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10/19/76

APPROVED
OCT 19 1976

THE WHITE HOUSE
WASHINGTON
October 18, 1976

ACTION

Last Day: October 23

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *Jim Cannon*
SUBJECT: S. 12 - Judicial Survivors' Annuities Reform Act

Attached for your consideration is S. 12, sponsored by Senator McClellan.

The judicial survivor system, created in 1956, has not been updated to reflect liberalizations in the Civil Service Retirement System on which it was originally patterned, and makes no provisions for cost-of-living or other periodic annuity increases. In addition, the present contribution rate, equal to 3% of a judge's annual salary, has proved to be inadequate to finance benefits and to cover the deficiency in the judicial Survivor's Annuity Fund created at the inception of the program when 121 widows, for whom no coverage had been made, were granted coverage.

S. 12 is designed to update the judicial survivors annuity system and to improve its financing. The bill was developed over a period of several years jointly by the Judicial Conference and the Senate Judiciary Committee. The Executive Branch customarily has not taken a position on legislation involving Judicial Branch personnel matters and did not take a position on S. 12.

A detailed discussion of the provisions of S. 12 is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus), Bill Seidman and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 12 at Tab B.

Posted 10/20/76
archived 10/20/76



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 15 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 12 - Judicial Survivors'
Annuities Reform Act
Sponsor - Senator McClellan (D) Arkansas

Last Day for Action

October 23, 1976 - Saturday

Purpose

Increases annuities for survivors of Federal Justices and judges, provides for periodic future increases, and substantially restructures the financing and benefit provisions of the annuity program.

Agency Recommendations

Office of Management and Budget

Approval

Administrative Office of the
United States Courts
Department of the Treasury
Civil Service Commission

Approval
No objection
Defers to the Judicial
Conference of the
United States

Discussion

The judicial survivor annuity system, created in 1956, has not been updated to reflect liberalizations in the Civil Service Retirement System (CSR) on which it was originally patterned, and makes no provisions for cost-of-living or other periodic annuity increases. In addition, the present contribution rate, equal to 3% of a judge's annual salary, has proved to be inadequate to finance benefits and to cover the deficiency in the judicial Survivor's Annuity Fund created at the inception of the program when 121 widows, for whom no contributions had been made, were granted coverage.

S. 12 is designed to update the judicial survivors annuity system and to improve its financing. To compensate for the lack of cost-of-living increases over the years, S. 12 provides for the immediate payment to beneficiaries of a lump sum annuity increase equal to 2.4% for each year the annuity has been paid. It also authorizes future periodic increases in survivor annuities equal to 3% for each 5% increase in the salary of active judges. No increase would be granted if a salary increase for judges is less than 5%.

To put the annuity system on a sounder financial basis, the enrolled bill:

- increases the judges' and matching Government contribution rate from 3% to 4.5% of salary, and

- requires a one-time appropriation to the Fund to cover the deficiency stemming from the original unfinanced widows' benefit, and to pay the cost of the lump-sum increases to present beneficiaries.

S. 12 also makes other changes in the judicial survivors' annuity system which conform to similar changes previously made in the Civil Service Retirement System's survivorship provisions. The enrolled bill:

- changes the computation formula for a survivor annuity from a percentage of the judge's highest annual salary over a 5-year period to the highest 3-year average,

- extends coverage under the program to widowers and children over 18 who are full-time students,

- reduces the period of marriage required for a spouse's eligibility from two years to one year, and

- permits payment of a survivor annuity after 18 months service instead of 5 years.

S. 12 also permits judges presently participating in the program to elect to leave it and receive a lump-sum of contributions, provided they exercise this option within six months of the effective date of the bill.

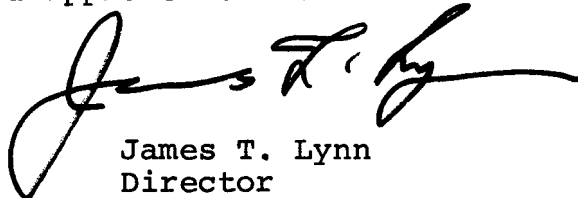
S. 12 would be effective January 1, 1977. The Congressional Budget Office estimates that its cost would be \$13.4

million in fiscal year 1977, and approximately \$500,000 a year thereafter. The high initial cost is attributed to the one-time appropriation of \$13 million for the Fund deficiency and for retroactive annuity increases.

S. 12 was developed over a period of several years jointly by the Judicial Conference and the Senate Judiciary Committee. The Senate report states that its provisions were developed in light of previous failures of Congress and the judges to agree on a solution to the financial problems of the survivor program. The Executive Branch customarily has not taken a position on legislation involving Judicial Branch personnel matters and did not take a position on S. 12.

In its views letter on the enrolled bill, the Administrative Office of the United States Courts states that the Judicial Conference has urged enactment of legislation along the lines of this reform bill and urgently recommends that it be approved.

We recommend that you approve S. 12.



James T. Lynn
Director

Enclosures

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

October 6, 1976

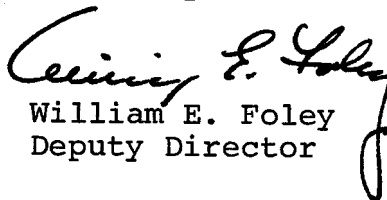
James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C.

Dear Mr. Frey:

This is in response to your enrolled bill request transmitting for views and recommendations S. 12, "To amend section 376 of title 28, United States Code, in order to reform and update the existing program for annuities to survivors of Federal Justices and judges."

