

Editorial Notes

AMENDMENTS

1997—Subsec. (c). Pub. L. 105-85 made technical amendment to heading and substituted “under the court” for “under the Court” in second sentence and “positions referred to in the preceding sentences” for “such positions” in third sentence.

1996—Subsec. (c). Pub. L. 104-201 substituted “Certain” for “Attorney” in heading and inserted “A position of employment under the Court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service.” after first sentence in par. (1).

1994—Subsecs. (a)(1), (c). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1992—Subsec. (a). Pub. L. 102-484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “CHIEF JUDGE.—The President shall designate from time to time one of the judges of the United States Court of Military Appeals to be chief judge of the court.”

Statutory Notes and Related Subsidiaries

TRANSITION PROVISION

Pub. L. 102-484, div. A, title X, §1061(b), Oct. 23, 1992, 106 Stat. 2504, provided that: “For purposes of section 943(a) (article 943(a)) of title 10, United States Code, as amended by subsection (a)—

“(1) the person serving as the chief judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the date of the enactment of this Act [Oct. 23, 1992] shall be deemed to have been designated as the chief judge under such section; and

“(2) the five-year term provided in paragraph (3) of such section shall be deemed to have begun on the date on which such judge was originally designated as the chief judge under section 867(a) or 943 of title 10, United States Code, as the case may be, as that provision of law was in effect on the date of the designation.”

INAPPLICABILITY OF SUBSECTION (C)

Subsec. (c) of this section not to be applied to change civil service status of any attorney who is an employee of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on Nov. 28, 1989, see section 1301(h) of Pub. L. 101-189, set out as a Transitional Provisions note under section 942 of this title.

§ 944. Art. 144. Procedure

The United States Court of Appeals for the Armed Forces may prescribe its rules of procedure and may determine the number of judges required to constitute a quorum.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

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1994—Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

§ 945. Art. 145. Annuities for judges and survivors

(a) RETIREMENT ANNUITIES FOR JUDGES.—(1) A person who has completed a term of service for which he was appointed as a judge of the United

States Court of Appeals for the Armed Forces is eligible for an annuity under this section upon separation from civilian service in the Federal Government. A person who continues service with the court as a senior judge under section 942(e)(1)(B) of this title (article 142(e)(1)(B)) upon the expiration of the judge’s term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.

(2) A person who is eligible for an annuity under this section shall be paid that annuity if, at the time he becomes eligible to receive that annuity, he elects to receive that annuity in lieu of any other annuity for which he may be eligible at the time of such election (whether an immediate or a deferred annuity) under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

(3)(A) The Secretary of Defense shall notify the Director of the Office of Personnel Management whenever an election under paragraph (2) is made affecting any right or interest under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 based on service as a judge of the United States Court of Appeals for the Armed Forces.

(B) Upon receiving any notification under subparagraph (A) in the case of a person making an election under paragraph (2), the Director shall determine the amount of the person’s lump-sum credit under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, as applicable, and shall request the Secretary of the Treasury to transfer such amount from the Civil Service Retirement and Disability Fund to the Department of Defense Military Retirement Fund. The Secretary of the Treasury shall make any transfer so requested.

(C) In determining the amount of a lump-sum credit under section 8331(8) of title 5 for purposes of this paragraph—

(i) interest shall be computed using the rates under section 8334(e)(3) of such title; and

(ii) the completion of 5 years of civilian service (or longer) shall not be a basis for excluding interest.

(b) AMOUNT OF ANNUITY.—The annuity payable under this section to a person who makes an election under subsection (a)(2) is 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the person is separated from civilian service.

(c) RELATION TO THRIFT SAVINGS PLAN.—Nothing in this section affects any right of any person to participate in the thrift savings plan under section 8351 of title 5 or subchapter III of chapter 84 of such title.

(d) SURVIVOR ANNUITIES.—The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of persons receiving annuities under this section by reason of elections made by such persons under subsection (a)(2). That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under other re-

retirement systems for civilian employees of the Federal Government. The program may include provisions for the reduction in the annuity paid the person as a condition for the survivor annuity. An election by a judge (including a senior judge) or former judge to receive an annuity under this section terminates any right or interest which any other individual may have to a survivor annuity under any other retirement system for civilian employees of the Federal Government based on the service of that judge or former judge as a civilian officer or employee of the Federal Government (except with respect to an election under subsection (f)(1)(B)).

