

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE
PART I - ORGANIZATION OF COURTS
CHAPTER 17 - RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

§ 377. Retirement of bankruptcy judges and magistrate judges

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

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

(1) such judge or magistrate judge has served at least 1 full term as a bankruptcy judge or magistrate judge, and

(2) not earlier than 9 months before the date on which the term of office of such judge or magistrate judge expires, and not later than 6 months before such date, such judge or magistrate judge notified the appointing authority in writing that such judge or magistrate judge was willing to accept reappointment to the position in which such judge or magistrate judge was serving.

For purposes of this subsection, in the case of a bankruptcy judge, the written notice required by paragraph (2) shall be given to the chief judge of the circuit in which such bankruptcy judge is serving and, in the case of a magistrate judge, such notice shall be given to the chief judge of the district court in which the magistrate judge is serving.

(c) **Service of at Least 8 Years.**— A bankruptcy judge or magistrate judge to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by 1/6 of 1 percent for each full month such bankruptcy judge or magistrate judge was under the age of 65 at the time the judge or magistrate judge left office, except that such reduction shall not exceed 20 percent.

(d) **Retirement for Disability.**— A bankruptcy judge or magistrate judge to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate judge, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

(e) **Cost-of-Living Adjustments.**— A bankruptcy judge or magistrate judge who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340 (b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate judge retired or was removed.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

(f) Election; Annuity in Lieu of Other Annuities.— A bankruptcy judge or magistrate judge shall be entitled to an annuity under this section if the judge or magistrate judge elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate judge who elects to receive an annuity under this section shall not be entitled to receive ¹

- (1) any annuity to which such judge or magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as such a judge or magistrate judge or otherwise;
- (2) an annuity or salary in senior status or retirement under section 371 or 372 of this title;
- (3) retired pay under section 7447 of the Internal Revenue Code of 1986; or
- (4) retired pay under section 7296 of title 38.

(g) Calculation of Service.—

- (1) For purposes of calculating an annuity under this section—
 - (A) full-time service as a bankruptcy judge or magistrate judge to whom this section applies may be credited; and
 - (B) each month of service shall be credited as one-twelfth of a year, and the fractional part of any month shall not be credited.
- (2)
 - (A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a United States magistrate judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate judge and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.
 - (B) In the case of an individual who is a magistrate judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a bankruptcy judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of magistrate judge and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

(h) Covered Positions and Service.— This section applies to—

- (1) any bankruptcy judge appointed under—
 - (A) section 152 of this title;
 - (B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2682); or
 - (C) section 404 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2549); and
- (2) any United States magistrate judge appointed under section 631 of this title,

only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate judge.

(i) Payments Pursuant to Court Order.—

- (1) Payments under this section which would otherwise be made to a bankruptcy judge or magistrate judge based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

(3) As used in this subsection, the term “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

(j) Deductions, Contributions, and Deposits.—

(1) Deductions.— Beginning with the next pay period after the Director of the Administrative Office of the United States Courts receives a notice under subsection (f) that a bankruptcy judge or magistrate judge has elected an annuity under this section, the Director shall deduct and withhold 1 percent of the salary of such bankruptcy judge or magistrate 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 Judicial Officers’ Retirement Fund. Deductions under this subsection from the salary of a bankruptcy judge or magistrate judge shall terminate upon the retirement of the bankruptcy judge or magistrate judge or upon completing 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

(2) Consent to Deductions; Discharge of Claims.— Each bankruptcy judge or magistrate judge who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 376 of this title) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such bankruptcy judge or magistrate judge during the period covered by such payment, except the right to those benefits to which the bankruptcy judge or magistrate judge is entitled under this section (and section 376).

(k) Deposits for Prior Service.— Each bankruptcy judge or magistrate judge who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

(l) Individual Retirement Records.— The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each bankruptcy judge or magistrate judge from whom such amounts are received, for credit to the Judicial Officers’ Retirement Fund.

