

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 11.
ORGANIZATION AND JURISDICTION OF
THE COURTS.

CHAPTER 15.
JUDGES OF THE DISTRICT OF COLUMBIA COURTS.

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DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 15. JUDGES OF THE DISTRICT OF
COLUMBIA COURTS.

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CHAPTER 15. JUDGES OF THE DISTRICT OF COLUMBIA COURTS.

SUBCHAPTER I. APPOINTMENT; QUALIFICATIONS; SERVICE OF JUDGES.

§ 11-1501. APPOINTMENT AND QUALIFICATIONS OF JUDGES.

(a) The President of the United States shall nominate, and by and with the advice and consent of the Senate, shall appoint all judges of the District of Columbia courts. The President shall have power to fill all vacancies that may occur in those courts during a recess of the Senate, by granting commissions which shall expire at the end of the next session of the Senate.

(b) A person may not be appointed a judge of a District of Columbia court unless that person --

(1) is a citizen of the United States;

(2)(A) is a member of the bar of the District of Columbia and (B) (i) has been a member of such bar for a period of at least five years, or (ii) in the case of a professor of law in a law school in the District of Columbia or of an attorney employed in the District of Columbia by the United States or the District of Columbia, has been eligible for membership in the bar of the District of Columbia for at least five years prior to appointment;

(3) has been actively engaged, for at least five of the ten years immediately prior to appointment, as an attorney in the practice of law in the District of Columbia, as a judge of a District of Columbia court, as a professor of law in a law school in the District of Columbia, or as an attorney employed in the District of Columbia by the United States or the District of Columbia; and

(4) is a bona fide resident of the area consisting of the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties (and any cities within the outer boundaries thereof) and the city of Alexandria in Virginia and has maintained an actual place of abode in such area for at least five years prior to appointment.

During term of service and for one year after the termination thereof, no member of the District of Columbia Commission on Judicial Disabilities and Tenure shall be eligible for nomination or appointment to a District of Columbia court.

(July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(4); June 13, 1994, Pub. L. 103-266, §§ 1(b)(18), (19), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1501.

1973 Ed., § 11-1501.

Miscellaneous Notes

Vacancies in certain District courts on July 29, 1970: Section 195(c) of Pub. L. 91-358 provided for the qualifications and 15-year term of office of any judge appointed to fill any vacancy which existed on July 29, 1970, in the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, or the Juvenile Court of the District of Columbia.

Supersedure of section: The provisions of this section have been superseded by § 433 of the District Charter (See the Appendix to Title II).

Appointment of additional judges to Court of Appeals: Section 195(a)(1) of Pub. L. 91-358 provided for the appointment of 3 additional judges to the District of Columbia Court of Appeals, by the President of the United States and with the advice and consent of the Senate, to serve a term of 15 years.

Appointment of additional judges to Court of General Sessions: Section 195(a)(2) of Pub. L. 91-358 provided for the appointment of 10 additional judges to the District of Columbia Court of General Sessions, by the President of the United States and with the advice and consent of the Senate, to serve a term of 15 years.

Appointment of Executive Officer: Section 195(b) of Pub. L. 91-358 provided for the appointment, and compensation, and removal of the Executive Officer of the District of Columbia courts.

Termination of Federal Disclosure Requirements: See Pub. L. 99-573, § 6.

§ 11-1502. TENURE.

Subject to mandatory retirement at age 74 and to the provisions of subchapters II and III of this chapter, a judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 shall serve for a term of fifteen years, and upon completion of such term, such judge shall continue to serve until the judge's successor is appointed and qualifies.

(July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; Mar. 19, 1984, 98 Stat. 65, Pub. L. 98-235; June 13, 1994, Pub. L. 103-266, § 1(b)(20), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1502.

1973 Ed., § 11-1502.

References in Text

The date of enactment of the District of Columbia Court Reorganization Act of 1970, referred to in this section, is July 29, 1970.

§ 11-1503. DESIGNATION OF CHIEF JUDGE.

(a) The chief judge of a District of Columbia court shall be designated by the President of the United States from among the judges of the court in regular active service, and shall serve for a term of four years or until a successor is designated. The chief judge shall be eligible for redesignation. The chief judge may relinquish that position, after giving notice to the President.

(b) If a chief judge is not redesignated, or relinquishes the office of chief judge, that person shall continue as an associate judge.

(July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(21), (22), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1503.

1973 Ed., § 11-1503.

§ 11-1504. SERVICES OF RETIRED JUDGES.

(a)(1) A judge, retired for reasons other than disability, who has been favorably recommended and appointed as a senior judge, in accordance with subsection (b), may perform such judicial duties as such senior judge is assigned and willing and able to undertake. A senior judge shall be subject to reappointment every four years, unless the Senior Judge has reached his or her seventy-fourth birthday, whereupon review shall be at least every two years, in accordance with subsection (b). Except as provided under this section, retired judges may not perform judicial duties in District of Columbia courts.

(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the "Commission") to be appointed as a senior judge in accordance with this section; except that any retired judge shall have not less than 180 days from the effective date of this Act to file a request for an initial recommendation from the Commission.

(b)(1) A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge and the judge requesting appointment within 180 days of the date of the

request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final.

(c) A judge may continue to perform judicial duties upon retirement, without appointment as a senior judge, until such judge's successor assumes office.

(d) A retired judge, actively performing judicial duties as of the date of enactment of the District of Columbia Retired Judge Service Act, may continue to perform such judicial duties as he or she may be willing and able to assume, subject to the approval of the appropriate chief judge, for a period not to exceed one year from the date of enactment of such Act, without appointment as a senior judge.

(July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 2(a); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 14(a), (b).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1504.

1973 Ed., § 11-1504.

References in Text

"The effective date of this Act," referred to in subsection (a)(2), is October 28, 1986.

The "District of Columbia Retired Judge Service Act," referred to in subsection (d), is Public Law 98-598.

§ 11-1505. VACATIONS.

(a) Each judge of the District of Columbia courts shall be entitled to an annual vacation of not more than 30 calendar days. Such vacation shall be taken at such time or times as prescribed by the chief judge of the District of Columbia Court of Appeals for judges of that court and by the chief judge of the Superior Court for judges of that court. Time spent by a judge as a member of any conference, committee, or commission established by law shall not be deducted from the judge's vacation period.

(b) In determining when a judge shall take a vacation, and the length thereof, the chief judge exercising authority under this section shall be mindful of the necessity of retaining sufficient judicial personnel in the court under the chief judge's supervision to permit at all times the prompt and effective disposition of the business of such court.

(July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(23), (24), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1505.

1973 Ed., § 11-1505.

SUBCHAPTER II. THE DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE.

§ 11-1521. ESTABLISHMENT OF COMMISSION.

There shall be a District of Columbia Commission on Judicial Disabilities and Tenure (hereafter in this subchapter referred to as the "Commission"). The Commission shall have power to suspend, retire, or remove a judge of a District of Columbia court, as provided in this subchapter.

(July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1521.

1973 Ed., § 11-1521.

§ 11-1522. MEMBERSHIP.

(a) The Commission shall consist of five members appointed as follows:

(1) The President of the United States shall appoint three members of the Commission. Of the members appointed by the President --

(A) at least one member must be a member of the District of Columbia bar who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years immediately before appointment; and

(B) at least two members must be residents of the District of Columbia.

(2) The Commissioner [Mayor] of the District of Columbia shall appoint one member of the Commission. The member appointed by the Commissioner [Mayor] must be a resident of the District of Columbia and not an attorney.

(3) The chief judge of the United States District Court for the District of Columbia shall appoint one member of the Commission. The member appointed by the chief judge shall be an active or retired Federal judge serving in the District of Columbia.

The President shall designate as Chair of the Commission one of the members appointed pursuant to paragraph (1) who is a member of the District of Columbia bar who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years before the member's appointment.

