viction is final and all time for filing appeals thereof has expired, shall not be included for purposes of determining years of service under section 371(c), 377, or 178 of this title or creditable service under subchapter III of chapter 83, or chapter 84, of title 5.

(Added Pub. L. 107–273, div. C, title I, § 11042(a), Nov. 2, 2002, 116 Stat. 1855.)

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

Sec.
371. Retirement on salary; retirement in senior status.
372. Retirement for disability; substitute judge on failure to retire.
373. Judges in Territories and Possessions.[1]
374. Residence of retired judges; official station.
375. Recall of certain judges and magistrate judges.
376. Annuities for survivors of certain judicial officials of the United States.
377. Retirement of bankruptcy judges and magistrate judges.

AMENDMENTS

2002—Pub. L. 107–273, div. C, title I, § 11043(a)(2), Nov. 2, 2002, 116 Stat. 1855, struck out ''; judicial discipline'' after ''failure to retire'' in item 372.

1988—Pub. L. 100–702, title X, § 1020(a)(9), Nov. 19, 1988, 102 Stat. 4672, substituted ''Annuities for survivors of certain judicial officials of the United States'' for ''Annuities to widows and surviving dependent children of justices and judges of the United States'' in item 376.

Pub. L. 100–659, § 2(b), Nov. 15, 1988, 102 Stat. 3916, added item 377.

1986—Pub. L. 99–651, title II, § 201(b)(2), Nov. 14, 1986, 100 Stat. 3648, amended item 375 generally.

1984—Pub. L. 98–353, title II, § 204(b), July 10, 1984, 98 Stat. 350, substituted ''Retirement on salary; retirement in senior status'' for ''Resignation or retirement for age'' in item 371.

1980—Pub. L. 96–458, § 3(c), Oct. 15, 1980, 94 Stat. 2040, inserted reference to ''judicial discipline'' in item 372.

1972—Pub. L. 92–397, § 3(a), (b), Aug. 22, 1972, 86 Stat. 579, substituted ''JUSTICES AND JUDGES'' for ''JUDGES'' in chapter heading, and substituted ''justices and judges of the United States'' for ''judges'' in item 376.

1959—Pub. L. 86–312, § 2, Sept. 21, 1959, 73 Stat. 587, inserted ''; official station'' in item 374.

1956—Act Aug. 3, 1956, ch. 944, § 1(a), 70 Stat. 1021, substituted ''Annuities to widows of justices'' for ''Annuities to widows on the Chief Justice and Associate Justices of the Supreme Court of the United States'' in item 375 and added item 376.

1954—Act Aug. 28, 1954, ch. 1053, § 2, 68 Stat. 918, added item 375.

Act Feb. 10, 1954, ch. 6, § 4(b), 68 Stat. 13, transferred ''; substitute judge on failure to retire'' from item 371 to item 372.

CHANGE OF NAME

Words ''magistrate judges'' substituted for ''magistrates'' in items 375 and 377 pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of this title.

§ 371. Retirement on salary; retirement in senior status

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b)(1) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (e).

(2) In a case in which a justice or judge who retires under paragraph (1) does not meet the requirements of subsection (e), the justice or judge shall continue to receive the salary that he or she was receiving when he or she was last in active service or, if a certification under subsection (e) was made for such justice or judge, when such a certification was last in effect. The salary of such justice or judge shall be adjusted under section 461 of this title.

(c) The age and service requirements for retirement under this section are as follows:

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

(e)(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

(A) The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

(B) The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average

[1] Section catchline amended by Pub. L. 99–396 without corresponding amendment of analysis.

judge in active service would perform in three months.

(C) The justice or judge has, in the preceding calendar year, performed work described in subparagraphs (A) and (B) in an amount which, when calculated in accordance with such subparagraphs, in the aggregate equals at least 3 months work.

(D) The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch. In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.

(E) The justice or judge was unable in the preceding calendar year to perform judicial or administrative work to the extent required by any of subparagraphs (A) through (D) because of a temporary or permanent disability. A certification under this subparagraph shall be made to a justice who certifies in writing his or her disability to the Chief Justice, and to a judge who certifies in writing his or her disability to the chief judge of the circuit in which the judge sits. A justice or judge who is certified under this subparagraph as having a permanent disability shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

(2) Determinations of work performed under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be made pursuant to rules promulgated by the Judicial Conference of the United States. In promulgating such criteria, the Judicial Conference shall take into account existing standards promulgated by the Conference for allocation of space and staff for senior judges.

(3) If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.

