

***Benefits and Retirement
For
Bankruptcy Judges and
Magistrate Judges***

Carol S. Sefren, Chief

***Judges Compensation and Retirement Division
202-502-1880***

Flexible Benefits Program

The Federal Judiciary Flexible Benefit program provides pre-tax health-care and dependent-care benefits to judicial branch officers and employees in accordance with section 125 and 129 of the Internal Revenue Code. The program is administered, under contract with the Administrative Office, by Automated Data Processing Incorporated, (ADP), formerly known as SHPS, Incorporated. It consists of the following components:

- A **Premium Payment Plan** that allows a judge enrolled in a federal health insurance plan to deduct the cost of that plan from his or her gross salary *before* taxes are withheld.
- Two **Flexible Spending Accounts**—
 - A **Health Care Reimbursement Account** that allows a judge to set aside pre-tax dollars from his or her salary to cover eligible health-care expenses not covered by any medical, dental, or vision care plan that a judge and/or dependent may have. Eligible expenses include, but not limited to, medical deductibles, co-payments, chiropractic services, back supports, bereavement and grief counseling, birth control pills and devices, transplants, child birth preparation classes, contact lenses and supplies, crutches, diabetic supplies, eye exams and eye glasses, hearing aids, orthodontia, orthopedic shoes, respirators, automobile equipment to assist the physically disabled, and wheelchairs.
 - A **Dependent Care Reimbursement Account** that allows a judge to set aside pre-tax dollars from his or her salary to cover eligible dependent-care expenses. Eligible expenses include child care at a day camp or nursery school or by a private sitter in your home, elder care for an incapacitated adult who lives with you at least 8 hours a day, expenses for pre-school and after-school care, and the cost of a housekeeper whose duties include the care of a qualifying dependent.

A. ELIGIBILITY AND ENROLLMENT

Judges are eligible to participate in the Flexible Benefit program. *Retired judges are not eligible to participate.* Enrollment may occur as follows:

- A judge is automatically enrolled in the Premium Payment Plan unless an affirmative election is made to have health insurance premiums deducted on an *after tax basis*.
- A judge may elect to enroll in one or both spending accounts during an annual open enrollment period. Each year, the AO notifies judges of the open enrollment dates.

- Newly appointed judges may enroll in one or both Flexible Spending Accounts within 60 days of entrance on duty.

When enrolling in a Flexible Spending Account, a judge elects to make contributions to the account by reducing his or her salary by a specified amount on a pre-tax basis. The election remains in effect until the end of the Plan Year for which the election is made, and it cannot be changed during that time except when there is a qualifying life event (such as marriage or birth of a child) as defined by the Internal Revenue Service.

Under an IRS policy implemented by the AO, judges enrolled in a Health Care Reimbursement Account have a two and one-half month grace period to incur expenses for medical services (until March 15 of the year following the relevant plan year). This grace period does not apply to the Dependent Care Account. Judges have until April 30 to file prior year claims under the Health Care Reimbursement Account.

Enrollment in a Flexible Spending Account is *not* automatic, and if a judge wishes to begin, continue, or resume participation in one or both accounts in a given year, he or she must enroll and specify the salary reduction amount(s) during the open enrollment period for that year.

The maximum annual amount that can be contributed to the Health Care Reimbursement Account is \$2,650. The contribution limit for the Dependent Care Reimbursement Account is \$5,000. To qualify for the favorable tax treatment, a “use it or lose it” rule applies to these accounts. Thus, if a judge overestimates eligible expenses and contributes too much pre-tax salary to an account, the unused amount is forfeited at the end of the year. For that reason, a judge should be conservative in the amount of money he or she elects to contribute to one of these accounts.

B. CHANGES TO THE JUDICIARY’S FLEXIBLE BENEFITS PROGRAM AS A RESULT OF HEALTH CARE REFORM

A number of significant changes to the Judiciary’s Flexible Benefits Program have occurred as a result of The Patient Protection and Affordable Care Act and The Health Care and Education Reconciliation Act of 2010 (the health care reform laws).

1. Over-the-Counter Drugs and Medicines and Over-the-Counter Products

Under the IRS regulations that govern the Judiciary’s Flexible Benefit Program, there is a distinction between Over-the-Counter (OTC) Drugs and Medicines and Over-the-Counter Products. OTC Drugs and Medicines include, but are not limited to, medicines for acid control, allergy & sinus relief, pain relief and stomach remedies.

- Only drugs and medications for which a valid prescription is written by a physician and filled by a pharmacy (even if such medications are commonly found over-the-counter) may be reimbursed. Judges would need to submit a Federal Judiciary Health Care Reimbursement Account claim form with a pharmacy receipt that contains the following information:

*Name of the purchaser (or name of the person
for whom the prescription applies)
Date of Service
Amount of the Purchase
RX Number*

2. Change in Age of Eligible Children for the Health Care Reimbursement Account

The Health Care Reimbursement Account allows coverage of eligible expenses for children through the end of the calendar year in which they turn 26. “Child” is defined by reference to Section 152(f) of the Internal Revenue Code (i.e., son/daughter, step son/daughter, adopted child, or eligible foster child), without regard to whether the child is otherwise a tax dependent.

C. MORE INFORMATION

More information on the Judiciary’s Flexible Benefits Program is available from the Administrative Office Judges Compensation and Retirement Division at 202-502-1880.

Federal Employees Health Benefits Program

All judges are eligible to participate in the Federal Employees Health Benefits (FEHB) program. *See* 5 U.S.C. § 8901 *et seq.* FEHB provides judges a wide selection of health benefits plans, including managed fee-for-service plans, plans offering a point-of-service product, and health maintenance organizations, as well as optional levels of coverage within certain plans. The key features of the FEHB program are:

- no waiting period for coverage;
- no physical examination required for coverage, and no denial of coverage on grounds of age or physical condition;
- choice of plans and options;
- choice of self, self-plus-one, or self and family coverage;
- government contribution toward the total cost of premium;
- payroll deduction of employee's share of premium;
- annual opportunities to enroll or change plan, type of coverage, or option;
- continued group coverage for retirees, former spouses, and survivors; and
- temporary continuation of group coverage and right to convert to private (non-group) coverage when FEHB coverage ends.

A. CONTINUATION OF HEALTH INSURANCE AFTER RETIREMENT

1. Enrollment in a federal health benefits plan may be continued when a judge retires from office only if the judge:
 - a. is entitled to receive an immediate annuity under (JRS) or under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS) at the time of leaving office; and
 - b. was covered by the health insurance program for:
 - (i) the last 5 years of service, or
 - (ii) the full period of service during which the insurance was available, if less than 5 years.
2. Consequently, a judge who elects to receive a straight JRS annuity and leaves office before age 65 will not be able to continue enrollment in a federal health

benefits plan. If a judge elects to receive a "Hybrid" alternative annuity, however, and leaves office while entitled to receive an immediate annuity under CSRS or FERS, enrollment may be continued in a federal health benefits plan.

B. HEALTH INSURANCE FOR A JUDGE'S SPOUSE

An active judge may elect federal health benefits with coverage for self, self plus one or self and family. Upon death, however, only spouses who are entitled to receive a survivor's annuity under either the Judicial Survivors' Annuities System (JSAS), CSRS or FERS (including the "Hybrid" alternative annuity) are eligible to continue to be enrolled in the federal health benefits program. **Thus, if a judge elects to receive a straight JRS annuity and decides not to elect JSAS coverage, the spouse is not eligible to continue enrollment in a federal health benefits program upon the judge's death.** The spouse would, however, have a 31-day temporary extension of coverage at no cost to the spouse, during which time the spouse may convert to a non-group coverage.

C. CHILDREN'S ELIGIBILITY FOR HEALTH INSURANCE COVERAGE

As a result of Public Law 111-148, the Patient Protection and Affordable Care Act (commonly called the health care reform law), the federal health benefits law has changed to provide coverage for enrollees' children (single or married) who are under age 26. A child can be covered until age 26 regardless of residence or dependency. However, the child's spouse and/or their own children are not covered.

D. OPEN SEASON

There is an annual government-wide open season that begins on the Monday of the second full work week in November and continues through Monday of the second full work week in December. Any change made during an open season becomes effective on January 1.

During the open season, a judge can elect or change current health care coverage without showing evidence of insurability.

E. MORE INFORMATION

More information on health insurance is available from the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880.

Federal Employees Vision and Dental Programs

The Federal Dental and Vision Program (FEDVIP) is a supplemental insurance program that was first offered to all federal employees, including judges, during the 2007 health benefits open season. The FEDVIP program is administered by Long Term Care Partners through the “BENEFEDS” enrollment portal, and under the supervision of the Office of Personnel Management.

Judges, including retired judges, are eligible to enroll in this insurance program during the annual open season (beginning the second week of November of each calendar year), without showing any evidence of insurability. A spouse who receives an immediate annuity as the survivor of a judge is also eligible to enroll in FEDVIP, even if the judge was not covered by FEDVIP at the time of death.

Judges and annuitants may enroll in a FEDVIP dental plan, a FEDVIP vision plan, or both. You may elect the FEDVIP plan(s) of your choice, regardless of which FEHB plan, if any, you are enrolled in. In other words, you do not have to be enrolled in an FEHB plan to enroll in FEDVIP. When a FEDVIP election is made during one of the allowable periods, that coverage cannot be cancelled until the next open season.

Ten carriers are currently offering FEDVIP **dental** plans, six nationwide and four on a regional basis. The nationwide plans are Aetna Life Insurance Company, Delta Dental, FEP Blue Dental, Government Employees Hospital Association (GEHA), MetLife, Inc, and United Concordia. The four regional plans are Humana Dental Company (offered in 24 states in the Southeast, Midwest, and Mid-Atlantic), Dominion Dental, and Emblem (offered in New York, and parts of Connecticut, New Jersey, and Pennsylvania) and Triple-S Salud, Inc. (offered in Puerto Rico only). Four carriers offer FEDVIP **vision** plans, all on a nationwide basis: Aetna Vision, FEP Blue Vision, United Health Care Vision Plan, and Vision Service Plan (VSP). Each of these carriers offer both a standard and high option vision plan.

The dental plans provide a comprehensive range of services defined by “Class” that include: Class A (Basic) services– which includes preventive services such as oral examinations, diagnostic evaluations, sealants and x-rays; Class B (Intermediate) services– which includes services such as resin based fillings or extractions, and Class C (Major) services– which includes services such as crowns and bridges. In addition, there is Class D (Orthodontic) services.

The vision plans feature comprehensive eye examinations and coverage for lenses, frames, and contact lenses. Other benefits such as discounts on Lasik surgery may also be available.

All premiums for dental and vision plans are deducted on a **pre-tax basis**. The deduction of FEDVIP premiums on a pre-tax basis applies to all active judges, and recalled judges on a **full-time** basis. Retired judges and survivor annuitants pay premiums on an after tax basis.

The premiums under FEDVIP will vary by plan and by enrollment type. For each type of plan, FEDVIP offers three types of enrollment: (1) self-only; (2) self-and-family; and, (3) self-plus-one. Self-plus-one coverage will enable you to cover yourself and any one additional family member (current spouse or unmarried dependent child under age 22).

You may download the FEDVIP plan brochures from the FEDVIP website at: <http://www.opm.gov/insure/dentalvision>. You can also find a comparison of the plans available and their premiums on this website. The FEDVIP vision plans are the same throughout the country for the plan and level of coverage you elect. Premium rates for each FEDVIP dental plan, however, vary according to where you live. You may determine the rating area where you live according to the first three digits of your residential ZIP Code. After determining your rating area, you can then view the premium rates for each FEDVIP dental plan and option serving that rating area.

Enrollment in the FEDVIP program is done either through the enrollment website at www.BENEFEDS.com or by calling a BENEFEDS customer service representative at **1-877-888-3337**, or **TTY 1-877-889-5680**. The BENEFEDS phone representatives are available from 9:00 a.m. to 7:00 p.m., Eastern Time, Monday through Friday.

More information about the FEDVIP program is available from the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880.

Federal Employees Group Life Insurance

Judges are eligible to participate in the Federal Employees' Group Life Insurance (FEGLI) program. *See* 5 U.S.C. § 8701(a)(5). FEGLI is a term life insurance program for federal employees administered by the Metropolitan Life Insurance Company under contract to the Office of Personnel Management (OPM).

A. COVERAGE

Unless coverage is waived, a judge is automatically covered by Basic Life insurance (and subject to withholding of the applicable premium from his or her salary) upon the date of his or her entrance on duty. To waive Basic Life insurance coverage, a judge must execute and file a Standard Form 2817, Life Insurance Election with the Administrative Office's Judges Compensation and Retirement Division, within the calendar month in which he or she enters on duty. A judge may also cancel existing FEGLI coverage at any time by filing a Standard Form 2817.

FEGLI consists of Basic Life coverage and three optional coverages (Options A, B, and C). *Option B, in particular, provides a judge with the opportunity to elect a substantial amount of term life insurance coverage.* Basic Life insurance coverage is a prerequisite to the purchase of any of the three options, and cancellation of Basic Life coverage also cancels any optional coverages at the same time. A judge may elect optional coverages by executing and filing a Standard Form 2817 form with the Administrative Office's Judges Compensation and Retirement Division within 60 days after he or she enters on duty. As explained on the page 3, a judge who does not elect optional coverage at that time generally must show evidence of insurability before optional coverage may be obtained.

B. DESCRIPTION OF COVERAGE

1. **Basic Life** insurance coverage is based on a "basic insurance amount" that equals the insured's annual salary (rounded up to the next \$1,000, plus an additional \$2,000). For persons under age 45, there is an extra benefit that increases the amount of coverage up to twice the basic insurance amount. Basic Life coverage also includes accidental death and dismemberment benefits, paying (in addition to the life insurance benefit itself) either 50% or 100% of the life insurance amount, depending on the circumstances, and a "Living Benefit" option that allows certain terminally ill persons to receive during their lifetime a lump-sum distribution of all or (or, in the case of insured employees, not annuitants) part of their Basic Life insurance benefit.
2. **Option A (Standard)** provides coverage of \$10,000 in addition to the Basic Life insurance coverage. Option A coverage also provides additional coverage for accidental death or dismemberment equal to all or half the additional life insurance amount, depending on the circumstances. The cost of Option A is paid entirely by the judge.

3. **Option B (Additional)** permits purchase of up to five times the annual rate of an insured's basic salary, rounded to the next \$1,000. No accidental death and dismemberment benefits are included under Option B. The cost of Option B is paid entirely by the judge.
4. **Option C (Family)** permits purchase of small amounts of coverage for family members. Judges may purchase one to five times \$5,000 for a spouse (up to a total of \$25,000) and \$2,500 for each eligible child who are under the age of 22 (up to a total of \$12,500 per child). No accidental death and dismemberment benefits are included under Option C.

C. COMMON FEATURES

1. Basic Life and the three options have several common features. Generally, the level of benefits is fixed. Premiums are collected through payroll deductions, including withholding from retirement annuity. Optional insurance premiums increase with age until age 60 for Option A, currently age 65 for Option B and age 80 for Option C. Coverage is renewed automatically on an annual basis, no cash value accrues, and no dividends are paid. In short, the coverage is the same as a term-life insurance policy. The amount of coverage is linked to a scheduled rate of pay and it automatically reflects any changes in pay.
2. FEGLI coverage may be reduced or cancelled at any time, and apart from an infrequent open enrollment opportunity, coverage may be increased only under limited conditions, which generally require evidence of insurability (including a physical examination).

D. PREMIUM BENEFIT

As a result of legislative changes, judges age 65 and over (and full-time judges retired under the Judicial Retirement System), have the same “FEGLI Fix” benefit enjoyed by Article III judges and judges of the Court of Federal Claims. The rate for Option B-Additional coverage for bankruptcy judges and magistrate judges age 65 and over is fixed at the monthly rate that was in effect in 2003 (\$1.517 per \$1,000 of Option B coverage).

E. MODIFYING INSURANCE COVERAGE

1. If a judge has previously waived Basic Life insurance coverage, declined to elect Option A or B coverage, or elected less than the maximum amount, the judge may request such insurance coverage or additional coverage if
 - a. evidence of insurability is furnished, and
 - b. one year has elapsed since the judge filed the waiver to obtain such coverage.
2. To show evidence of insurability, Standard Form 2822 (Request for Insurance, Federal Employees Group Life Insurance Program) should be requested from the Administrative Office’s Judges Compensation and Retirement Division at 202-502-

1880. This form is a combination request to cancel a waiver, medical certificate, and authorization to insure an employee. Part A is completed by the Judges Compensation and Retirement Division. Part B is completed by the judge, and Part C is completed by the judge's examining physician. The completed form must then be sent directly by the judge's physician to the Office of Federal Employees Group Life Insurance, P.O. Box 6080, Scranton, Pennsylvania 18505-6080 within 60 days of the examination. That office will notify the Judges Compensation and Retirement Division as to whether insurance coverage is authorized or denied, and the Office representative will, in turn, notify the judge of the determination immediately. The judge has 60 days after the determination to elect additional coverage.

3. Judges who have a change in their family status (i.e., marriage, divorce, death of family members, and birth, adoption, or other addition of children) can **elect Basic insurance** within 60 days after the family status change. At the same time, they **can also elect any combination of Optional insurance**, including Option A, Option B (up to all five multiples), and Option C (up to all five multiples).

F. SEPARATION FROM OFFICE BEFORE RETIREMENT

If a judge leaves office before becoming entitled to receive an immediate annuity under JRS, CSRS or FERS, FEGLI coverage terminates. That coverage will continue (other than accidental death and dismemberment benefits) for 31 days, after the judge leaves office, during which time he or she may apply for an individual policy from an insurance company that has agreed to issue such policies under the FEGLI program. The judge must request information on obtaining a conversion policy within this 31-day temporary extension period.

Judges retired under JRS are treated as “employees” for life insurance purposes as a result of the “FEGLI FIX” provision. Accordingly, a judge who is entitled to a deferred JRS annuity at age 65 (hybrid or straight), may, upon commencement of the annuity, apply for FEGLI coverage by showing evidence of insurability, by enrolling during an open season, or as a result of a change in their family status. Any coverage that is acquired will be calculated based upon the amount of the judge’s deferred annuity. Basic and Option B coverages would be increased as a result of any future cost-of-living adjustments (COLAs) that may be payable on the JRS annuity.

G. COVERAGE UPON RETIREMENT FOR JRS ANNUITANTS

As discussed above, the laws result in significant and favorable changes to the FEGLI program for judges. These changes not only impact active full-time and part-time judges, but also judges who retire under JRS (straight and hybrid). Retired part-time and full-time judges who retire exclusively under CSRS or FERS do not benefit from the law.