(b) There shall be three alternate members of the Commission, who shall serve as members pursuant to rules adopted by the Commission. The alternate members shall be appointed as follows:

(1) The President shall appoint one alternate member, who shall be a resident of the District of Columbia and a member of the bar of the District of Columbia who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years immediately before appointment.

(2) The Commissioner [Mayor] shall appoint one alternate member who shall be a resident of the District of Columbia and not an attorney.

(3) The chief judge of the United States District Court for the District of Columbia shall appoint one alternate member who shall be an active or retired Federal judge serving in the District of Columbia.

(c) No member or alternate member of the Commission shall be a member, officer, or employee of the legislative branch or of an executive or military department of the United States Government (listed in section 101 or 102 of title 5, United States Code); and no member or alternate member (other than a member or alternate member appointed by the chief judge of the United States District Court for the District of Columbia) shall be an officer or employee of the judicial branch of the United States Government. No member or alternate member of the Commission shall be an officer or employee of the District of Columbia government (including its judicial branch).

(July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(25)-(27), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1522.

1973 Ed., § 11-1522.

Change in Government

This section originated at a time when local government powers were delegated at the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1523. TERMS OF OFFICE; VACANCY; CONTINUATION OF SERVICE BY A MEMBER.

(a)(1) Except as provided in paragraph (2), the term of office of members and alternate members of the Commission shall be six years.

(2) Of the members and alternate members first appointed to the Commission --

(A) one member and alternate member appointed by the President shall be appointed for a term of six years, one member appointed by the President shall be appointed for a term of four years, and one such member shall be appointed for a term of two years, as designated by the President at the time of appointment;

(B) the member and alternate member appointed by the chief judge of the United States District Court for the District of Columbia shall be appointed for a term of four years; and

(C) the member and alternate member appointed by the Commissioner [Mayor] of the District of Columbia shall be appointed for a term of two years.

(b) A member or alternate member appointed to fill a vacancy occurring before the expiration of the term of that member's predecessor shall serve only for the remainder of that term. Any vacancy on the Commission shall be filled in the same manner as the original appointment was made.

(c) If approved by the Commission, a member may serve after the expiration of that member's term for purposes of participating until conclusion in a matter, relating to the suspension, retirement, or removal of a judge, begun before the expiration of that member's term. A member's successor may be appointed without regard to the member's continuation in service, but that member's successor may not participate in the matter for which the member's continuation in service was approved.

(July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(28), (29), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1523.

1973 Ed., § 11-1523.

Change in Government

This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1524. COMPENSATION.

Members of the Tenure Commission shall serve without compensation for services rendered in connection with their official duties on the Commission.

(July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; Apr. 26, 1996, 110 Stat. [210], Pub. L. 104-134, § 133(a).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1524.

1973 Ed., § 11-1524.

§ 11-1525. OPERATIONS; PERSONNEL; ADMINISTRATIVE SERVICES.

(a) The Commission may make such rules and regulations for its operations as it may deem necessary, and such rules and regulations shall be effective on the date specified by the Commission. The District of Columbia Administrative Procedure Act (D.C. Official Code, secs. 2-501 to 2-510) shall be applicable to the Commission only as provided by this subsection. For the purposes of the publication of rules and regulations, judicial notice, and the filing and compilation of rules, sections 5, 7, and 8 of that Act (D.C. Official code, secs. 2-504, 2-505, and 2-507), insofar as consistent with this subchapter, shall be applicable to the Commission; and for purposes of those sections, the Commission shall be deemed an independent agency as defined in section 3(5) of that Act (D.C. Official Code, sec. 2-502). Nothing contained herein shall be construed to require prior public notice and hearings on the subject of rules

adopted by the Commission.

(b) The Commission is authorized, without regard to the provisions governing appointment and classification of District of Columbia employees, to appoint and fix the compensation of, or to contract for, such officers, assistants, reporters, counsel, and other persons as may be necessary for the performance of its duties. It is authorized to obtain the services of medical and other experts in accordance with the provisions of section 3109 of title 5, United States Code, but at rates not to exceed the daily equivalent of the rate provided for GS-18 of the General Schedule.

(c) The District of Columbia is authorized to detail, on a reimbursable basis, any of its personnel to assist in carrying out the duties of the Commission.

(d) Financial and administrative services (including those related to budgeting and accounting, financial reporting, personnel, and procurement) shall be provided to the Commission by the District of Columbia, for which payment shall be made in advance, or by reimbursement, from funds of the Commission in such amounts as may be agreed upon by the Chair of the Commission and the District of Columbia government. Regulations of the District of Columbia for the administrative control of funds shall apply to funds appropriated to the Commission.

(July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(30), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1525.

1973 Ed., § 11-1525.

References in Text

The General Schedule, referred to at the end of the last sentence of subsection (b) of this section, appears in 5 U.S.C. § 5332.

§ 11-1526. REMOVAL; INVOLUNTARY RETIREMENT; PROCEEDINGS.

(a)(1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District of Columbia.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Commission of --

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of the judge's judicial duties, and (2) the Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c)(1) A judge of a District of Columbia court shall be suspended, without salary --

(A) upon --

(i) proof of conviction of a crime referred to in subsection (a)(1) which has not become final, or

(ii) the filing of an order of removal under subsection (a)(2) which has not become final; and

(B) upon the filing by the Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover salary and all rights and privileges pertaining to the judge's office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as the judge may be entitled to pursuant to subchapter III of this chapter, upon the

filing by the Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover the judge's judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of office.

(3) A judge of a District of Columbia court shall be suspended from all or part of judicial duties, with salary, if the Commission, upon the concurrence of three members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Commission) but in no event later than the termination of all appeals.

(July 29, 1970, 84 Stat. 494, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(31)-(35), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1526.

1973 Ed., § 11-1526.

§ 11-1527. PROCEDURES.

(a)(1) On its own initiative, or upon complaint or report of any person, formal or informal, the Commission may undertake an investigation of the conduct or health of any judge. After such investigation as it deems adequate, the Commission may terminate the investigation or it may order a hearing concerning the health or conduct of the judge. No order affecting the tenure of a judge based on grounds for removal set forth in section 11-1526(a)(2) or 11-1530(b)(3) shall be made except after a hearing as provided by this subchapter. Nothing in this subchapter shall preclude any informal contacts with the judge, or the chief judge of the court in which the judge serves, by the Commission, whether before or after a hearing is ordered, to discuss any matter related to its investigation.

(2) A judge whose conduct or health is to be the subject of a hearing by the Commission shall be given notice of such hearing and of the nature of the matters under inquiry not less than thirty days before the date on which the hearing is to be held. The judge shall be admitted to such hearing and to every subsequent hearing regarding the judge's conduct or health. The judge may be represented by counsel, offer evidence in his or her own behalf, and confront and cross-examine witnesses against the judge.

(3) Within ninety days after the adjournment of hearings, the Commission shall make findings of fact and a determination regarding the conduct or health of a judge who was the subject of the hearing. The concurrence of at least four members shall be required for a determination of grounds for removal or retirement. Upon a determination of grounds for removal or retirement, the Commission shall file an appropriate order pursuant to subsection (a) or (b) of section 11-1526. On or before the date the order is filed, the Commission shall notify the judge, the chief judge of the court in which the judge serves, and the President of the United States.

(b) The Commission shall keep a record of any hearing on the conduct or health of a judge and one copy of such record shall be provided to the judge at the expense of the Commission.

(c)(1) In the conduct of investigations and hearings under this section the Commission may administer oaths, order and otherwise provide for the inspection of books and records, and issue subpoenas [subpoenas] for attendance of witnesses and the production of papers, books, accounts, documents, and testimony relevant to any such investigation or hearing. It may order a judge whose health is in issue to submit to a medical examination by a duly licensed physician designated by the Commission.

