwithstanding section 401 of the Veterans' Judicial Review Act [Pub. L. 100–687, set out as an Effective Date note under section 7251 of this title], the authority provided by section 4081 [now 7281] of title 38, United States Code, as amended by subsection (a), shall take effect on the date of the enactment of this Act [Aug. 16, 1989].''

LIMITATION ON CONVERSION OF EMPLOYEES TO COMPETITIVE SERVICE

Pub. L. 101–94, title II, § 204(b), Aug. 16, 1989, 103 Stat. 627, as amended by Pub. L. 105–368, title V, § 512(c), Nov. 11, 1998, 112 Stat. 3342, provided that: ''Notwithstanding clause (1)(A) of the proviso under the heading 'Court of Veterans Appeals' in chapter XI of [title I of] Public Law 101–45 [formerly set out below], no employee of the United States Court of Appeals for Veterans Claims

may be converted to the competitive service without the approval of the Court.''

APPOINTMENT OF EMPLOYEES ELIGIBLE FOR NONCOMPETITIVE CONVERSION TO POSITION IN COMPETITIVE SERVICE; PROCUREMENT OF EXPERTS AND CONSULTANTS

Pub. L. 101–45, title I, June 30, 1989, 103 Stat. 113, authorized United States Court of Veterans Appeals, during fiscal year 1989, to appoint not to exceed 35 employees to positions in competitive service if certain requirements were met and to procure services of experts and consultants.

## § 7282. Budget and expenditures

(a) The budget of the Court of Appeals for Veterans Claims as submitted by the Court for inclusion in the budget of the President for any fiscal year shall be included in that budget without review within the executive branch.

(b) The Court may make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals) as may be necessary to execute efficiently the functions vested in the Court.

(c) All expenditures of the Court shall be allowed and paid upon presentation of itemized vouchers signed by the certifying officer designated by the chief judge. Except as provided in section 7285 of this title, all such expenditures shall be paid out of moneys appropriated for purposes of the Court.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4118, § 4082; renumbered § 7282 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

### Editorial Notes

AMENDMENTS

1998—Subsec. (a). 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 4082 of this title as this section.

Subsec. (c). Pub. L. 102–40, § 402(d)(1), substituted ''7285'' for ''4085''.

### Statutory Notes and Related Subsidiaries

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.

## § 7283. Disposition of fees

Except for amounts received pursuant to section 7285 of this title, all fees received by the Court of Appeals for Veterans Claims shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4118, § 4083; renumbered § 7283 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

### Editorial Notes

AMENDMENTS

1998—Pub. L. 105–368 substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

1991—Pub. L. 102–40 renumbered section 4083 of this title as this section and substituted ''7285'' for ''4085''.

### Statutory Notes and Related Subsidiaries

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.

## § 7284. Fee for transcript of record

The Court of Appeals for Veterans Claims may fix a fee, not in excess of the fee authorized by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record of any proceeding before the Court, or for copying any record, entry, or other paper and the comparison and certification thereof.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4118, § 4084; renumbered § 7284, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341.)

### Editorial Notes

AMENDMENTS

1998—Pub. L. 105–368 substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

1991—Pub. L. 102–40 renumbered section 4084 of this title as this section.

### Statutory Notes and Related Subsidiaries

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.

## § 7285. Practice and registration fees

(a) The Court of Appeals for Veterans Claims may impose a reasonable periodic registration fee on persons admitted to practice before the Court. The frequency and amount of such fee shall be determined by the Court. The Court may also impose a reasonable registration fee on persons (other than judges of the Court) participating at judicial conferences convened pursuant to section 7286 of this title or in any other court-sponsored activity.

(b) Amounts received by the Court under subsection (a) of this section shall be available to the Court for the following purposes:

(1) Conducting investigations and proceedings, including employing independent counsel, to pursue disciplinary matters.

(2) Defraying the expenses of—

(A) judicial conferences convened pursuant to section 7286 of this title; and

(B) other activities and programs of the Court that are intended to support and foster communication and relationships between the Court and persons practicing before the Court or the study, understanding,

public commemoration, or improvement of veterans law or of the work of the Court.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4119, § 4085; renumbered § 7285, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 105–368, title V, § 512(a)(1), Nov. 11, 1998, 112 Stat. 3341; Pub. L. 107–103, title VI, § 604(a)–(c)(1), Dec. 27, 2001, 115 Stat. 999; Pub. L. 110–389, title VI, § 605, Oct. 10, 2008, 122 Stat. 4179.)