1. Judges who retire on an immediate JRS annuity (straight or hybrid) continue their FEGLI coverage as “employees.” **Because JRS annuitants are employees for life insurance purposes, the previous requirement that a judge be covered by life insurance for the last five years of service in order to continue coverage is eliminated.**

2. Because the FEGLI coverage that the judge had in active service continues into retirement, the requirement to make a post-retirement life insurance election of full or reduced coverage is also eliminated.
3. Basic Life insurance premiums are permanently fixed at the employee rate (currently \$0.3250 per \$1,000 of coverage) and Option B (Additional) premiums are permanently fixed at the rate of \$1.517 per \$1,000 of coverage. Option A (Standard) and Option C (Family) coverage and premiums remain unchanged upon retirement.
4. The amount of a judge's Basic Life and Option B (Additional) coverage is calculated based upon the value of the JRS annuity (current rate of compensation). For judges **who retire at less than full salary**, this will result in a reduction in the amount of life insurance. For example, a judge who retires on an immediate 10/14 JRS annuity of \$136,685 (based on a final salary of \$191,360) will have his or her Basic Life coverage reduced to \$139,000 (from \$194,000) and two multiples of Option B (Additional) coverage reduced to \$274,000 (from \$384,000). **However, this life insurance coverage will increase when there are COLAs on the JRS annuity (unless the judge elects to practice law as discussed below).**
5. JRS annuitants who elect to practice law will continue to carry any Basic Life and Optional coverage that the judges' had while in active service. However, once the practice of law election takes effect, such judges will not benefit from the "FEGLI Fix" on the Option B premiums. In other words, the Option B premiums will continue to increase at five year intervals until age 80 and will not be fixed at the rate of \$1.517 per \$1,000 of coverage. The value of the life insurance will also be fixed because once a judge elects to practice law there are no further COLAs on the JRS annuity.

H. COVERAGE UPON RETIREMENT FOR CSRS AND FERS ANNUITANTS

1. Enrollment in the group life insurance program may be continued upon leaving office only if a judge:
 - a. is entitled to receive an immediate annuity under CSRS or FERS at the time of leaving office, and
 - b. was covered by the life insurance program for:
 - (i) the last 5 years of service, or
 - (ii) the full period of service during which the insurance was available, if less than 5 years.
2. Basic Life coverage and premiums vary after retirement depending upon a judge's election of full coverage or coverage at a reduced amount.
3. Basic Life coverage continues after retirement. At that time, a judge may choose one of three levels of coverage. The cost of Basic Life insurance will vary depending on

the level of coverage chosen. The minimum coverage is free after age 65, but the insurance amount reduces 2% each month beginning at age 65 or the date of retirement, whichever is later. The reduction stops once the insurance amount reaches 25% of its original face value. Higher coverage of 50% or 100% is available, but at higher premiums payable until death.

4. Upon retirement before age 65, Option A (Standard) coverage will continue with the full cost withheld from a judge's annuity until age 65. Upon retirement at age 65 or over, coverage continues **without cost** but is reduced by 2% per month until the maximum reduction is reached, leaving coverage of \$2,500.
5. Option B (Additional) and Option C (Family) coverage may continue with the full cost withheld from a judge's annuity until age 65. Upon retirement at age 65 years or over, Option B (Additional) and Option C (Family) coverage may continue **without cost** but it is reduced by 2% each month for 50 months, **when such coverage terminates**. In other words, the life insurance coverage under this option begins to diminish steadily for judges retiring at age 65 and is totally eliminated at the end of 50 months (age 69 and 2 months if a judge retires at age 65). However, retiring judges may elect to continue some or all multiples of Option B-Additional coverage on an unreduced basis by continuing to pay premiums after age 65. If less than all multiples are continued, those multiples not continued will begin to reduce at 2% each month. Retiring judges who elect unreduced Option B-Additional coverage may later change the election to full reduction. However, **retiring judges who initially elect reduced coverage cannot change to unreduced coverage at a later date.**

Also, judges may elect unreduced Option C-Family coverage by continuing to pay premiums for one, some, or all multiples after age 65. Annuitants who elect unreduced Option C-Family coverage may later cancel that election and have the full reduction. However, **retiring judges who elect reduced coverage cannot change to unreduced coverage at a later date.**

I. COVERAGE UPON RECALL FOR JRS ANNUITANTS

All retired JRS annuitants are employees for FEGLI purposes, whether recalled or not. However, there are still advantages to being recalled for FEGLI purposes.

1. As “employees” the amount of life insurance coverage of a JRS annuitant is calculated based upon the current rate of compensation. For these judges the current rate of compensation is the JRS annuity. As discussed in section G, paragraph 4, above, if a JRS annuitant retires at less than full salary, the amount of life insurance coverage will reduce because the life insurance will be calculated based upon the lower annuity figure and not the salary of the office. If a judge who is retired on less than full salary is recalled to full-time service, the current rate of compensation will increase to the salary of the office. This will result in a higher amount of life insurance coverage while on recall.

For example, a judge who retires on a 10/14 annuity of \$136,685 (based on a final salary of \$191,360) will have his or her Basic Life coverage reduced to \$139,000 (from \$194,000) and two multiples of Option B (Additional) coverage reduced to \$274,000 (from \$384,000). If that same judge is recalled full-time six months after retirement, the judge will receive compensation (annuity and salary) equal to the current salary of the office. Assuming that the current salary of the office is \$191,360, the amount of life insurance coverage on recall will revert to the higher level that was in place before retirement. Once the recall service ends, the life insurance coverage will again be based upon the amount of the JRS annuity.

2. As discussed in section F above, a deferred JRS annuitant may, upon commencement of the JRS annuity, apply for FEGLI coverage by showing evidence of insurability, by enrolling during an open season, or as a result of a change in their family status. However, if a deferred JRS annuitant upon commencement of the annuity, is recalled on a full-time basis for one year and one day after a break in service of at least 180 days, the judge may immediately elect new life insurance coverage based upon the new appointment. Once the recall service ends, the life insurance coverage will be based upon the amount of the deferred JRS annuity.

J. COVERAGE UPON RECALL FOR CSRS AND FERS ANNUITANTS

1. A retired CSRS or FERS annuitant who is recalled with a full-time appointment is considered to be a re-employed annuitant for life insurance purposes, and subject to paragraph G2 below, has the option of:
 - (i) retaining the Basic Life and optional insurance coverage in effect at the time of retirement, or
 - (ii) electing Basic Life and optional insurance coverage as if the judge were a new federal employee.

A recalled judge **with** less than a full-time appointment is considered to be recalled on a "when-actually-employed" basis; see paragraph 4.

2. As a re-employed annuitant, a recalled judge may continue Basic Life and any optional insurance coverage at **the same rate** in effect at the time of retirement. To do so, a judge must be appointed to a full-time position and the recall appointment must:
 - (i) begin within 4 days from retirement, or
 - (ii) be made for at least 1 year and 1 day.

Basic Life and Option A (Standard) insurance in effect at the time of retirement will continue automatically. To retain Option B (Additional) insurance, however, a judge must complete a Standard Form 2817, Election of Life Insurance, and file it with either the Chief of the Judges Compensation and Retirement Division of the Administrative Office or the clerk of court, **within 31 days** from the date the recall service begins.

3. A recalled judge may also elect **new** life insurance coverage (coverage that was not in effect at the time of retirement) as if the judge were a "new" federal employee, **if**:
 - (i) the judge had a break in service of at least 180 days, and
 - (ii) the recall appointment is made for at least 1 year and 1 day
 - a. A judge will have 31 days from the date of appointment to elect new life insurance coverage by completing a Standard Form 2817, Election of Life Insurance, and filing it with either the Chief of the Judges Compensation and Retirement Division of the Administrative Office's or the clerk of court.
 - b. A CSRS or FERS judge who is recalled to service after retirement may continue new life insurance coverage into retirement if the judge meets the qualification requirements for a supplemental annuity, **and** the judge had Basic Life and optional insurance coverage in effect for the five years of service immediately preceding separation from recall service. Otherwise, the insurance in effect at the time of retirement will be reinstated, subject to diminution in coverage during the period of recall.
4. A recalled judge whose salary is paid on a when-actually-employed basis is **not eligible** to elect new life insurance coverage as a new employee **or** reacquire coverage as a reemployed annuitant. Instead, the judge maintains Basic Life and any optional insurance coverage as a retiree. (*See section J above.*) Therefore, when recalling a judge, a court should consider making the recall appointment for a regularly scheduled tour of duty (full-time).
5. The financial consequences of these decisions are significant, especially if a recalled judge elects optional coverage to supplement Basic Life. Considerations include the age and health of a judge contemplating recall service, and the number of years a judge anticipates serving in recall status. Questions should be directed to the Judges Compensation and Retirement Division at 202-502-1880.

K. DESIGNATION OF BENEFICIARY

A designation of beneficiary under the FEGLI program is solely for the disposition of FEGLI insurance proceeds. If no beneficiary has been designated to receive all or any part of the insurance proceeds upon the judge's death, that amount is payable to the individuals listed below in the following order of precedence:

- to the surviving spouse;
- if a spouse does not survive, to the surviving child or children, with the share of any deceased child distributed among the descendants of that child;
- if none of the above, to the parents in equal shares or the entire amount to the surviving parent;
- if none of the above, to the duly appointed executor or administrator of the estate;

- if none of the above, to the other next of kin who are entitled under the laws of the domicile of the insured at the date of death.

If a judge is not satisfied with the statutory order of precedence, he or she may change the designation at any time by completing a Standard Form 2823, Designation of Beneficiary, and returning it to the Administrative Office's Judges Compensation and Retirement Division, Washington, D.C. 20544. A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, and this right cannot be waived or restricted. The insurance proceeds will not be distributed according to the judge's designation or the statutory order of precedence if a divorce, annulment or separation decree or court-approved marital property settlement expressly provides for distribution to someone else.

L. ABSOLUTE ASSIGNMENT OF LIFE INSURANCE

A judge may make "an irrevocable assignment of [the judge's] incidents of ownership" in a FEGLI life insurance policy. *See* 5 U.S.C. § 8706(e). An assignment is made under OPM regulations, published in Part 870, Subpart I of title 5 of the Code of Federal Regulations. A judge can be required to make an irrevocable assignment of his or her FEGLI coverage (if one has not already been made) to a person specified in a divorce, annulment, or separation decree or court-approved marital property settlement. If an assignment is made at least three years before death, the proceeds of the policy generally pass outside of the judge's estate and generally are not subject to estate taxes.

An assignment must be executed and witnessed on an approved form expressing the judge's intent to assign irrevocably all incidents of ownership in the insurance. In assigning FEGLI insurance, a judge must assign *all* Basic Life as well as any Option A or Option B coverage that he or she owns, but a judge may not assign Option C-Family Insurance coverage. The assignment may be made to one or more "persons," including individuals, corporations, or trusts. An assignment to two or more persons must be made by specifying the percentage shares to go to each assignee, rather than the dollar amount or type of insurance. Contingent assignees (selected in the event the primary assignee predeceases the insured) may not be named.

The most significant incident of FEGLI insurance ownership assigned is the right to name beneficiaries. Once assigned, that right vests exclusively in the assignee(s). An assignment of the right to name beneficiaries, therefore, cancels a judge's prior designation of beneficiary. Assignees may name themselves or any other person as beneficiary and may later change the designation at their discretion. If an assignee predeceases the judge and has not designated a beneficiary, the proceeds of the life insurance policy will be paid to the assignee's heir(s) according to state laws where assignee(s) lived upon the judge's death. *See* 5 C.F.R. § 870.909(c).

More information about this topic and an assignment package, including Form RI 76-10 (Assignment of Federal Employees Group Life Insurance), can be obtained by contacting the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880.

M. LIVING BENEFIT

The living benefit feature provides an up-front insurance payment to terminally ill individuals who have a life expectancy of nine months or less. Terminally ill individuals may elect a full or partial lump sum payment up to the amount of their Basic Life insurance. The amount of Basic insurance elected as a Living Benefit will be reduced by an actuarial amount of interest lost to the Fund because of the early payment of the benefit.

N. MORE INFORMATOIN

More information about life insurance is available from the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880.

Thrift Savings Plan

The Thrift Savings Plan (TSP) is a retirement savings and investment plan for federal civilian employees. It offers the same type of savings and tax benefits that many private corporations offer their employees through 401(k) plans.

A. ELIGIBILITY TO PARTICIPATE

Active Judges and Judges Recalled to Service

Judges, including judges retired under CSRS and FERS who are recalled to service, may participate in the Thrift Savings Plan, which consists of five funds:

- Government Securities Investment Fund (or “G Fund”);
- Fixed Income Investment Fund (or “F Fund”);
- Common Stock Index Investment Fund (or “C Fund”);
- Small Capitalization Stock Index Fund (or “S Fund”)
- International Stock Index Fund (or “I Fund”)

The TSP also offers Lifecycle Funds (L Funds) which are invested in various combinations using the five individual TSP Funds. Professional investment experts determine the asset allocation that is appropriate under the L Funds based upon the date a participant anticipates needing his or her money (their time horizon).

For example, a judge who anticipates needing the money in TSP by the year 2020 would select an L 2020 Fund that would be allocated as follows: G Fund 38%, F Fund 7%, C Fund 30%, S Fund 9%, and I Fund 16%. This investment mix is adjusted periodically as a judge approaches his or her withdrawal date.

TSP also offers a Roth TSP Account. The Roth TSP option will allow judges to make after tax contributions and receive tax-free earnings on those contributions as long as the judge is at least age 59½ at the time of the withdrawal and the withdrawal is made at least 5 years after the beginning of the year in which a judge first makes Roth contributions. Participants will be able to contribute to the traditional (pre tax) TSP or the Roth TSP option, or a combination of both. However, a judge will not be allowed to exceed the IRS limit of \$18,500 or the \$6,000 limit for catch-up contributions when making pre-tax contributions, Roth TSP contributions, or a combination of both.

Judges Who Retire or Resign from Office

Only an active judge, or recalled judge who retired under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS) (not the Judicial Retirement System (JRS)) may participate in the TSP. A judge who retires or resigns from office is no longer eligible to participate, and any deductions from salary cease upon the last day of active service.

B. CONTRIBUTIONS

Contributions may be made in any combination in the five TSP Funds. Judges may contribute any whole percentage of basic pay, or a specified dollar amount. Total contributions to TSP, however, remain subject to IRS rules that can be contributed annually to a tax deferred retirement plan

For judges covered under FERS, the government will contribute an amount equal to 1% of salary and then match the judges first 3% of salary contributions on a dollar for dollar basis. Thereafter, the government matches the next 2% of salary contributions on a 50 cents per dollar basis.

Judges covered under CSRS or JRS do not receive matching contributions.

The judge's contributions may be deposited in any combination of the various TSP funds. Judges may allocate future payroll contributions at any time by using a TSP-50 form, the TSP website or the Thriftline, and can make interfund transfers at anytime.

C. ENROLLMENT IN THE TSP

Judges are allowed to make elections and contribution changes at any time. Elections and changes will be effective the first day of the month following the month the elections are received by the Administrative Office's Judges Compensation and Retirement Division.

D. CATCH-UP CONTRIBUTIONS

Judges age 50 and older, who participate in TSP are allowed, to make "catch-up" contributions to TSP on top of the percentage of salary or IRS dollar limits that would otherwise be applicable to an individual participant. The maximum catch-up amount is \$6,000. The limit is determined by increases in inflation. To make catch-up contributions a judge must be 50 years old by December 31st of the year that the contributions are made. The judge must also be contributing either the maximum TSP contribution percentage or an amount which will result in his or her reaching the IRS contribution limit by the end of the relevant year. For current contribution levels, refer to the TSP website, www.tsp.gov.

E. ROTH TSP OPTION

TSP offers a Roth TSP Account. The addition of a Roth option to the TSP was approved in the Thrift Savings Enhancement Act of 2009. The Roth TSP option will allow judges to make after tax contributions and receive tax-free earnings on those contributions as long as the judge is at least age 59½ at the time of the withdrawal and the withdrawal is made at least 5 years after the beginning of the year in which a judge first makes Roth contributions. Participants will be able to contribute to the traditional (pre tax) TSP or the Roth TSP option, or a combination of both. However, a judge will not be allowed to exceed the IRS limit of \$18,500 or the \$6,000 limit for catch-up contributions when making pre-tax contributions, Roth TSP contributions, or a combination of both.

F. ROLLOVER FROM QUALIFIED PLAN

The Thrift Savings Plan accepts transfers or rollovers from eligible retirement plans, including a traditional IRA and an eligible employer plan. A traditional IRA does not include a Roth IRA, a SIMPLE IRA, or a Coverdell Education IRA. Transfers or rollovers are accomplished by completing a Form TSP-60.

G. TSP LOANS

The TSP also has a loan program under which a judge may have access to personal contributions to the program and to the earnings on those contributions. A judge may obtain a loan for any purpose with a repayment period of one to five years. Documentation supporting the amount of a requested general purpose loan is not required. Loans are also available for purchase of a primary residence with a repayment period of 1 to 15 years, but documentation is required to support the amount of a residential loan.

The minimum loan amount is \$1,000. The maximum loan amount depends on the amount the judge has contributed to TSP and is limited by the Internal Revenue Code to \$50,000. The interest rate for the life of the loan is the latest available interest rate on the G Fund at the time the loan application is received at the TSP Service Office. Payment of the interest is deposited into the judge's TSP account, along with repayments of the loan principal.

A TSP loan must be paid in full before a judge retires from office.

H. WITHDRAWAL OF TSP FUNDS

Withdrawal of funds from the TSP Fund is authorized under specified contingencies and under the rules applicable to other retirement plans governed by section 401 of the Internal Revenue Code.

Judges in Active Service

A judge in active federal service is permitted to: (1) withdraw an amount not exceeding the participant's total contributions and earnings on those

contributions to meet a documented financial hardship (but the early withdrawal penalty tax applies—see discussion of “early distributions” on the next page); or (2) if the participant is age 59½ or over, may make a one-time withdrawal of all or part of the participant’s vested account balance. See 5 U.S.C. § 8433(h).

Judges Who Retire or Resign from Office

On or after separating from office, a judge may elect to have a balance of his or her TSP account paid as:

- an annuity for self, or self and spouse, or self and someone other than a spouse, or
- a single, or lump-sum, payment, or
- a series of monthly payments, or
- an amount to be transferred to another eligible retirement plan, and/or
- leave money in TSP account until April 1 following 70½ birthday.

Judges Recalled to Service

A judge who retires under CSRS or FERS and is recalled to service 31 or more calendar days after retiring may elect to withdraw the balance of his or her TSP account in the same manner as any other judge retiring or resigning from office. The request for withdrawal must be submitted after the judge retires, but before the judge begins to serve on a recalled basis. A judge recalled to service less than 31 calendar days after retiring is not eligible to withdraw the balance of his or her TSP account during the recall. The judge is treated like an active judge with respect to TSP account withdrawals.

