

Public Law 100-659
100th Congress

An Act

Nov. 15, 1988
[S. 1630]

To provide for retirement and survivors' annuities for bankruptcy judges and United States magistrates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Retirement and
Survivors'
Annuities for
Bankruptcy
Judges and
Magistrates Act
of 1988.
28 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988".

SEC. 2. BASIC RETIREMENT PROGRAM.

(a) NEW RETIREMENT SYSTEM.—Chapter 17 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 377. Retirement of bankruptcy judges and magistrates

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

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

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

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

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

"(c) SERVICE OF AT LEAST 8 YEARS.—A bankruptcy judge or magistrate to whom this section applies and who retires after serving at

least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by $\frac{1}{8}$ of 1 percent for each full month such bankruptcy judge or magistrate was under the age of 65 at the time the judge or magistrate left office, except that such reduction shall not exceed 20 percent.

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

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

"(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—A bankruptcy judge or magistrate shall be entitled to an annuity under this section if the judge or magistrate elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate who elects to receive an annuity under this section shall not be entitled to receive any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5.

"(g) CALCULATION OF SERVICE.—(1) For purposes of calculating an annuity under this section—

"(A) full-time service as a bankruptcy judge or magistrate to whom this section applies may be credited; and

"(B) each month of service shall be credited as one-twelfth of a year, and the fractional part of any month shall not be credited.

"(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a United States magistrate to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

"(B) In the case of an individual who is a magistrate to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or

physical disability, any service of that individual as a bankruptcy judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

“(h) COVERED POSITIONS AND SERVICE.—This section applies to—

“(1) any bankruptcy judge appointed under—

“(A) section 152 of this title;

“(B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2682); or

“(C) section 404 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549); and

“(2) any United States magistrate appointed under section 631 of this title,

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

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

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

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

“(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

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

“(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each bankruptcy judge or magistrate who makes an election under subsection (f) shall be deemed to consent and agree to the

deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 376 of this title) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such bankruptcy judge or magistrate during the period covered by such payment, except the right to those benefits to which the bankruptcy judge or magistrate is entitled under this section (and section 376).

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

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

“(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

“(1) PRACTICING LAW AFTER RETIREMENT.—

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

“(B) FORFEITURE NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—(i) If a bankruptcy judge or magistrate makes an election to practice law after retirement under this section—

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

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

“(ii) An election under clause (i)—

“(I) may be made by a bankruptcy judge or magistrate eligible for retirement under this section, and

“(II) shall be filed with the Director of the Administrative Office of the United States Courts.

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

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

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

“(3) ACCEPTING OTHER EMPLOYMENT.—Any bankruptcy judge or magistrate who retires under this section and thereafter

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

"(n) LUMP-SUM PAYMENTS.—

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

"(i) who leaves office and is not reappointed as a bankruptcy judge or magistrate for at least 31 consecutive days;

"(ii) who files an application with the Administrative Office of the United States Courts for payment of the lump-sum credit;

"(iii) is not serving as a bankruptcy judge or magistrate at the time of filing of the application; and

"(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application; is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a bankruptcy judge or magistrate.

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

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

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

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

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

"(G) Subject to paragraph (2), a bankruptcy judge or magistrate who forfeits rights to an annuity under subsection (m)(3) before the total annuity paid equals the lump-sum credit, shall be entitled to be paid the difference if the bankruptcy judge or magistrate files an application with the Administrative Office of the United States Courts for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

"(2) SPOUSES AND FORMER SPOUSES.—(A) Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

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

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

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

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

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

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

Regulations.

"(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

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

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

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

but does not include interest—

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

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

"(o) JUDICIAL OFFICERS' RETIREMENT FUND.—

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

"(2) INVESTMENT OF FUND.—The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Judicial Officers' Retirement Fund as are not immediately required for payments

Appropriation
authorization.

from the Fund. The income derived from these investments constitutes a part of the Fund.

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

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

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

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

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

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authorization.