**Editorial Notes**

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–389 inserted ''reasonable'' after ''impose a'' in two places and struck out '', except that such amount may not exceed $30 per year'' after ''by the Court''.

2001—Pub. L. 107–103, § 604(c)(1), substituted ''Practice and registration fees'' for ''Practice fee'' in section catchline.

Subsec. (a). Pub. L. 107–103, § 604(a), inserted at end ''The Court may also impose a registration fee on persons (other than judges of the Court) participating at judicial conferences convened pursuant to section 7286 of this title or in any other court-sponsored activity.''

Subsec. (b). Pub. L. 107–103, § 604(b), substituted ''for the following purposes:'' and pars. (1) and (2) for ''for the purposes of (1) employing independent counsel to pursue disciplinary matters, and (2) defraying administrative costs for the implementation of the standards of proficiency prescribed for practice before the Court.''

1998—Subsec. (a). Pub. L. 105–368 substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

1991—Pub. L. 102–40 renumbered section 4085 of this title as this section.

**Statutory Notes and Related Subsidiaries**

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.

## § 7286. Judicial Conference of the Court

The Chief Judge of the Court of Appeals for Veterans Claims may summon the judges of the Court to an annual judicial conference, at a time and place that the Chief Judge designates, for the purpose of considering the business of the Court and recommending means of improving the administration of justice within the Court's jurisdiction. The Court shall provide by its rules for representation and active participation at such conference by persons admitted to practice before the Court and by other persons active in the legal profession.

(Added Pub. L. 102–82, § 2(a), Aug. 6, 1991, 105 Stat. 375; amended Pub. L. 105–368, title V, § 512(a)(1), (2)(A), Nov. 11, 1998, 112 Stat. 3341.)

**Editorial Notes**

AMENDMENTS

1998—Pub. L. 105–368 struck out ''of Veterans Appeals'' after ''Court'' in section catchline and substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals'' in text.

**Statutory Notes and Related Subsidiaries**

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.

## § 7287. Administration

Notwithstanding any other provision of law, the Court of Appeals for Veterans Claims may exercise, for purposes of management, administration, and expenditure of funds of the Court, the authorities provided for such purposes by any provision of law (including any limitation with respect to such provision of law) applicable to a court of the United States (as that term is defined in section 451 of title 28), except to the extent that such provision of law is inconsistent with a provision of this chapter.

(Added Pub. L. 107–103, title VI, § 605(a), Dec. 27, 2001, 115 Stat. 1000.)

## § 7288. Annual report

(a) IN GENERAL.—The chief judge of the Court shall submit to the appropriate committees of Congress each year a report summarizing the workload of the Court for the fiscal year ending during the preceding year.

(b) ELEMENTS.—Each report under subsection (a) shall include, with respect to the fiscal year covered by such report, the following information:

(1) The number of appeals filed with the Court.

(2) The number of petitions filed with the Court.

(3) The number of applications filed with the Court under section 2412 of title 28.

(4) The total number of dispositions by each of the following:

(A) The Court as a whole.

(B) The Clerk of the Court.

(C) A single judge of the Court.

(D) A multi-judge panel of the Court.

(E) The full Court.

(5) The number of each type of disposition by the Court, including settlement, affirmation, remand, vacation, dismissal, reversal, grant, and denial.

(6) The median time from filing an appeal to disposition by each of the following:

(A) The Court as a whole.

(B) The Clerk of the Court.

(C) A single judge of the Court.

(D) Multiple judges of the Court (including a multi-judge panel of the Court or the full Court).

(7) The median time from filing a petition to disposition by the Court.

(8) The median time from filing an application under section 2412 of title 28 to disposition by the Court.

(9) The median time from the completion of briefing requirements by the parties to disposition by the Court.

(10) The number of oral arguments before the Court.

(11) The number of cases appealed to the United States Court of Appeals for the Federal Circuit.

(12) The number and status of appeals and petitions pending with the Court and of applications described in paragraph (3) as of the end of such fiscal year.

(13) The number of cases pending with the Court more than 18 months as of the end of such fiscal year.

(14) A summary of any service performed for the Court by a recalled retired judge of the Court.