A judge who retires under JRS, including the “hybrid” alternative, and is recalled to service continues to be treated in the same manner as judges who retire or resign from office (see above) for TSP withdrawal purposes.

I. FINAL DISPOSITION OF TSP ACCOUNT BALANCE

Although a judge need not make a withdrawal election immediately upon separating from office, an election should be made, and withdrawals from the TSP account should begin, by April 1 of the year following the later of the year in which the judge either becomes 70½ or retires. If no election is made so that payments begin by that deadline, TSP will send the judge a one time calculated required minimum distribution with a notice to make a withdrawal election. If the judge does not respond, the account will be forfeited.

J. SPECIAL CONSIDERATIONS

Generally speaking, participant contributions to TSP and the earnings on TSP

account balances are subject to income tax only upon withdrawal. Judges considering TSP participation should consult their financial advisors with respect to the need for a tax-deferred savings plan and their possible exposure to distribution penalties and other tax consequences for TSP withdrawals. The following are some of the special tax considerations to keep in mind:

Early distributions

The Internal Revenue Code imposes a 10% “early distribution” tax on the gross amount of certain distributions made to a judge who has not yet attained the age of 59½ and who has left active service before the year in which the judge turned 55. The tax applies if the distribution is a single payment, an automatic cash out, or a series of equal monthly payments not based on the IRS life expectancy table. It is not applicable to annuity payments, monthly payments based on the life expectancy table, or payments made because of death, court order, or disability retirement.

Minimum distribution

The Internal Revenue Code imposes a “minimum distribution” penalty on amounts in a tax qualified plan, tax-sheltered annuity, IRA, or TSP account that are not distributed as required by the Code. This takes the form of a 50% excise tax on the undistributed portion of the minimum required distribution. The minimum distribution is measured by the participant’s life expectancy and must begin by April 1 of the year following the calendar year in which the participant reaches age 70½ or retires (whichever is later).

Mandatory withholding

Any lump-sum payments from a TSP account are subject to mandatory tax withholding if not rolled over to another IRA-type plan within 60 days. *See* 26 U.S.C. § 402©.

K. MORE INFORMATION

More information about participation in the TSP is available from the Administrative Office’s Judges Compensation and Retirement Division at 202-502-1880. TSP information can also be obtained from the Plan’s ThriftLine, 1-TSP-YOU-FRST(1-877-968-3778), or at its website, <http://www.tsp.gov>.

Judicial Survivor's Annuities System

Under the Judicial Survivors' Annuities System (JSAS), a judge's spouse and eligible dependent children are entitled to a survivor's annuity if the judge dies while in office or while receiving retirement compensation. The provisions of JSAS are set forth in 28 U.S.C. § 376. In October 1992, legislation was enacted that significantly improved the program by reducing the cost of participation and enhancing benefits. The "Judicial Survivors Protection Act of 2009" (Pub. L. No. 111-49) authorized a limited six month open season for all active and full-time recalled judges who previously opted not to enroll in JSAS. The open season began on September 11, 2009, and ran through March 10, 2010.

(NOTE: For a spouse or other eligible surviving family member to continue coverage under the Federal Employees Health Benefits program after the judge's death, the judge must have elected JSAS and met the vesting requirements for a JSAS benefit, or the judge must have otherwise provided for a survivor annuity under a retirement system for federal employees (e.g., the Civil Service Retirement System or the Federal Employees' Retirement System).)

A. ELECTION

A judge may elect to participate in JSAS only within:

- 6 months after taking office (in the case of a judge elevated to an Article III court, this time runs from the date on which the judge assumes the new office);
- 6 months after marriage; or
- an open season specifically authorized by statute.

An election to participate in JSAS is made by completing AO Form 162 (Election to Participate in the Judicial Survivors' Annuities System) and submitting it to the Administrative Office's Judges Compensation and Retirement Services Division. A judge should also submit Form PER 42 (Designation of Beneficiary) if he or she does not wish to have any lump-sum refund of JSAS contributions and/or deposits paid to beneficiaries according to the order of precedence set forth in 28 U.S.C. § 376(o).

A judge may revoke the election to participate in JSAS only if the marriage ends by death of the judge's spouse or upon divorce. If the marriage ends by divorce, the revocation is subject to any court order relating to JSAS benefits. (Also, under certain circumstances, a former spouse may be entitled to receive a JSAS annuity if the judge elects to provide one, or if it is expressly provided in the decree of divorce or annulment or a court-approved marital property settlement.) Upon revocation, payroll contributions will stop, but the money contributed to the Judicial Survivors' Annuities Fund will not be refunded until the judge's death. If a judge revokes the election and later remarries, the judge must reelect JSAS coverage in order for the surviving spouse and eligible children to receive a JSAS annuity.

A magistrate judge or bankruptcy judge who already participates in JSAS is not required to “reelect” JSAS coverage if appointed to another judgeship covered under JSAS without a break in service. Deductions from the judge’s new salary will continue at the same contribution rate (see below).

B. ELIGIBILITY

A judge’s JSAS benefit is vested (*i.e.*, his or her eligible surviving spouse and/or children become entitled to survivor annuities in the event of the judge’s death) when the judge has completed at least 18 months of creditable service for which payroll contributions and/or deposits have been made. If a judge dies as a result of assassination before completing 18 months of creditable service, annuities are still payable to the eligible survivors if the judge had made contributions and/or deposits for the service actually completed.

C. COST

Contribution Rate

For active and recalled judges who were participating in JSAS prior to September 11, 2009, and for newly appointed judges who subsequently enroll in JSAS, the annual cost of participation in the JSAS plan is 2.2% of salary. For active and recalled judges who enrolled in JSAS during the six-month open season between September 11, 2009 and March 10, 2010, the annual cost of participation in the JSAS plan is 2.75% of salary. The contribution rate increases to 3.5% of the annuity amount for judges who retire from office.

D. COMPUTATION OF ANNUITY

Spousal Annuities

A judge’s spouse is eligible to receive a vested JSAS benefit if the spouse has been married to the judge for at least one year. For each year a judge contributes to or makes a deposit in JSAS, the spouse is entitled to an annuity of 1.5% of the judge’s “average annual salary,” subject to a 25% minimum annuity and a 50% maximum annuity. The years during which a retired judge is receiving retirement compensation (and contributing 3.5% of that compensation to JSAS) are included as creditable service in computing the surviving spouse’s annuity. The judge’s “average annual salary” is based on the highest average salary or retirement compensation received during any three consecutive years of service. In other words:

- a surviving spouse is entitled to receive a JSAS annuity of no less than 25% of the average annual salary of the judge;
- for each year that a judge’s contributions or deposits exceed the amount needed for the minimum 25% survivor annuity (*i.e.*, creditable service exceeding 16 years and 8 months), a surviving spouse is entitled to an

additional 1.5% of the judge's average annual salary each year; and

- the maximum annuity payable is 50% of the average annual salary of the judge—based on 33 years and 4 months of creditable service.

Annuities for Surviving Children

Under JSAS, certain unmarried surviving children are also eligible to receive an annuity. Payments are continued until a child reaches 18 years of age, or 22 years of age if the child is a student who regularly pursues a full-time course of study. An unmarried child who is incapable of self-support because of a mental or physical disability occurring before the child's 18th birthday (or later if the disability occurs when the child is receiving a JSAS annuity while a full-time student) is eligible for an annuity regardless of age. Generally, the amount of the annuity is equal to 20% of the average annual salary of the judge divided by the number of eligible children, subject to a maximum annuity of 10% of the judge's average annual salary per child.

Payment of Annuities

JSAS Annuitants are paid on the first day of each month for annuity that is due the previous month. The annuities are paid by direct deposit to a bank account.

Cost-of-Living Adjustments

JSAS annuitants receive an annual adjustment in their annuities at the same time, and by the same percentage, as any COLA provided to Civil Service Retirement System annuitants.

E. PRIOR CREDITABLE SERVICE

Obtaining Credit

Prior federal civilian service (including judicial service) and active military service (except military service for which credit has been allowed toward retirement or retired pay under any other provision of law) are eligible for credit under JSAS. A deposit equal to 3.5% of the salary received for prior creditable service (plus 3% interest, compounded annually on December 31) is necessary to receive full credit under JSAS for the past service. *See* 28 U.S.C. § 376(d). No deposit is required to credit military service. The deposit may be made at any time before the judge's death, and it may be made in installments. But the initial payment must cover at least the last 18 months of prior creditable service.

If no deposit is made for prior creditable service, the annuity of the surviving spouse will either—

- include credit for such service, with the annuity reduced by 10% of the unpaid deposit computed as of the date of the judge's death, or

- not include credit for such service, but be spared the 10% reduction,

whichever results in a greater annuity. In all cases, however, a surviving spouse is still entitled to the minimum annuity of 25% of the judge's average annual salary (assuming payroll contributions or deposits were made for the minimum 18-month period).

Considerations in Making Deposits

When electing JSAS, a judge who has completed prior creditable service should consider making a deposit for at least the last 18 months of prior service to provide immediate protection for the judge's survivors. In making that decision, a judge should consider, among other factors: (1) the cost of purchasing comparable term life insurance for 18 months in lieu of making an 18 month deposit for immediate JSAS coverage; and (2) the fact that a vested JSAS benefit would ensure the judge's survivors continued coverage under the Federal Employees Health Benefits program.

Except for the 18 months of prior service credits ordinarily needed to secure immediate vesting of JSAS benefits, it is not advantageous in most cases to make deposits for past service since a judge's spouse is entitled under JSAS to a 25% minimum survivor's annuity in all cases. It is particularly disadvantageous to make a deposit for prior years of service when the total number of creditable years of service is less than 16 years and 8 months, the point at which additional creditable service would begin to provide more than the minimum 25% annuity (*i.e.*, $16\frac{2}{3}$ years \times $1\frac{1}{2}\%$ of average annual salary = 25% of the judge's average annual salary).

Likewise, if a judge has made contributions or deposits to the Judicial Survivors' Annuities Fund for service of 33 years and 4 months or more, no additional deposits for prior creditable service would be useful since the judge's surviving spouse would then be entitled to the maximum 50% annuity (*i.e.*, $33\frac{1}{3}$ years \times $1\frac{1}{2}\%$ of average annual salary = 50% of the judge's average annual salary).

F. VOLUNTARY CONTRIBUTIONS

Another significant feature of JSAS is the ability for all active and full-time recalled judges to make voluntary contributions to increase the number of years of creditable service used to calculate the survivor benefit, thus enhancing the amount of their survivors' annuities. A judge may purchase, in three-month increments, an additional year of judge service, for each year of judge service completed. For example, a judge with 10 years of judge service could purchase up to an additional 10 years of creditable service under the voluntary contribution provision.

The obvious benefit of the voluntary contribution provision is to provide judges with a mechanism to vest a spouse in an annuity that exceeds the minimum annuity level or reaches the maximum annuity level on an accelerated basis. Judges considering the voluntary contribution option will have to weigh the benefit of enhancing the annuity on an accelerated basis against the relatively high cost involved in making

such contributions. The cost of voluntary contributions varies depending upon whether a judge is paying 2.2% or 2.75% of salary.

In order to illustrate the potential cost and benefit of making voluntary contributions it would be helpful to consider two different examples:

EXAMPLE 1: A judge with 8 years of paid JSAS service could make voluntary contributions of up to an additional 8 years at a cost of $(\$191,360 \times 2.2\% = \$4,209 \times 8 \text{ years} = \$33,672)$. In this example the payment of the voluntary contributions would not change the value of the JSAS annuity because the judge would still have less than the 16 years and 8 months necessary to increase the annuity above 25% of the high three average salary (although the payment would significantly reduce the length of time in which it would take for the annuity to begin increasing above 25%).

EXAMPLE 2: On the other hand, a judge with 25 years and 4 months of paid JSAS service who is facing serious health issues may want to consider making voluntary contributions for an additional 8 years in order to immediately vest his or her spouse in the maximum 50% benefit. For a contribution of \$33,672, the judge would increase the value of the survivor annuity for the spouse from \$72,716 per year to \$95,680 per year (using current salary figures). Based on these figures, the spouse would recoup the voluntary contributions by way of increased annuity payments in slightly more than two years.

A judge who makes voluntary contributions continues to be obligated to make monthly payroll deductions to JSAS. For instance, if the judge in Example 2 made voluntary contributions to guarantee a 50% JSAS annuity for a spouse, that judge would still continue to have 2.2% of salary per month deducted from pay. If that judge then lived long enough to make the payroll deductions that would have been necessary to reach the 50% maximum annuity, the judge would not be entitled to a refund for the prior voluntary contributions. Some judges may determine that it would be more prudent to assume the risk of allowing the annuity to simply increase incrementally over time rather than making voluntary contributions to accelerate the value of the annuity.

Whether or not it makes sense for an individual judge to make voluntary contributions will ultimately depend upon that judge's unique situation— age, length of service, family health history, age and health of spouse, etc. Judges who are considering making voluntary contributions should contact the Judges Compensation and Retirement Division at the Administrative Office at 202-502-1880.

G. RESIGNATION FROM OFFICE

A judge who resigns from office forfeits all rights to a JSAS annuity. Instead, the judge will receive a lump-sum payment of any contributions and deposits (plus 3% annual, compounded interest) minus 2.2% of the judge's salary for each year that contributions or deposits were made. *See* 28 U.S.C. § 376(g). In effect, this means that the judge will receive *interest* on contributions and deposits, but will receive a refund of the contributions and deposits *themselves* only to the extent that they were

made at a rate higher than 2.2%

H. TERMINATION OF ANNUITY

An annuity payable to a surviving spouse terminates upon (1) the spouse's death, or (2) the spouse's remarriage before the age of 55. An annuity payable to a surviving child ordinarily terminates:

- on the last day of the month in which an unmarried child turns 18, if he or she is not a full-time student;
- on July 1 of the year following an unmarried child's 22nd birthday, if he or she remains a full-time student until that time;
- on the last day of the month in which an unmarried child, between the ages 18 and 22, ceases to be a full-time student; or
- on the last day of the month in which a child dies or marries.

The annuity payable to a child who remains incapable of self-support due to a mental or physical disability incurred before age 18 or while receiving the annuity continues without interruption during the child's lifetime regardless of age.

If a judge dies without any survivors eligible to receive an annuity, the judge's contributions to the Judicial Survivors' Annuities Fund (plus 3% annual, compounded interest) will be refunded to beneficiaries in accordance with the order of precedence set forth in 28 U.S.C. § 376(o), beginning with any beneficiary or beneficiaries designated by the judge on Form PER 42.

I. MORE INFORMATION

More information on JSAS is available from the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880.

Claiming Death Benefits Upon Judge's Death

Upon receiving notification of a judge's death, the Administrative Office's Judges Compensation and Retirement Division automatically does the following:

Sends a letter of condolence to the surviving spouse along with information and instructions for completing death benefit claim forms. This initial letter also includes the following:

1. Notice of change in health benefits coverage changing the enrollment from a self-plus-one or family plan to a self only plan if there are no other eligible family members. The surviving spouse does not need to do anything.
2. Application for an annuity under the Judicial Survivors' Annuities System (AO Form 164) if applicable, and
 - a. Direct Deposit information to send annuity payments electronically to a bank account
 - b. Form for federal tax withholding. If this form is not returned, withholdings will automatically be at the rate of married with 3 dependents (Form W-4P).
3. Application for Federal Employees' Group Life Insurance (FEGLI) proceeds (Form FE-6) if applicable
4. Application for Unpaid Compensation (SF 1153)
5. Application for benefits under the Civil Service Retirement System (SF 2100) if applicable, or

Application for benefits under the Federal Employees Retirement System (SF 3104) if applicable
6. Application for Account Balance of Deceased Participant, Thrift Savings Plan (TSP-17)

Upon receipt of these forms from the surviving spouse, the Judges Compensation and Retirement Division

1. Processes the annuity payment retroactive to the date of the judge's death.
2. Sends the claim forms for life insurance proceeds to the FEGLI office (payment is made directly to beneficiary and takes approximately 30 days after receipt by FEGLI).
3. Calculates and pays unpaid compensation to the survivor.

4. Sends the claim forms for Civil Service Retirement or Federal Employees Retirement System to the Office of Personnel Management (payment is made directly to the beneficiaries).
5. Claims forms for TSP are immediately sent to the National Finance Center (payment is made directly to the beneficiaries and takes approximately 60 days after receipt by Finance Center).

More Information on claiming death benefits is available from the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880

Federal Employees Retirement System (FERS)

A. IN GENERAL

1. FERS consists of three elements:
 - a. social security coverage;
 - b. a defined benefits plan; and
 - c. participation in a Thrift Savings Plan with matching government contributions.
2. Unlike CSRS (*see CSRS section D2*), FERS provides no enhanced annuity computation for service as a judge beyond that provided for federal employees generally.
3. The Office of Personnel Management administers and rules on questions pertaining to FERS. Questions concerning FERS should be addressed to the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880.

B. ELIGIBILITY

All judges without prior government service appointed after December 31, 1983, are covered automatically under FERS. Judges who had completed at least 5 years of civilian federal service by December 31, 1986, may elect FERS coverage within 6 months of appointment. Otherwise, they are covered under the CSRS Offset plan.

C. DEFINED BENEFITS ANNUITY

1. Under the defined benefits component of FERS, each year of federal service (including military service) is credited at 1% of "average salary" upon retirement - 1.1% for each year of service if at the time of separation the judge has completed 20 or more years of service and is at least age 62. "Average salary" means the highest average salary earned by the individual for any three consecutive years of service. For example, a judge leaving office after completing 15 years of creditable federal service would receive an annuity under FERS equal to 15% of the average salary of the office, plus Social Security and Thrift Savings Plan benefits.
2. An employee under FERS may retire before attaining age 62, at which time social security benefits may commence. To account for the years before the retiree becomes eligible to receive social security benefits, the employee's FERS annuity may be increased by a special supplement that is paid until age 62. The supplement is based on the eventual amount of social security benefits attributable to service under FERS that would otherwise be payable at age 62.
3. An annuity under FERS is adjusted annually for inflation.

D. SOCIAL SECURITY BENEFITS

A component of FERS is mandatory social security coverage. The social security contribution rate may change periodically. However, once a judge begins receiving social security benefits, the annual social security deduction stops. In addition, a judge receives an annual cost-of-living increase.

E. AGGREGATE SOCIAL SECURITY AND DEFINED ANNUITY BENEFITS

The annuity under FERS plus social security benefits is less than the annuity under CSRS for a comparable period of service. The difference in overall benefits is intended to be offset by participation in and earnings from the Thrift Savings Plan.