(2) Whenever a witness before the Commission refuses, on the basis of the witness's privilege against self-incrimination, to testify or produce books, papers, documents, records, recordings, or other materials, and the Commission determines that the testimony or production of evidence is necessary to the conduct of its proceedings, it may order the witness to testify or produce the evidence. The Commission may issue the order no earlier than ten days after the day on which it served the Attorney General with notice of its intention to issue the order. The witness may not refuse to comply with the order on the basis of the witness's privilege against self-incrimination, but no testimony or other information compelled under the order (or any information directly or indirectly derived from the testimony or production of evidence) may be used against the witness in any criminal case, nor may it be used as a basis for subjecting the witness to any penalty or forfeiture contrary to constitutional right or privilege. No witness shall be exempt under this subsection from prosecution for perjury committed while giving testimony or producing evidence under compulsion as provided in this subsection.

(3) If any person refuses to attend, testify, or produce any writing or things required by a subpoena [subpoena] issued by the Commission, the Commission may petition the United States district court

for the district in which the person may be found for an order compelling that person to attend and testify or produce the writings or things required by subpoena [subpoena]. The court shall order the person to appear before it at a specified time and place and then and there shall consider why that person has not attended, testified, or produced writings or things as required. A copy of the order shall be served upon that person. If it appears to the court that the subpoena [subpoena] was regularly issued, the court shall order the person to appear before the Commission at the time or place fixed in the order and to testify or produce the required writings or things. Failure to obey the order shall be punishable as contempt of court.

(4) In pending investigations or proceedings before it, the Commission may order the deposition of any person to be taken in such form and subject to such limitation as may be prescribed in the order. The Commission may file in the Superior Court a petition, stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and directions, if any, of the Commission requesting an order requiring the person to appear and testify before a designated officer. Upon the filing of the petition the Superior Court may order the person to appear and testify. A subpoena [subpoena] for such deposition shall be issued by the clerk of the Superior Court and the deposition shall be taken and returned in the manner prescribed by law for civil actions.

(d) It shall be the duty of the United States marshals upon the request of the Commission to serve process and to execute all lawful orders of the Commission.

(e) Each witness, other than an officer or employee of the United States or the District of Columbia, shall receive for attendance the same fees, and all witnesses shall receive the allowances, prescribed by section 15-714 for witnesses in civil cases. The amount shall be paid by the Commission from funds appropriated to it.

(July 29, 1970, 84 Stat. 495, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(36)-(41), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1527.

1973 Ed., § 11-1527.

Editor's Notes

Throughout subsection (c), "subpoena" and "subpoenas" were inserted, in brackets, to correct misspellings.

§ 11-1528. PRIVILEGE; CONFIDENTIALITY.

(a)(1) Subject to paragraph (2), the filing of papers with, and the giving of testimony before, the Commission shall be privileged. Subject to paragraph (2), hearings before the Commission, the record thereof, and materials and papers filed in connection with such hearings shall be confidential.

(2)(A) The judge whose conduct or health is the subject of any proceedings under this chapter may disclose or authorize the disclosure of any information under paragraph (1).

(B) With respect to a prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection with such hearing shall be disclosed to the extent required for such prosecution or review.

(C) Upon request, the Commission shall disclose, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission any information under paragraph (1) concerning any judge being considered by such nomination commission for elevation to the District of Columbia Court of Appeals or for chief judge of a District of Columbia court.

(b) If the Commission determines that no grounds for removal or involuntary retirement exist it shall notify the judge and inquire whether the judge desires the Commission to make available to the public information pertaining to the nature of its investigation, its hearings, findings, determinations, or any other fact related to its proceedings regarding the judge's health or conduct. Upon receipt of such request in writing from the judge, the Commission shall make such information available to the public.

(July 29, 1970, 84 Stat. 497, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 11; June 13, 1994, Pub. L. 103-266, § 1(b)(42), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1528.

1973 Ed., § 11-1528.

§ 11-1529. JUDICIAL REVIEW.

(a) A judge aggrieved by an order of removal or retirement filed by the Commission pursuant to subsection (a) or (b) of section 11-1526 may seek judicial review thereof by filing notice of appeal with the Chief Justice of the United States. Notice of appeal shall be filed within 30 days of the filing of the order of the Commission in the District of Columbia Court of Appeals.

(b) Upon receipt of notice of appeal from an order of the Commission, the Chief Justice shall convene a special court consisting of three Federal judges designated from among active or retired judges of the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia.

(c) The special court shall review the order of the Commission appealed from and, to the extent necessary to decision and when presented, shall decide all relevant questions of law and interpret constitutional and statutory provisions. Within 90 days after oral argument or submission on the briefs if oral argument is waived, the special court shall affirm or reverse the order of the Commission or remand the matter to the Commission for further proceedings.

(d) The special court shall hold unlawful and set aside a Commission order or determination found to be --

- (1) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

In making the foregoing determinations, the special court shall review the whole record or those parts of it cited by the judge or the Commission, and shall take due account of the rule of prejudicial error.

(e) As appropriate and to the extent consistent with this chapter, the Federal Rules of Appellate Procedure governing appeals in civil cases shall apply to appeals taken under this section.

(f) Decisions of the special court shall be final and conclusive.

(July 29, 1970, 84 Stat. 497, Pub. L. 91-358, title I, § 111.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1529.

1973 Ed., § 11-1529.

§ 11-1530. FINANCIAL STATEMENTS.

(a) Pursuant to such rules as the Commission shall promulgate, each judge of the District of Columbia courts shall, within one year following the date of enactment of the District of Columbia Court Reorganization Act of 1970 and at least annually thereafter, file with the Commission the following reports of the judge's personal financial interests:

- (1) A report of the judge's income and the judge's spouse's income for the period covered by the report, the sources thereof, and the amount and nature of the income received from each such source.
- (2) The name and address of each private foundation or eleemosynary institution, and of each business or professional corporation, firm, or enterprise in which the judge was an officer, director, proprietor, or partner during such period;
- (3) The identity of each liability of \$5,000 or more owed by the judge or by the judge and the judge's spouse jointly at any time during such period.
- (4) The source and value of all gifts in the aggregate amount or value of \$50 or more from any single source received by the judge during such period, except gifts from the judge's spouse or any of the judge's children or parents.
- (5) The identity of each trust in which the judge held a beneficial interest having a value of \$10,000 or more at any time during such period, and in the case of any trust in which the judge held any beneficial interest during such period, the identity, if known, of each interest in real or personal property in which the trust held a beneficial interest having a value of \$10,000 or more at any time during such period. If the judge cannot obtain the identity of the trust interest, the judge shall request the trustee to report that information to the Commission in such manner as the Commission shall by rule prescribe.
- (6) The identity of each interest in real or personal property having a value of \$10,000 or more which

the judge owned at any time during such period.

(7) The amount or value and source of each honorarium of \$300 or more received by the judge during such period.

(8) The source and amount of all money, other than that received from the United States Government, received in the form of an expense account or as reimbursement for expenditures during such period.

(b)(1) Except as provided in paragraph (2) of this subsection the content of any report filed under this section shall not be open to inspection by anyone other than (A) the person filing the report, (B) authorized members, alternate members, or staff of the Commission to determine if this section has been complied with or in connection with duties of the Commission under this subchapter, or (C) a special court convened under section 11-1529 to review a removal order of the Commission.

(2) Reports filed pursuant to paragraphs (2) and (7) of subsection (a) shall be made available for public inspection and copying promptly after filing and during the period they are kept by the Commission, and shall be kept by the Commission for not less than three years.

(3) The intentional failure by a judge of a District of Columbia court to file a report required by this section, or the filing of a fraudulent report, shall constitute willful misconduct in office and shall be grounds for removal from office under section 11-1526(a)(2).