(15) An assessment of the workload of each judge of the Court, including consideration of the following:

(A) The time required of each judge for disposition of each type of case.

(B) The number of cases reviewed by the Court.

(C) The average workload of other Federal judges.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Veterans' Affairs of the Senate; and

(2) the Committee on Veterans' Affairs of the House of Representatives.

(Added Pub. L. 110–389, title VI, § 604(a), Oct. 10, 2008, 122 Stat. 4178.)

SUBCHAPTER IV—DECISIONS AND REVIEW

**§ 7291. Date when Court decision becomes final**

(a) A decision of the United States Court of Appeals for Veterans Claims shall become final upon the expiration of the time allowed for filing, under section 7292 of this title, a notice of appeal from such decision, if no such notice is duly filed within such time. If such a notice is filed within such time, such a decision shall become final—

(1) upon the expiration of the time allowed for filing a petition for certiorari with the Supreme Court of the United States, if the decision of the Court of Appeals for Veterans Claims is affirmed or the appeal is dismissed by the United States Court of Appeals for the Federal Circuit and no petition for certiorari is duly filed;

(2) upon the denial of a petition for certiorari, if the decision of the Court of Appeals for Veterans Claims is affirmed or the appeal is dismissed by the United States Court of Appeals for the Federal Circuit; or

(3) upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if that Court directs that the decision of the Court of Appeals for Veterans Claims be affirmed or the appeal dismissed.

(b)(1) If the Supreme Court directs that the decision of the Court of Appeals for Veterans Claims be modified or reversed, the decision of the Court of Appeals for Veterans Claims rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Secretary or the petitioner has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Court of Appeals for Veterans Claims shall become final when so corrected.

(2) If the decision of the Court of Appeals for Veterans Claims is modified or reversed by the United States Court of Appeals for the Federal Circuit and if—

(A) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) the petition for certiorari has been denied, or

(C) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court,

then the decision of the Court of Appeals for Veterans Claims rendered in accordance with the mandate of the United States Court of Appeals for the Federal Circuit shall become final upon the expiration of 30 days from the time such decision of the Court of Appeals for Veterans Claims was rendered, unless within such 30 days either the Secretary or the petitioner has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Court of Appeals for Veterans Claims shall become final when so corrected.

(c) If the Supreme Court orders a rehearing, or if the case is remanded by the United States Court of Appeals for the Federal Circuit to the Court of Appeals for Veterans Claims for a rehearing, and if—

(1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(2) the petition for certiorari has been denied, or

(3) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court,

then the decision of the Court of Appeals for Veterans Claims rendered upon such rehearing shall become final in the same manner as though no prior decision of the Court of Appeals for Veterans Claims had been rendered.

(d) As used in this section, the term ''mandate'', in case a mandate has been recalled before the expiration of 30 days from the date of issuance thereof, means the final mandate.

(Added Pub. L. 100–687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4119, § 4091; renumbered § 7291 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 105–368, title V, § 512(a)(1), (2)(B), Nov. 11, 1998, 112 Stat. 3341.)

**Editorial Notes**

AMENDMENTS

1998—Pub. L. 105–368, § 512(a)(2)(B), substituted ''Court decision'' for ''United States Court of Veterans Appeals decision'' in section catchline.

Subsecs. (a) to (c). Pub. L. 105–368, § 512(a)(1), substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals'' wherever appearing.

1991—Pub. L. 102–40, § 402(b)(1), renumbered section 4091 of this title as this section.

Subsec. (a). Pub. L. 102–40, § 402(d)(1), substituted ''7292'' for ''4092'' in introductory provisions.

Subsec. (b). Pub. L. 102–83 substituted ''Secretary'' for ''Administrator'' in pars. (1) and (2).

**Statutory Notes and Related Subsidiaries**

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.

### § 7292. Review by United States Court of Appeals for the Federal Circuit

(a) After a decision of the United States Court of Appeals for Veterans Claims is entered in a case, any party to the case may obtain a review of the decision with respect to the validity of a decision of the Court on a rule of law or of any statute or regulation (other than a refusal to review the schedule of ratings for disabilities adopted under section 1155 of this title) or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the Court in making the decision. Such a review shall be obtained by filing a notice of appeal with the Court of Appeals for Veterans Claims within the time and in the manner prescribed for appeal to United States courts of appeals from United States district courts.