F. DEDUCTIONS

A deduction of 0.8% is withheld from the salary of judges who were covered under FERS on December 31, 2012, or who have five years of prior creditable service under FERS, or have five years of potentially creditable service under FERS. A deduction of 3.1% is withheld from the salary of a judge appointed on or after January 1, 2013 who does not have any prior FERS service. A deduction of 4.4% is withheld from the salary of a judge appointed on or after January 1, 2014 who does not have any FERS service. A judge is also subject to the 6.2% Social Security (OASDI) and 1.45% Medicare taxes and may contribute to the Thrift Savings Plan (TSP).

G. IMMEDIATE ANNUITY

1. A judge under FERS is entitled to an unreduced annuity:
 - a. at age 62 with at least 5 years of service,
 - b. at age 60 with 20 years of service, or
 - c. at age 50 with 20 years of service, or at any age with at least 25 years of service, provided that the annuity is based upon an involuntary separation.
 - d. at the minimum retirement age with 30 years of service. (The minimum retirement age is 55-57, depending upon the year of a judge's birth. See 5 U.S.C. § 8412(h).)
2. A reduced annuity is provided for employees who complete at least 10 years of service and have reached the minimum retirement age of 55-57.

H. DEFERRED ANNUITY

1. A judge, who separates prior to age 62, with at least 5 years of federal service, may elect a deferred annuity at age 62.
2. A judge, who separates prior to reaching the minimum retirement age, with at least 10 years of federal service may elect a deferred, **reduced** annuity, payable beginning

at the minimum retirement age (55-57) or an unreduced annuity beginning at age 62.

I. DISABILITY ANNUITY

1. A judge with at least 18 months of creditable service who is determined to be disabled under the provisions of 5 U.S.C. § 8451 is entitled to an immediate disability annuity. If the disability annuity commences before age 62, the annuity during the first year is equal to 60% of the judge's "average salary," minus any social security benefit payable. Thereafter, the judge is entitled to 40% of the "average salary," minus 60% of any social security benefit payable until age 62.
2. Upon reaching age 62, the disability annuity of a judge will be recomputed to include credit for all periods of time before the judge's 62nd birthday, as if the judge had been working. The "average salary" (computed as of the date the judge left office) used in recomputing the annuity will reflect all cost-of-living adjustments made during the period the judge was receiving a disability annuity.

J. SURVIVORSHIP BENEFITS

1. If a judge dies **in office** after completing at least 18 months but fewer than 10 years of service, the judge's surviving spouse is entitled to a lump-sum death benefit.
2. If the judge had completed 10 or more years of service at the time of death, the judge's surviving spouse is entitled to an annuity equal to 50% of the judge's accrued annuity benefit in addition to the benefit described in *section J 1*. There is no reduction in the spouse's annuity for any social security benefit that may be payable.
3. If a judge dies after leaving office and while receiving a FERS annuity, the judge's surviving spouse is entitled to 50% of the judge's annuity unless the spouse waived her right to a survivor annuity or agreed to a lesser survivor annuity.
4. A judge with at least 5 years but less than 10 years of service, who is eligible for a deferred FERS annuity cannot provide survivor coverage after separating from service **until** the judge turns age 62 **and** files an application to receive a deferred annuity and elects survivor benefits. In this case, the spouse would be entitled to receive 50% of the deferred annuity.
5. If a judge, with 10 or more years of service, dies after leaving office but prior to receiving the deferred benefit, the judge's surviving spouse is entitled to 50% of the judge's earned annuity commencing on the day the judge would have turned age 55-57, 60, or 62, depending on his or her total service under FERS. However, the spouse may elect to receive an immediate benefit subject to an actuarial reduction, or a lump-sum payment plus interest of all contributions to the FERS Fund.
6. Benefits are also provided to eligible dependent children. Generally, FERS dependent benefits are the same as those under CSRS, but they are reduced by any social security benefits payable. As a result, the annuity payable is generally a social security benefit only.

K. PART-TIME SERVICE

1. Service as a part-time judge is prorated over the entire period of creditable FERS service (including military service credited under FERS). See 5 U.S.C. § 8415 (e).
2. If the judge has a CSRS component and a FERS component to his or her FERS benefit, the part-time service under the CSRS component is credited using CSRS rules and part-time service under the FERS component is credited under the FERS rules.
3. In accordance with OPM regulations, the annuity provided to a part-time federal employee under FERS is based on the average salary of a full-time employee in the same position. The service, however, is prorated to credit only the proportion that a judge's part-time service bears to full-time service.

For example, a part-time judge who earns an annual salary equivalent to 25% of a full-time judge would be entitled to an annuity roughly equal to 25% of the annuity payable to a full-time judge.

L. COST-OF-LIVING ADJUSTMENTS

Generally, under FERS, the basic annuity is not adjusted for inflation before attaining the age of 62. At age 62, however, the benefits are adjusted by the FERS inflation index, generally the change in the Consumer Price Index (CPI) minus 1 percent, subject to a minimum increase of 2 percent.

M. LUMP-SUM REFUNDS

A judge who leaves federal service, who transfers to a federal position no longer covered by FERS (such as an Article III judgeship or a political appointment), or who elects to be covered by straight JRS before eligible retirement age may elect a refund of all contributions paid to the FERS defined benefits plan **with interest**, at the market rate. Such a withdrawal, however, forfeits all rights to an annuity under FERS for the service upon which the refund was based, even if the individual subsequently reenters federal service. See 5 U.S.C. § 8424(a).

Judicial Retirement System (JRS)

A. IN GENERAL

The benefits available to a judge under the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (hereinafter Judicial Retirement System or JRS) are superior in most cases to those under either CSRS or FERS. The Act is codified at 28 U.S.C. § 377. The Administrative Office of the United States Courts administers the program and rules on questions pertaining to JRS. Questions concerning JRS should be addressed to the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880.

Details on the JRS retirement plan, including descriptions of the computation of the annuity, the age and service vesting requirements, and disability annuity, are contained in the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

1. JRS is less expensive to judges than CSRS, and it costs about the same as FERS. Yet, the annuity eventually paid to a judge under JRS is normally superior to that under either CSRS or FERS.
2. An individual must serve for a minimum of 8 years as a judge to qualify for an annuity under JRS. In other words, it takes 8 years of service as a bankruptcy judge or magistrate judge for a JRS retirement annuity to "vest."
3. Unlike CSRS or FERS annuities, which can be paid as early as age 50, an annuity under JRS (other than a disability annuity) cannot be paid any earlier than age 65.
4. FERS provides a disability benefit after completion of at least 18 months of federal civilian service, compared with CSRS, which provides a disability benefit only after completion of at least 5 years of creditable federal civilian service and JRS, which provides a disability benefit after 5 years of full-time judge service.
5. Upon an election to participate under JRS, all full-time judicial service performed on or after October 1, 1979, is creditable.¹ An appropriate deposit equal to 1% of the salary payable during such period of service must be made to obtain credit for prior judicial service. No interest is assessed on the deposit.
6. The indefinite period to elect coverage under JRS provides substantial flexibility for a judge in fashioning an individual retirement plan. The advantage for a judge to delay an election into the JRS plan for several years should be carefully examined. JRS benefits do not vest until 8 years of judicial service have been

¹ A judge who is eligible to elect the "Hybrid" alternative, however, may choose to have certain judicial service credited under CSRS/FERS, rather than JRS. *See JRS section D2.*

attained, compared with only 5 years under CSRS or FERS. In addition, maintaining coverage under one of the general federal retirement programs (CSRS or FERS) retains survivorship protection for a judge's spouse and dependents after the judge has completed 18 months of service. Moreover, individuals under FERS may continue to contribute to the Thrift Savings Plan at the higher salary maximum level. (The JRS annuity would be reduced eventually, however, by the principal amount of government matching and automatic contributions made into the TSP until the total government contributions have been offset.) On the other hand, the cost of CSRS, including CSRS Offset, is relatively high. Although the CSRS contributions are refunded eventually upon an election to participate in JRS, no interest accrues. FERS contributions are refunded, with interest.

7. A judge who elects JRS and subsequently is appointed to an Article III judgeship loses the right to receive a JRS annuity when the Article III judge retires from office under 28 U.S.C. § 371(a) or retires to senior status under §§ 371(b) or 372(a). On the other hand, no parallel offset applies to the treatment of CSRS or FERS annuities. Accordingly, an Article III judge is eligible to receive an annuity under FERS or CSRS at the same time the judge is receiving a retirement salary under § 371(a)(retirement), § 371(b)(senior status) or § 372(a)(disability).
8. JRS provides eligible judges who were in office on November 15, 1988 with an option to elect a "Hybrid" annuity composed of a CSRS or FERS annuity plus a JRS annuity (discussed at *JRS section D2*). All references to an annuity under JRS in this discussion pertain to a straight annuity under JRS unless otherwise indicated.

B. ELIGIBILITY AND ELECTION

1. A judge must make an election to participate in the JRS plan. The election is irrevocable and can be made at any time while the judge is in office as long as it is made at least 30 days prior to the date the judge leaves office. The election form (PER 70) must be submitted to the Administrative Office's Judges Compensation and Retirement Division, no later than 30 days before leaving office.
2. Only active service performed as a full-time bankruptcy judge or a full-time magistrate judge on or after October 1, 1979, is creditable under JRS. To obtain credit, a deposit or payroll contributions must be made in an amount equal to 1% of the then effective salary, subject to a 14 year maximum. A deposit for prior service will be applied to the earliest creditable service performed as a judge, unless otherwise specified by the judge.
3. Service performed by a retired judge recalled to active service (28 U.S.C. §§ 155(b) or 636(h)) is not creditable under JRS.
4. An election to participate and receive a straight annuity under JRS voids all rights to annuities under CSRS or FERS, including disability and survivorship

annuities.

5. Upon making an election to participate in the JRS plan, a judge is entitled to a refund of all prior contributions made to CSRS or FERS. The refund of FERS contributions is made with market-rate interest. The refund of CSRS contributions is without interest.

C. DEDUCTIONS

The annual cost of participation in JRS is 1% of a judge's salary. Payroll contributions or deposits to cover prior creditable service under JRS are limited to a 14-year period.

D. COMPUTATION OF ANNUITY

1. Straight Annuity

- a. A straight annuity under JRS is equal to that proportion of the salary received when a judge leaves office that the total number of years of creditable judge service, not exceeding 14, bears to 14. Each full month of service is credited as one-twelfth of a year.

For example, a judge who retires under JRS after 12 years of creditable service as a judge would be entitled to an annuity of 12/14, or 85.7%, of the salary of the office at the time the judge retires.

- b. A judge receiving an annuity under JRS is entitled to the same annual cost-of-living-adjustments (COLAs) as annuitants under CSRS. Future COLAs under JRS, however, are forfeited if the judge notifies the Administrative Office in writing (Form PER 75) that he or she intends to practice law. *See JRS section K.*

2. "Hybrid" Alternative Annuity

- a. Full-time judges who were in office on November 15, 1988 (including judges who had served as part-time judges at that time) may select the "Hybrid" alternative annuity. Under this option, a judge is entitled to a proportionate JRS annuity for creditable full-time judicial service designated by the judge on or after October 1, 1979, in addition to a CSRS or FERS annuity that may be payable for federal service prior to the designation. Unlike a "straight" JRS annuity, which requires a minimum of 8 years of judicial service to vest, **there is no minimum number of years required for the JRS portion of a "Hybrid" alternative annuity to vest.** (A refund of prior contributions to CSRS or FERS is allowed for the period designated as JRS service.)
- b. The CSRS or FERS portion of the "Hybrid" alternative annuity is based on the "average salary" for the highest three consecutive years preceding the years being credited towards the annuity under JRS.

For example, a judge who designates judge service after October 1, 1979, as creditable under JRS, would draw an annuity computed on the basis of the average salary of the office during the preceding three-year period of 1976 to 1979.

- c. The spouse and dependents of a judge who elects the "Hybrid" alternative annuity may be eligible for survivor benefits under the CSRS or FERS portion of the aggregate annuity under the same conditions as other federal employees under CSRS or FERS.

For example, if the judge dies while receiving a "Hybrid" alternative annuity composed of a \$20,000 CSRS annuity (reduced for survivor annuity) and a \$80,000 JRS annuity, the spouse could be entitled to a survivor's annuity under CSRS equal to \$12,057 ($55\% \times \$21,923$ (*unreduced civil service annuity*)). The spouse would be eligible for a JSAS annuity if the judge had elected such coverage for periods of creditable service not covered under CSRS.

- d. If a judge covered under the "Hybrid" alternative dies in office before meeting the age and service requirements for an immediate annuity, the judge's contributions to CSRS will be refunded in accordance with the statutory order of precedence. Consequently, it is important for a judge who has filed a Designation of Beneficiary form under CSRS or FERS to make sure the designation is current. This may be accomplished by writing to the Office of Personnel Management, Retirement Operations Center, P.O. Box 45, Boyers, PA, 16017.
- e. An initial aggregate "Hybrid" alternative annuity may not exceed 100% of the salary of the office at the time the judge leaves office. Once the annuity commences it will be increased by subsequent COLA's subject to the cap of not receiving more than the salary of an active judge.
- f. A judge, who elects a "Hybrid" annuity and leaves office prior to age 65, may continue to participate in a federal health benefits plan if the judge's CSRS/FERS component commences within 31 days of leaving office. *See FEHB section A2.*

E. IMMEDIATE ANNUITY

A minimum of 8 years of creditable service is necessary for a judge to be eligible for a JRS nondisability annuity, with the exception of a "Hybrid" alternative annuity discussed at *JRS section D2*. The annuity is payable beginning at retirement or at age 65 or date of retirement, if later.

F. DEFERRED ANNUITY AND PENALTY FOR EARLY SEPARATION

1. A JRS nondisability annuity is reduced by 2% for each year (calculated on a monthly basis) that a judge is less than age 65 at the time of separation. The maximum reduction in an annuity is 20%. The reduction applies even to a "fully vested" annuity earned by a judge after 14 years of creditable service under JRS.

For example, if a judge leaves office at age 62 after 12 years of creditable judicial service, the judge's annuity under JRS would be 80.5% of final salary [$85.7\% (12/14) \text{ times } 94\% (100\% - 6\%)$].

2. An annuity under JRS is deferred until the judge reaches age 65.
3. A JRS annuity is not reduced if, at the expiration of a full term of office, a judge is not reappointed after having notified the court of a willingness to serve an additional term. The written notification (Form PER 74) must be submitted to the chief judge of the appropriate court no earlier than 9 months but no later than 6 months before the expiration of the term of office.

G. DISABILITY ANNUITY

A judge with at least 5 years of judge service is eligible for a disability annuity under JRS. If the judge has completed 5 to 10 years of judge service under JRS, the disability annuity is equal to 40% of the salary of the office. If, however, the judge has completed 10 or more years of judge service, the disability annuity is equal to that proportion of the salary of the office that the aggregate number of years of service bears to 14.

H. SURVIVORSHIP BENEFITS

1. **No survivorship benefits are provided under JRS.** Benefits for a surviving spouse and dependants, however, may be purchased under the Judicial Survivors' Annuities System or as part of the CSRS or FERS portion of a "Hybrid" alternative annuity after retirement.
2. Survivorship benefits under CSRS and FERS are described at *CSRS section I* and *FERS section J*. The amount of the annuity paid to a survivor under CSRS is normally larger than that paid under FERS.

I. REDUCTION OF A JRS ANNUITY

If a judge elects JRS after having been covered under FERS, the judge's JRS annuity will be reduced by the amount of contributions made by the government to the principal TSP fund on behalf of the judge during the years of service while covered under FERS. This only includes those years of service covered under FERS as a judge. In other words, if a judge transfers to a judge position from a

non-judge position that was covered under FERS, the judge keeps all the government's contributions, including interest, for the period of service before becoming a judge. The government contributions include the automatic 1% of salary contribution and any matching government contribution to the TSP fund. It does not include earnings attributable to the government's contributions. The government contributions will be recovered by deducting the amount owed in 12 equal installments from the judges JRS annuity or 24 months if the reduction causes the judges annuity to reduce below 50%.

The reduction as described above shall commence with the first monthly payment of a JRS annuity unless the judge timely notifies the Administrative Office's Judges Compensation and Retirement Services Division that upon retirement, there will not be an immediate distribution from his or her TSP account. In the event of such a notice, the reduction shall commence:

- (1) with the first monthly payment of a JRS annuity that occurs after the month in which a distribution is received from the judge's TSP account; or,
- (2) if no distribution is received from the judge's TSP account, then with the monthly JRS annuity payment beginning on June 1 of the year after the year in which the judge reaches age 70½.

J. COST-OF-LIVING ADJUSTMENTS

Under JRS, the retirement annuity is adjusted for inflation as measured by the change in the Consumer Price Index (CPI). However, the annuity can not exceed the salary of the active judges.

K. FORFEITURE OF ANNUITY OR COST-OF-LIVING ADJUSTMENTS

1. If a judge retires under JRS and practices law without first filing an Election to Practice Law (form PER 75), or practices law before the election becomes effective, the judge forfeits the JRS annuity. An election is effective on the first day of the month following the month in which it is received.
2. A judge who makes the election to practice law will continue to receive the JRS annuity, but will not be entitled to receive any future annual cost-of-living-adjustments after the election becomes effective. The definition of "practice of law" is broad and is defined in section 3.05 of the Director's Regulations under JRS. It does not include judicial service for the courts on recall or **pro bono** work.
3. All rights to receive a JRS annuity are forfeited during any period in which compensation is received by a retired judge for civil office or employment with the United States government (other than for service as a recalled judge).

Retirement Election Considerations

The benefits available under CSRS, FERS and JRS vest at different points in time. Since an election to participate in JRS is normally irrevocable and can be made up to 30 days before leaving office, it is critical that a judge consider the different vesting requirements under each system before making a retirement election. An analysis of the vesting requirements for nondisability, disability and survivor annuities under each system is set forth below. Additional election considerations are discussed as well.

A. DISABILITY ANNUITY

Judges covered by FERS are eligible for a disability annuity after 18 months of creditable civilian service. Judges covered by CSRS are also eligible for a disability annuity after five years of creditable service have been met. It takes five years of creditable judicial service for a disability annuity under JRS to vest. Therefore, if a judge elects JRS coverage before completing five years of judicial service and becomes disabled during that period, he or she would not be eligible for a disability annuity. A judge would be eligible for a disability annuity by remaining under FERS (assuming 18 months of service) or CSRS.

The Administrative Office has concluded that a JRS election may be made after a judge is disabled, provided the election and deposit for past service are received by the Administrative Office's Judges Compensation and Retirement Division no later than 30 days before the judge officially leaves office. The deposit must cover the years of full-time service as a judge but cannot be less than five years of judge service.