The Judicial Conference of the United States over a period of years has urged the enactment of legislation along the lines of the bill known as the Judicial Survivors' Annuities Reform Act. Accordingly executive approval is urgently recommended.

Sincerely,


William E. Foley
Deputy Director



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

October 8, 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the Commission's views on enrolled bill, S. 12, "To amend section 376 of title 28, United States Code, in order to reform and update the existing program for annuities to survivors of Federal Justices and judges."

The enrolled bill would make the following changes in the Judicial Survivors' Annuity System, which would conform to changes previously made in the Civil Service Retirement System's survivorship provisions:

- . Bring widowers, as well as widows, into the program and reduce the two year period of marriage requirement for eligibility to one year.
- . Permit payment of survivor annuity to surviving children who pursue a full-time course of study though age 22, rather than terminating such annuity at age 18.
- . Compute average salary for survivor annuity purposes on the basis of the 3 year period in which his or her annual salary was greatest instead of the 5 year period preceding his death.
- . Permit payment of survivor annuity upon death in service after 18 months instead of 5 years.

Certain other liberalizations provided for by this bill do not exactly conform to the Civil Service Retirement System's survivorship provisions. Although the bill would increase the amount of annuity payable to surviving children to the level currently being paid to surviving children under the Civil Service Retirement System, there is no provision for

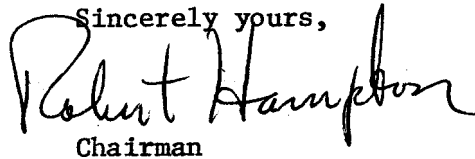
further increases in the cost of living as is provided for under the Civil Service Retirement Law. In addition, payment to a surviving child who is incapable of self-support because of a mental or physical disability is provided if the disability was incurred before age 18, or, in the case of a child who is receiving an annuity as a full-time student, before the termination of that annuity. The Civil Service Retirement law provides for payment of a survivor annuity to a child incapable of self-support only if the disability was incurred prior to age 18.

The above changes are largely technical in nature. However, the Commission views conformity as a desirable feature whenever possible and has no objection to these conforming provisions.

While the provisions of the enrolled bill would not directly or substantially affect any of the programs administered by the Commission we believe they are justified. Since such matters are for the consideration of the Judicial Conference of the United States, however, the Commission defers to the opinion of that Conference.

By direction of the Commission:

Sincerely yours,

A handwritten signature in cursive script that reads "Robert Hampton". The signature is written in dark ink and is positioned above the printed name "Chairman".

Chairman



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 14 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

This is to confirm the informal views previously given your office on the Senate committee report of S. 12, the "Judicial Survivors' Annuities Reform Act." S. 12 passed both Houses of Congress.

S. 12 would reform and update the present judicial survivors' annuity program (28 U.S.C. 376) to, among other things, provide for appropriations to place the program on an actuarially sound basis.

Of interest to this Department are subsection (f) of the first section, and sections 3 and 4.

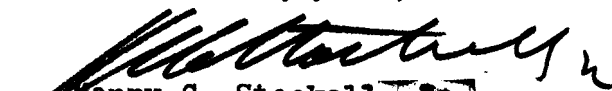
Subsection (f) would provide that the Secretary of the Treasury shall invest in interest bearing securities of the United States or Federal loan bonds, those portions of the "Judicial Survivors' Annuities Fund" which in his judgment may not be immediately required for the payment of annuities, refunds, and allowances. The income derived from such investments shall constitute a part of the fund for paying annuities and carrying out the provisions of the Act. We have no objection to this provision.

Section 3 would reestablish the Judicial Survivors' Annuities Fund on the books of the Treasury. All moneys in the present fund would be transferred to the new account on the effective date of the Act.

Section 4 would require the Secretary of the Treasury to ascertain from the Administrative Office of the United States Courts the amount of the level cost deficiency in the transferred account, and at the time that appropriations become available in that amount to deposit such sum to the new fund.

We have no objection to the provisions of sections 3 and 4. We suggest, however, that your office notify the Administrative Office of the United States Courts that it is their responsibility to request the appropriation for the unfunded liability.

Sincerely yours,


Henry C. Stockell, Jr.
Acting General Counsel

THE WHITE HOUSE

MEMORANDUM

WASHINGTON

LOG NO.:

October 15

Time: 200pm

ATTENTION: Dick Parsons *m* cc (for information):
Max Friedersdorf *m*
Bobbie Kilbegg *m*
Bill Seidman *m*

Jack Marsh
Ed Schmults
Steve McConahey *df*
Mike Duval

THE STAFF SECRETARY

Date:

Time:

~~October 11~~

~~900am~~

SUBJECT:

S.12-Judicial Survivors' Annuities Reform Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 15

Time: 200pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Bill Seidman

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey
Mike Duval

FROM THE STAFF SECRETARY

DUE: Date:

Time:

October 19

900am

SUBJECT:

S.12-Judicial Survivors' Annuities Reform Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Approved MS



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

K R COLE JR

THE WHITE HOUSE

ADMINISTRATIVE MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 15

Time: 200pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Bill Seidman

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey
Mike Duval

FROM THE STAFF SECRETARY

DUE: Date:

October 19

Time:

900am

SUBJECT:

S.12-Judicial Survivors' Annuities Reform Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Approved - RB

please return to judy johnston, ground floor west wing

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K R COLE JR

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 15

Time: 200pm 10/15

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Bill Seidman

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey
Mike Duval

FROM THE STAFF SECRETARY

DUE: Date:

