

“(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.

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

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

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

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

“(A) the age and service requirements in the table in paragraph (2) shall apply to those judges rather than the otherwise applicable age and service requirements specified in the table in subsection (b)(1) of that section; and

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

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

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

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

§ 7297. Survivor annuities

(a) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

(d)(1) A judge who makes an election under subsection (b) of this section shall deposit, with interest at 3 percent per year compounded on December 31 of each year, to the credit of the retirement fund, an amount equal to 3.5 percent of the judge’s pay and of the judge’s basic salary, pay, or compensation for service as a Member of Congress, and for any other civilian service within the purview of section 8332 of title 5. Each such judge may elect to make such deposits in installments during the judge’s period of service in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annual annuity of the surviving spouse of such judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as

of the date of the death of such judge, unless the surviving spouse elects to eliminate such service entirely from credit under subsection (k) of this section. However, a deposit shall not be required from a judge for any year with respect to which deductions from the judge's pay, or a deposit, were actually made (and not withdrawn) under the civil service retirement laws.

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

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

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

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

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

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

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

ly 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 (i)" 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