(4) In the case of any justice or judge who retires under subsection (b) during a calendar year, there shall be included in the determination under this subsection of work performed during that calendar year all work performed by that justice or judge (as described in subparagraphs (A), (B), (C), and (D) of paragraph (1)) during that calendar year before such retirement.

(June 25, 1948, ch. 646, 62 Stat. 903; Oct. 31, 1951, ch. 655, §39, 65 Stat. 724; Feb. 10, 1954, ch. 6, §4(a), 68 Stat. 12; Pub. L. 98–353, title II, §204(a), July 10, 1984, 98 Stat. 350; Pub. L. 100–702, title X, §1005(a), Nov. 19, 1988, 102 Stat. 4666; Pub. L. 101–194, title VII, §705(a), Nov. 30, 1989, 103 Stat. 1770; Pub. L. 104–317, title III, §301, Oct. 19, 1996, 110 Stat. 3851; Pub. L. 106–398, §1 [[div. A], title VI, §654(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–165; Pub. L. 106–518, title III, §303, Nov. 13, 2000, 114 Stat. 2417.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§375 and 375a (Mar. 3, 1911, ch. 231, §260, 36 Stat. 1161; Feb. 25, 1919, ch. 29, §6, 40 Stat. 1157; Mar. 1, 1929, ch. 419, 45 Stat. 1422; Mar. 1, 1937, ch. 21, §§1, 2, 50 Stat. 24; Feb. 11, 1938, ch. 25, §1, 52 Stat. 28; May 11, 1944, ch. 192, §1, 58 Stat. 218).

This section consolidates provisions of sections 375 and 375a of title 28, U.S.C., 1940 ed., relating to resignation and retirement. Remaining provisions of said section 375 now appear in sections 136, 294, and 756 of this title, and remaining provisions of said section 375a now appear in section 294 of this title.

Words ''may resign, or may retain his office but retire from regular active service'' were used to clarify the difference between resignation and retirement. Resignation results in loss of the judge's office, while retirement does not. (*Booth v. U.S.*, 1933, 54 S. Ct. 379, 291 U.S. 339, 78 L. Ed. 836; *U.S. v. Moore*, 1939, 101 F. 2d 56, certiorari denied 59 S. Ct. 788, 306 U.S. 664, 83 L. Ed. 1060.)

Terms ''judge of the United States'' and ''justice of the United States'' are defined in section 451 of this title.

The revised section continues the provision respecting the salary of a resigned judge but changes such provision for retired judges and makes them eligible to receive any increases provided by Congress for the office from which they retired. This change is in harmony with the clear line of distinction drawn by Congress between retirement and resignation.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398, §1 [[div. A], title VI, §654(a)(2)], substituted ''subsection (e)'' for ''subsection (f)'' wherever appearing.

Subsec. (e). Pub. L. 106–518, which directed amendment of subsec. (e) by inserting '', except such pay as is deductible from the retired or retainer pay as a result of participation in any survivor's benefits plan in connection with the retired pay,'' after ''such retired or retainer pay'', could not be executed because of amendment by Pub. L. 106–398. See below.

Pub. L. 106–398, §1 [[div. A], title VI, §654(a)(1)], redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: ''Notwithstanding subsection (c) of section 5532 of title 5, if a regular or reserve member or former member of a uniformed service who is receiving retired or retainer pay becomes employed as a justice or judge of the United States, as defined by section 451, or becomes eligible therefor while so employed, such retired or retainer pay shall not be paid during regular active service as a justice or judge, but shall be resumed or commenced without reduction upon retirement from the judicial office or from regular active service (into senior status) as such justice or judge.''

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title VI, §654(a)(1)(B)], redesignated subsec. (f) as (e).

1996—Subsec. (f)(1)(D). Pub. L. 104–317, §301(b), inserted at end ''In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.''

Subsec. (f)(3). Pub. L. 104–317, § 301(a), substituted ''may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.'' for ''is thereafter ineligible to receive such a certification.''

1989—Subsec. (b). Pub. L. 101–194, § 705(a)(1), designated existing provisions as par. (1), inserted ''or her'' after ''his'', substituted ''of the office if he or she meets the requirements of subsection (f)'' for ''of the office'', and added par. (2).

Subsec. (f). Pub. L. 101–194, § 705(a)(2), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–702 added subsec. (e).

1984—Pub. L. 98–353 substituted ''Retirement on salary; retirement in senior status'' for ''Resignation or retirement for age'' in section catchline.