(b)(1) When a judge or panel of the Court of Appeals for Veterans Claims, in making an order not otherwise appealable under this section, determines that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that there is in fact a disagreement between the appellant and the Secretary with respect to that question of law and that the ultimate termination of the case may be materially advanced by the immediate consideration of that question, the judge or panel shall notify the chief judge of that determination. Upon receiving such a notification, the chief judge shall certify that such a question is presented, and any party to the case may then petition the Court of Appeals for the Federal Circuit to decide the question. That court may permit an interlocutory appeal to be taken on that question if such a petition is filed with it within 10 days after the certification by the chief judge of the Court of Appeals for Veterans Claims. Neither the application for, nor the granting of, an appeal under this paragraph shall stay proceedings in the Court of Appeals for Veterans Claims, unless a stay is ordered by a judge of the Court of Appeals for Veterans Claims or by the Court of Appeals for the Federal Circuit.

(2) For purposes of subsections (d) and (e) of this section, an order described in this paragraph shall be treated as a decision of the Court of Appeals for Veterans Claims.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof brought under this section, and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision. The judgment of such court shall be final subject to review by the Supreme Court upon certiorari, in the manner provided in section 1254 of title 28.

(d)(1) The Court of Appeals for the Federal Circuit shall decide all relevant questions of law, 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.)

#### Editorial Notes

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".

#### Statutory Notes and Related Subsidiaries

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 en-

actment 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 section;

(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.)

### Editorial Notes

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 subsecs. (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).

### Statutory Notes and Related Subsidiaries

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 retirement 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 deduc-

tion 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 section), for the last 18 months of which the salary deductions provided for by subsection (c) of this section or the deposits required by subsection (d) of this section have actually been made (and not withdrawn) or the salary deductions required by the civil service retirement laws have actually been made (and not withdrawn)—

(A) if the judge is survived by a surviving spouse but not by a dependent child, there shall be paid to the surviving spouse an annuity beginning with the day of the death of the judge, in an amount computed as provided in subsection (k) of this section; or

(B) if the judge is survived by a surviving spouse and a dependent child or children, there shall be paid to the surviving spouse an immediate annuity in an amount computed as provided in subsection (k) of this section and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

(i) 10 percent of the average annual pay of such judge (determined in accordance with subsection (k) of this section), or

(ii) 20 percent of such average annual pay, divided by the number of such children; or

(C) if the judge is not survived by a surviving spouse but is survived by a dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

(i) 20 percent of the average annual pay of such judge (determined in accordance with subsection (k) of this section), or

(ii) 40 percent of such average annual pay, divided by the number of such children.

(2) The annuity payable to a surviving spouse under this subsection shall be terminated—

(A) upon the surviving spouse's death; or

(B) upon the remarriage of the surviving spouse before age 55.

(3) The annuity payable to a child under this subsection shall be terminated upon the child's death.

(4) In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving the spouse, the annuity of such child or children under paragraph (1)(B) of this subsection shall be recomputed and paid as provided in paragraph (1)(C) of this subsection. In any case in which the annuity of a dependent child is terminated, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived the judge.

(5) If a judge dies as a result of an assassination and leaves a survivor or survivors who are otherwise entitled to receive annuity payments under this section, the 18-month requirement in the matter in paragraph (1) preceding subparagraph (A) shall not apply.

(g) Questions of family relationships, dependency, and disability arising under this section

shall be determined in the same manner as such questions arising under chapter 84 of title 5 are determined.

(h)(1) If—

(A) a judge making an election under subsection (b) of this section dies while in office (i) before having rendered 5 years of civilian service computed as prescribed in subsection (*l*) of this section, or (ii) after having rendered 5 years of such civilian service but without a survivor entitled to annuity benefits provided by subsection (f) of this section; or

(B) the right of all persons entitled to an annuity under subsection (f) of this section based on the service of such judge terminates before a claim for such benefits has been established,

the total amount credited to the individual account of such judge (with interest at 3 percent per year, compounded on December 31 of each year, to the date of the death of such judge) shall be paid in the manner specified in paragraph (2) of this subsection.

(2) An amount payable under paragraph (1) of this subsection 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:

(A) To the beneficiary or beneficiaries whom the judge designated in writing filed before death with the chief judge (except that in the case of the chief judge such designation shall be filed before death as prescribed by the Court).