(July 29, 1970, 84 Stat. 498, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(43)-(50), 108 Stat. 713.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1530.

1973 Ed., § 11-1530.

References in Text

The date of enactment of the District of Columbia Court Reorganization Act of 1970, referred to in the introductory language of subsection (a) of this section, is July 29, 1970.

SUBCHAPTER III. RETIREMENT.

§ 11-1561. DEFINITIONS.

For purposes of this subchapter --

(1) The term "judge" means any judge of the District of Columbia Court of Appeals or the Superior Court or any person with judicial service as described in paragraph (2) of this section.

(2) The term "judicial service" means service as a judge in the District of Columbia Court of Appeals, the Superior Court, or the former Juvenile Court of the District of Columbia, District of Columbia Tax Court, police court, municipal court, Municipal Court of Appeals, or District of Columbia Court of General Sessions.

(3) The terms "retire" and "retirement" include retirement, resignation, or failure to be recommissioned or reappointed upon the expiration of a commission.

(4) The term "fund" means the District of Columbia Judicial Retirement and Survivors Annuity Fund established by section 11-1570.

(5) The term "widow" means a surviving wife of a judge who either (A) has been married to the judge for at least two years preceding his death or (B) is the mother of issue by the marriage and has not remarried.

(6) The term "widower" means a surviving husband of a judge who either (A) has been married to the judge for at least two years preceding her death or (B) is the father of issue by the marriage and has not remarried.

(7) The term "Commissioner" ["Mayor"] means the Commissioner [Mayor] of the District of Columbia.

(8) The term "child" means --

(A) an unmarried child under eighteen years of age, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lived with the judge in a regular parent-child relationship;

(B) such unmarried child regardless of age who is incapable of self-support because of mental or physical disability incurred before age eighteen; or

(C) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical

or vocational institute, junior college, college, university or comparable recognized educational institution. For the purpose of this paragraph, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while the child is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than five months and if the child shows to the satisfaction of the Secretary of the Treasury that the child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

- (9) The term "lump-sum credit for retirement" means the unrefunded amount consisting of --
- (A) retirement deductions made from the basic salary of a judge[:];
 - (B) amounts deposited covering earlier judicial and nonjudicial service; and
 - (C) interest on the deductions and deposits at 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter compounded annually to December 31, 1956, or, in the case of a judge separated or transferred to a position not within the purview of this section before the judge has completed five years of service, to the date of the separation or transfer or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Official Code, sec. 1-701 et seq.), whichever is earlier;
- but the term "lump-sum credit for retirement" does not include interest --
- (i) if the service covered thereby aggregates one year or less; or
 - (ii) for the fractional part of a month in the total service.
- (10) The term "lump-sum credit for survivor annuity" means the unrefunded amount consisting of --
- (A) survivor annuity deductions made from the salary of a judge;
 - (B) amounts deposited for survivor annuity covering earlier judicial and nonjudicial service; and
 - (C) interest on the deductions and deposits at 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter compounded annually to December 31, 1956, or, in the case of a judge separated or transferred to a position not within the purview of this section before the judge has completed five years of service, to the date of the separation or transfer or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (sec. 1-701 et seq.), whichever is earlier;
- but the term "lump-sum credit for survivor annuity" does not include interest --
- (i) if the service covered thereby aggregates one year or less; or
 - (ii) for the fractional part of a month in the total service.

(July 29, 1970, 84 Stat. 499, Pub. L. 91-358, title I, § 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(5), (6); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 124(b)(1), 254(a)(1); June 13, 1994, Pub. L. 103-266, §§ 1(b)(51)-(53), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (b); Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(4); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(4); Apr. 20, 1999, D.C. Law 12-264, § 23, 46 DCR 2118.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1561.

1973 Ed., § 11-1561.

Legislative History of Laws

Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

References in Text

"The date of the enactment of the District of Columbia Retirement Reform Act," referred to in paragraphs (9)(C) and (10)(C) of this section, is November 17, 1979.

Change in Government

This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of

Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1562. ELIGIBILITY FOR RETIREMENT.

(a) A judge is eligible for retirement under this subchapter when the judge has completed ten years of judicial service, whether continuous or not, or upon mandatory retirement as provided in section 11-1502.

(b) The retirement salary of a judge who retires shall commence as follows:

(1) With twenty or more years of judicial service, at age fifty.

(2) With less than twenty years of judicial service, at age sixty, unless the judge elects to receive a reduced salary beginning at age fifty-five or at the date of retirement if subsequent to that age.

(c) A judge with five years or more of judicial service, including civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, may voluntarily retire for a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of judicial duties. Such disability shall be established by furnishing to the Secretary of the Treasury a certificate of disability signed by a duly licensed physician, approved by the Surgeon General of the United States, and containing such information and conclusions as the Secretary of the Treasury by regulation may require consistent with this subsection.

(d) Eligibility for retirement salary of a judge involuntarily retired for disability under section 11-1526(b) shall not be conditioned upon prior service.

(July 29, 1970, 84 Stat. 500, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(54), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, § 11253(a)(1).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1562.

1973 Ed., § 11-1562.

Change in Government

This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1563. WITHHOLDING OF RETIREMENT PAYMENTS; LUMP-SUM CREDIT.

(a) There shall be deducted and withheld from the basic salary of each judge appointed after October 31, 1964, and each judge appointed before November 1, 1964, who has elected to come within the provisions of this subchapter an amount equal to 3 1/2 per centum of the judge's basic salary. Amounts so deducted and withheld shall be paid to the Secretary of the Treasury for deposit in the fund. Each judge subject to this section shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for all regular service during the period covered by such payment, except the right to the benefits to which the judge shall be entitled under this subsection, notwithstanding any law, rule, or regulation affecting the judge's salary.

(b) If the judge has not previously so deposited, each judge subject to this section shall deposit in the fund, with interest computed in accordance with section 11-1564(d)(2), a sum equal to 3 1/2 per centum of the judge's basic salary received for judicial service performed by the judge as a judge prior to the date the judge became subject to the District of Columbia Judges Retirement Act of 1964. Each judge may elect to make such deposits in installments during the continuance of the judge's judicial service in such amounts as may be determined in each instance by the Secretary of the Treasury. Notwithstanding the failure of any judge to make such deposits, credit shall be allowed for the service rendered but the retirement pay for such judge shall be reduced by 10 per centum of such deposit remaining unpaid unless the judge shall elect to eliminate the service involved for purposes of retirement salary computation, except as provided in section 11-1564(d).

(c) If any judge who is subject to this section is removed, resigns, or fails to be recommissioned or reappointed, the judge is entitled to be paid his [the judge's] lump-sum credit for retirement if application for payment is filed with the Secretary of the Treasury at least thirty-one days before the commencing date of any retirement salary for which the judge is eligible. The receipt of the lump-sum credit for retirement by the judge voids all retirement salary rights under this subchapter, until the judge is reemployed in judicial service subject to this subchapter.

(d) If a judge who has not elected to be within the survivor annuity provisions of this subchapter dies while in regular active service, or while receiving retirement salary under this subchapter but before having recouped all contributions, the lump-sum credit for retirement or the balance after deduction of retirement salary paid prior to death, if applicable, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving the judge in the order of precedence established in section 11-1569(b). Such payments shall be a bar to recovery by any other person.

(July 29, 1970, 84 Stat. 501, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 124(b)(2), 254(b)(1); Oct. 1, 1989, 102 Stat. 2269-12, Pub. L. 100-462, § 135(a); June 13, 1994, Pub. L. 103-266, §§ 1(b)(55)-(57), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (a)(4).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1563.

1973 Ed., § 11-1563.

References in Text

The District of Columbia Judges Retirement Act of 1964, referred to in the first sentence in subsection (b) of this section, is the Act of October 13, 1964, 78 Stat. 1055, Pub. L. 88-644.