Subsec. (a). Pub. L. 98–353 amended subsec. (a) generally, substituting ''may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired'' for ''who resigns after attaining the age of seventy years and after serving at least ten years continuously or otherwise shall, during the remainder of his lifetime, continue to receive the salary which he was receiving when he resigned''.

Subsec. (b). Pub. L. 98–353 amended subsec. (b) generally, substituting ''may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his lifetime, continue to receive the salary of the office'' for ''may retain his office but retire from regular active service after attaining the age of seventy years and after serving at least ten years continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years continuously or otherwise. He shall, during the remainder of his lifetime, continue to receive the salary of the office. The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires''.

Subsecs. (c), (d). Pub. L. 98–353 added subsecs. (c) and (d).

1954—Act Feb. 10, 1954, struck out ''; substitute judge on failure to retire'' in section catchline.

Subsec. (a). Act Feb. 10, 1954, reenacted subsec. (a) without change.

Subsec. (b). Act Feb. 10, 1954, in first sentence, inserted provision for retirement after attaining the age of 65 years and after serving 15 years continuously or otherwise.

Subsec. (c). Act Feb. 10, 1954, in general amendment of section, omitted subsec. (c) which related to appointment of substitute judges for disabled judges eligible to resign or retire where the latter fail to resign or retire, and to precedence of such disabled judges who remain on the active list after the appointment of substitutes.

1951—Act Oct. 31, 1951, subdivided section into subsections, and limited second par. of subsec. (c) (as so designated) to judges who remain on the active list but whose disabilities cause the appointment of additional judges as authorized by first par. of such subsec.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title VI, § 654(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–165, provided that: ''The amendments made by this section [amending this section and repealing section 180 of this title] shall take effect as of October 1, 1999.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 705(b) of Pub. L. 101–194 provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall first apply with respect to work performed on or after January 1, 1990, by a justice or judge of the United States who has retired under section 371(b) of title 28, United States Code.

''(2) CALENDAR YEAR 1990.—In the case of certifications required by section 371(f) of title 28, United States Code, for calendar year 1990—

''(A) such certifications shall be based on the 10-month period beginning on January 1, 1990, and ending on October 31, 1990, and shall be completed not later than December 15, 1990;

''(B) determinations of work performed under section 371(f) of title 28, United States Code, shall be made pro rata on the basis of such 10-month period; and

''(C) such certifications shall be deemed to be certifications made in calendar year 1991.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1005(b) of Pub. L. 100–702 provided that: ''The amendment made by this section [amending this section] shall apply to a justice or judge who retires, or has retired, from the judicial office or from regular active service (into senior status) as such justice or judge of the United States on or after the effective date of section 5532(c) of title 5 [effective 90 days after Oct. 13, 1978, see Effective Date of 1978 Amendment note under section 1101 of Title 5, Government Organization and Employees], and to whom section 5532(c) would otherwise be applicable.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 204(c) of Pub. L. 98–353 provided that: ''The amendments made by this section [amending this section] shall apply with respect to any justice or judge of the United States appointed to hold office during good behavior who retires on or after the date of enactment of this Act [July 10, 1984].''

COMPUTATION OF JUDICIAL SERVICE, DISTRICT OF ALASKA

Pub. L. 89–70, July 8, 1965, 79 Stat. 213, provided: ''That, notwithstanding any other provision of law, any service as a judge of the District Court for the Territory of Alaska shall be included in computing under sections 371 and 372 of Title 28, United States Code, the aggregate years of judicial service of a United States district judge for the district of Alaska.''

JUDICIAL SERVICE IN HAWAII INCLUDED WITHIN COMPUTATION OF AGGREGATE YEARS OF JUDICIAL SERVICE

Pub. L. 86–3, § 14(d), Mar. 18, 1959, 73 Stat. 10, provided in part: ''That service as a judge of the District Court for the Territory of Hawaii or as a judge of the United States District Court for the District of Hawaii or as a justice of the Supreme Court of the Territory of Hawaii or as a judge of the circuit courts of the Territory of Hawaii shall be included in computing under section 371, 372, or 373 of title 28, United States Code, the aggregate years of judicial service of any person who is in office as a district judge for the District of Hawaii on the date of enactment of this Act [Mar. 18, 1959].''

§ 372. Retirement for disability; substitute judge on failure to retire

(a) Any justice or judge of the United States appointed to hold office during good behavior who becomes permanently disabled from performing his duties may retire from regular active service, and the President shall, by and with the advice and consent of the Senate, appoint a successor.

Any justice or judge of the United States desiring to retire under this section shall certify to the President his disability in writing.