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

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 17 of title 28, United States Code, is amended by adding at the end the following new item:

"377. Retirement of bankruptcy judges and magistrates."

28 USC 377 note.

(c) INCUMBENT JUDGES AND MAGISTRATES.—

(1) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 377 OF TITLE 28.—A bankruptcy judge or United States magistrate in active service on the effective date of this Act shall, subject to paragraph (2), be entitled, in lieu of the annuity otherwise provided under the amendments made by this section, to—

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

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

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

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

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

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

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

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

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

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

SEC. 3. JUDICIAL SURVIVORS' ANNUITIES.

(a) **ANNUITIES FOR SURVIVORS OF BANKRUPTCY JUDGES AND MAGISTRATES RETIRING UNDER NEW SYSTEM.**—Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (a)(1) is amended—

(A) by striking out “or” at the end of subparagraph (D);

(B) by adding “or” at the end of subparagraph (E);

(C) by inserting after subparagraph (E) the following:

“(F) a full-time bankruptcy judge or a full-time United States magistrate;” and

(D) by striking out “; or (iv) October 1, 1986;” and inserting in lieu thereof “, (iv) October 1, 1986, or (v) the date of the enactment of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States magistrate in active service on that date;”.

(2) Subsection (a)(2) is amended—

(A) by striking out “and” at the end of subparagraph (D);

(B) by adding “and” at the end of subparagraph (E); and

(C) by adding at the end the following:

“(F) in the case of a bankruptcy judge or United States magistrate, an annuity paid under section 377 of this title;”.

(3) Subsection (b) is amended in the last sentence—

(A) by inserting after “deductions” the following: “(and any deductions made under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5);” and

(B) by inserting before the period the following: “(and under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)”.

28 USC 376 note.

(b) **SURVIVORS' ANNUITIES FOR INCUMBENTS.**—In the case of a bankruptcy judge or magistrate who elects an annuity under section 2(c), only service for which an annuity under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by section 2 of this Act, is calculated under section 2(c) may be used in the computation of an annuity under section 376 of title 28, United States Code, as amended by subsection (a) of this section.

SEC. 4. AMENDMENTS RELATED TO RECALL.

(a) **RECALL OF BANKRUPTCY JUDGES.**—Section 155(b) of title 28, United States Code, is amended—

(1) by inserting “section 377 of this title or in” after “annuity in”; and

(2) by inserting “which are applicable to such judge” after “title 5”.

(b) **ALTERNATIVE RECALL OF CERTAIN JUDGES AND MAGISTRATES.**—Section 375 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting “under the provisions of section 377 of title or” after “has retired”; and

(2) in subsection (c)—

(A) by inserting “under the provisions of section 377 of this title or” after “annuity provided”; and

(B) by adding at the end thereof the following: “The annuity of a bankruptcy judge or magistrate who completes that 5-year period of service, whose certification is not renewed, and who retired under section 377 of this title shall be equal to the salary in effect, at the end of that 5-year period, for the office from which he or she retired.”; and

(3) in subsection (g) by inserting “who retired under the applicable provisions of title 5” after “section”.

(c) **RECALL OF MAGISTRATES.**—Section 636(h) of title 28, United States Code, is amended in the second sentence—

(1) by inserting “section 377 of this title or in” after “annuity set forth in”; and

(2) by inserting “which are applicable to such magistrate” after “title 5”.

SEC. 5. TECHNICAL AMENDMENTS.

Section 631(e) of title 28, United States Code, is amended—

(1) by striking out “(j)” and inserting in lieu thereof “(k)”;

(2) by striking out “(i)” and inserting in lieu thereof “(j)”;

(3) by striking out “(h)” and inserting in lieu thereof “(i)”.

SEC. 6. CONFORMING AMENDMENTS.