B. NONDISABILITY ANNUITY

A judge under CSRS or FERS can receive a nondisability annuity with five years of service (payable at age 62) and as early as age 55 with 30 years of service under CSRS or by reaching the minimum retirement age based on your year of birth with 30 years under FERS. It requires eight years of service as a judge for a JRS nondisability annuity to vest. The JRS annuity is payable at age 65. If a judge is vested in a CSRS or FERS annuity (based upon five years of service) but has less than eight years of judicial service, he or she may want to consider delaying election into JRS, particularly if there is a reasonable possibility of leaving office prior to satisfying the eight-year JRS vesting period.

C. DISCONTINUED SERVICE ANNUITY

A judge under CSRS or FERS, who separates from office upon expiration of a term of appointment, may be eligible for an immediate discontinued service annuity based upon an "involuntary" separation. A judge is entitled to a discontinued service annuity if (1) the judge is age 50 with 20 years of creditable federal service or any age with 25 years of service at the time of separation and (2) a completed Form 1510 is submitted to the Office of Personnel Management certifying that the judge was not given a written offer of another position in the district. This same rule applies if there is abolishment of a magistrate judge position by the Judicial Conference. A judge need not seek and be denied reappointment to be eligible for a discontinued service annuity. The CSRS annuity is reduced 2% for each year the judge is under age 55. A discontinued service annuity is not available under JRS. A judge who elects JRS and voluntarily leaves office before age 65 receives a JRS annuity reduced by 2% per year for each year that the judge is under the age of 65, subject to a maximum reduction of 20%. In contrast, an unreduced annuity will be provided to a judge under age 65 at the time of separation if the judge was not reappointed after notifying the court of his or her willingness to serve an additional term. Under no circumstances is a JRS nondisability annuity payable before age 65.

D. SURVIVOR ANNUITY

CSRS and FERS offer survivor annuities. While JRS does not provide a survivor annuity, a judge may obtain a survivor annuity by electing to participate in the Judicial Survivor's Annuities System (JSAS) within six months after taking office, marriage, elevation to a higher office, or within a statutorily authorized open season. A judge may elect JSAS while under CSRS or FERS, but must retire under JRS to continue JSAS coverage after retirement. The survivor annuities under JSAS and CSRS generally vest after a judge completes 18 months of service. Under FERS, a death benefit vests after a judge completes 18 months of service, while a survivor annuity generally vests after a judge completes 10 years of service.

If a judge who has elected JSAS dies in office, having delayed election into JRS, the judge's spouse may be entitled to a survivor annuity under both JSAS and the retirement program that the judge was under at the time of death (CSRS and FERS). However, the years of service used in computing the JSAS survivor annuity cannot also be used in computing the CSRS or FERS survivor annuity. If a judge dies in office while still under FERS, the surviving spouse is also entitled to a one-time lump-sum FERS death benefit. Therefore, if a judge electing JSAS wishes to provide additional survivor income protection for a spouse while in office, he or she may want to consider delaying an election into JRS.

The election of JRS coverage voids all benefits under CSRS and FERS, including survivor benefits (except for judges in office on November 15, 1988 who elect the "Hybrid" annuity, discussed below). **Therefore, if a judge elects JRS without having elected JSAS, no survivor annuity would be payable to a spouse upon the judge's death.** If no survivor annuity is payable, the surviving spouse will also be ineligible for continued health coverage under the Federal Employees' Health Benefits program.

E. THRIFT SAVINGS PLAN

Judges covered by JRS and CSRS may contribute to the Thrift Savings Plan (TSP) on a tax-deferred basis, with no matching government contributions. A judge covered by FERS may contribute to TSP on a tax-deferred basis with matching government contributions of up to 5% of salary. Under IRS rules, a maximum of \$18,000 (excluding government matches) can be contributed to TSP.

A judge under FERS who delays electing JRS could continue to make tax-deferred contributions into TSP. The judge would continue to receive matching government contributions, and earn tax-deferred interest income on those matching contributions. If the judge elects JRS, the JRS annuity will be temporarily reduced over a 12 to 24 month period to recover an amount representing all government contributions to the judge's TSP account during his or her service as a full-time judge. Interest earned on the government contributions will not be reduced from the JRS annuity. In other words, the judge keeps the earnings made on the government's contributions.

F. ANNUAL COST

All judges are subject to the Social Security Federal Insurance Contributions Act (FICA) tax, which includes a 6.2% tax for Old Age, Survivors, Disability Insurance (OASDI) and a 1.45% tax for Medicare (hospital insurance). In addition, the annual cost of a JRS annuity is 1% of salary for each year of covered service up to a maximum of 14 years. The cost of FERS is 0.8% of salary per year for judges who were covered under FERS on December 31, 2012 or for judges who have five years of prior creditable service under FERS or have five years of potentially creditable service under FERS. The cost of FERS is 3.1% of salary per year for judges appointed on or after January 1, 2013 and the cost of FERS is 4.4% of salary per year for judges appointed on or after January 1, 2014. The cost of full CSRS is 8.0% of salary per year. The cost for CSRS offset is 1.8% of salary up to the OASDI wage base (\$128,400 in 2018), then 8.0% of salary for the balance of the 2018 calendar year.

After making a JRS election, FERS contributions are subject to refund with interest at the market-rate. Since no interest is assessed on a deposit for prior service under JRS, a judge covered under FERS may have a financial incentive for delaying his or her JRS election. A judge may also wish to delay applying for a refund of FERS contributions after electing JRS, since interest on the FERS contributions will continue to accrue through the last day of the month preceding the date the refund is paid. CSRS contributions are refunded without interest.

G. APPOINTMENT TO ARTICLE III JUDGESHIP

A judge who is elevated to an Article III judgeship, having previously elected JRS, cannot receive a JRS annuity unless the judge resigns from the Article III office before retiring or taking senior status under the "Rule of 80." A judge who retains CSRS or FERS eligibility on appointment to the Article III bench will receive a deferred CSRS or FERS annuity for non-Article III federal service, including magistrate judge or bankruptcy judge service, and retirement compensation for

Article III service when he or she retires from office or takes senior status.

H. RETURNING TO PRIVATE PRACTICE OR OTHER GOVERNMENT SERVICE

A judge who retires under JRS and practices law without first filing an election to practice law, or practices law before the election becomes effective, forfeits the entire JRS annuity for life. A judge who makes an election to practice law is entitled to receive a JRS annuity, but forfeits any future cost-of-living adjustments on that annuity after the election becomes effective. No such penalties apply to CSRS or FERS annuitants who practice law.

A judge who retires under JRS and later accepts civilian employment with the federal government, (other than for service as a recalled judge) cannot receive a JRS annuity during the time that compensation is being received for the later government service. Under CSRS and FERS, a reemployed annuitant (including a recalled judge) generally continues to receive an annuity, but his or her compensation is offset by the amount of that annuity.

I. SPECIAL CONSIDERATIONS FOR CERTAIN BANKRUPTCY JUDGES AND MAGISTRATE JUDGES -- THE "HYBRID" ALTERNATIVE ANNUITY

Full-time judges who were in office on November 15, 1988, (including judges who had served as part-time magistrate judges at that time) may select the "Hybrid" annuity under JRS. Under this option, a judge is entitled to a proportionate JRS annuity for creditable full-time judicial service designated by the judge, on or after October 1, 1979, in addition to a CSRS or FERS annuity payable for at least five years of federal civilian service occurring before the dates designated under JRS. **There is no minimum number of years required for the JRS portion of a "Hybrid" annuity to vest.** However, to receive a disability annuity under the "Hybrid" plan a judge must have five years of creditable judicial service.

The spouse of a judge who elects the "Hybrid" plan would be eligible for a survivor benefit under the CSRS or FERS portion of the aggregate annuity, and, if the judge has elected to participate in JSAS, for a survivor annuity under JSAS based on periods of service designated for JRS.

Because at least five years of service under the "Hybrid" annuity has to be designated under FERS or CSRS, the JRS portion of the aggregate annuity may be less than if a straight JRS annuity had been made. However, for those judges who may leave the bench before age 65, those who do not elect JSAS coverage, or those who seek additional survivor coverage for a spouse, the "Hybrid" annuity may be desirable.

RETIREMENT ELECTION CONSIDERATIONS

	FERS	CSRS	JRS
Disability Annuity	18 months	5 years	5 years
Immediate Annuity			
Age:	55-57	55	65
Service:	10	30	8 Straight 0 Hybrid
Survivor Annuity	18 months	18 months	None, unless a participant in JSAS
Thrift Savings Plan	5% match	no match	no match
Portability	Yes	Yes	No

Applying for Retirement

At least 30 days before retirement, the completed forms should be returned to: Administrative Office of the United States Courts, Judges Compensation and Retirement Division, Washington, D.C. 20544

- If retiring under JRS:
 - PER -71, Application For An Annuity
 - Direct Deposit information if annuity is going to be sent to a different bank account from the bank that the salary payments are deposited to.

- If retiring under CSRS:
 - SF-2801, Application for Immediate Retirement
 - DD-214, Military Discharge Papers
 - SF - 2818, Continuation of Life Insurance Coverage
 - SF - 1199A, Direct Deposit Sign-Up Form
 - W4P - Tax Withholding for Annuity

- If retiring under FERS:
 - SF - 3107, Application for Immediate Retirement
 - DD - 214, Military Discharge Papers
 - SF - 2818, Continuation of Life Insurance Coverage
 - SF - 1199A, Direct Deposit Sign-Up Form
 - W4P - Tax Withholding for Annuity

For CSRS or FERS annuity under the Hybrid Annuity Plan:

- SF-2801, Application for Immediate Retirement under the Civil Service Retirement System; or
- SF -3106, Application for Retirement under the Federal Employees' Retirement System

Medicare

A. OVERVIEW

If a retired judge qualifies for Medicare coverage, the retired judge is entitled to primary health insurance coverage from Medicare and, if enrolled, secondary coverage from the judge's Federal Employees' Health Benefits carrier.

Part A - Hospital insurance. A judge should apply for Part A 2 months before age 65, whether or not in active status. No monthly premium is required since part of the FICA withholding was for Part A.

Part B - Supplementary Medical Insurance. This covers doctor's visits, doctor's fees for surgery, in/out patient care and some prescription drugs.

A judge first becomes eligible to sign up for Part B during an initial seven-month enrollment period which includes the three months before a judge turns age 65, the month of the judge's 65th birthday, and the three months after the judge turns age 65. Medicare Part B does not become primary until a judge retires, so enrollment during the initial enrollment period should only occur if a judge intends to retire by age 65 and three months. If a judge does retire during the initial seven-month enrollment period and declines to elect Medicare Part B during that period, the judge must wait until the general enrollment period to enroll in Medicare Part B. The general enrollment period commences the first calendar quarter of each year (January through March) with coverage effective on July 1 of the year during which the general enrollment takes place.

Judges who retire outside the initial enrollment period (i.e., after age 65 and three months) may enroll in Part B during a special eight-month enrollment period commencing from the date of retirement.

If a judge enrolls outside the initial or special enrollment period, he or she will have to pay a permanent 10% surcharge for each full 12 month period that he or she could have been enrolled in Part B but declined.

B. FREQUENTLY ASKED QUESTIONS (FAQS)

1. What is Medicare?

Medicare is a federal health insurance program for people age 65 or older, certain people with disabilities under 65, and people of any age who have permanent kidney failure.

2. How is Medicare financed and administered?

Medicare is part of Social Security, and the entire package of Social Security benefits is paid for by a system of taxation called Federal Insurance

Contributions Act (FICA) taxes. 26 U.S.C. §§ 3101-3127. The Medicare tax is currently 1.45 percent. /For the Medicare portion, the contributions and benefits base is unlimited.

Medicare is administered by the Health Care Financing Administration (HCFA) of the Department of Health and Human Services. Social Security offices located throughout the country (there are about 1,300) take applications for Medicare and provide general information about the program.

3. What services are covered under Medicare?

Medicare consists of two primary components: Part A (hospital insurance) and Part B (supplementary medical insurance). **Part A** hospital insurance can help pay for medically necessary inpatient hospital care and inpatient care in a skilled nursing facility, home health care, and hospice care. Covered services include semi-private rooms, all meals, regular nursing services, operating and recovery room costs, hospital costs for anesthesia services, intensive care and coronary care, drugs, lab tests, X-rays, medical supplies and appliances, rehabilitation services, and preparatory services related to kidney transplant surgery. Certain co-payments are attached to covered services.

Part B medical insurance covers doctors' services no matter where they are received (e.g., at home, in the doctor's office, in a clinic, in a nursing home, or in a hospital).

Some outpatient medical services and items are not covered by Part B, such as, routine physicals, most dental care, dentures, routine foot care, hearing aids and most prescription drugs. Eyeglasses are only covered if a beneficiary needs corrective lenses after a cataract operation. Medicare does not generally cover delivery of hospitalization or medical services outside the United States and its territories.

On January 1, 2006, Medicare prescription drug coverage (Medicare Part D) became available to all individuals with Medicare. Judges with existing coverage under the Federal Employees Health Benefits (FEHB) program, as well as those judges enrolled in TRICARE, or a comparable state health plan with prescription drug coverage, **should not** enroll in Medicare Part D. The primary target for the Medicare Part D prescription drug plan are those individuals with limited income and resources who would qualify for Medicare's extra assistance with prescription drug costs.

The prescription drug benefits offered under your current FEHB coverage (such as Blue Cross and Blue Shield) did not change as a result of the new Medicare Part D program. If circumstances change and you decide to enroll in Medicare Part D at some point in the future, you can join that program without having to pay any penalty for late enrollment as long as you were covered by a plan that had "creditable coverage." All FEHB plans,

TRICARE, and comparable state health plans with prescription drug coverage, are deemed to have “creditable coverage.”

There is also Medicare Part C (Medicare Advantage Plans) which combines Part A, Part B, and sometimes Part D coverage. Medicare Advantage Plans are managed by private insurance companies approved by Medicare. Generally, judges should not enroll in Part C.

4. When does a judge become eligible for Medicare benefits?

A judge qualifies for Medicare at age 65 with 40 quarters of credit (generally, 10 years of judicial service or a combination of private sector and government service). A judge is eligible to receive Medicare at 65, regardless of whether a judge continues in active service, recall service, or retires. Similarly, a spouse qualifies when he or she has reached 65. People of any age with permanent kidney failure and certain other disabilities may also qualify.

5. How does a judge apply for Medicare benefits?

Unless a judge is getting Social Security benefits when the judge turns 65, he or she will have to apply for both Part A and Part B benefits online at the Social Security website at www.socialsecurity.gov and click on “Medicare,” or at a local Social Security Administration office. Where a judge is receiving Social Security benefits payments when the judge turns 65, the judge will be enrolled automatically in both Part A and Part B. However, because a judge must pay a monthly premium for Part B coverage, he or she has the option of paying for the coverage or turning it down.

6. What are the out-of-pocket costs of Part A and Part B?

Part A has deductibles and coinsurance, but most people do not have to pay premiums for Part A (unless the insured has fewer than 40 credits).

Part B has premiums, deductible, and coinsurance amounts that an enrollee must pay personally or through coverage by another insurance plan. In general, Part B medical insurance will pay 80 percent of the charges for covered service a person receives during the year after an annual deductible of \$183. Premium, deductible and coinsurance amounts are set each year based on formulas established by law. 42 U.S.C. §§ 1395r; 1395u. New amounts begin each January 1.

Where charges are higher than the Medicare fee schedule amount, the judge will have to pay any difference. Thus, a judge should determine in advance whether a particular health care provider accepts the Medicare fee schedule amount. Because there are about 200 distinct geographic areas under the Medicare fee schedule, benefit payments may differ from locale-to-locale.

A monthly premium for Part A coverage is required only if the insured has fewer than 40 quarters of wages subject to FICA tax. The monthly premiums for Part B coverage are subject to a means test. Under the Medicare Prescription Drug Improvement and Modernization Act of 2003, Pub. L. No.108-173, individuals with income above \$85,000, or \$170,000 as a married couple filing jointly, will have to pay substantially more for Medicare Part B premiums. **The Centers for Medicare & Medicaid Services will use the adjusted gross income reported on your 2016 federal income tax return to determine the Medicare Part B premium for 2018.** The adjusted gross income used to determine Medicare Part B premiums includes income of retired or recalled judges. The chart below shows the Part B premiums for 2018 under the means-testing method:

Income for Individual Filer	Income for Joint Filer	Monthly Medicare Premium in 2018
\$85,000 or less	\$170,000 or less	\$134.00
\$85,001 - \$107,000	\$170,001 - \$214,000	\$187.50
\$107,001 - \$160,000	\$214,001 - \$320,000	\$267.90
\$160,001 - \$214,000	\$320,001 - \$428,000	\$348.30
Above \$214,000	Above \$428,000	\$428.60

In light of the increase in Medicare Part B premiums, judges may want to evaluate your health coverage options to determine what would provide you with the most comprehensive and cost-effective coverage.

If a judge was still in active status during the initial enrollment period commencing three months before and ending three months after age 65, the judge can sign up for Medicare Part B during a special enrollment period within eight months after retiring. If a judge does not apply for Part B until after the 8-month period, the judge will be charged a higher premium to enroll in Part B. Part B premiums go up 10 percent for each full 12-month period in which a beneficiary delayed enrollment.

7. Should a judge elect Part B medical insurance if the judge is enrolled in a fee-for service plan under the Federal Employees Health Benefits Program (FEHBP)?

Where a judge is in active service at age 65, the judge's FEHBP plan is his or her primary insurer. 42 U.S.C. § 1395y(b). Upon retirement, Medicare will replace the FEHBP plan as the judge's primary health insurer, provided that the judge enrolls in Part B. If the judge does not enroll in Part B, then the judge's FEHBP plan will remain the primary payer.

For retired judges (as well as other retired federal employees) who are covered by both Medicare and the FEHBP, benefits are coordinated so that if they are in a fee-for-service FEHBP plan (such as Blue Cross and Blue Shield plans or GEHA) and elect to take Medicare Part B, Medicare pays its standard amount and then the employee's FEHBP plan will cover the deductibles and copayments that Medicare normally requires. Thus, a judge would generally receive more comprehensive coverage than from either program alone.

This is not to suggest that a judge should necessarily elect Part B coverage. Some people do not enroll in Part B since they do not wish to pay the Part B premium. This is particularly true in light of the increase in Medicare Part B premiums. A judge might want to compare the cost of the co-payments and deductibles he or she now must pay under his or her FEHBP plan with the annual cost of the Part B premium. This would enable a judge to decide whether it would be beneficial to enroll in Part B. A judge should also be aware, however, that if he or she decides not to sign up for Part B at retirement, but later wants that more complete coverage, Medicare will charge the judge a higher premium to enroll in Part B. As discussed earlier, the judge will be charged a 10 percent penalty fee on the monthly premium for each full 12-month period in which the judge could have had Part B medical insurance but was not enrolled. It should be noted that various low-option federal plans are available under the FEHBP to fill in the gaps of Medicare coverage.