Change in Government

This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.13(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1564. COMPUTATION OF RETIREMENT SALARY; ELECTION TO CREDIT OTHER SERVICE.

(a) The retirement salary of a judge who retires pursuant to section 11-1562(a) and (b) shall be paid annually in equal monthly installments during the remainder of the judge's life and shall bear the same ratio to the judge's basic salary immediately prior to the date of the judge's retirement as the total of the judge's aggregate years of service bears to the period of thirty years. A judge who elects to receive a reduced retirement salary pursuant to section 11-1562(b)(2) shall have retirement salary reduced by one-twelfth of 1 per centum for each month or fraction of a month the judge is under the age of sixty at the time of the commencement of reduced retirement salary. In no event shall the retirement salary (including the amount provided by subsection (c) of this section) of a judge exceed 80 per centum of the judge's basic salary immediately prior to the date of the judge's retirement.

(b) The retirement salary of a judge retired for disability pursuant to section 11-1526(b) or section 11-1562(c) or (d) shall be paid annually in equal monthly installments during the remainder of the judge's life and shall be computed as provided in subsection (a). If a judge is retired for disability, the judge's retirement salary shall not be reduced because of the judge's age at the time of retirement. In no event shall the retirement salary of a judge retired for disability be less than 50 per centum or exceed 80 per centum of the judge's basic salary immediately prior to the date of the judge's retirement.

(c) In computing the retirement salary of a judge retiring under section 11-1562, the judge shall be entitled, if the judge so elects during the continuance of judicial service or at the time of retirement, to receive, in addition to the amount provided for in subsection (a) of this section, an amount (payable annually in equal monthly installments during the remainder of the judge's life) based on military and civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, computed in accordance with section 8339 (a), (b), (c), (d), (g), and (h) of that title, as applicable, subject to the provisions of section 8334 (c) and (d) of that title and the provisions of subsection (d) of this section; except that average pay for the purpose of the computation shall be deemed to be the basic salary of the judge immediately prior to the date of retirement under section 11-1562.

(d)(1) The crediting of service with respect to any judge under subsection (c) of this section shall be made on the standard basis of a deposit in the sum equal to 3 1/2 per centum of the judge's basic salary, pay, or

compensation for civilian service creditable under section 8332 of title 5, United States Code, with interest as provided in paragraph (2) of this subsection.

(2) Interest on deposits under this subsection and section 11-1567(b) shall be computed as follows:

(A) Interest shall be paid at a rate which (as determined by the Secretary of the Treasury) is equal to the average rate of return on investment (adjusted to the nearest one-eighth of 1 per centum) for the District of Columbia Judges' Retirement Fund (established by section 1-714) or the District of Columbia Judicial Retirement and Survivors Annuity Fund (established by section 11- 1570) for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if the judge makes a lump-sum payment or during which the judge makes the first payment if the judge makes installment deposits, except that --

(i) for so much of any such period which occurs between the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (sec. 1-701 et seq.) and October 1, 1980, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one-eighth of 1 per centum) shall be used in determining the interest rate to be paid on deposits;

(ii) for so much of any such period which occurs between January 1, 1948, and the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (sec. 1-701 et seq.), the rate of 3 per centum a year, compounded annually, shall be used in determining the interest rate to be paid on deposits; and

(iii) for so much of any such period which occurs prior to January 1, 1948, the rate of 4 per centum a year, compounded annually, shall be used in determining the interest rate to be paid on deposits.

(B) Interest shall be payable for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made.

(C) If a judge elects to make deposit in installments, each payment shall include interest on that portion of the refund which is then being redeposited.

Interest may not be charged for a period of separation from the service which began before October 31, 1956.

(3) Deposit under this subsection may not be required for --

(A) service before August 1, 1920;

(B) military service; or

(C) service for the Panama Railroad Company before January 1, 1924.

(4) If a judge elects to be credited with service under subsection (c) of this section, the judge's lump-sum credit, or any remaining balance thereof, in the Civil Service Retirement and Disability Fund or in the retirement fund of any other retirement system for civilian employees of the Government of the United States or the District of Columbia, shall be transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund under section 11- 1570. The judge shall be deemed to consent to the transfer. The transfer shall be a complete discharge and acquittance of all claims and demands against the retirement system from which the funds were transferred on account of the service so credited.

(5) A judge whose lump-sum credit is transferred to the fund under paragraph (4) of this subsection is not required to make deposits in addition to the amount transferred for periods of service for which full contributions were made to the retirement system from which the transfer was made.

(6) In the case of a judge whose lump-sum credit has been transferred to the fund under paragraph (4) of this subsection and who has not elected a survivor annuity under section 11-1566, or prior corresponding provision of law, the Secretary of the Treasury shall refund to the judge any amount which the Secretary of the Treasury determines to be in excess of the amount of the deposit required by this subsection. In the case of a judge whose lump-sum credit has been transferred to the fund under paragraph (4) of this subsection and who, prior to the effective date of this section, had elected a survivor annuity and made deposits to the fund for survivor annuity purposes, the Secretary of the Treasury shall refund to the judge any amount which the Secretary of the Treasury determines in excess of the amount of the deposit required by section 11-1567.

(7) If any civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, is not covered by the amount of the lump-sum credit transferred under paragraph (4) of this subsection, the judge may make deposit, on the standard basis prescribed by paragraph (1) of this subsection, with interest as provided in paragraph (2) of this subsection, in accordance with and subject to the applicable provisions of section 8334(c) and (d) of that title, of the amount or amounts necessary for the judge to receive full credit for that service for the purposes of subsection (c) of this section. The deposit may be made, as the judge may elect, in installments, during the continuance of

the judge's judicial service, in such amounts as the Secretary of the Treasury may determine in each instance, or in a lump sum prior to or at the time of the judge's retirement under section 11-1562. A judge electing to make installment deposits shall not be given full credit for the service until the total required deposit is made.

(8) For the purpose of survivor annuity, deposits authorized by this subsection also may be made by the survivor of a judge.

(e) Nothing in this subchapter shall prevent a judge eligible therefor from simultaneously receiving retirement salary under this section and any annuity or retired pay to which the judge would otherwise be entitled under any other law without regard to this subchapter. However, in computing the retirement salary of a judge under this section, service used in the computation of such other annuity shall not be credited.

(July 29, 1970, 84 Stat. 501, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 124(b)(3), 254(b)(2); June 13, 1994, Pub. L. 103-266, §§ 1(b)(58)-(68), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (a)(3), (c); Oct. 21, 1998, 112 Stat. 2423, Pub. L. 105-274, § 2(e)(5); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(5).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1564.

1973 Ed., § 11-1564.

References in Text

"The date of the enactment of the District of Columbia Retirement Reform Act," referred to in subsection (d)(2)(A)(i) and (ii), is November 17, 1979.

Change in Government

This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1565. SERVICE BY RETIRED JUDGES.

Any retired judge performing judicial duties as a senior judge on the District of Columbia Court of Appeals or the Superior Court shall be entitled, during the period for which he or she serves, to receive the same daily rate of pay as a judge on the court in which he or she performs such duties. The cumulative daily earnings of a senior judge, in any single year, when added to the annual retirement salary, may not exceed the current annual salary of a judge of the court in which he or she performs such duties. No deduction shall be withheld for health benefits, Federal employee's life insurance, or retirement purposes from the salary paid to a judge during judicial service. The performance of such judicial service shall not create an additional retirement, change retirement, or create, or in any manner affect a survivor annuity.

(July 29, 1970, 84 Stat. 503, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 14(c).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1565.

1973 Ed., § 11-1565.

§ 11-1566. SURVIVOR ANNUITY; ELECTION; RELINQUISHMENT.