(B) To the surviving spouse of the judge.

(C) To the child or children of the judge (and the descendants of any deceased children by representation).

(D) To the parents of the judge or the survivor of them.

(E) To the executor or administrator of the estate of the judge.

(F) To such other next of kin of the judge as may be determined by the chief judge to be entitled under the laws of the domicile of the judge at the time of the judge's death.

(3) Determination as to the surviving spouse, child, or parent of a judge for the purposes of paragraph (2) of this subsection shall be made without regard to the definitions in subsection (a) of this section.

(4) Payment under this subsection in the manner provided in this subsection shall be a bar to recovery by any other person.

(5) In a case in which the annuities of all persons entitled to annuity based upon the service of a judge terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge (with interest at 3 percent per year, compounded on December 31 of each year to the date of the death of the judge), the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (2) of this subsection.

(6) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any individual based upon the service of a judge shall be paid to that individual. Any accrued annuity remaining unpaid upon the death of an individual receiving an annuity based upon the service of a judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

(A) To the executor or administrator of the estate of that person.

(B) After 30 days after the date of the death of such individual, to such individual or individuals as may appear in the judgment of the chief judge to be legally entitled thereto.

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

(i) When a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, the payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or the claimant's estate. If no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or the claimant's estate.

(j) Annuities 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 has accrued. An annuity under this section is not assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(k)(1) The annuity of the surviving spouse of a judge making an election under subsection (b) of this section shall be an amount equal to the sum of the following:

(A) The product of—

(i) 1.5 percent of the judge's average annual pay; and

(ii) the sum of the judge's years of judicial service, the judge's years of prior allowable service as a Member of Congress, the judge's years of prior allowable service performed as a member of the Armed Forces, and the judge's years, not exceeding 15, of prior allowable service performed as a congressional employee (as defined in section 2107 of title 5).

(B) Three-fourths of 1 percent of the judge's average annual pay multiplied by the judge's years of allowable service not counted under subparagraph (A) of this paragraph.

(2) An annuity computed under this subsection may not exceed 50 percent of the judge's average annual pay and may not be less than 25 percent of such average annual pay. Such annuity shall be further reduced in accordance with subsection (d) of this section (if applicable).

(3) For purposes of this subsection, the term ''average annual pay'', with respect to a judge, means the average annual pay received by the judge for judicial service (including periods in which the judge received retired pay under section 7296(d) of this title) or for any other prior allowable service during the period of three consecutive years in which the judge received the largest such average annual pay.

(*l*) Subject to subsection (d) of this section, the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of the judge's surviving spouse shall include the judge's years of service as a judge of the Court, the judge's years of service as a Member of Congress, the judge's years of active service as a member of the Armed Forces not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and the judge's years of any other civilian service within the purview of section 8332 of title 5.

(m) Nothing contained in this section shall be construed to prevent a surviving spouse eligible therefor from simultaneously receiving an annuity under this section and any annuity to which such spouse would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of such spouse's annuity under this section shall not be credited.

(n) A judge making an election under subsection (b) of this section shall, at the time of such election, waive all benefits under the civil service retirement laws except section 8440d of title 5. Such a waiver shall be made in the same manner and shall have the same force and effect as an election filed under section 7296(d) of this title.

(*o*) Each survivor annuity payable from the retirement fund shall be increased at the same time as, and by the same percentage by which, annuities payable from the Judicial Survivors' Annuities Fund are increased pursuant to section 376(m) of title 28.

(p)(1) A covered judge who makes an election under subsection (b) may purchase, in 3-month increments, up to an additional year of service credit for each year of Federal judicial service completed, under the terms set forth in this section.

(2) In this subsection, the term ''covered judge'' means any of the following:

(A) A judge in regular active service.

(B) A retired judge who is a recall-eligible retired judge pursuant to subsection (a) of section 7257 of this title.

(C) A retired judge who would be a recall-eligible retired judge pursuant to subsection (a) of section 7257 but for—

(i) meeting the aggregate recall service requirements under subsection (b)(3) of such section; or

(ii) being permanently disabled as described by subsection (b)(4) of such section.