Time:

October 19

900am

SUBJECT:

S.12-Judicial Survivors' Annuities Reform Act

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

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K. R. COLE JR

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 15

Time: 200pm

FOR ACTION: Dick Parsons
 Max Friedersdorf
 Bobbie Kilberg
 Bill Seidman

cc (for information): Jack Marsh
 Ed Schmults
 Steve McConahey
 Mike Duval

FROM THE STAFF SECRETARY

DUE: Date:

October 19

Time:

900am

SUBJECT:

S.12-Judicial Survivors' Annuities Reform Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

No objection -- Ken Lazarus 10/15/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

K. B. COLE JR.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: **[redacted]**ber 15

Time: 200pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Bill Seidman

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey
Mike Duval

FROM THE STAFF SECRETARY

DUE: Date:

Time:

October 19

900am

SUBJECT:

S.12-Judicial Survivors' Annuities Reform Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*Recommend
Approval. [Signature]*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

K. R. COLE JR.

REFORMING THE JUDICIAL SURVIVORS' ANNUITIES PROGRAM

MAY 6, 1976—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 12]

The Committee on the Judiciary, to which was referred the bill (S. 12) to improve judicial machinery by providing benefits for survivors of federal judges comparable to benefits received by survivors of Members of Congress, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

The committee proposes two amendments to the bill as follows:

1. Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Judicial Survivors' Annuities Reform Act".

SEC. 2. That section 376 of title 28 of the United States Code is amended to read as follows:

"§ 376. Annuities for survivors of certain judicial officials of the United States

"(a) For the purposes of this section—

"(1) 'judicial official' means:

"(A) a Justice or judge of the United States, as defined by section 451 of this title;

"(B) a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands;

"(C) a Director of the Administrative Office of the United States Courts, after he or she has filed a waiver under subsection (a) of section 611 of this title;

(1)

"(D) a Director of the Federal Judicial Center, after he or she has filed a waiver under subsection (b) of section 627 of this title; or

"(E) an Administrative Assistant to the Chief Justice of the United States, after he or she has filed a waiver in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title; who notifies the Director of the Administrative Office of the United States Courts in writing of his or her intention to come within the purview of this section within six months after (i) the date upon which he or she takes office, (ii) the date upon which he or she marries, or (iii) the date upon which the Judicial Survivors' Annuities Reform Act becomes effective;

"(2) 'retirement salary' means:

"(A) in the case of a Justice or judge of the United States, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title;

"(B) in the case of a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, salary paid after retirement from office (i) by resignation on salary under section 373 of this title or (ii) by removal or failure of reappointment after not less than ten years' judicial service;

"(C) in the case of a Director of the Administrative Office of the United States Courts, an annuity paid under subsection (b) or (c) of section 611 of this title;

"(D) in the case of a Director of the Federal Judicial Center, an annuity paid under subsection (c) or (d) of section 627 of this title; and

"(E) in the case of an Administrative Assistant to the Chief Justice of the United States, an annuity paid in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

"(3) 'widow' means the surviving wife of a 'judicial official', who:

"(A) has been married to him for at least one year on the day of his death; or

"(B) is the mother of issue by that marriage;

"(4) 'widower' means the surviving husband of a 'judicial official', who:

"(A) has been married to her for at least one year on the day of her death; or

"(B) is the father of issue by that marriage;

"(5) 'child' means:

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

"(B) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable educational institution. A child whose twenty-second birthday occurs before July 1, or after August 31, of a calendar year, and while he or she is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July immediately following that birthday. A child who is a student is deemed not to have ceased being a student during an interim period between school years, if that interim period lasts no longer than five consecutive months and if that child shows, to the satisfaction of the Director of the Administrative Office of the United States Courts, that he or she has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester, or other period into which the school year is divided, immediately following that interim period; or

"(C) such unmarried child, regardless of age, who is incapable of self-support because of a mental or physical disability incurred either (i) before age eighteen, or (ii) in the case of a child who is receiving an annuity as a full-time student under subparagraph (5)(B) of this subsection, before the termination of that annuity.

"(b) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary, including any 'retirement salary' a sum equal to 4.5 percent of that salary. The amounts so deducted and withheld from the salary of each such judicial official shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be covered into the Treasury of the United States and credited to the 'Judicial Survivors' Annuities Fund' established by section 3 of the Judicial Survivors' Annuities Reform Act. Such fund shall be used for the payment of annuities, refunds, and allowances as provided by this section. Payment of such salary less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such judicial official during the period covered by such payment, except the rights to those benefits to which such judicial official, or his or her survivors, shall be entitled under the provisions of this section.

"(c) There shall also be deposited to the credit of the 'Judicial Survivors' Annuities Fund', in accordance with such procedures as may be prescribed by the Comptroller General of the United States, amounts matching those deducted and withheld in accordance with subsection (b) of this section. Such deposits shall be taken from the fund used to pay the compensation of the judicial official, and shall immediately become an integrated part of the 'Judicial Survivors' Annuities Fund' for any use required under this section.

"(d) Each judicial official shall deposit, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the 'Judicial Survivors' Annuities Fund':

"(1) a sum equal to 4.5 percent of that salary, including 'retirement salary', which he or she has received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section prior to the date upon which he or she filed notice of an intention to come within the purview of this section with the Director of the Administrative Office of the United States Courts; and

"(2) a sum equal to 4.5 percent of the basic salary, pay, or compensation which he or she has received for serving as a Senator, Representative, Delegate, or Resident Commissioner in Congress, or for serving as an 'employee', as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

The interest otherwise required by this subsection shall not be required for any period during which a judicial official was separated from all such service and was not receiving any 'retirement salary'.