(a) Any judge, whether or not subject to sections 11-1562 to 11-1565, may, by written election filed with the Secretary of the Treasury within six months after the date on which the judge takes office or is reappointed or recommissioned, or within six months after the judge marries, elect to be within the survivor annuity provisions of this subchapter.

(b) Any judge in regular active service or any retired judge, who shall have elected survivor annuity, and who after that election is unmarried and does not have a dependent child, may elect --

(1) to terminate the deductions and withholdings from the judge's salary under section 11-1567(a) and

any installment payments elected to be made under section 11-1567(b); and

(2) to have paid to the judge the lump-sum credit for survivor annuity.

Any election under this subsection shall be made in writing and filed with the Secretary of the Treasury.

(c) If any judge who shall have elected survivor annuity resigns from office otherwise than under the provisions of this subchapter or is removed, the judge shall be entitled to be paid the lump-sum credit for survivor annuity.

(d) Payment of the lump-sum credit for survivor annuity as provided in this section shall extinguish all claims with respect to survivor annuity.

(July 29, 1970, 84 Stat. 503, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(69)-(71), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (a)(2).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1566.

1973 Ed., § 11-1566.

Change in Government

This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1567. SURVIVOR ANNUITY; PAYMENTS TO FUND.

(a) There shall be deducted and withheld from the salary (whether basic or retirement) of each judge who has elected survivor annuity a sum equal to 3.5 percent of that salary. The amounts so deducted and withheld shall, in accordance with such procedures as may be prescribed by the Secretary of the Treasury, be deposited in the fund. Every judge who elects survivor annuity shall be deemed thereby to consent and agree to the deductions from the judge's salary as provided in this subsection, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which the judge or the judge's survivors shall be entitled under the survivor annuity provisions of this subchapter.

(b) If the judge has not previously so deposited, each judge who has elected survivor annuity shall deposit to the fund, with interest computed in accordance with section 11-1564(d)(2), a sum equal to 3.5 percent of the judge's salary received for judicial service and of retirement salary (but excluding salary for judicial service under section 11-1565); and a sum equal to 3.5 percent of the judge's basic salary, pay, or compensation for civilian service creditable under section 8332 of title 5, United States Code, with interest as provided in section 11-1564(d). Except to the extent that the Secretary of the Treasury has made refund to the judge under section 11-1564(d)(6), deposit is not required with respect to that portion of the service of the judge covered by the transfer, under section 11-1564(d)(4), of the judge's lump-sum credit to the fund. In addition, deposit may not be required for the types of service described in section 11-1564(d)(3). Each judge may elect to make deposits under this subsection in installments during the continuance of the judge's judicial service in such amounts as may be determined in each instance by the Secretary of the Treasury. Deposits under this subsection also may be made by the survivor of a judge.

(c) If a judge or survivor fails to make such deposits, credit shall be allowed for the service, but the annuity of the widow or widower of such judge shall be reduced by an amount equal to 10 per centum of the deposit required by this section, computed as of the date of the death of the judge, unless the widow or widower elects to eliminate the service not covered by deposit entirely from credit for computation purposes except as provided in section 11-1564(d)(3).

(July 29, 1970, 84 Stat. 504, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 254(b)(3); June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(a)(1); June 13, 1994, Pub. L. 103-266, §§ 1(b)(72), (73), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, § 11253(a)(2).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1567.

1973 Ed., § 11-1567.

§ 11-1568. SURVIVOR ANNUITY; ENTITLEMENT; COMPUTATION.

(a) The service of a judge for the purpose of any provision of this subchapter which refers to this subsection includes the judge's judicial service (and retired service for which deductions are made) and, subject to section 8334(d) of title 5, United States Code, the judge's military and civilian service which is creditable under section 8332 of that title.

(b) Nothing in this subchapter shall prevent a widow or widower eligible therefor from simultaneously receiving a survivor annuity under this subchapter and any other annuity (survivor or otherwise) or retired pay to which he or she would otherwise be entitled under any other law without regard to this subchapter. However, in computing the survivor annuity of that widow or widower under this subchapter, service used in the computation of such other annuity shall not be credited.

(c) If a judge who has elected a survivor annuity dies in regular active service or after having retired from such service with at least five years of allowable service under this section for which payments have been withheld or deposits made, the survivor annuity shall be paid as follows:

(1) If the judge is survived by a widow or widower but no child, the widow or widower shall receive, beginning on the day after the judge dies, an amount computed as provided in subsection (e).

(2) If the judge is survived by a widow or widower and one or more children --

(A) the widow or widower shall receive an immediate annuity in the amount computed as provided in subsection (e); and

(B) there also shall be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow or widower, but not to exceed the lesser of (i) \$8,424 per year divided by the number of such children or (ii) \$2,808 per child per year.

(3) If the judge leaves no surviving widow or widower but leaves a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which the widow or widower would have been entitled under paragraph (1) of this subsection had he or she survived, but not to exceed the lesser of (A) \$10,110 per year divided by the number of such children or (B) \$3,370 per child per year.

For the purpose of computing, under this subsection, the annuity of a child that commences on or after January 1, 1987, the figures \$8,424, \$2,808, \$10,110, and \$3,370 (provided in paragraphs (2) and (3)) shall be increased by the total percentage of the increases allowed and in force with respect to retirement salaries of judges under section 11-1571(a) of this title on or after such date. An annuity payable to a widow or widower under this section shall be terminable upon death or upon remarriage prior to the attainment of fifty-five years of age. The annuity payable to a child shall be terminable upon the child's death or marriage or ceasing to be a child as defined in section 11-1561(8). In case of the death of a widow or widower of a judge leaving a child or children of the judge surviving, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a child is terminated, the annuities of any remaining child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was terminated had not survived the judge.

(d) Questions of disability or other eligibility requirements of a child under this section shall be determined by the Secretary of the Treasury who may order such medical or other examinations at any time as the Secretary of the Treasury deems necessary with respect to determining the facts concerning the disability of a child receiving or applying for an annuity under this subchapter. An annuity may be denied or suspended for failure to submit to examination.

(e) The annuity of a widow or widower of a judge or retired judge who elected a survivor annuity shall be equal to --

(1) in the case of a judge who dies while in active regular service as a judge, the greater of --

(A) 55 percent of the retirement salary the judge would have been entitled to receive (as computed under section 11-1564) if the judge had retired on the day before the date of death (without regard to the age requirements prescribed in section 11-1562(b)), or

(B) 55 percent of the retirement salary the judge would have been entitled to receive (as computed under section 11-1564) if the judge had retired on the day before the date of death with 15 years of service for the purposes of this subchapter (without regard to the age requirements prescribed in section 11-1562(b)); and

(2) In the case of a retired judge, 55 percent of the retirement salary payable to such judge on the day before the date of the judge's death.

(July 29, 1970, 84 Stat. 504, Pub. L. 91-358, title I, § 111; June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(a)(2); June 13, 1994, Pub. L. 103-266, §§ 1(b)(74)-(76), 108 Stat. 713; Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(1); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(1).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1568.

1973 Ed., § 11-1568.

§ 11-1568.01. OPPORTUNITY TO REVOKE A PREVIOUS SURVIVOR ANNUITY ELECTION.

(1)(A) Any individual who, before the date of the enactment of this Act, made an election under section 11-1566 of title 11 of the District of Columbia Official Code, to come within the purview of the survivor annuity provisions of subchapter III of chapter 15 of such title may revoke that election. Such a revocation shall constitute a complete withdrawal from the survivor annuity program provided for in such subchapter.

(B) A revocation under subparagraph (A) shall be submitted in writing to the Secretary of the Treasury.

(2) A revocation under paragraph (1) shall be effective on the day it is received by the official referred to in subparagraph (B) of such paragraph.