8. Should a judge elect Part B medical insurance if the judge has health benefits through a Health Maintenance Organization (HMO) under the FEHBP?

HMOs generally require few co-payments or deductibles, so a judge would be paying a high Part B premium for relatively low additional insurance. Thus, a judge who is enrolled in an HMO plan under the FEHBP might consider declining Part B coverage under Medicare. However, HMOs operate in limited geographical areas. Thus, in determining the necessity of Part B, a judge should consider whether he or she will permanently reside in the HMO's service area. If a retired judge leaves the service area and enrolls in a fee-for-service plan later and wants to enroll in Part B, there is a 10 percent penalty for each year the judge delayed enrolling.

9. Should a judge decline FEHBP coverage after enrolling in Medicare Part A and Part B?

As discussed in the earlier questions, there is sometimes good reason to have both Medicare Part B and FEHBP coverage, but it depends on the FEHBP plan and a judge's own preferences about how much he or she is concerned about the risk of having to pay extra charges out-of-pocket. The biggest risk of dropping FEHBP coverage is that Medicare has no upper limit on how much an enrollee must pay out-of-pocket.

Thus, if a judge has a major health problem that leads to several hospital stays (which in 2018 has a deductible of \$1,340 for a hospital stay of 1-60 days) and very high bills from doctors and other providers (where the co-payments are 20 percent of the costs), a judge could easily end up paying several thousand dollars. A more cautious approach would be for a judge to continue to participate in the FEHBP and evaluate the cost-effectiveness of Part B coverage.

10. Who may a judge contact for more detailed information on Medicare?

More detailed information on Medicare can be obtained by contacting the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880.

The Center for Medicare & Medicaid Services publishes a comprehensive guide to Medicare benefits entitled *Medicare & You*, which can be obtained by visiting the Medicare website at www.medicare.gov.

Social Security

1. All United States bankruptcy judges and magistrate judges (hereinafter “judges”) are covered by the Social Security system. Pub. L. No. 98-21 (1983). They are subject to the Social Security Federal Insurance Contributions Act (FICA) tax, which includes a tax for Old Age, Survivors, Disability Insurance (OASDI) and the Medicare hospital insurance tax.
2. For 2018, the OASDI tax rate is 6.2%. The wage base subject to the OASDI tax is indexed annually for inflation. It is set at \$128,400 in 2018. The Medicare tax is an additional 1.45% of all wages.
3. Social Security retirement benefits are based on the number of years of coverage and the wages earned by an individual over a lifetime. A minimum of 40 quarters (10 years) of wages subject to Social Security tax is required for vesting purposes. The maximum benefit in 2018 for an individual at full retirement age is \$33,456 per year or \$2,788 per month.
4. An unreduced Social Security benefit is payable at a minimum age of 65-67. A reduced benefit may be payable as early as age 62.
5. The Social Security retirement benefits of a judge, unlike those of other federal employees, are not reduced under the “windfall elimination” provision, which reduces the Social Security benefits of federal employees who are entitled to retirement benefits based on wages earned not subject to FICA taxes.
6. As amended in April 2000, the Social Security Act eliminates the Social Security retirement “earnings test” for individuals who have attained full retirement age (which currently ranges from age 65 to 66, but will rise to age 67 in 2027). As a result of this legislation, active full-time judges can begin receiving a Social Security retirement benefit once they reach full retirement age. An active full-time judge who has not reached full retirement age is not considered “retired” under the “earnings test” and thus, as a practical matter, cannot receive a Social Security retirement benefit.
7. A judge who retires before attaining the full retirement age and who earns wages over a specified “exempt” amount during a taxable year (typically the calendar year) will have his or her Social Security retirement benefit reduced. *A judge’s retirement annuity is not considered “wages” for purposes of the earnings test.* The amount of earnings exempt from reduction is—
 - \$17,040 (in 2018, subject to annual adjustment) for a year in which the judge will not yet attain the full retirement age, and
 - \$45,360 (in 2018, subject to an annual adjustment) for the months preceding attainment of the full retirement age within the year in which the judge will attain that age.

The amount of reduction is (1) \$1.00 in Social Security retirement benefits for every \$2.00 in wages above the exempt amount during a year preceding the one in which the full retirement age is attained, and (2) \$1.00 in benefits for every \$3.00 in wages above the exempt amount during the months preceding attainment of the full retirement age within the year in which that age is attained. There is no reduction of Social Security retirement benefits based on wages earned during or after the month in which the full retirement age is attained.

8. A modest lump sum payment and monthly survivorship benefits are payable at death to an eligible surviving spouse and dependents.
9. Additional information regarding the impact of Social Security on retired judges who are recalled to active service is set forth at §§ 8(I)-(k).
10. Certain Social Security information, including forms and pamphlets, can be obtained 24 hours a day by calling the Social Security Administration toll-free at 1-800-772-1213. Information can also be obtained from the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880.

Elevation to Article III Status

A. IN GENERAL

1. When a newly-appointed magistrate judge or bankruptcy judge is making retirement decisions, consideration should be given to the possibility of eventual nomination to an Article III judgeship. A substantial number of magistrate judges and bankruptcy judges have been appointed to the Article III bench, and most of them had investments in one or more federal civilian or military retirement plans at the time they were appointed to the Article III judgeship.
2. This chapter is intended to provide a brief overview of the special rules applicable to retirement benefits for Article III judges. The interaction of federal and civilian retirement plans with the retirement options available to Article III judges is complex, and significant financial consequences must be explored. For instance, most of these retirement plans include deferred benefit entitlements that may be paid out to the judge in addition to any retirement compensation for service performed as an Article III judge. **The right to receive a JRS annuity, however is forfeited** when a judge receives retirement compensation for Article III service.

B. SENIOR STATUS AND RETIREMENT FOR ARTICLE III JUDGES

1. The retirement and employment benefits of Article III judges are governed explicitly by statute and by regulations of the Judicial Conference of the United States.
2. An Article III judge is entitled to receive retirement compensation upon meeting the age and service requirements of the Rule of 80, as set forth in 28 U.S.C. § 371(c). Beginning at age 65, an Article III judge may retire on salary or take senior status after performing 15 years of active service as an Article III judge ($65+15=80$). A sliding scale of increasing age and decreasing service results in eligibility for retirement compensation at age 70 with a minimum 10 years of service ($70+10=80$). An Article III judge, regardless of age or length of service, may also voluntarily retire from regular active service and take senior status if the judge becomes permanently disabled from performing judicial duties.
3. An Article III judge who meets the age and service requirements of the Rule of 80 is entitled to receive retirement compensation that is at least equal to the full salary of the office at the time of retirement. Upon meeting the requirements of the Rule of 80, the judge can elect to:
 - (i) **take senior status** and retire from active service while retaining the judicial office. The retirement compensation of a senior judge is adjusted for cost-of-living allowances, and a senior judge who meets certain workload requirements is entitled to receive any future salary increases provided by Congress to active Article III judges. A senior

judge remains a judicial officer and cannot practice law.

- (ii) **retire on salary** and relinquish the judicial office irrevocably. The retirement compensation of a judge who retires on salary is permanently frozen and is not subject to any future cost-of-living or other adjustment to the salary of the office. After retirement, the judge may practice law subject only to traditional ethical considerations on matters handled while in active service.
4. An Article III judge who resigns from office before becoming eligible to receive retirement compensation under the Rule of 80 forfeits the right to retire on salary or take senior status unless the judge is later appointed to a new Article III judgeship.

C. CIVIL SERVICE RETIREMENT SYSTEM (CSRS)

1. Appointment to an Article III judgeship constitutes a separation from service for purposes of computing a CSRS annuity. By statute, an Article III judge is not considered an “employee” under CSRS. 5 U.S.C. § 8331(1)(I). Therefore, eligibility for a CSRS retirement annuity generally derives from a minimum of five years of credible federal civilian service performed **prior to** appointment to an Article III judgeship.

A special exception allows CSRS credit for service as an Article III judge **only if** an Article III judge resigns from office, is employed in a position subject to CSRS and the judge had been covered under the Judicial Survivors’ Annuities System.

2. Generally, a federal employee who separates from service before reaching the minimum retirement age is entitled to receive, if otherwise eligible, a deferred annuity at age 62. An Article III judge, however, is not entitled to receive a deferred CSRS annuity for prior government service while the judge remains **in active service**, regardless of age.
3. A senior judge or a judge who retires on salary is entitled, if otherwise eligible, to receive a CSRS annuity for prior federal service **in addition** to retirement compensation for services as an Article III judge.
4. A judge may elect to receive a lump-sum payment without interest of all contributions paid to the CSRS plan at the time of appointment to an Article III judgeship or at any time while in active service. 5 U.S.C. § 8342(g). Once the judge elects and receives a refund of prior contributions into CSRS, however, the right to a future deferred CSRS annuity for the service upon which the refund is based is forever forfeited (unless the judge is subsequently employed in a position subject to CSRS).
5. A judge should consider carefully whether to forfeit a CSRS deferred annuity in return for a refund of all prior contributions or to retain CSRS coverage and receive a deferred annuity. The relative value of a deferred CSRS annuity will

often exceed the value of a lump-sum refund that has been invested during the period before an individual actually begins to receive the annuity. It is therefore not surprising that most federal employees who resign before being entitled to receive an immediate retirement annuity decide to leave their contributions in CSRS. This is indicative of the value of retaining an entitlement to a deferred CSRS annuity.

**D. FEDERAL EMPLOYEES' RETIREMENT SYSTEM (FERS)
AND THRIFT SAVINGS PLAN (TSP)**

1. Appointment to an Article III judgeship constitutes a separation from service for purposes of computing a FERS annuity. By statute, an Article III judge is not considered an employee under FERS. 5 U.S.C. § 8401(11)(I)(I). Therefore, eligibility for a FERS retirement annuity generally derives from a minimum five years of creditable federal civilian service performed prior to appointment to an Article III judgeship.
2. A senior judge or a judge who retires on salary is entitled, if otherwise eligible, to receive a FERS defined benefits annuity **in addition** to retirement compensation for service as an Article III judge.
3. A judge may elect to receive a lump-sum payment with interest at the market rate of all contributions paid to the FERS plan at the time of appointment to an Article III judgeship, or at any time while in active service up to 31 days before a judge becomes eligible to receive a FERS annuity.
4. Article III judges can contribute to the TSP Fund but do not receive matching government contributions. A magistrate judge or bankruptcy judge who is appointed to an Article III judgeship without a break in federal service may carry over the balance of an account in the Fund and continue to contribute a portion of their salary.
5. A judge should consider whether to stay in FERS and remain entitled to a defined benefits annuity or opt out by withdrawing all contributions paid to the FERS defined benefits plan. In virtually all cases, the value of a FERS defined benefits annuity is greater than the value of a refund of prior contributions, even with interest and investment returns factored into the calculations. A judge can also continue to contribute to the Thrift Savings Plan without matching government contributions and add to what already may be a substantial sum of previous personal contributions, matching government contributions, and return on investment.

E. JUDICIAL RETIREMENT SYSTEM (JRS)

1. An Article III judge who previously elected JRS **loses the right to receive a JRS annuity** when the judge retires or takes senior status. The judge would receive a refund of JRS contributions, plus interest.
2. An Article III judge who resigns from office is entitled to receive a JRS annuity

for prior service as a bankruptcy judge or magistrate judge at age 65. Receipt of the JRS annuity would be subject to the minimum service requirement and to the annuity reduction for separation before age 65.

3. A magistrate judge or bankruptcy judge who elects to participate in JRS forfeits all rights under CSRS or FERS and receives a refund of all prior contributions into CSRS and into the defined benefits plan under FERS. Although a JRS annuity is substantially superior to an annuity under CSRS or FERS, a judge who anticipates an appointment to the Article III bench should consider delaying a JRS election. The judge would retain the right to receive a deferred CSRS or FERS annuity in addition to retirement compensation for Article III service, where the JRS annuity would otherwise be forfeited.
4. Retirement compensation for service as an Article III judge is payable only when the age and service requirements of the Rule of 80 are met. Recently, several Article III judges have declined appointments to political offices in the federal government because they would be required to resign from office and forfeit their retirement rights. As a result, some judges have elected JRS upon nomination to the Article III bench in order to preserve future rights to a substantial JRS annuity in the event they choose to resign from Article III judgeship.

F. JUDICIAL SURVIVORS' ANNUITIES SYSTEM (JSAS)

1. Magistrate judges or bankruptcy judges who are already participating in JSAS are not required to "re-elect" JSAS coverage if they are appointed to an Article III judgeship without a break in service. Deductions from their Article III salary will continue automatically at the 2.2% contribution rate or 2.75% if the judge elected into JSAS during the 2009-2010 open season.
2. A bankruptcy judge or magistrate judge who waived the right to participate in JSAS will have a second chance to participate in JSAS within six months of appointment to an Article III judgeship. A deposit may be made at that time to receive credit for prior service as a bankruptcy judge or magistrate judge. A deposit to receive credit for prior service is not necessary but a bankruptcy judge or magistrate judge may want to consider making at least an 18-month deposit to provide immediate protection to spouse and/or dependent children.

G. MORE INFORMATION

More information on being elevated to an Article III judgeship is available from the Administrative Office's Judges Compensation and Retirement Division at 202-502-1880.

Recall of Retired Bankruptcy Judges

Retired bankruptcy judges willing to serve under the recall program are indispensable to the national bankruptcy court system. Their service provides individual districts with a cost-effective means to address shifting caseloads and the experience to improve the bankruptcy system. Circuit judicial councils may ask any eligible bankruptcy judge to return to judicial service as a recalled judge. If the retired judge consents, he or she may be recalled for either ad hoc service of up to one year and one day or extended service of one to three years. Recall judges may receive some compensation and may receive staff and other support. Moreover, their benefit package may change from retirement to active employment. Judges considering recall service should be familiar with the recall process, the statutory limits to their compensation, and how recall service will affect their retirement benefits.

A. AUTHORITY

Circuit judicial councils may recall under regulations promulgated by the Judicial Conference (28 U.S.C. § 155(b)), any eligible retired bankruptcy judge who consents to serve on recall notwithstanding where the judge served before retirement. Under the Conference's regulations governing "ad hoc" recall service, the circuit councils may recall a retired bankruptcy judge for a period up to one year and a day. Additionally, the circuit councils may recall a retired bankruptcy judge under "extended service" regulations for a period of more than one year to three years. A judge may serve successive recall periods under either the ad hoc or extended service regulations.

B. ELIGIBILITY

Any bankruptcy judge either retiring with an immediate annuity under the Civil Service Retirement System (CSRS), the Federal Employees' Retirement System (FERS), the Judicial Retirement System (JRS), or the "hybrid" JRS alternative, or receiving a deferred retirement annuity under one of those programs, is eligible for ad hoc recall service; either full-time or "when-actually-employed." A retired bankruptcy judge who has retired on full salary under either JRS or "hybrid" JRS and is at least age 65 is eligible for extended service recall. A judge retiring under the JRS program who practices law is ineligible for recall service under both the ad hoc or the extended service programs. The need for recalled bankruptcy judges varies from district to district depending on caseload and the number of active judges.

C. APPOINTMENT

A retired bankruptcy judge may apply for recall service by submitting either a letter or an official form to the circuit judicial council. In some circuits, the circuit executive's office keeps a list of retired bankruptcy judges available for recall service. When a district requests assistance, the circuit council will consult this list and solicit applications from those judges expressing an interest.

Nothing limits recall service to the circuit from which the judge retired. On the contrary, a retired bankruptcy judge may be recalled by any circuit's judicial council and may serve in any district (28 U.S.C. § 155(b)). To facilitate intercircuit service, the Judicial Conference allows the chief circuit judge of a court planning to recall a bankruptcy judge access to information concerning that judge's prior service. The Conference also allows the chief judge to discuss the recall assignment with the judges of the recall candidate's home district and circuit.

The Judicial Services Office of the AO has developed a recall registry to assist circuit judicial councils and chief judges with identifying retired bankruptcy judges who are interested in being recalled (in their home district or in other locations). An information sheet on the registry as well as a questionnaire to be completed by those who want to be added to the registry are included at the end of this chapter.

The circuit council recalling a bankruptcy judge under the extended service program must certify that the bankruptcy judge will perform substantial service during the period of recall. The ad hoc recall regulations have no similar requirement. The local court on which the recalled judge will serve determines the location and duration of the judge's assignment. In some instances, the circuit may ask the recalled judge to accept temporary intracircuit assignments.

The office of the circuit executive prepares the appointment papers recalling a bankruptcy judge. Then, the circuit's judicial council issues an order of appointment. The order will specify the terms of service, including the judge's consent to serve, and specifying the hours (e.g., if not full time, the hours per day, per week, or per month, as appropriate) during which the bankruptcy judge will serve. The judicial council may renew the order of recall for an additional term.

Any bankruptcy judge who is eligible for recall but has been separated from federal judicial service for more than one year, but no more than 10 years, is subject to a name and fingerprint check by the FBI, a tax check by the IRS, and a credit check by the Office of Personnel Management. A bankruptcy judge who has been separated from federal judicial service for more than 10 years is subject to a full-field background check by the FBI with a 15 year scope.

D. BANKRUPTCY JUDGES COMMITTEE APPROVAL

Any request for funds for any recall that exceeds \$10,000 in judicial salary (including Office of Personnel Management annuity reimbursement, travel, and subsistence expenses) requires the approval of the Judicial Conference Committee on the Administration of the Bankruptcy System.

In addition, chambers staff may be authorized for a recalled bankruptcy judge only with the approval of the Bankruptcy Committee and the judicial council of the circuit in which the judge will be serving. A recalled bankruptcy judge may be authorized two full-time chambers staff if the bankruptcy judge performs or is expected to perform at least 75 percent of a full-time workload. One full-time chambers staff member may be authorized if the judge performs or is expected to perform at least a 40 percent workload. If a recalled bankruptcy judge is expected to perform less

than a 40 percent workload, no chambers staff will be authorized. Exceptions to these workload requirements are allowed in limited circumstances.

E. POWERS AND SCOPE OF SERVICE

The recall regulations provide that a recalled judge may exercise all the powers and duties of the office of bankruptcy judge. Nevertheless, the court may limit the scope of recall service and may restrict the recalled judge's authority to certain designated matters. The appointing court may limit the recalled judge's duties to acting as a mediator or settlement judge, or to handling a particular case or types of cases, such as a particular chapter 11 mega-case or a district's chapter 13 cases. On occasion, the circuits have assigned recalled bankruptcy judges to serve as chief judge and to perform judicial and administrative duties on a bankruptcy appellate panel. The Judicial Conference allows the circuits much flexibility in making the best use of recall services.

F. COMPENSATION

A recalled bankruptcy judge performing full-time service is entitled to the salary payable to a full-time bankruptcy judge less the annuity allocable to the period of recall service.