(m) Annuities Affected in Certain Cases.—

(1) Practicing law after retirement.—

(A) Forfeiture of annuity.— Subject to subparagraph (B), any bankruptcy judge or magistrate judge who retires under this section and who thereafter practices law shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he or she so practices law.

(B) Forfeiture not to apply where individual elects to freeze amount of annuity.—

(i) If a bankruptcy judge or magistrate judge makes an election to practice law after retirement under this section—

(I) subparagraph (A) shall not apply to such bankruptcy judge or magistrate judge beginning on the date such election takes effect, and

(II) the annuity payable under this section to such bankruptcy judge or magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such bankruptcy judge or magistrate judge is entitled on the day before such effective date.

(ii) An election under clause (i)—

- (I) may be made by a bankruptcy judge or magistrate judge eligible for retirement under this section, and
- (II) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

(iii) Any election under this subparagraph shall take effect on the first day of the first month following the month in which the election is made.

(2) **Recall not permitted.**— Any bankruptcy judge or magistrate judge who retires under this section and who thereafter practices law shall not be eligible for recall under section 155 (b), 375, or 636 (h) of this title.

(3) **Accepting other employment.**— Any bankruptcy judge or magistrate judge who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a bankruptcy judge or magistrate judge under section 155 (b), 375, or 636 (h) of this title) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term “compensation” includes retired pay or salary received in retired status.

(n) **Lump-Sum Payments.**—

(1) **Eligibility.**—

(A) Subject to paragraph (2), an individual who serves as a bankruptcy judge or magistrate judge and—

- (i) who leaves office and is not reappointed as a bankruptcy judge or magistrate judge for at least 31 consecutive days;
- (ii) who files an application with the Administrative Office of the United States Courts for payment of the lump-sum credit;
- (iii) is not serving as a bankruptcy judge or magistrate judge at the time of filing of the application; and
- (iv) will not become eligible to receive an annuity under this section within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a bankruptcy judge or magistrate judge.

(B) Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the bankruptcy judge or magistrate judge and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of this title, and in accordance with the last two sentences of that subsection. For purposes of the preceding sentence, the term “judicial official” as used in subsection (o) of section 376 shall be deemed to mean “bankruptcy judge or magistrate judge”.

(C) If a bankruptcy judge or magistrate judge dies before receiving an annuity under this section, the lump-sum credit shall be paid.

(D) If all annuity rights under this section based on the service of a deceased bankruptcy judge or magistrate judge terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(E) If a bankruptcy judge or magistrate judge who is receiving an annuity under this section dies, annuity accrued and unpaid shall be paid.

(F) Annuity accrued and unpaid on the termination, except by death, of the annuity of a bankruptcy judge or magistrate judge shall be paid to that individual.

(G) Subject to paragraph (2), a bankruptcy judge or magistrate judge who forfeits rights to an annuity under subsection (m)(3) before the total annuity paid equals the lump-sum credit,

shall be entitled to be paid the difference if the bankruptcy judge or magistrate judge files an application with the Administrative Office of the United States Courts for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

(2) Spouses and former spouses.—

(A) Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

(i) may be made only if any current spouse and any former spouse of the bankruptcy judge or magistrate judge are notified of the bankruptcy judge’s or magistrate judge’s application; and

(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court or court approved property settlement agreement incident to such decree, if—

(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved; and

(II) payment of the lump-sum credit or other payment would extinguish entitlement of the bankruptcy judge’s or magistrate judge’s spouse or former spouse to any portion of an annuity under subsection (i).

(B) Notification of a spouse or former spouse under this paragraph shall be made in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the bankruptcy judge or magistrate judge establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.

(C) The Director shall prescribe regulations under which this paragraph shall be applied in any case in which the Director receives two or more orders or decrees described in subparagraph (A).