(3)(A) On the effective date of a revocation under paragraph (1), any right to survivor benefits (to which the revocation relates) for the survivors of the individual who makes the revocation shall terminate, and all amounts credited to the account of such individual under section 11-1570(c) of Title 11 of the District of Columbia Official Code, together with interest computed as provided in subparagraph (B), shall be returned to that individual in a lump-sum payment.

(B) For the purpose of subparagraph (A), interest shall be computed in accordance with section 11-1561(10)(C) of title 11 of the District of Columbia Official Code.

(4)(A) Any individual who makes a revocation under paragraph (1) and who thereafter becomes eligible to make an election under section 11-1556 of Title 11 of the District of Columbia Official Code may make such election only if such individual redeposits, to the credit of the District of Columbia Judicial Retirement and Survivors Annuity Fund referred to in section 11-1561(4) of such title, the full amount of the lump-sum payment made to such individual under paragraph (4), together with interest.

(B) For the purpose of subparagraph (A), interest shall be computed at 3 percent per annum, compounded on December 31 of each year from the date of the lump-sum payment referred to in such subparagraph until the date on which the amount referred to in such subparagraph is redeposited under such subparagraph.

(June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(c); Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, § 11253(a)(3); Oct. 21, 1998, 112 Stat. 2423, Pub. L. 105-274, § 2(e)(6); Oct. 21, 1998, 112 Stat. 2681-538, Pub. L. 105-277, § 804(e)(6).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1568.1.

References in Text

"The date of the enactment of this Act," referred to in paragraph (1)(A), is June 6, 1986.

The reference in paragraph (4)(A) to § 11-1556 probably should be to § 11-1566.

Miscellaneous Notes

Section 23(b) of D.C. Law 15-354 provides that the section designation of § 11-1568.1 of the District of Columbia Official Code is redesignated as § 11- 1568.01.

§ 11-1568.02. ADDITIONAL OPPORTUNITY TO MAKE A SURVIVOR ANNUITY ELECTION.

(1) Any individual who, on or before the date of the enactment of this Act, has not made an election under section 11-1566(a) of Title 11 of the District of Columbia Official Code, to come within the purview of the survivor annuity provisions of subchapter III of Chapter 15 of such title and is no longer entitled to make such an election may make such an election. Any such election shall be submitted in writing to the Secretary of the Treasury.

(2) An election under paragraph (1) shall be effective on the day it is received by the official referred to

in such paragraph.

(June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(d); Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(2); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(2).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1568.2.

References in Text

"The date of the enactment of this Act," referred to in the first sentence of paragraph (1), is June 6, 1986.

Miscellaneous Notes

Section 23(c) of D.C. Law 15-354 provides that the section designation of § 11-1568.2 of the District of Columbia Official Code is redesignated as § 11- 1568.02.

§ 11-1568.03. PERIOD FOR EXERCISE OF RIGHT TO REVOKE OR ELECT.

The right to revoke an election under subsection (d) or to make an election under subsection (e) is irrevocably waived if not exercised within 180 days after the date of the enactment of this Act.

(June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(e).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1568.3.

References in Text

The reference to "subsection (d)" should be to subsection (c) of § 601 of Pub. L. 99-335 which is codified at § 11-1568.01.

The reference to "subsection (e)" should be to subsection (d) of § 601 of Pub. L. 99-335 which is codified at § 11-1568.02.

"The date of the enactment of this Act" is June 6, 1986.

Miscellaneous Notes

Section 23(d) of D.C. Law 15-354 provides that the section designation of § 11-1568.3 of the District of Columbia Official Code is redesignated as § 11- 1568.03.

§ 11-1569. SURVIVOR ANNUITY; PAYMENT; ORDER OF PRECEDENCE.

(a) Survivor annuities 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 shall have accrued.

(b) In any case in which --

(1) a judge who has elected survivor annuity shall die (A) while in regular active service after having rendered five years of allowable service as provided in section 11-1568(a) or while receiving retirement salary under this subchapter but without a survivor or survivors entitled to annuity under section 11-1568(c) or (B) while in regular active service but before having rendered five years of allowable service; or

(2) the right of all persons entitled to an annuity under section 11-1568(c) based on the service of the judge shall terminate before a valid claim therefor shall have been established;

the lump-sum credit 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, and such payment shall be a bar to recovery by any other person:

First, to the beneficiary or beneficiaries whom the judge may have designated in writing to the Secretary of the Treasury prior to the judge's death;

Second, if there be no such beneficiary, to the widow or widower of the judge;

Third, if none of the above, to the child or children of the judge and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of the judge or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such judge;

Sixth, if none of the above, to such other next of kin of the judge as may be determined by the Secretary of the Treasury to be entitled under the laws of the domicile of the judge at the time of the judge's death.

Determination as to the widow, widower, or child of a judge for purposes of this subsection shall be made by the Secretary of the Treasury without regard to the definitions in section 11-1561.

(c) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid (together with any amounts received by the judge as retirement salary) equals the total amount credited to the individual account of the judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Official Code, sec. 1-701 et seq.), whichever is earlier, the difference shall be paid upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (b).

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

First, to the duly appointed executor or administrator of the estate of the annuitant;

Second, if there is no such executor or administrator, payment may be made, after the expiration of thirty days from the date of death of the annuitant, to such person or persons as may appear in the judgment of the Secretary of the Treasury to be legally entitled thereto, and such payments shall be a bar to recovery by any other person.

(e) Where any payment under sections 11-1566 to 11-1569 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, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the jurisdiction wherein the claimant resides or is otherwise legally vested with the care of the claimant or the claimant's estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the jurisdiction wherein the claimant resides, payment may be made to any person who, in the judgment of the Secretary of the Treasury, is responsible for the care of the claimant, and the payment bars recovery by any other person.

(July 29, 1970, 84 Stat. 506, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 254(a)(2); June 13, 1994, Pub. L. 103-266, §§ 1(b)(77)-(79), 108 Stat. 713; Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(1); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-177, § 804(e)(1).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1569.

1973 Ed., § 11-1569.

References in Text

"The date of the enactment of the District of Columbia Retirement Reform Act," referred to in subsection (c) of this section, is November 17, 1979.

§ 11-1570. THE DISTRICT OF COLUMBIA JUDICIAL RETIREMENT AND SURVIVORS ANNUITY FUND.

(a) There is established in the Treasury a fund known as the District of Columbia Judicial Retirement and Survivors Annuity Fund (hereafter in this section referred to as the 'Fund'), which shall consist of the following assets:

- (1) Amounts deposited by, or deducted and withheld from the salary and retired pay of, a judge under section 1563 or 1567 of this title, which shall be credited to an individual account of the judge.
- (2) Amounts transferred from the District of Columbia Judges' Retirement Fund under section 124(c)(1) of the District of Columbia Retirement Reform Act, as amended by section 11252 of the Balanced Budget Act of 1997.
- (3) Amounts deposited under subsection (d) [of this section].
- (4) Any return on investment of the assets of the Fund.

(b)(1) The Secretary of the Treasury (hereafter in this section referred to as the "Secretary") shall be responsible for the administration of the Fund. The Secretary may carry out such responsibilities through an agreement with a Trustee or contractor (who may be the Trustee or contractor appointed to carry out

responsibilities relating to Federal benefit payments under subtitle A of title XI of the Balanced Budget Act of 1997 and an enrolled actuary (as defined in section 7701(a)(35) of the Internal Revenue Code of 1986) who is a member of the American Academy of Actuaries (who may be the enrolled actuary engaged under such Act). Notwithstanding any other provision of District law or any other law, rule, or regulation, any Trustee, contractor, or enrolled actuary selected by the Secretary under this subsection may, with the approval of the Secretary, enter into one or more subcontracts with the District of Columbia government or any person to provide services to such Trustee, contractor, or enrolled actuary in connection with its performance of its agreement with the Secretary. Such Trustee, contractor, or enrolled actuary shall monitor the performance of any subcontract to which it is a party and enforce its provisions.