(Added Pub. L. 101–94, title I, § 101(a), Aug. 16, 1989, 103 Stat. 620, § 4097; renumbered § 7297 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–54, § 14(e)(6), June 13, 1991, 105 Stat. 287; Pub. L. 102–82, § 5(c)(2), Aug. 6, 1991, 105 Stat. 376; Pub. L. 102–198, § 7(c)(4)(E), Dec. 9, 1991, 105 Stat. 1625; Pub. L. 105–368, title V, §§ 503, 512(a)(1), Nov. 11, 1998, 112 Stat. 3340, 3341; Pub. L. 106–117, title X, §§ 1023, 1035(2), Nov. 30, 1999, 113 Stat. 1592, 1595; Pub. L. 114–315, title II, § 203, Dec. 16, 2016, 130 Stat. 1549.)

**Editorial Notes**

AMENDMENTS

2016—Subsec. (p). Pub. L. 114–315 added subsec. (p).

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

Pub. L. 106–117, § 1023(e)(2)(A), inserted ''who is in active service or who has retired under section 7296 of this title'' after ''Court''.

Subsec. (a)(3). Pub. L. 106–117, § 1023(e)(2)(B), substituted ''7296'' for ''7296(c)''.

Subsec. (a)(5). Pub. L. 106–117, § 1023(a), substituted ''one year'' for ''two years''.

Subsec. (a)(8). Pub. L. 106–117, § 1023(e)(2)(C), added par. (8).

Subsec. (b). Pub. L. 106–117, § 1023(b), inserted ''or within six months after the date on which the judge marries if the judge has retired under section 7296 of this title'' before the period at end of first sentence.

Subsec. (c). Pub. L. 106–117, § 1023(c), substituted ''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'' for ''3.5 percent of the judge's pay''.

Subsec. (d). Pub. L. 106–117, § 1023(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (f)(1). Pub. L. 106–117, § 1023(e)(1)(A), in introductory provisions, substituted ''at least 18 months'' for ''at least 5 years'' and ''last 18 months'' for ''last 5 years''.

Subsec. (f)(1)(A). Pub. L. 106–117, § 1023(f), struck out ''or following the surviving spouse's attainment of the age of 50 years, whichever is the later'' after ''death of the judge''.

Subsec. (f)(5). Pub. L. 106–117, § 1023(e)(1)(B), added par. (5).

1998—Subsec. (a)(1), (4). Pub. L. 105–368, § 512(a)(1), substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

Subsec. (*o*). Pub. L. 105–368, § 503, amended subsec. (*o*) generally. Prior to amendment, subsec. (*o*) read as follows: ''Whenever the salaries of judges paid under section 7253(e) of this title are increased, each annuity payable from the retirement fund which is based, in whole or in part, upon a deceased judge having rendered some portion of that judge's final 18 months of service as a judge of the Court, shall also be increased. The amount of the increase in the annuity shall be determined by multiplying the amount of the annuity on the date on which the increase in salaries becomes effective by 3 percent for each full 5 percent by which those salaries were increased.''

1991—Pub. L. 102–40, § 402(b)(1), renumbered section 4097 of this title as this section.

Subsec. (a)(3). Pub. L. 102–40, § 402(d)(1), substituted ''7253(e)'' for ''4053(e)'' and ''7296(c)'' for ''4096(c)''.

Subsec. (a)(4). Pub. L. 102–40, § 402(d)(1), substituted ''7298'' for ''4098''.

Subsec. (e). Pub. L. 102–40, § 402(d)(1), substituted ''7296'' for ''4096'' wherever appearing.

Subsec. (h)(1)(A)(i). Pub. L. 102–54 amended subsec. (h)(1)(A)(i) as in effect immediately before the enactment of Pub. L. 102–40 by substituting ''subsection (*l*)'' for ''subsection (1)''.

Subsec. (k)(3). Pub. L. 102–40, § 402(d)(1), substituted ''7296(d)'' for ''4096(d)''.

Subsec. (n). Pub. L. 102–198 substituted ''8440d'' for ''8440c''.

Pub. L. 102–82 inserted ''except section 8440c of title 5'' before period at end of first sentence.

Pub. L. 102–40, § 402(d)(1), substituted ''7296(d)'' for ''4096(d)''.

Subsec. (*o*). Pub. L. 102–40, § 402(d)(1), substituted ''7253(e)'' for ''4053(e)''.

**Statutory Notes and Related Subsidiaries**

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 section 512(a)(1) of 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.