(e) **COST-OF-LIVING INCREASES.**—The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this section in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this section. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(f) **ELECTION OF JUDICIAL RETIREMENT BENEFITS.**—(1) A person who is receiving an annuity under this section by reason of service as a judge of the court and who later is appointed as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this section, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by that person at the time of his retirement from the office, or from regular active service in the office, of justice or judge of the United States. Such an election may not be revoked.

(2) An election by a person to be paid an annuity or salary pursuant to paragraph (1)(B) terminates (A) any election previously made by such person to provide a survivor annuity pursuant to subsection (d), and (B) any right of any other individual to receive a survivor annuity pursuant to subsection (d) on the basis of the service of that person.

(g) **SOURCE OF PAYMENT OF ANNUITIES.**—Annuities and survivor annuities paid under this section shall be paid out of the Department of Defense Military Retirement Fund.

(h) **ELIGIBILITY TO ELECT BETWEEN RETIREMENT SYSTEMS.**—(1) This subsection applies with respect to any person who—

(A) prior to being appointed as a judge of the United States Court of Appeals for the Armed Forces, performed civilian service of a type making such person subject to the Civil Service Retirement System; and

(B) would be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986, by virtue of being appointed as such a judge, but for the fact that such person has not had a break in service of sufficient duration to be considered someone who is being reemployed by the Federal Government.

(2) Any person with respect to whom this subsection applies shall be eligible to make an elec-

tion under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 to the same extent and in the same manner (including subject to the condition set forth in section 301(d) of such Act) as if such person's appointment constituted reemployment with the Federal Government.

(Added Pub. L. 101-189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102-190, div. A, title X, §1061(b)(1)(C), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 102-484, div. A, title X, §§1052(11), 1062(a)(1), Oct. 23, 1992, 106 Stat. 2499, 2504; Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114-328, div. A, title V, §541(e), Dec. 23, 2016, 130 Stat. 2125.)

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REFERENCES IN TEXT

Section 301(a)(2) and (d) of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (h), is section 301(a)(2) and (d) of Pub. L. 99-335, which is set out in a note under section 8331 of Title 5, Government Organization and Employees.

AMENDMENTS

2016—Subsec. (d). Pub. L. 114-328, §541(e)(1), substituted “subsection (f)(1)(B)” for “subsection (g)(1)(B)”.

Subsecs. (f) to (i). Pub. L. 114-328, §541(e)(2), (3), redesignated subsecs. (g) to (i) as (f) to (h), respectively, and struck out former subsec. (f). Prior to amendment, text of subsec. (f) read as follows: “A person who is receiving an annuity under this section by reason of service as a judge of the court and who is appointed to a position in the Federal Government shall, during the period of such person's service in such position, be entitled to receive only the annuity under this section or the pay for that position, whichever is higher.”

1994—Subsecs. (a)(1), (3)(A), (b), (i)(1)(A). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals”.

1992—Subsec. (a)(1). Pub. L. 102-484, §1052(11), substituted “section 942(e)(1)(B) of this title (article 142(e)(1)(B))” for “section 943(e)(1)(B) of this title (art. 143(e)(1)(B))”.

Subsec. (i). Pub. L. 102-484, §1062(a)(1), added subsec. (i).

1991—Subsec. (a)(1). Pub. L. 102-190 inserted at end “A person who continues service with the court as a senior judge under section 943(e)(1)(B) of this title (art. 143(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-484, div. A, title X, §1062(a)(2), Oct. 23, 1992, 106 Stat. 2505, provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to any appointment which takes effect on or after the date of the enactment of this Act [Oct. 23, 1992].”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Nov. 29, 1989, see section 1061(b)(1)(D) of Pub. L. 102-190, set out as a note under section 942 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable with respect to judges of United States Court of Military Appeals [now United States Court of Appeals for the

Armed Forces] whose terms of service on such court end after Sept. 28, 1988, and to survivors of such judges, see section 1301(f) of Pub. L. 101-189, set out as a Transitional Provisions note under section 942 of this title.