(2) The Secretary shall submit to the President an annual estimate of the expenditures necessary for the maintenance and operation of the Fund, and such supplemental estimates as may be required from time to time for the same purposes, according to law.

(3) The Secretary may cause periodic examinations of the Fund to be made by an enrolled actuary (as defined in section 7701(a)(35) of the Internal Revenue Code of 1986) who is a member of the American Academy of Actuaries.

(c)(1) Amounts in the Fund are available --

(A) for the payment of judges retirement pay, annuities, refunds, and allowances under this subchapter;

(B) to cover the reasonable and necessary expenses of administering the Fund under any agreement entered into with a Trustee, contractor, or enrolled actuary under subsection (b)(1), including any agreement with a department, agency, or instrumentality of the United States; and

(C) to cover the reasonable and necessary administrative expenses incurred by the Secretary in carrying out the Secretary's responsibilities under this subchapter.

(2) Notwithstanding any other provision of District law or any other law (other than the Internal Revenue Code of 1986), rule, or regulation --

(A) the Secretary may review benefit determinations under this subchapter made prior to the date of the enactment of the Balanced Budget Act of 1997 [August 5, 1997], and shall make initial benefit determination after such date; and

(B) the Secretary may recoup or recover, or waive recoupment or recovery of, any amounts paid under this subchapter as a result of errors or omissions by any person.

(3)(A) In accordance with procedures approved by the Secretary, the Secretary shall provide to any individual whose claim for a benefit under this subchapter has been denied in whole or in part--

(i) adequate written notice of such denial, setting forth the specific reasons for the denial in a manner calculated to be understood by the average participant in the program of benefits under this subchapter; and

(ii) a reasonable opportunity for a full and fair review of the decision denying such claim.

(B) Any factual determination made by the Secretary pursuant to this paragraph shall be presumed correct unless rebutted by clear and convincing evidence. The Secretary's interpretation and construction of the benefit provisions of this subchapter shall be entitled to great deference.

(d)(1) The Secretary shall pay into the Fund from the General Fund of the Treasury, not later than the close of each fiscal year, an amount equal to the sum of --

(A) the normal cost for the year;

(B) the annual amortization amount for the year (which may not be less than zero); and

(C) the covered administrative expenses for the year.

(2) For purposes of this subsection:

(A) The "original unfunded liability" is the amount that is the present value as of September 30, 1997, of future benefits payable from the Fund (net of the sum of the present value of future normal costs and plan assets as of such date).

(B) The "annual amortization amount" is the amount determined by the enrolled actuary to be necessary to amortize in equal annual installments (until fully amortized) --

(i) the original unfunded liability over a 30-year period;

(ii) a net experience gain or loss over a 10-year period; and

(iii) any other changes in actuarial liability over a 20-year period.

(C) The "covered administrative expenses" are the expenses determined by the Secretary (on an annual basis) to be necessary to administer the Fund.

(3) Deposits made under this subsection shall not be credited to the account of any individual.

(e) The Secretary shall invest such portion of the Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(f) None of the moneys mentioned in this subchapter shall be assignable, either in law or in equity, or be subject to execution, levy, attachment, garnishment, or other legal process (except to the extent permitted pursuant to the District of Columbia Spouse Equity Act of 1988 [subchapter VI of Chapter 5 of Title 1]).

(g) Notwithstanding any other provision of District law, rule, or regulation, any civil action brought --

(1) by an individual to enforce or clarify rights to benefits from the Fund; or

(2) by the Secretary --

(A) to enforce any claim arising (in whole or in part) under this section or any contract entered into to carry out this section,

(B) to recover benefits improperly paid from the Fund or to clarify an individual's rights to benefits from the Fund, or

(C) to enforce any provision of this section or any contract entered into to carry out this section,

shall be brought in the United States District Court for the District of Columbia.

(h) For purposes of the Internal Revenue Code of 1986 --

(1) the Fund shall be treated as a trust described in section 401(a) of the Code that is exempt from taxation under section 501(a) of the Code;

(2) any transfer to or distribution from the Fund shall be treated in the same manner as a transfer to or distribution from a trust described in section 401(a) of the Code; and

(3) the benefits provided by the Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(i) For purposes of the Employee Retirement Income Security Act of 1974, the benefits provided by the Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(j) To the extent that any provision of subpart A of part I of subchapter D of the chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 401 et seq.) is amended after the date of the enactment of this subsection, such provision as amended shall apply to the Fund only to the extent the Secretary determines that application of the provision as amended is consistent with the administration of this subchapter.

(k) Federal obligations for benefits under this subchapter are backed by the full faith and credit of the United States.

(l) The provisions of section 664 of title 18, United States Code (relating to theft or embezzlement from employee benefit plans), shall apply to the Fund.

(July 29, 1970, 84 Stat. 507, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 124(b)(4); Aug. 5, 1997, 111 Stat. 756, Pub. L. 105-33, §§ 11251(a), 11253(a)(1); Oct. 21, 1998, 112 Stat. 2419, Pub. L. 105-274, § 2(a); Oct. 21, 1998, 112 Stat. 2681-533, Pub. L. 105-277, § 804(a); Dec. 23, 2004, 118 Stat. 3970, Pub. L. 108-489, § 3(a)(1), (b)(1).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1570.

1973 Ed., § 11-1570.

Effect of Amendments

Pub. L. 108-489, in subsec. (c), added par. (3); and added subsec. (l).

Effective Dates

Section 2(f) of Pub. L. 105-274, 112 Stat. 2423, provides that § 2(a) of the act shall take effect October 1, 1998.

Pub. L. 108-489, § (3)(a)(2), provides that: "The amendment made by paragraph (1) shall apply with respect to claims for benefits which are made after the date of the enactment of this Act [Dec. 23, 2004]."

Pub. L. 108-489, § (3)(b)(2) provides that: "The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act [Dec. 23, 2004]."

References in Text

Subtitle A of Title XI of the Balanced Budget Act of 1997, referred to in (b)(1) and (c)(2)(A), is subtitle A of title

Change in Government

This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1571. PERIODIC INCREASES; EXISTING RIGHTS.

(a) The retirement salary of any judge, or the annuity of any person based upon the service of a judge, who, on the effective date of any increase which, after the effective date of this section, becomes payable under the provisions of section 8340 (b) of title 5, United States Code, is receiving such salary or annuity, or who, before the next such increase first becomes payable under such section, receives such salary or annuity, either (1) under the provisions of this subchapter, or (2) under the provisions of section 11-1701, as in effect prior to the effective date of this section, and its predecessor laws, shall be increased on the effective date of the increase by a percentage equal to the percentage of such increase under section 8340 of title 5, United States Code.

(b) Nothing in this subchapter shall defeat or diminish rights acquired under section 11-1701, as in effect prior to the effective date of this section, and its predecessor laws, except on the election and with the consent of the judge, annuitant, or other person affected.

(July 29, 1970, 84 Stat. 507, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 252(a).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1571.

1973 Ed., § 11-1571.

§ 11-1572. REGULATIONS; EFFECT ON REFORM ACT.

(a) The Secretary is authorized to issue regulations to implement, interpret, administer, and carry out the purposes of this subchapter, and, in the Secretary's discretion, those regulations may have retroactive effect, except that nothing in this subsection may be construed to permit the Secretary to issue any regulation to retroactively reduce or eliminate the benefits to which any individual is entitled under this subchapter.

(b) This subchapter supersedes any provision of the District of Columbia Retirement Reform Act (Public Law 96-122) inconsistent with this subchapter and the regulations thereunder.

(Oct. 21, 1998, 112 Stat. 2420, Pub. L. 105-274, § 2(b); Oct. 21, 1998, 112 Stat. 2681-535, Pub. L. 105-277, § 804(b).)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 11-1572.