## § 7298. Retirement Fund

(a) There is established in the Treasury a fund known as the Court of Appeals for Veterans Claims Retirement Fund.

(b) Amounts in the fund are available for the payment of judges' retired pay under section 7296 of this title and of annuities, refunds, and allowances under section 7297 of this title.

(c) Amounts deposited by, or deducted and withheld from the salary and retired pay of, a judge under section 7296 or 7297 of this title shall be deposited in the fund and credited to an individual account of the judge.

(d) The chief judge of the Court of Appeals for Veterans Claims shall submit to the President an annual estimate of the expenditures and appropriations necessary for the maintenance and operation of the fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law.

(e)(1) The chief judge may cause periodic examinations of the retirement fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose.

(2)(A) Subject to the availability of appropriations, there shall be deposited in the Treasury to the credit of the retirement fund, not later than the close of each fiscal year, such amounts as may be required to reduce to zero the unfunded liability (if any) of the fund. Such deposits shall be taken from sums available for that fiscal year for the payment of the expenses of the Court.

(B) For purposes of subparagraph (A) of this paragraph, the term ''unfunded liability'', with respect to any fiscal year, means the amount estimated by the chief judge to be equal to the excess (as of the close of that fiscal year) of—

(i) the present value of all benefits payable from the fund (determined on an annual basis in accordance with section 9503 of title 31), over

(ii) the sum of—

(I) the present values of future deductions under sections 7296(i) and 7297(c) of this title and future deposits under sections 7296(j) and 7296(d) of this title, and

(II) the balance in the fund as of the close of the fiscal year.

(C) For purposes of subparagraph (B), the term ''present value'' includes a value determined by an actuary with respect to a payment that may be made under subsection (b) from the retirement fund within the contemplation of law.

(D) Amounts deposited in the retirement fund under this paragraph shall not be credited to the account of any individual.

(f) The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States, such portions of the retirement fund as in such Secretary's judgment may not be immediately required for payments from the fund. The income derived from such investments shall constitute a part of the fund.

(g) For purpose of section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(B)), the retirement fund shall be treated in the same manner as the Claims Judges' Retirement Fund.

(Added Pub. L. 101–94, title I, § 101(a), Aug. 16, 1989, 103 Stat. 625, § 4098; renumbered § 7298 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 105–368, title V, §§ 502, 512(a)(1), (2)(C), Nov. 11, 1998, 112 Stat. 3340, 3341; Pub. L. 106–117, title X, § 1011(j), Nov. 30, 1999, 113 Stat. 1589.)

### Editorial Notes

AMENDMENTS

1999—Subsec. (e)(2)(C), (D). Pub. L. 106–117 added subpar. (D) and redesignated former subpar. (C) as (D).

1998—Pub. L. 105–368, § 512(a)(2)(C), struck out ''Court of Veterans Appeals'' before ''Retirement Fund'' in section catchline.

Subsecs. (a), (d). Pub. L. 105–368, § 512(a)(1), substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

Subsec. (g). Pub. L. 105–368, § 502, added subsec. (g).

1991—Pub. L. 102–40, § 402(b)(1), renumbered section 4098 of this title as this section.

Subsecs. (b), (c). Pub. L. 102–40, § 402(d)(1), substituted ''7296'' for ''4096'' and ''7297'' for ''4097''.

Subsec. (e)(2)(B)(ii)(I). Pub. L. 102–40, § 402(d)(1), substituted ''7296(i) and 7297(c)'' for ''4096(i) and 4097(c)'' and ''7296(j) and 7296(d)'' for ''4096(j) and 4096(d)''.

### Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 512(a)(1), (2)(C) of 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.

## § 7299. Limitation on activities of retired judges

(a) A retired judge of the Court who is recall-eligible under section 7257 of this title and who in the practice of law represents (or supervises or directs the representation of) a client in making any claim relating to veterans' benefits against the United States or any agency thereof shall, pursuant to such section, be considered to have declined recall service and be removed from the status of a recall-eligible judge. The pay of such a judge, pursuant to section 7296 of this title, shall be the pay of the judge at the time of the removal from recall status.

(b) A recall-eligible judge shall be considered to be an officer or employee of the United States, but only during periods when the judge is serving in recall status. Any prohibition, limitation, or restriction that would otherwise apply to the activities of a recall-eligible judge shall apply only during periods when the judge is serving in recall status.