"Each such judicial official may elect to make such deposits in installments, during the continuance of his or her service in those offices designated in paragraph (1) of subsection (a) of this section, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts: Provided, That, in each instance in which a judicial official does elect to make such deposits in installments, the Director shall require (i) that the first installment payment made shall be in an amount no smaller than that amount necessary to cover at least the last eighteen months of prior creditable civilian service, and (ii) that at least one additional installment payment shall be made every eighteen months thereafter until the total of all such deposits have been made.

"Notwithstanding the failure of any such judicial official to make all such deposits or installment payments, credit shall be allowed for the service rendered, but the annuity of that judicial official's widow or widower shall be reduced by an amount equal to 10 percent of the amount of such deposits, computed as of the date of the death of such judicial official, unless such widow or widower shall elect to eliminate such service entirely from credit under subsection (k) of this section: Provided, That no deposit shall be required from any such judicial official for any honorable active duty service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or for any other creditable service rendered prior to August 1, 1920.

"(e) The amounts deducted and withheld in accordance with subsection (b) of this section, and the amounts deposited in accordance with subsection (d) of

this section, shall be credited to individual accounts in the name of each judicial official from whom such amounts are received, for credit to the 'Judicial Survivors' Annuities Fund'.

"(f) The Secretary of the Treasury shall invest, from time to time, in interest bearing securities of the United States or Federal farm loan bonds, those portions of the 'Judicial Survivors' Annuities Fund' which in his judgment may not be immediately required for the payment of annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of such fund for the purposes of paying annuities and carrying out the provisions of subsections (g), (h), (m), (o), (p), and (q) of this section.

"(g) If any judicial official resigns from office without receiving any 'retirement salary,' all amounts credited to his or her individual account, together with interest at 4 percent per annum to December 31, 1947; and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this subsection a 'reasonable period of time' shall be presumed to be no longer than one year following the date upon which such judicial official relinquished his or her office.

"(h) Annuities payable under this section shall be paid only in accordance with the following provisions:

"(1) In any case in which a judicial official dies while in office, or while receiving 'retirement salary,' after having completed at least eighteen months of creditable civilian service, as computed in accordance with subsection (k) of this section, for the last eighteen months of which the salary deductions provided by subsection (b) of this section or, in lieu thereof, the deposits required by subsection (d) of this section have actually been made—

"(A) if such judicial official is survived by a widow or widower, but not by a child, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section; or

"(B) if such judicial official is survived by a widow or widower and a child or children, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to:

"(i) \$1,466; or

"(ii) \$4,399, divided by the number of children;

whichever is smallest; or

"(C) if such judicial official leaves no surviving widow or widower, but does leave a surviving child or children, there shall be paid to or on behalf of each such child, an immediate annuity equal to:

"(i) the amount of the annuity to which the judicial official's widow or widower would have been entitled under subparagraph

(1) (A) of this subsection, had such widow or widower survived the judicial official, divided by the number of children; or

"(ii) \$1,760; or

"(iii) \$5,279, divided by the number of children;

whichever is smallest.

"(2) An annuity payable to a widow or widower under subparagraphs (1) (A) or (1) (B) of this subsection shall be terminated upon his or her death or remarriage.

"(3) An annuity payable to a child under this subsection shall terminate:

"(A) if such child is receiving an annuity based upon his or her status under subparagraph (5) (A) of subsection (a) of this section, on the last day of the month during which he or she becomes eighteen years of age;

"(B) if such child is receiving an annuity based upon his or her status under subparagraph (5) (B) of subsection (a) of this section, either (i) on the first day of July immediately following his or her twenty-second birthday or (ii) on the last day of the month during which he or she ceases to be a full-time student in accordance with subparagraph (5) (B) of subsection (a) of this section, whichever occurs first: Provided, That if such child is rendered incapable of self-support because of a mental or physical disability incurred while receiving that annuity, that annuity shall not terminate, but shall continue without interruption and shall be deemed to have become, as of the date of disability, an annuity based

upon his or her status under clause (ii) of subparagraph (5) (C) of subsection (a) of this section;

"(C) if such child is receiving an annuity based upon his or her status under subparagraph (5) (C) of subsection (a) of this section, on the last day of the month during which he or she ceases to be incapable of self-support because of mental or physical disability; or

"(D) on the last day of the month during which such child dies or marries.

"(4) An annuity payable to a child or children under subparagraph (1) (B) of this subsection shall be recomputed and paid as provided in subparagraph (1) (C) of this subsection upon the death, but not upon the remarriage, of the widow or widower who is receiving an annuity under subparagraph (1) (B) of this subsection.

"(5) In any case in which the annuity of a child is terminated, the annuity of each remaining child which is based upon the service of the same judicial official shall be recomputed and paid as though the child whose annuity has been terminated had not survived that judicial official.

"(i) All questions of dependency and disability arising under this section shall be determined by the Director of the Administrative Office of the United States Courts, subject to review only by the Judicial Conference of the United States, and the decision of the Judicial Conference of the United States shall be final and conclusive. The Director may order or direct at any time such medical or other examinations as he deems necessary to determine the facts relative to the nature and degree of disability of any child who is an annuitant, or an applicant for an annuity, under this section, and may suspend or deny any such annuity for failure to submit to any such examination.