ADDITIONAL ELECTIONS

Pub. L. 102-484, div. A, title X, §1062(b), Oct. 23, 1992, 106 Stat. 2505, provided that:

“(1) Any individual who is a judge in active service on the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be eligible to make an election under section 301(a)(2) of the Federal Employees’ Retirement System Act of 1986 [Pub. L. 99-335, 5 U.S.C. 8331 note] if—

“(A) such individual is such a judge on the date of the enactment of this Act [Oct. 23, 1992]; and

“(B) as of the date of the election, such individual is—

“(i) subject to the Civil Service Retirement System; or

“(ii) covered by Social Security but not subject to the Federal Employees’ Retirement System.

“(2) An election under this subsection—

“(A) shall not be effective unless it is—

“(i) made within 30 days after the date of the enactment of this Act; and

“(ii) in compliance with the condition set forth in section 301(d) of the Federal Employees’ Retirement System Act of 1986 [Pub. L. 99-335, 5 U.S.C. 8331 note]; and

“(B) may not be revoked.

“(3) For the purpose of this subsection, a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be considered to be ‘covered by Social Security’ if such judge’s service is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.]”

§ 946. Art. 146. Military Justice Review Panel

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a panel to conduct independent periodic reviews and assessments of the operation of this chapter. The panel shall be known as the “Military Justice Review Panel” (in this section referred to as the “Panel”).

(b) MEMBERS.—

(1) NUMBER OF MEMBERS.—The Panel shall be composed of thirteen members.

(2) APPOINTMENT OF CERTAIN MEMBERS.—Each of the following shall appoint one member of the Panel:

(A) The Secretary of Defense (in consultation with the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy).

(B) The Attorney General.

(C) The Judge Advocates General of the Army, Navy, Air Force, and Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps.

(3) APPOINTMENT OF REMAINING MEMBERS BY SECRETARY OF DEFENSE.—The Secretary of Defense shall appoint the remaining members of the Panel, taking into consideration recommendations made by each of the following:

(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(B) The Chief Justice of the United States.

(C) The Chief Judge of the United States Court of Appeals for the Armed Forces.

(4) ESTABLISHMENT OF STAGGERED TERMS.—Notwithstanding subsection (e), members of the Panel appointed to serve on the Panel to fill vacancies that exist due to terms of appointment expiring during the period beginning on August 1, 2030, and ending on November 30, 2030, shall be appointed to terms as follows:

(A) Three members designated by the Secretary of Defense shall serve a term of two years.

(B) Three members designated by the Secretary of Defense shall serve a term of four years.

(C) Three members designated by the Secretary of Defense shall serve a term of six years.

(D) Four members designated by the Secretary of Defense shall serve a term of eight years.

(c) QUALIFICATIONS OF MEMBERS.—The members of the Panel shall be appointed from among private United States citizens with expertise in criminal law, as well as appropriate and diverse experience in investigation, prosecution, defense, victim representation, or adjudication with respect to courts-martial, Federal civilian courts, or State courts.

(d) CHAIR.—The Secretary of Defense shall select the chair of the Panel from among the members.

(e) TERM; VACANCIES.—

(1) TERM.—Subject to subsection (b)(4) and paragraphs (2) and (3) of this subsection, each member shall be appointed for a term of eight years, and no member may serve more than one term.

(2) VACANCY.—Any vacancy in the Panel shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy in the Panel that occurs before the expiration of the term of appointment of the predecessor of such member shall be appointed for the remainder of the term of such predecessor.

(3) AVAILABILITY OF REAPPOINTMENT FOR CERTAIN MEMBERS.—Notwithstanding paragraph (1), a member of the Panel may be appointed to a single additional term if—

(A) the appointment of the member is to fill a vacancy described in subsection (b)(4); or

(B) the member was initially appointed—

(i) to a term of four years or less in accordance with subsection (b)(4); or

(ii) to fill a vacancy that occurs before the expiration of the term of the predecessor of such member and for which the remainder of the term of such predecessor is four years or less.

(f) REVIEWS AND REPORTS.—

(1) INITIAL REVIEW OF RECENT AMENDMENTS TO UCMJ.—During fiscal year 2021, the Panel shall conduct an initial review and assessment of the implementation of the amendments made to this chapter during the preceding five years. In conducting the initial review and assessment, the Panel may review such other aspects of the operation of this chapter as the Panel considers appropriate.