(Added Pub. L. 106–117, title X, § 1024(a), Nov. 30, 1999, 113 Stat. 1593.)

## CHAPTER 73—VETERANS HEALTH ADMINISTRATION—ORGANIZATION AND FUNCTIONS

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### Editorial Notes

AMENDMENTS

2022—Pub. L. 117–328, div. U, title I, § 182(b), Dec. 29, 2022, 136 Stat. 5436, added item for subchapter V and items 7381 and 7382.

Pub. L. 117–328, div. U, title I, § 181(b), Dec. 29, 2022, 136 Stat. 5435, which directed amendment of subchapter analysis for this chapter by adding item 7330D, was executed by making the amendment to the analysis for this chapter, to reflect the probable intent of Congress. Item was editorially conformed to the style used in this title.

2021—Pub. L. 116–315, title V, § 5101(b)(3), Jan. 5, 2021, 134 Stat. 5026, added items 7310 and 7310A.

2018—Pub. L. 115–182, title I, § 106(b), June 6, 2018, 132 Stat. 1415, added item 7330C.

2016—Pub. L. 114–315, title VI, § 612(b), Dec. 16, 2016, 130 Stat. 1576, added item 7330B.

Pub. L. 114–198, title IX, § 924(b), July 22, 2016, 130 Stat. 769, added item 7309A.

2013—Pub. L. 112–239, div. A, title VII, § 728(b), Jan. 2, 2013, 126 Stat. 1813, added item 7309.

2010—Pub. L. 111–275, title X, § 1001(n)(1), Oct. 13, 2010, 124 Stat. 2897, substituted ''the human immunodeficiency virus'' for ''human immunodeficiency virus'' in item 7333.

Pub. L. 111–163, title V, §§ 505(a)(2), 515(b), title VIII, § 805(b), May 5, 2010, 124 Stat. 1159, 1166, 1179, added items 7311A, 7321A, and 7365 and struck out former items 7364A ''Coverage of employees under certain Federal tort claims laws'' and 7365 ''Applicable State law''.

2008—Pub. L. 110–387, title IV, § 404(b), title VIII, § 806(b), Oct. 10, 2008, 122 Stat. 4129, 4141, added item 7330A and struck out item 7368 ''Expiration of authority''.

2006—Pub. L. 109–461, title X, § 1006(b), Dec. 22, 2006, 120 Stat. 3468, provided that as of the enactment of Pub. L. 109–461, the amendments made by Pub. L. 109–444 were deemed for all purposes not to have taken effect and that Pub. L. 109–444 ceased to be in effect. See Amendment notes below and section 1006(b) of Pub. L. 109–461, set out as a Coordination of Provisions With Pub. L. 109–444 note under section 101 of this title.

Pub. L. 109–461, title II, §§ 209(a)(2), 212(a)(2), Dec. 22, 2006, 120 Stat. 3418, 3422, added items 7308, 7329, and 7330.

Pub. L. 109–444, § 6(a)(2), Dec. 21, 2006, 120 Stat. 3312, which added items 7329 and 7330, was terminated by Pub. L. 109–461, § 1006(b). See Amendment notes above.

2004—Pub. L. 108–422, title III, §§ 302(a)(2), 303(c)(2), Nov. 30, 2004, 118 Stat. 2385, 2387, added items 7327 and 7328.

2003—Pub. L. 108–170, title IV, §§ 401(a)(2), 402(a)(2), Dec. 6, 2003, 117 Stat. 2061, 2062, added items 7307 and 7364A.

2002—Pub. L. 107–287, §§ 2(a)(2), 3(a)(2), Nov. 7, 2002, 116 Stat. 2027, 2028, added items 7325 and 7326.

Pub. L. 107–135, title I, § 125(a)(2), Jan. 23, 2002, 115 Stat. 2453, added item 7324.

2001—Pub. L. 107–14, § 8(a)(14)(B), June 5, 2001, 115 Stat. 35, struck out item 7367 ''Report to Congress''.

2000—Pub. L. 106–419, title II, § 201(b)(2), Nov. 1, 2000, 114 Stat. 1840, added item 7323.

1997—Pub. L. 105–114, title II, § 208(a)(2), Nov. 21, 1997, 111 Stat. 2289, added item 7322.