For example, a judge who retires with an annuity equal to 100% of the salary of the office receives no additional compensation for recall service. On the other hand, a judge who retires with an annuity of \$160,080, and is recalled to service on a full-time basis, would be entitled to the difference between the annuity and the current salary of the office. Accordingly, if the salary of the office were \$191,360, the judge would receive "wages" of \$31,280, in addition to the \$160,080 annuity.

A circuit may recall a bankruptcy judge to serve "when-actually-employed." Under the "when actually employed" regulations the judge's compensation is computed on a daily basis. For each day of service, the judge receives the maximum daily salary payable to a bankruptcy judge less the portion of the judge's annuity allocable to that day.

For example, if the salary of the office were \$191,360, the daily salary rate would be \$736 ($\$191,360$ divided by 260 days — the number of days in a standard work year). If the judge were receiving an annuity of \$160,080, the daily proportion of the annuity would be \$445 ($\$160,080$ divided by 360 days — the number of days using 30-day calendar months). Therefore, the judge would receive "wages" of \$291 per day for recall service in addition to the annuity ($\$736$ less $\$445$). The judge's total compensation (annuity plus wages) for each day of recall service would be \$736, equal to the daily rate for the salary of the office.

A recalled bankruptcy judge serving on a "when-actually-employed" basis must certify monthly to the Judges Compensation and Retirement Division, the number of days (not hours per day) actually worked. The bankruptcy judge may satisfy this certification requirement by sending an email to Carol S. Sefren at

Carol_Sefren@ao.uscourts.gov indicating the days worked by the 15th of each month following the month in which duties are performed.

G. SUPPORT SERVICES

Subject to the approval of the circuit's judicial council, the court may provide a recalled bankruptcy judge with a judicial assistant, a law clerk, an office, courtroom facilities, lawbooks, equipment, stationery, and other supplies.

H. SUPPLEMENTAL OR RE-COMPUTED RETIREMENT ANNUITY

A retired bankruptcy judge who is receiving an annuity under either CSRS or FERS (except for "hybrid" annuitants under JRS) may earn an increased annuity as a result of full-time recall service under the ad hoc regulations. For continuous, full-time recall service of at least 1 year but less than 5 years, the judge is entitled to a supplemental annuity equal to 2.5% (CSRS) or 1% (FERS) of the judge's basic pay averaged during the recall period. If the continuous, full-time recall service exceeds 5 years, the judge may elect to have the total CSRS or FERS annuity recomputed as if the judge were retiring for the first time with a new "average salary" in lieu of receiving a supplemental annuity.

For example, a retired bankruptcy judge who is paid a CSRS annuity of \$96,875 based on 25 years of service and a high-three "average salary" of \$155,000 at the time of retirement ($25 \text{ years} \times 2.5\% \times \$155,000$), would be entitled to a recomputed annuity of \$143,520 after 5 years of recall service, assuming the salary of the office increased to \$191,360.

A recalled bankruptcy judge must contribute (or pay a deposit) to the Civil Service Retirement and Disability Fund in order to receive a supplemental or recomputed CSRS or FERS annuity. A judge is entitled to receive the supplemental or recomputed annuity only after there is a break in service of more than three days or the judge's recall status changes from a full-time to a "when-actually-employed" basis. Service on recall will not increase a judge's annuity under JRS or the "hybrid" alternative.

I. JUDICIAL SURVIVOR ANNUITIES' SYSTEM

For a bankruptcy judge serving on recall, the cost to participate in the Judicial Survivors' Annuities System (JSAS) is 2.2% of the total recall compensation (annuity and salary), unless the recalled judge enrolled in JSAS during the 2009-2010 open season. In that case, the contribution rate is 2.75% of total compensation. Retired bankruptcy judges not serving on recall must contribute 3.5% of their retirement annuity to participate in JSAS.

J. THRIFT SAVINGS PLAN

Recalled judges retired under either CSRS or FERS may participate in the Thrift Savings Plan to the same extent as other re-employed federal annuitants. The tax advantages associated with the Thrift Savings Plan, however, tend to erode at this

stage of a judge's career. Recalled judges retired under either JRS or "hybrid" JRS are ineligible to participate in the TSP as reemployed annuitants.

K. HEALTH INSURANCE BENEFITS

Enrollment in a Federal Employees' Health Benefits plan will continue for judges upon retirement with the same benefits and costs as before retirement. No change in health benefits status occurs when a retired judge enters recall service.

L. LIFE INSURANCE BENEFITS

All retired JRS annuitants are employees for FEGLI purposes, whether recalled or not. However, there are still advantages to being recalled for FEGLI purposes.

1. As "employees" the amount of life insurance coverage of a JRS annuitant is calculated based upon the current rate of compensation. For these judges the current rate of compensation is the JRS annuity. If a JRS annuitant retires at less than full salary, the amount of life insurance coverage will reduce because the life insurance will be calculated based upon the lower annuity figure (and not the salary of the office). If a judge who is retired on less than full salary is recalled to full-time service, the current rate of compensation will increase to the salary of the office. This will result in a higher amount of life insurance coverage while on recall.

For example, a judge who retires after serving 10 years receives a 10/14's annuity of \$136,685 based on a full salary of \$191,360. That judge will also have his or her Basic Life coverage reduced to \$137,000 (from \$194,000) and two multiples of Option B (Additional) coverage reduced to \$274,000 (from \$384,000). If that same judge is recalled full-time six months after retirement, the judge will receive compensation (annuity and salary) equal to the current salary of the office. Assuming that the current salary of the office is still \$191,360, the amount of life insurance coverage on recall will revert to the higher level that was in place before retirement. Once the recall service ends, the life insurance coverage will again be based upon the amount of the JRS annuity.

2. Upon commencement of the JRS annuity, a deferred JRS annuitant who is **recalled** on a full-time basis for one year and one day after a break in service of at least 180 days, may elect new life insurance coverage based upon the new appointment. Once the recall service ends, the life insurance coverage will be based upon the amount of the deferred JRS annuity. Otherwise, a deferred annuitant may apply for life insurance coverage but would need to show evidence of insurability.

M. LIFE INSURANCE BENEFITS FOR CSRS AND FERS ANNUITANTS

A judge who retires under CSRS or FERS may be entitled to acquire federal life insurance coverage as an employee during the period of recall service, resulting in lower employee premium rates and a temporary suspension of the reduction in

coverage that occurs when a retired judge reaches age 65. All life insurance as a retiree is suspended upon acquisition of life insurance as an employee on recall.

A judge recalled on a full-time basis under the ad hoc recall regulations may acquire, at the employee rate, the Basic Life and any optional insurance coverage in effect at the time of the judge's retirement, if the recall appointment:

- begins four days or less after retirement (i.e., no break in service), or
- the recall appointment is for at least one year and one day

A judge who is recalled on a when-actually-employed basis is not eligible to acquire life insurance coverage as an employee. Such a recalled judge continues life insurance coverage as an annuitant, subject to diminution.

Recalled judges satisfying the requirements discussed above automatically acquire as employees the Basic Life, Option A, and Option C insurance that was in effect at the time of retirement. To acquire as an employee the Option B insurance that was in effect at the time of retirement a judge must complete a Standard Form 2817, Election of Life Insurance, and file it with either the Judges Compensation and Retirement Division or the clerk of court, within 31 days from the date the recall service begins.

The amount of Basic Life insurance and optional insurance acquired by a judge on recall is based on the current salary of an active judge.

For example, if a judge retired on a salary of \$160,080, and elected 100% Basic Life insurance coverage, the judge would have Basic Life insurance coverage as a retiree in the amount of \$163,000. If that judge is recalled (and meets the requirements for acquiring life insurance as an employee) and the salary of the office for an active judge is \$191,360, the judge, during the period of recall, would have Basic Life insurance coverage of \$194,000.

If a judge dies during recall service, the survivor will receive the amount of Basic Life and optional insurance that the judge had as a recalled employee.

A judge who is recalled to service may continue the life insurance coverage acquired as an employee into "re-retirement" if the judge: (a) has completed at least one year of continuous recall service, (b) has qualified for a supplemental annuity or acquired a new retirement right and (c) was covered by Basic Life and the optional insurance coverage for the five years immediately preceding separation from recall service or for the full period during which such coverage was first available, whichever is less.

Any Basic Life and Option B and C life insurance acquired on recall that is continued into "re-retirement" will not diminish (for being age 65 or older) if the judge elects to continue the coverage unreduced before separating from recall service. If a judge, upon separation from recall service, elects to continue the life insurance acquired on recall with reduction, the life insurance will begin to diminish on the date the recall service ends (or at age 65 if later). If a judge is not eligible to

continue life insurance acquired on recall into “re-retirement” (e.g., for full-time recall service of less than one year), the life insurance in effect at the time of the initial retirement will be reinstated in an amount the judge would have had if the retiree coverage had not been suspended; i.e, the coverage may be reduced for all periods that the judge was age 65 or older during his or her recall service (unless the judge previously elected to continue the life insurance unreduced at the time of his or her initial retirement).

A judge recalled on either a full-time basis for at least one year and one day or on an extended service basis may elect Basic Life and optional insurance *that had previously been waived* if the judge had a break in service of more than 180 days. No evidence of insurability is required to elect the previously waived insurance.

N. PRACTICE OF LAW AND CODES OF CONDUCT

All retired judges performing substantial services under the extended service regulations or full-time services under the ad hoc regulations are prohibited from practicing law during the period of recall service. Judges recalled on a “when-actually-employed” basis under the ad hoc regulations (except for JRS and “Hybrid” annuitants) may practice law during recall service. The *Codes of Conduct for United States Judges* applies to recalled judges unless the judge files a notice that the judge will not consent to recall service.

O. TRAVEL REIMBURSEMENT

Section 374 of title 28 of the United States Code provides that the place where a recalled judge "maintains the actual abode in which [the judge] customarily lives shall be deemed to be [the judge's] official station for the purposes of [travel reimbursement]." When a recalled bankruptcy judge is holding court or otherwise transacting official business outside the corporate limits of his or her official duty station, the judge may be reimbursed for both transportation and actual subsistence expenses incurred during the day, e.g. round trip mileage and lunch. When the court or other duty location where the recalled judge is working is within the corporate limits of the judge's official station (residence), then the judge may be reimbursed only for transportation expenses incurred between his or her residence and the duty location.

The Social Security Implications of Recall Service

Some judges have expressed concerns regarding the affect of recall service upon their social security contributions (taxes) and benefits. Prior to 1984, federal judges, like all federal employees, were excluded from social security coverage, so the question of liability for social security taxes did not arise. The Social Security Amendments of 1983, however, provided that all federal judges (except senior Article III judges) would be subject to social security taxes.

The annuity portion of a judge's compensation is not subject to social security taxes when a judge is recalled. Nevertheless, if a recall judge receives "wages" because the salary of the office exceeds his or her annuity, those "wages" will be subject to a portion of the social security tax, only the 1.45% Medicare tax. These wages also may cause a reduction in Social Security benefits.

Social Security Taxes

Social security taxes have two components: Old-Age, Survivors, and Disability Insurance (OASDI), and Hospital Insurance (Medicare). The OASDI tax rate is 6.2%. The Medicare tax rate is 1.45%. These taxes are applied to "wages received by [the employee] with respect to employment." **A judge's JRS retirement annuity (including the annuity portion of the compensation received by a recalled judge) is not considered wages for purpose of the Social Security OASDI or Medicare tax.** Accordingly, if a judge retires on a full salary annuity under 28 U.S.C. § 377(a) (at age 65 with 14 years of service) and is recalled immediately, he or she would not receive any "wages" for recall service because the recall compensation is calculated upon the difference between the retirement annuity and the full salary of the office. A judge who either retires on less than full salary or retires on full salary but is recalled after the salary of the office is increased, would receive wages equal to the difference between the annuity and the salary of the office. Although a recalled judge, as a reemployed annuitant under JRS, is exempt from the OASDI tax on those wages, those wages will be subject to the 1.45% Medicare tax. For example, a judge who retires on a reduced JRS retirement annuity of \$160,080 and is recalled upon retirement (under the "ad hoc" recall program, which does not limit recall eligibility to retirement on full salary), would receive "wages" of \$31,280 for that year (based upon a salary of the office of \$191,360). The total Medicare tax on these wages would be approximately \$454. No OASDI taxes would be withheld.

Judges recalled under CSRS or FERS would pay the Medicare and OASDI tax on recall wages.

Reduction of Social Security Benefits

As amended in April 2000, the Social Security Act provides for reduction of an individual's Social Security retirement benefits in accordance with a set formula (known as the "earnings test") when he or she is under the "full retirement age" (the age at which the individual would have become eligible for an unreduced retirement benefit -- currently 66 for those born between 1943 and 1954, and rising incrementally to age 67 by 2027) and earns wages over a specified "exempt" amount during a taxable year (typically the calendar year). **A judge's retirement annuity (including the annuity portion of the compensation received by a recalled judge) is not considered "wages" for purposes of the earnings test.** The amount of earnings exempt from the reduction is:

- \$17,040 for individuals who will attain the Social Security Retirement Age after 2018.
- \$45,360 for individuals attaining the Social Security Retirement Age in 2018.

The reduction is (1) \$1 in Social Security retirement benefits for every \$2 in wages above the exempt amount during a year preceding the one in which the full retirement age is attained, and (2) \$1 in benefits for every \$3 in wages above the exempt amount during the months preceding attainment of the full retirement age within the year in which that age is attained. There is no reduction of social security retirement benefits based on wages earned during or after the month in which the full retirement age is attained.

Recall of Retired Magistrate Judges

A retired magistrate judge may be recalled to service in accordance with regulations promulgated by the Judicial Conference under 28 U.S.C. § 636(h). Under the Conference regulations governing "ad hoc" recall service, a retired magistrate judge may be recalled for renewable periods of up to one year and one day. Magistrate judges may be recalled under "extended service" regulations for renewable periods in excess of one year but not exceeding three years.

A. ELIGIBILITY

Any full-time or part-time magistrate judge who is receiving an annuity under Civil Service Retirement System (CSRS), Federal Employees Retirement System (FERS), Judicial Retirement System (JRS), or the "hybrid" alternative is eligible to be recalled to service under the "ad hoc" provisions on a full-time or "when-actually-employed" basis. To be eligible for extended service recall a judge must have retired on full salary under either JRS or the "hybrid" alternative and be at least 65.

The "ad hoc" recall regulations for magistrate judges state that a magistrate judge retiring on less than full salary who is recalled on a full-time basis is expected to perform judicial and administrative duties commensurate with the level of compensation received (i.e., the difference between the judge's annuity and the current salary of a full-time magistrate judge in active service). The judicial council of the circuit within which a magistrate judge is recalled to duty on an extended service basis must certify that the magistrate judge is expected to perform "substantial service" during the period of recall. Substantial service is defined in the extended service regulations as no less than an annual workload equal to or greater than the average amount of work that a full-time magistrate judge in active service would perform in three months.

A judge who retires after electing JRS "straight" or "hybrid" JRS and who thereafter practices law for compensation is not eligible to be recalled to service.

B. APPOINTMENT

A circuit judicial council may recall a retired magistrate judge with the judge's consent. A request to recall a retired magistrate judge is made to the circuit judicial council by (and with the consent of) the chief judge of the district where the magistrate judge is to serve. A retired magistrate judge is not limited to service in the district or circuit where he or she formerly served, but may be recalled in any judicial district by the judicial council of the circuit within which the district is located. The chief judge of the district in which a recalled magistrate judge formerly served must be notified of a request to recall the magistrate judge outside the district. A request for intercircuit recall of a retired magistrate judge must be forwarded through the AO to the Committee on the Administration of the Magistrate Judges System for approval.

To effect a recall, an order is issued by the judicial council of the circuit in which the magistrate judge will serve. The order states that the judge has consented to perform recall service and generally specifies the terms of the service, including the duration and manner of service (e.g., if not full-time, the estimated number of days of service to be performed during the recall term). The order of recall may be modified or terminated at any time by the circuit judicial council. Upon the expiration of a term of recall, the circuit judicial council may renew the order of recall for an additional term. There is no limit to the number of recall periods.

Any magistrate judge who is eligible for recall but has been separated from federal judicial service for more than one year, but no more than 10 years, is subject to a name and fingerprint check by the FBI, a tax check by the IRS, and a credit check by the Office of Personnel Management. A magistrate judge who has been separated from federal judicial service for more than 10 years is subject to a full-field background check by the FBI with a 15 year scope.

Copies of appointment forms and detailed instructions and advice on the recall of magistrate judges are available from the Judicial Services Office at 202-502-1830.

C. MAGISTRATE JUDGES COMMITTEE APPROVAL

Any request for funds for any recall that exceeds \$10,000 in judicial salary (including Office of Personnel Management annuity reimbursement, travel, and subsistence expenses) requires the approval of the Judicial Conference Committee on the Administration of the Magistrate Judges System.

In addition, chambers staff may be authorized for a recalled magistrate judge only with the approval of the Magistrate Judges Committee and the judicial council of the circuit in which the judge will be serving. A recalled magistrate judge may be authorized two full-time chambers staff if the magistrate judge performs or is expected to perform at least 75 percent of a full-time workload. One full-time chambers staff member may be authorized if the judge performs or is expected to perform at least a 40 percent workload. If a recalled magistrate judge is expected to perform less than a 40 percent workload, no chambers staff will be authorized. A recalled magistrate judge may be approved for a part-time chambers staff person with workloads at lower percentages if justified by the court. Absent exceptional circumstances, a recalled magistrate judge is not eligible for law clerk assistance if the magistrate judge's duties on recall are limited to handling preliminary felony matters, petty offenses, misdemeanor cases, and settlement conferences.

D. COMPENSATION

A recalled magistrate judge performing full-time service is entitled to the salary payable to a full-time magistrate judge less the annuity allocable to the period of recall service.

For example, a judge who retires with an annuity equal to 100% of the salary of the office would receive no additional compensation for recall service. On the other hand, a judge who retires from office with an annuity of \$160,080, and is

recalled to service on a full-time basis, would be entitled to the difference between the annuity and the current salary of the office. Accordingly, if the salary of the office were \$191,360, the judge would earn "wages" of \$31,280, in addition to the \$191,360 annuity.

The compensation of a retired magistrate judge recalled to serve on a "when-actually-employed" basis under the ad hoc recall regulations is computed on a daily basis. For each day of service, the judge receives the maximum daily salary payable to a full-time magistrate judge less the portion of the judge's annuity allocable to that day.

For example, if the salary of the office were \$191,360, the daily salary rate would be \$736 (*\$191,360 divided by 260 days — the number of days in a standard work year*). If the judge were receiving an annuity of \$160,080, the daily proportion of the annuity would be \$445 (*\$160,080 divided by 360 days — the number of days using 30-day calendar months*). Therefore, the judge would receive "wages" of \$291 per day for recall service in addition to the annuity (*\$736 less \$445*). The judge's total compensation (annuity plus wages) for each day of recall service would be \$726, equal to the daily rate for the salary of the office.