"(j) In any case in which a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability, as determined by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary of such claimant by the laws of the State of residence of such claimant, or to any other person who is otherwise legally vested with the care of the claimant or of the claimant's estate, and need not be made directly to such claimant. The Director of the Administrative Office of the United States Courts may, at his or her discretion, determine whether such payment is made directly to such claimant or to such guardian, fiduciary, or other person legally vested with the care of such claimant or the claimant's estate. Where no guardian or other fiduciary of such minor or such person under legal disability has been appointed under the laws of the State of residence of such claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or of the claimant's estate.

"(k) The years of service rendered by a judicial official which may be creditable in calculating the amount of an annuity for such judicial official's widow or widower under subsection (l) of this section shall include—

"(1) those years during which such judicial official served in any of the offices designated in paragraph (1) of subsection (a) of this section, including in the case of a Justice or judge of the United States those years during which he or she continued to hold office following retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title;

"(2) those years during which such judicial official served as a Senator, Representative, Delegate, or Resident Commissioner in Congress, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;

"(3) those years during which such judicial official honorably served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section; Provided, That those years of such military service for which credit has been allowed for the purposes of retirement or retired pay under any other provision of law shall not be included as allowable years of such service under this section; and

"(4) those years during which such judicial official served as an 'employee', as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

For the purposes of this subsection the term 'years' shall mean full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month

which numbers less than fifteen full days and including, as one full month, any fractional part of a month which numbers fifteen full days or more. Nothing in this subsection shall be interpreted as waiving or canceling that reduction in the annuity of a widow or widower which is required by subsection (d) of this section due to the failure of a judicial official to make those deposits required by subsection (d) of this section.

"(l) The annuity of a widow or widower of a judicial official shall be an amount equal to the sum of—

"(1) $1\frac{1}{4}$ percent of the average annual salary, including 'retirement salary', which such judicial official received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section (i) during those three years of such service in which his or her annual salary was greatest, or (ii) if such judicial official has so served less than three years, but more than eighteen months, then during the total period of such service prior to his or her death, multiplied by the total of:

"(A) the number of years of creditable service tabulated in accordance with paragraph (1) of subsection (k) of this section; plus

"(B) the number of years of creditable service tabulated in accordance with paragraph (2) of subsection (k) of this section; plus

"(C) the number of years of creditable service tabulated in accordance with paragraph (3) of subsection (k) of this section; plus

"(D) the number of years up to, but not exceeding, fifteen of creditable service tabulated in accordance with paragraph (4) of subsection (k) of this section,

plus:

"(2) three-fourths of 1 percent of such average annual salary, multiplied by the number of years of any prior creditable service, as tabulated in accordance with subsection (k) of this section, not applied under paragraph (1) of this subsection:

Provided, That such annuity shall not exceed 40 percent of such average annual salary and shall be further reduced in accordance with subsection (d) of this section, if applicable.

"(m) Whenever the salary paid for service in one of the offices designated in paragraph (1) of subsection (a) of this section is increased, each annuity payable from the Judicial Survivors' Annuities Fund, which is based, in whole or in part, upon a deceased judicial official having rendered some portion of his or her final eighteen months of service in that same office, shall also be increased. The actual amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each 5 percent by which such salary has been increased. In the event that such salary is increased by less than 5 percent, there shall be no increase in such annuity.

"(n) Each annuity authorized under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. No annuity authorized under this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

"(o) In any case in which a judicial official dies while in office, or while receiving 'retirement salary', and:

"(1) before having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which the salary deductions provided by subsection (b) of this section or the deposit required by subsection (d) of this section have actually been made; or

"(2) after having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which all such deductions or deposits have been made, but without a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) of this section; or

"(3) the rights of all persons entitled to receive the annuity benefits provided by subsection (h) of this section terminate before a valid claim therefor has been established;

the total amount credited to the individual account of that judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

"First, to the beneficiary or beneficiaries whom that judicial official may have designated in a writing received by the Administrative Office of the United States Courts prior to his or her death;

"Second, if there be no such beneficiary, to the widow or widower of such judicial official;

"Third, if none of the above, to the child or children of such judicial official and the descendants of any deceased children by representation;

"Fourth, if none of the above, to the parents of such judicial official or the survivor of them;

"Fifth, if none of the above, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such judicial official;

"Sixth, if none of the above, to such other next of kin of such judicial official, as may be determined by the Director of the Administrative Office of the United States Courts to be entitled to such payment, under the laws of the domicile of such judicial official, at the time of his or her death.

Such payment shall be a bar to recovery by any other person. For the purposes of this subsection only, a determination that an individual is a widow, widower, or child of a judicial official may be made by the Director of the Administrative Office of the United States Courts without regard to the definitions of those terms contained in paragraphs (3), (4), and (5) of subsection (a) of this section.

"(p) In any case in which all the annuities which are authorized by this section and based upon the service of a given official terminate before the aggregate amount of annuity payments received by the annuitant or annuitants equals the total amount credited to the individual account of such judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, the difference between such total amount, with such interest, and such aggregate amount shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (o) of this section.