(3) Definition.— For purposes of this subsection, the term “lump-sum credit” means the unrefunded amount consisting of—

(A) retirement deductions made under this section from the salary of a bankruptcy judge or magistrate judge;

(B) amounts deposited under subsection (k) by a bankruptcy judge or magistrate judge covering earlier service; and

(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Judicial Officers’ Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under subsection (o);

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service.

(o) Judicial Officers’ Retirement Fund.—

(1) Establishment.— There is established in the Treasury a fund which shall be known as the “Judicial Officers’ Retirement Fund”. The Fund is appropriated for the payment of annuities, refunds, and other payments under this section.

(2) Investment of fund.— The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Judicial Officers’ Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscript.html>).

(3) Unfunded liability.—

(A) There are authorized to be appropriated to the Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

(B) For purposes of subparagraph (A), the term “unfunded liability” means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Judicial Officers' Retirement Fund over the sum of—

(i) the present value of deductions to be withheld under this section from the future basic pay of bankruptcy judges and magistrate judges; plus

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

In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

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

Footnotes

¹ So in original. Probably should be “receive—”.

(Added Pub. L. 100–659, § 2(a), Nov. 15, 1988, 102 Stat. 3910; amended Pub. L. 101–650, title III, §§ 321, 325 (b)(3), Dec. 1, 1990, 104 Stat. 5117, 5121; Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239.)

References in Text

Section 7447 of the Internal Revenue Code, referred to in subsec. (f)(3), is classified to section 7447 of Title 26, Internal Revenue Code.

Section 34 of the Bankruptcy Act, referred to in subsec. (h)(1)(B), was classified to section 62 of former Title 11, Bankruptcy. The Bankruptcy Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§ 401(a), 402 (a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

Section 404 of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2549), referred to in subsec. (h)(1)(C), was set out as a note preceding section 151 of this title prior to repeal by Pub. L. 98–353, title I, § 114, July 10, 1984, 98 Stat. 343.

Amendments

1991—Subsec. (f)(4). Pub. L. 102–40 substituted “section 7296 of title 38” for “section 4096 of title 38”.

1990—Subsec. (f). Pub. L. 101–650, § 325(b)(3)(A), substituted pars. (1) to (4) for “any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5.”

Subsec. (h). Pub. L. 101–650, § 325(b)(3)(B), substituted “on or after” for “in or after” in concluding provisions.

Change of Name

Words “magistrate judge”, “magistrate judges”, and “magistrate judge’s” substituted for “magistrate”, “magistrates”, and “magistrate’s”, respectively, wherever appearing in section catchline and text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

Effective Date

Section 9 of Pub. L. 100–659, as amended by Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117, provided that:

“(a) In General.—Subject to subsection (b), this Act [enacting this section and section 8440a [now 8440b] of Title 5, Government Organization and Employees, amending sections 155, 375, 376, 604, 631, and 636 of this title and sections 8334 and 8402 of Title 5, and enacting provisions set out as notes under this section and sections 1 and 376 of this

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Nov. 15, 1988] and shall apply to bankruptcy judges and magistrate judges who retire on or after the date of the enactment of this Act.

“(b) Exception for Judges and Magistrate Judges Retiring on or after July 31, 1987.—A bankruptcy judge or magistrate judge who left office on or after July 31, 1987, and before the date of the enactment of this Act [Nov. 15, 1988] may elect to receive an annuity, or to participate in the Judicial Survivors’ Annuity System, under the amendments made by this Act if such bankruptcy judge or magistrate judge, within 60 days after so leaving office, accepted office or employment with the United States Government or a State government or was eligible at the time he or she left office for an immediate annuity under title 5, United States Code. Any election under this subsection shall not be valid unless it is made within 6 months after the date of the enactment of this Act and under the same conditions as other persons who may make elections under the amendments made by this Act, except that any such person who makes an election under this subsection shall not receive a lump-sum credit under section 8342 or 8424 of title 5, United States Code, for prior service and shall not be required to make contributions for prior years of creditable service.”