(a) **ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.**—Section 604(a) of title 28, United States Code (relating to the duties of

the Director of the Administrative Office of the United States Courts) is amended—

(1) in paragraph (7) by inserting “bankruptcy judges, United States magistrates,” after “United States,”;

(2) by redesignating paragraph (18) as paragraph (19); and

(3) by inserting after paragraph (17) the following:

“(18) Regulate and pay annuities to bankruptcy judges and United States magistrates in accordance with section 377 of this title and paragraphs (1)(B) and (2) of section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988;”

(b) **CIVIL SERVICE RETIREMENT SYSTEM.**—Section 8334(i) of title 5, United States Code, is amended by adding at the end the following new paragraph:

“(4) Notwithstanding any other provision of law, a bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall not be subject to deductions and contributions to the Fund, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge or magistrate shall be entitled to a lump-sum credit under section 8342(a) of this title.”

(c) **FEDERAL EMPLOYEES RETIREMENT SYSTEM.**—Section 8402 of title 5, United States Code, is amended by adding at the end the following new subsection:

“(e) A bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate shall be entitled to a lump-sum credit under section 8424 of this title.”

SEC. 7. THRIFT SAVINGS PLAN.

(a) **PARTICIPATION IN THE PLAN.**—Subchapter III of chapter 84 of title 5, United States Code, is amended by adding at the end the following:

“§ 8440a. Bankruptcy judges and magistrates

“(a)(1) A bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988 may elect to contribute an amount of such individual’s basic pay to the Thrift Savings Fund.

“(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to this chapter.

“(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to bankruptcy judges and magistrates who make contributions to the Thrift Savings Fund under subsection (a) of this section.

“(2) The amount contributed by a bankruptcy judge or magistrate for any pay period shall not exceed 5 percent of basic pay for such pay period.

"(3) No contributions shall be made under section 8432(c) of this title for the benefit of a bankruptcy judge or magistrate making contributions under subsection (a) of this section.

"(4)(A) Section 8433(b) of this title applies to a bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an immediate annuity under section 377 of title 28 (including a disability annuity under subsection (d) of such section) or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

"(B) Section 8433(c) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988; except that the period described in paragraph (3) of section 8433(c) commences on or after the date on which payment of the bankruptcy judge's or magistrate's annuity under section 377 of title 28 commences.

"(C) Section 8433(d) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

"(5) With respect to bankruptcy judges and magistrates to whom this section applies, retirement under section 377 of title 28 is a separation from service for purposes of this subchapter and subchapter VII.

"(6) For purposes of this section, the terms 'retirement' and 'retire' include removal from office under section 377(d) of title 28 on the sole ground of mental or physical disability.

"(7) Sums contributed pursuant to this section by bankruptcy judges or magistrates, as well as all previous contributions to the Thrift Savings Fund by those bankruptcy judges and magistrates, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

"(8) In the case of a bankruptcy judge or magistrate who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 377 of title 28, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity."

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 84 of title 5, United States Code, is amended by adding at the end the following:

"8440a. Bankruptcy judges and magistrates."

28 USC 377 note.

SEC. 8. REPORT TO CONGRESS.

The Director of the Administrative Office of the United States Courts shall, not later than 5 years after the date of the enactment of this Act, submit a report to the Congress on the financial oper-

ation of the retirement annuity program established under this Act and the amendments made by this Act. The report shall, in particular, include a discussion of the deductions from salary and deposits made for contributions to the annuity program and the need for continuing the deductions at the level established under the amendments made by this Act.

SEC. 9. EFFECTIVE DATE.

28 USC 377 note.

(a) **IN GENERAL.**—Subject to subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to bankruptcy judges and magistrates who retire on or after the date of the enactment of this Act.

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

Approved November 15, 1988.

LEGISLATIVE HISTORY—S. 1630 (H.R. 4340):

HOUSE REPORTS: No. 100-638, Pt. 1, accompanying H.R. 4340 (Comm. on the Judiciary) and No. 100-1072 (Comm. of Conference).

SENATE REPORTS: No. 100-293 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Mar. 3, considered and passed Senate.

July 11, H.R. 4340 considered and passed House; proceedings vacated and S. 1630, amended, passed in lieu.

Oct. 7, Senate agreed to conference report.

Oct. 19, House agreed to conference report.