"(q) Any accrued annuity benefits remaining unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to that annuitant. Any accrued annuity benefits remaining unpaid upon the death of an annuitant shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

"First, to the duly appointed executor, executrix, administrator, or administratrix, or the estate of such annuitant;

"Second, if there is no such executor, executrix, administrator, or administratrix, payments shall be made, after the expiration of sixty days from the date of death of such annuitant, to such individual or individuals as may appear, in the judgment of the Director of the Administrative Office of the United States Courts, to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

"(r) Nothing contained in this section shall be interpreted to prevent a widow or widower eligible for an annuity under this section from simultaneously receiving such an annuity while also receiving any other annuity to which such widow or widower may also be entitled under any other law without regard to this section: Provided, That service used in the computation of the annuity conferred by this section shall not also be credited in computing any such other annuity."

SEC. 3. That on the date upon which this Act becomes effective there shall be established on the books of the Treasury a fund which shall be known as "The Judicial Survivors' Annuities Fund", and all money credited to the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended, shall be transferred to the credit of the "Judicial Survivors' Annuities Fund" established by this section.

SEC. 4. That on the date upon which this Act becomes effective the Secretary of the Treasury shall ascertain from the Director of the Administrative Office of the United States Courts the amount of the level cost deficiency in the fund transferred by section 3 of this Act on the date of that fund's transfer and, at the earliest time thereafter at which appropriated funds in that amount shall become available, the Secretary shall deposit such funds, in a single payment, into the "Judicial Survivors' Annuities Fund" established by section 3 of this Act. Such funds as are necessary to carry out this section are hereby authorized to be appropriated.

SEC. 5. That on the date upon which this Act becomes effective each annuity then being paid to a widow from the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended, shall be increased by an amount equal to one-fifth of 1 percent of the amount of such

annuity multiplied by the number of months which have passed since the commencement of that annuity. For the purposes of this section, any fractional part of a month which numbers less than fifteen full days shall be excluded from the computation of the number of months and any fractional part of a month which numbers fifteen full days or more shall be included in the computation as one full month. Such funds as are necessary to carry out this section are authorized to be appropriated and, upon appropriation, shall be deposited by the Secretary of the Treasury, in a single payment, to the credit of the "Judicial Survivors' Annuities Fund" established by section 3 of this Act.

Sec. 6. That the benefits conferred by this Act shall, on the date upon which this Act becomes effective, immediately become available to any individual then receiving an annuity under section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended: Provided, That although the rights of any judicial official electing to come within the purview of section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective, shall be determined exclusively under the provisions of that section as amended by this Act, nothing in this Act shall be interpreted to cancel, abrogate, or diminish any rights to which an individual or his survivors may be entitled by virtue of his having contributed to the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended, before the date upon which this Act becomes effective.

Sec. 7. That this Act shall become effective on the first day of the third month following the month in which it is enacted.

2. Amend the title to read:

An Act to amend section 376 of title 28, United States Code, in order to reform and update the existing program for providing annuities to survivors of Federal Justices and judges.

PURPOSE OF AMENDMENTS

The purpose of the first amendment proposed by the committee is to substitute for the language in the body of S. 12, as introduced, the language of an alternative proposal. As introduced, S. 12 would have merged the existing program for providing annuities to survivors of Federal Justices and judges (28 U.S.C. § 376) into the Civil Service Retirement System (5 U.S.C. § 8331 et seq.). One result of that merger would have been more liberal eligibility standards and increases in annuity amounts made available to spouses and children of those Justices and judges electing to participate in the program. Another result of that merger, however, would have been the unavoidable appropriation of at least 63 million dollars from the general treasury for a program which today has less than 700 contributing members and less than 200 annuitants. The alternative proposal embodied in the first amendment proposed by the committee, rather than effecting that merger, entirely restructures the existing judicial program to the extent necessary to provide all of the improved standards and several of the annuity increases, at an estimated cost to the government of approximately 14 million dollars.

The purpose of the second amendment proposed by the committee is to change the title of the bill to reflect the substitution of material contained in the first amendment.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to thoroughly reform and update the existing judicial survivors' annuity program (28 U.S.C.

§ 376), providing benefits, for surviving spouses and children of all Federal Justices and judges who elect to join that program, which are substantially similar to the benefits now conferred upon surviving spouses and children of Members of Congress. The bill, as amended, would also (1) place that program in an actuarially sound fiscal condition for the first time since its creation; (2) provide more liberal eligibility standards and reasonable increases in existing annuity amounts, made necessary by increases in the cost of living since each existing annuity was commenced; and (3) establish a method for providing future periodic increases in annuity amounts without endangering the fiscal integrity of the entire program.

In essence the bill, as amended, is deliberately designed to provide improved survivorship benefits for all present and future annuitants without either endangering the vested interest which each currently participating judge has in the program or requiring the government to bear more than a reasonable share of the program's costs.

BACKGROUND

The existing judicial survivors' annuity program was created in 1956, after six years of controversial and sporadic consideration by Congress. In the ensuing 19 years, although proposals for changes in that program were repeatedly advocated by both the judiciary and Members of Congress, only minor changes were actually made. A brief review of developments during the twenty-five years between 1950, when the first attempt to create a judicial survivors' annuity program was defeated in the Senate, and 1975, when this committee was able to construct the reform proposal now being recommended, is essential to a full understanding of both the problems faced by the existing program and the solutions to those problems embodied in this recommended bill.

The first, and most serious, problem facing the existing program is its lack of actuarial soundness. This committee's studies have indicated that that problem is the direct result of Congressional errors which were made in 1956 when the program was created. Part I of this background section of this report documents those errors and attempts to explain why they were made.