Annuity of Qualified Magistrate Judge

Pub. L. 107–116, title V, § 515, Jan. 10, 2002, 115 Stat. 2220, provided that:

“(a) In this section the term ‘qualified magistrate judge’ means any person who—

“(1) retired as a magistrate judge before November 15, 1988; and

“(2) on the date of filing an election under subsection (b)—

“(A) is serving as a recalled magistrate judge on a full-time basis under section 636 (h) of title 28, United States Code; and

“(B) has completed at least 5 years of full-time recall service.

“(b) The Director of the Administrative Office of the United States Courts may accept the election of a qualified magistrate judge to—

“(1) receive an annuity under section 377 of title 28, United States Code; and

“(2) come within the purview of section 376 of such title.

“(c) Full-time recall service performed by a qualified magistrate judge shall be credited for service in calculating an annuity elected under this section.

“(d) The Director of the Administrative Office of the United States Courts may promulgate regulations to carry out this section.”

Retirement Annuities for Incumbent Bankruptcy Judges and Magistrate Judges

Section 2(c) of Pub. L. 100–659, as amended by Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117, provided that:

“(1) Retirement annuity under title 5 and section 377 of title 28.—A bankruptcy judge or United States magistrate judge in active service on the effective date of this Act [see Effective Date note above] shall, subject to paragraph (2), be entitled, in lieu of the annuity otherwise provided under the amendments made by this section [enacting this section] to—

“(A) an annuity under subchapter III of chapter 83, or under chapter 84, of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of subparagraph (B), and

“(B) an annuity calculated under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by this section, for any service as a full-time bankruptcy judge or magistrate judge on or after October 1, 1979 (as specified in the election pursuant to paragraph (2)) for which deductions and deposits are made under subsections (j) and (k) of such section 377, as applicable, without regard to the minimum number of years of service as such a bankruptcy judge or magistrate judge, except that—

“(i) in the case of a judge or magistrate judge who retires with less than 8 years of service, the annuity under subsection (c) of section 377 of title 28, United States Code, shall be equal to that proportion of the salary being received at the time the judge or magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 377 if the bankruptcy judge or magistrate judge is under age 65 at the time he or she leaves office, and

“(ii) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the bankruptcy judge or magistrate judge which is in effect on the day before the retirement becomes effective.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

“(2) Filing of notice of election.—A bankruptcy judge or magistrate judge shall be entitled to an annuity under this subsection only if the judge or magistrate judge files a notice of that election with the Director of the Administrative Office of the United States Courts specifying the date on which service would begin to be credited under section 377 of title 28, United States Code, in lieu of chapter 83 or chapter 84 of title 5, United States Code.

“(3) Lump-sum credit under title 5.—A bankruptcy judge or magistrate judge who makes an election under paragraph (2) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 377 of title 28, United States Code, as added by this section, pursuant to that election, and with respect to which any contributions were made by the judge or magistrate judge under the applicable provisions of title 5, United States Code.

“(4) Recall.—With respect to any bankruptcy judge or magistrate judge receiving an annuity under this subsection who is recalled to serve under section 375 of title 28, United States Code—

“(A) the amount of compensation which such recalled judge or magistrate judge receives under subsection (c) of such section shall be calculated on the basis of the annuity received under this subsection; and

“(B) such recalled judge or magistrate judge may serve as a reemployed annuitant to the extent permitted by subsection (e) of section 375 of such title.

Section 377 (m)(3) of title 28, United States Code, as added by subsection (a) of this section, shall not apply with respect to service as a reemployed annuitant described in subparagraph (B).”

Report to Congress on Financial Operation of Retirement Annuity Program

Section 8 of Pub. L. 100–659 provided that: “The Director of the Administrative Office of the United States Courts shall, not later than 5 years after the date of the enactment of this Act [Nov. 15, 1988], submit a report to the Congress on the financial operation of the retirement annuity program established under this Act and the amendments made by this Act [see Effective Date note above]. The report shall, in particular, include a discussion of the deductions from salary and deposits made for contributions to the annuity program and the need for continuing the deductions at the level established under the amendments made by this Act.”