The "wages" of a magistrate judge recalled on a "when-actually-employed" basis may not exceed the salary of an active part-time magistrate judge compensated at Salary Level 1 (\$88,364 in 2018). A recalled magistrate judge serving on a "when-actually-employed" basis must certify monthly to the Judges Compensation and Retirement Division the number of days (not hours per day) actually worked. The magistrate judge should send an email to Carol Sefren at Carol_Sefren@ao.uscourts.gov by the 15th of each month following the month in which duties are performed.

E. SUPPORT SERVICES

Subject to the approval of the judicial council of the circuit, a recalled magistrate judge may be provided with a judicial assistant and a law clerk paid from funds held by the Administrative Office. The judicial council may also approve lawbooks, equipment, furniture, stationery, and other supplies necessary for the performance of official duties by the recalled judge. However, these types of expenses must generally be paid by the district court from its own annual allotments under budget decentralization/allotment guidelines (except lawbooks which are funded by the circuit).

F. SUPPLEMENTAL OR RE-COMPUTED RETIREMENT ANNUITY

A retired magistrate judge who is receiving an annuity under either CSRS or FERS (except for "hybrid" annuitants under JRS) may earn an increased annuity as a result of full-time recall service under the ad hoc regulations. For continuous, full-time recall service of at least 1 year but less than 5 years, the judge is entitled to a supplemental annuity equal to 2.5% (CSRS) or 1% (FERS) of the judge's basic pay averaged during the recall period. If the continuous, full-time recall service exceeds 5 years, the judge may elect to have the total CSRS or FERS annuity recomputed as

if the judge were retiring for the first time with a new “average salary” in lieu of receiving a supplemental annuity.

For example, a retired magistrate judge who is paid a CSRS annuity of \$96,875 based on 25 years of service and a high-three “average salary” of \$155,000 at the time of retirement ($25 \text{ years} \times 2.5\% \times \$155,000$), would be entitled to a recomputed annuity of \$143,520 after 5 years of recall service, assuming the salary of the office increased to \$191,360.

A recalled magistrate judge must contribute (or pay a deposit) to the Civil Service Retirement and Disability Fund in order to receive a supplemental or recomputed CSRS or FERS annuity. A judge is entitled to receive the supplemental or recomputed annuity only after there is a break in service of more than three days or the judge’s recall status changes from a full-time to a “when-actually-employed” basis. Service on recall will not increase a judge’s annuity under JRS or the “hybrid” alternative.

G. JUDICIAL SURVIVORS’ ANNUITIES SYSTEM

For a magistrate judge serving on recall status, the annual contribution rate for participation in the Judicial Survivors' Annuities System (JSAS) is 2.2% of total recall compensation (annuity and salary), unless the recalled judge enrolled in JSAS during the 2009-2010 open season. In that case, the contribution rate is 2.75% of total compensation. The contribution rate for retired judges not serving on recall is 3.5% of their JRS retirement annuity.

H. THRIFT SAVINGS PLAN

Recalled judges retired under CSRS or FERS may participate in the Thrift Savings Plan (TSP) to the same extent as other reemployed federal annuitants. The tax advantages associated with the Thrift Savings Plan, however, tend to be reduced at this late stage of a judge’s career. Recalled judges who retired under JRS, including “hybrid” JRS, are not eligible to participate in TSP.

I. HEALTH INSURANCE BENEFITS

Enrollment in a Federal Employees’ Health Benefits plan will continue for judges upon retirement with the same benefits and costs as before retirement. No change in health benefits status occurs when a retired judge is recalled to service.

J. LIFE INSURANCE BENEFITS

All retired JRS annuitants are employees for FEGLI purposes, whether recalled or not. However, there are still advantages to being recalled for FEGLI purposes.

1. As “employees” the amount of life insurance coverage of a JRS annuitant is calculated based upon the current rate of compensation. For these judges the current rate of compensation is the JRS annuity. If a JRS annuitant retires at less than full salary, the amount of life insurance coverage will reduce

because the life insurance will be calculated based upon the lower annuity figure (and not the salary of the office). If a judge who is retired on less than full salary is recalled to full-time service, the current rate of compensation will increase to the salary of the office. This will result in a higher amount of life insurance coverage while on recall.

For example, a judge who retires after serving 10 years receives a 10/14's annuity of \$136,685 based on a full salary of \$191,360. That judge will also have his or her Basic Life coverage reduced to \$139,000 (from \$194,000) and two multiples of Option B (Additional) coverage reduced to \$274,000 (from \$384,000). If that same judge is recalled full-time six months after retirement, the judge will receive compensation (annuity and salary) equal to the current salary of the office. Assuming that the current salary of the office is still \$191,360, the amount of life insurance coverage on recall will revert to the higher level that was in place before retirement. Once the recall service ends, the life insurance coverage will again be based upon the amount of the JRS annuity.

2. Upon commencement of the JRS annuity, a deferred JRS annuitant, who is **recalled** on a full-time basis for one year and one day after a break in service of at least 180 days, may elect new life insurance coverage based upon the new appointment. Once the recall service ends, the life insurance coverage will be based upon the amount of the deferred JRS annuity. Otherwise, a deferred JRS annuitant may apply for life insurance coverage but would need to show evidence of insurability.

K. LIFE INSURANCE BENEFITS FOR CSRS AND FERS ANNUITANTS

A judge who retires under CSRS or FERS may be entitled to acquire federal life insurance coverage as an employee during the period of recall service, resulting in lower employee premium rates and a temporary suspension of the reduction in coverage that occurs when a retired judge reaches age 65. All life insurance as a retiree is suspended upon acquisition of life insurance as an employee on recall.

A judge recalled on a full-time basis under the ad hoc recall regulations may acquire, at the employee rate, the Basic Life and any optional insurance coverage in effect at the time of the judge's retirement, if the recall appointment:

- begins four days or less after retirement (i.e., no break in service), or
- the recall appointment is for at least one year and one day

A judge who is recalled on a when-actually-employed basis is not eligible to acquire life insurance coverage as an employee. Such a recalled judge continues life insurance coverage as an annuitant, subject to diminution.

Recalled judges satisfying the requirements discussed above automatically acquire as employees the Basic Life, Option A, and Option C insurance that was in effect at the time of retirement. To acquire as an employee the Option B insurance that was

in effect at the time of retirement a judge must complete a Standard Form 2817, Election of Life Insurance, and file it with the Judges Compensation and Retirement Division within 31 days from the date the recall service begins.

The amount of Basic Life insurance and optional insurance acquired by a judge on recall is based on the current salary of an active judge.

For example, if a judge retired on a salary of \$160,080, and elected 100% Basic Life insurance coverage, the judge would have Basic Life insurance coverage as a retiree in the amount of \$163,000. If that judge is recalled (and meets the requirements for acquiring life insurance as an employee) and the salary of the office for an active judge is \$191,360, the judge, during the period of recall, would have Basic Life insurance coverage of \$194,000.

If a judge dies during recall service, the survivor will receive the amount of Basic Life and optional insurance that the judge had as a recalled employee.

A judge who is recalled to service may continue the life insurance coverage acquired as an employee into “re-retirement” if the judge: (a) has completed at least one year of continuous recall service, (b) has qualified for a supplemental annuity or acquired a new retirement right and (c) was covered by Basic Life and the optional insurance coverage for the five years immediately preceding separation from recall service or for the full period during which such coverage was first available, whichever is less.

Any Basic Life and Option B and C life insurance acquired on recall that is continued into “re-retirement” will not diminish (for being age 65 or older) if the judge elects to continue the coverage unreduced before separating from recall service. If a judge, upon separation from recall service, elects to continue the life insurance acquired on recall with reduction, the life insurance will begin to diminish on the date the recall service ends (or at age 65 if later). If a judge is not eligible to continue life insurance acquired on recall into “re-retirement” (e.g., for full-time recall service of less than one year), the life insurance in effect at the time of the initial retirement will be reinstated in an amount the judge would have had if the retiree coverage had not been suspended; i.e, the coverage may be reduced for all periods that the judge was age 65 or older during his or her recall service (unless the judge previously elected to continue the life insurance unreduced at the time of his or her initial retirement).

A judge recalled on either a full-time basis for at least one year and one day or on an extended service basis may elect Basic Life and optional insurance *that had previously been waived* if the judge had a break in service of more than 180 days. No evidence of insurability is required to elect the previously waived insurance.

L. PRACTICE OF LAW AND CODES OF CONDUCT

All retired judges performing substantial service under the extended service regulations or full-time service under the ad hoc regulations are prohibited from practicing law during the period of recall service. Judges recalled on a “when-actually-employed” basis under the ad hoc regulations (except for JRS and “Hybrid”

annuitants) may practice law during the period of recall service. The *Codes of Conduct for United States Judges* applies to recalled judges unless the judge files a notice that the judge will not consent to recall service.

M. TRAVEL REIMBURSEMENT

For purposes of travel reimbursement, the location of a recalled judge's home is considered to be his or her official duty station. See 28 U.S.C. § 374. When a recalled judge is holding court or otherwise transacting official business at a location where he normally commutes from his residence (official station), and the location is outside the corporate limits of that residence, the judge is entitled to be reimbursed for both transportation and actual subsistence expenses incurred during the day, e.g. round trip mileage and lunch. However, any reimbursement for lunch is considered a taxable benefit. The only exception to the taxation of a meal reimbursement is when the meal is an integral part of official business being conducted. When the court or other duty location is within the corporate limits of the judge's residence (official station), then only transportation expenses incurred between that residence and the duty location may be claimed.

When a magistrate judge is recalled to serve on a full-time basis for one month or longer in a district other than the one from which he or she retired, the recall regulations limit reimbursement of subsistence expenses according to the length of the judge's recall service. The Director of the Administrative Office is authorized to adjust the reimbursement limits when they are either too high or too low to compensate the recalled judge appropriately.

Any new request for magistrate judge recall service in which the recalled judge's combined salary and reimbursable travel and subsistence expenses exceed an annual total of \$50,000 is subject to the approval of the Judicial Conference Committee on the Administration of the Magistrate Judges System.

The Social Security Implications of Recall Service

Some concern has been raised by judges concerning the effect recall service would have upon their social security contributions (taxes) and benefits. Prior to 1984, federal judges, like all federal employees, were excluded from social security coverage, so the question of liability for Social Security taxes and entitlement to benefits did not arise. The Social Security Amendments of 1983, however, provided that all federal judges' salaries (except senior Article III judges) would be subject to Social Security taxes.

Social Security Taxes

Social Security taxes have two components: Old-Age, Survivors, and Disability Insurance (OASDI), and Hospital Insurance (Medicare). The OASDI tax rate is currently 6.2%. The Medicare tax rate is 1.45%. Both these taxes are calculated as a percentage of the "wages received by [the employee] with respect to employment." 26 U.S.C. §§ 3101(a) & (b). Thus, a judge who is recalled to service is subject to Medicare taxes only if he or she is receiving "wages" with respect to "employment." **A judge's JRS retirement annuity (including the annuity portion of the compensation received by a recalled judge) is not considered wages for purpose of the Social Security tax.** Accordingly, if a judge retires on a full salary annuity under 28 U.S.C. § 377(a) (at age 65 with 14 years of service) and is recalled immediately, he or she would not receive any "wages" for recall service because recall compensation is calculated upon the difference between the retirement annuity and the full salary of the office. A judge who retires on less than full salary, or a judge who retires on full salary but is recalled to service after an increase in salary has been implemented, would thereby receive wages subject to the 1.45% Medicare tax. But a recalled judge, as a reemployed annuitant, is exempt from having the 6.2% OASDI tax deducted from any wages earned for recall service. See 26 U.S.C. § 3121(b)(5)(B)(ii). For example, a judge who retires on a reduced JRS retirement annuity of \$160,080 and is recalled upon retirement (under the "ad hoc" recall program, which does not limit recall eligibility to retirement on full salary), would receive "wages" of \$31,280 for that year (based upon the salary of the office of \$191,360). The total Medicare tax on these wages would be approximately \$453. No OASDI taxes would be withheld. **Judges recalled under CSRS or FERS would pay the Medicare and OASDI tax on recall.**

Reduction of Social Security Benefits

The Social Security Act provides for reduction of an individual's Social Security retirement benefits in accordance with a set formula (known as the "earnings test") when he or she is under the "full retirement age" (the age at which the individual would have become eligible for an unreduced retirement benefit -- currently age 66 for those born in 1943 and rising incrementally to age 67 by 2027) and earns wages over a specified "exempt" amount during a taxable year (typically the calendar year). **A judge's retirement annuity (including the annuity portion of the compensation received by a recalled judge) is not considered "wages" for purposes of the earnings test.** The amount of earnings exempt from the reduction is:

- \$17,040 for individuals who will attain the Social Security Retirement Age after 2018.
- \$45,360 for individuals attaining the Social Security Retirement Age in 2018.

The reduction is (1) \$1 in Social Security retirement benefits for every \$2 in wages above the exempt amount during a year preceding the one in which the full retirement age is attained, and (2) \$1 in benefits for every \$3 in wages above the exempt amount during the months preceding attainment of the full retirement age within the year in which that age is attained. There is no reduction of social security retirement benefits based on wages earned during or after the month in which the full retirement age is attained.

The Practice of Law After Retirement

For judges retiring under the Judicial Retirement System (JRS), including "Hybrid" JRS, the practice of law after retirement may affect the right to future increases in their annuities. In determining whether to engage in post-retirement employment, a judge should consider whether the employment would constitute the practice of law as defined by regulations implementing JRS. Judges retiring under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) may practice law after retirement for compensation without affecting their annuities under those retirement systems.

A. THE PRACTICE OF LAW IS DEFINED BROADLY

Members of Congress, in the hearings prior to enactment of JRS, expressed disapproval of a system that would permit retired judicial officers to receive generous annuities while also earning substantial income from the subsequent practice of law. Guided by the clear intent of Congress, the Administrative Office has defined the term "practice of law" broadly. Section 760.10.50(d)(5)(D) of the regulations of the Director implementing JRS (See Guide to Judiciary Policy, vol.12, chapter7) defines the **practice of law** as follows:

[A]ppearing for any other person as attorney in any court, or preparing for any other person any deeds, mortgages, contracts, assignments, discharges, leases, trust instruments or any other instruments affecting real or personal property or any interest therein, or any wills, codicils, or any other instruments affecting the disposition of property of decedents' estates, or any pleadings of any kind in any action brought before any court, or preparing or expressing formal opinions or consulting with respect to any of the foregoing or on any other matters of law, . . . for compensation.

B. IMPACT OF MAKING PRACTICE OF LAW ELECTION

A judge who retires under JRS, including "Hybrid" JRS, and timely files an Election to Practice Law (Form PER 75) forfeits any future cost-of-living adjustment in the JRS annuity once such an election takes effect. 28 U.S.C. § 377(m)(1)(B). (The forfeiture does not apply to the CSRS or FERS component of a "hybrid" alternative annuity.)

A judge who retires under JRS and thereafter practices law does not benefit from the fixed Option B (Additional) life insurance rates for magistrate judges age 65 and over. A judge who retires under JRS and thereafter practices law for compensation is also permanently ineligible for recall service. 28 U.S.C. § 377(m)(2). The forfeiture of future COLAs for the practice of law applies both to judges who retire from office voluntarily and to judges who are involuntarily separated from office upon failure of reappointment.

Also, the practice of law impacts the FEGLI “Fix” provision for life insurance purposes. Judges who file an election to practice law are no longer eligible for the FEGLI “Fix” provision which allows the Director of the Administrative Office to fix the rates for Option B-Additional coverage at the rates that were in effect in 2003. In other words, the premiums for Option B-Additional coverage will increase significantly.

Practicing law without first filing the election form, or practicing law before the election becomes effective results in forfeiture of the JRS annuity itself for life.

The election is effective on the first day of the month following the month in which the election is received by the Administrative Office. 28 U.S.C. § 377(m)(1)(B)(iii). The election, once it takes effect, is irrevocable. Form PER 75 must be filed with the Administrative Office and is available from the Judges Compensation and Retirement Division.

C. ADMINISTRATIVE OFFICE APPLICATION OF PRACTICE OF LAW REGULATIONS

The Administrative Office has received a number of inquiries from judges concerning whether certain post-retirement employment constitutes the practice of law. Based on the language of section 760.10.50(d)(5)(D), the Administrative Office has concluded that the following activities, performed for compensation, *would* constitute the practice of law:

- (1) Serving as an arbitrator;
- (2) Serving as a mediator;
- (3) Serving as a special master;
- (4) Serving as a state court judge or administrative law judge;
- (5) Serving as a judge on an international court;
- (6) Serving as an expert witness in a legal malpractice case;
- (7) Serving as an office manager for a law firm (to the extent that the retired judge consults with attorneys in the firm concerning "any matters of law" for compensation);
- (8) Serving on a commission or oversight committee whose primary responsibility is to administer and enforce the terms of a district court decree.

The Administrative Office has concluded that the performance of the following activities for compensation *would not* constitute the practice of law as defined in section 760.10.50(d)(5)(D), including:

- (1) Serving as Dean of a law school;
- (2) Serving as a law professor;
- (3) Lecturing at business seminars (if no specific legal advice is given);
- (4) Performing marriage ceremonies;
- (5) Serving as an officer for a private corporation (assuming that the position does not include the offering of legal advice).

The performance of legal services *without* compensation does not constitute the practice of law as defined in section 760.10.50(d)(5)(D). Accordingly, the performance of legal services on a pro bono basis would not require the filing of an

Election to Practice Law form. The Administrative Office has concluded that the term "compensation" does include the free use of "facilities" of a law firm in exchange for advisory services, but does not include the reimbursement of simple out-of-pocket expenses for performing legal services.

All retired judges serving on full-time recall status (including CSRS and FERS annuitants) are prohibited from practicing law, with or without compensation, during the period of recall service. CSRS and FERS annuitants recalled on a when-actually-employed basis may practice law for compensation during the period of recall service.

D. OTHER CONSIDERATIONS

In addition to the practice of law limitations, a judge who retires under JRS and thereafter accepts compensation for "civil office or employment under the United States Government" forfeits the right to an annuity for the period in which compensation is received. 28 U.S.C. § 377(m)(3). *This limitation does not include service on recall.* The AO has concluded that the term "compensation" in section 377(m)(3) does not include a retired judge's receipt of funds from private litigants for the judge's service as a federal court-appointed receiver.

Judges retiring under "Hybrid" JRS, who thereafter accept compensation for employment with the Government, also forfeit the right to receive a JRS annuity for the period in which compensation is received. In addition, a "Hybrid" JRS annuitant is ineligible to receive any additional retirement credit under CSRS or FERS for subsequent federal government service.