Repeated efforts to formulate a solution for the program's problems before 1973 were, with one exception, unsuccessful, and committee efforts to determine why have led to only one possible answer: a general failure by Congress and the judges to agree at a given time upon which proposed solution would be best. Part II of this section documents that absence of a consensus and suggests explanations for it.

The solutions to the program's problems recommended by this report have deliberately been drafted in light of those previous experiences. The committee has made every effort, not only to learn from earlier mistakes, but also to fully coordinate the development of this recommended bill with the studied approval of the Judicial Conference of the United States. Part III of this section documents and explains the gradual development of the recommended bill.

I. THE CREATION OF A JUDICIAL SURVIVORS' ANNUITIES PROGRAM
1950-1956

S. 3108, 81ST CONGRESS—1950

Following the deaths of Justices Wiley B. Rutledge and Frank Murphy in 1949, the Department of Justice prepared a bill, S. 3108,¹ providing annuities for widows and children of Justices and judges. Introduced on February 24, 1950 by Senator Patrick A. McCarran of Nevada, Chairman of the Senate Judiciary Committee, the bill was:

* * * designed to relieve anxieties and worries of members of the Federal judiciary * * *, thus making appointments to the Federal bench more attractive to practitioners of proved ability and standing, but who may not have accumulated substantial financial resources.²

Although the Department conceded that federal judicial retirement provisions³ were "generous enough", it nevertheless felt that annuities for widows and minor children were essential and "strongly urged" the enactment of S. 3108.⁴ Although no hearings were held on the bill, it was favorably reported, with amendments, on July 31, 1950.⁵ As amended, it provided:

1. An annuity to every widow of a Justice or judge of the United States,⁶ who was married to that Justice or judge for at least five years prior to the date of his death, from the time of his death until her death or remarriage;⁷

2. That that annuity be computed at the rate of 5 percent of the annual salary of the office occupied by the Justice or judge at the time of his death (or, if he died in retirement, of the office he occupied at the time of his retirement) multiplied by the number of years that he served as a Justice or judge in active service, but in no event to exceed fifty percent of that annual salary;⁸

3. That any living widow or minor unmarried orphan child of a Justice or judge who had died before enactment of S. 3108 be awarded an annuity just as if the Justice or judge had died after enactment of the bill;⁹

4. That the administration of the annuities be supervised by the Director of the Administrative Office of the U.S. Courts;¹⁰ and

5. That the annuities be funded from any money in the Treasury not otherwise appropriated.¹¹

¹ S. 3108, 81st Cong., 1st Sess. (1949).

² Letter of March 16, 1950 from Peyton Ford, Assistant to the Attorney General, to Senator Pat McCarran, Chairman, Senate Committee on the Judiciary in S. Rep. No. 2216, 81st Cong., 2d Sess. 6 (1950).

³ See notes 35 and 175, *infra*, and accompanying text.

⁴ See letter, note 2, *supra*, in which Mr. Ford stated: "The existing provisions for retirement at full pay may seem generous enough, but the recent deaths of Justices Rutledge and Murphy indicate that annuities for retired judges may not provide security of any kind should the judge die while in active service, or shortly after retirement, leaving a widow or minor children or both." See also notes 35 and 175, *infra*.

⁵ S. Rep. No. 2216, 81st Cong., 2d Sess. (1950).

⁶ Judges serving the District Court for the Territory of Alaska, the District Court of the Virgin Islands, and the United States District Court for the District of the Canal Zone were included in the coverage of the bill by express provision. See S. 3108, Sec. 1, at S. Rep. No. 2216, 81st Cong., 2d Sess. 1 (1950).

⁷ Express provisions were also made for: (a) an annuity for a widow when the marriage was less than 5 years old, if there were minor (under the age of 21 then) children who were unmarried, for as long as one child remained under age 21 and unmarried; (b) an annuity payable to a widow who remarried, for the benefit of any minor unmarried children of her marriage to the Justice or judge, until those minor children either married or attained age 21, and (c) an annuity payable to the guardian of a Justice's or judge's minor children, for the benefit of those children, until they either married or reached age 21. S. 3108, Sec. 1.

⁸ S. 3108, Sec. 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ S. 3108, Sec. 3.

In its report, the Committee cited four primary reasons for enacting the bill: (1) the "inhibitions" which prevent federal judges "from engaging in money-making pursuits and require them to depend primarily upon their salaries * * *"; (2) the inadequacy of insurance policies purchased before assumption of judicial office resulting from "the decrease in purchasing power of the dollars"; (3) the fact that judges were not covered by the Civil Service Retirement Act; and (4) the need "to attract practitioners * * * who are of proved ability but who have not accumulated financial reserves, as well as [the need] to retain those of * * * ability" who have not accumulated financial reserves.¹²

On September 13, 1950, Senator McCarran moved passage of S. 3108. It was passed without debate and without a recorded vote. Immediately following passage, Senator Paul Douglas of Illinois, citing the fact that he was still trying "to obtain certain information by telephone on this bill", asked that the vote be reconsidered and was successful in having the bill sent to "the foot of the calender".¹³ Later in the day, when the bill came up again, Senator Douglas was again successful in preventing final consideration.¹⁴ Stating that, "It seems to me this bill creates an extraordinary status for a group which is already the best protected in the whole Federal system" and that "No other Federal employee receives such treatment", Senator Douglas objected to the fact that the amounts of the annuities would probably exceed the pensions then provided for Presidential widows¹⁵ and observed that:

[Although] it might well be proper for us to establish an annuity system to which the judges would contribute a certain percentage of their salaries * * * and * * * the Government might well add an equal sum, * * * this outright hand-out to a group which has already life tenure, at proper salaries, * * * taking away from them any individual responsibility to provide for their widows, seems to me to be an extension of the welfare state which goes beyond proper bounds.¹⁶

Following Senator Douglas' remarks on September 13, 1950, S. 3108 was not again considered during the 81st Congress.

S. 3873, 83D CONGRESS—1954

Four years later, in 1954, Senator McCarran again undertook the task of providing annuities for the widows of federal judges. In this second attempt, however, he limited his objective. Citing Chief Justice Vinson's death in the summer of 1953; he sought to provide benefits only for the widows of Justices of the Supreme Court, rather than for the widows of all federal judges. On August 16, 1954, Senator Clements of Kentucky introduced S. 3873,¹⁷ providing an annuity, which would accrue and be due and payable in monthly installments commencing

¹² S. Rep. No. 2216, 81st Cong. 2d. Sess. 2-3 (1950). It perhaps should be noted that the committee estimated that the cost of making the bill retroactive would only be \$581,528 for the first year and approximately \$290,769 for the tenth year, that the cost for future widows would reach \$492,408 by 1959, and that the maximum annual cost, which would be incurred in 1955, would be \$873,646. *Id.* at 5. For the actual costs of the program which finally was created in 1956, see Table "B" in the "Statement" section of this report, *infra*.

¹³ 96 Cong. Rec. 14701 (1950).

¹⁴ 96 Cong. Rec. 14711 (1950).

¹⁵ See note 18, *infra*, and accompanying text.

¹⁶ 96 Cong. Rec. 14711 (1950).

¹⁷ S. 3873, 83d Cong., 2d Sess. (1954).

on the first day of the month in which a Justice died. The amount of the annuity was to be equal to that of annuities then payable to beneficiaries of the "Grace Collidge Act",¹⁸ which then provided annuities of \$5,000 per year for Presidential widows.¹⁹ Senator McCarran explained that a poll of the Committee on the Judiciary had established that Committee's approval of the proposal and the bill was immediately passed without debate.²⁰

Later that day Congressman Graham asked unanimous consent for immediate consideration of S. 3873 in the House. It was granted and, again, the bill was passed without debate.²¹ Apparently there is no supportive legislative history on S. 3873; no hearings were held, nor were committee reports filed, in either House.²² On August 28, 1954, President Eisenhower signed the Act and it became effective as of that date,²³ adding section 375 to Title 28 of the United States Code.²⁴

H.R. 11124, 84TH CONGRESS—1956

The historical record of Congressional action in processing that legislation which created the judicial survivors' annuity program (codified at 28 U.S.C. § 376) in 1956 stands in marked contrast to the enactment of 28 U.S.C. § 375 two years earlier.

Judicial Conference Recommendations

Within seven months of the President's approval of the \$5,000 annuity for widows of Supreme Court Justices, the Judicial Conference of the United States recommended to the Congress:

* * * the enactment of legislation to authorize provision for payment of annuities *on a contributory basis* to widows and dependent children of judges comparable to the provisions made under existing law for annuities to widows and dependent children of Members of Congress.²⁵

Six months later the judges "reaffirmed" their recommendations.²⁶ Of special significance were the two clauses emphasized above. Whereas the recently enacted program for Supreme Court Justices had provided annuities only for the Justices' widows, the Conference was now seeking annuities for the dependent children, as well as for the widows,

¹⁸ Priv. L. No. 1, ch. 3, 50 Stat. 923 (1937).

¹⁹ The "Grace Collidge Act", *Id.*, was later amended to provide presidential widows with an annuity of \$10,000 (See Act of Aug. 25, 1958, Pub. L. No. 85-745, § (c), 72 Stat. 838.), and still later amended to increase that amount to its present level of \$20,000 (See Act of Jan. 8, 1971, Pub. L. No. 91-658, § 6, 84 Stat. 1963 codified at 3 U.S.C. § 102 (1971)).

²⁰ 100 Cong. Rec. 14563 (1954).

²¹ 100 Cong. Rec. 14672 (1954).

²² Two years later Senator Welker of Idaho observed that: "[S]ome fast balls were pitched when the \$5,000 benefit bill was passed through the Senate and the House. . . . Certainly I never heard about it, and I know many other Senators did not hear a word about it. See 102 Cong. Rec. 12619 (1956).

²³ Act of Aug. 28, 1954, Pub. L. No. 83-702, ch. 1053, § 1, 64 Stat. 915 (codified at 28 U.S.C. § 375 (1970), as amended, 28 U.S.C.A. § 375 (Supp. 1, 1975)).

²⁴ The newly added § 375 then provided that:

"§ 375. Annuities to widows of the Chief Justice and Associate Justices of the Supreme Court of the United States.

"(a) The Director of the Administrative Office of the United States Courts shall pay to the surviving widow, if any, of a Justice of the United States who has died or who dies while in regular active service, or who has died or who dies after having retired or resigned under the provisions of this chapter, an annuity in the amount payable to the beneficiary under the Act of Jan. 14, 1937 (50 Stat. 923, chapter 3).

"(b) An annuity granted under the provisions of this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month for which the annuity shall have accrued. Such annuity shall commence on the first day of the month in which any such Justice dies, or on the first day of the month in which this section is enacted, whichever is later, and shall terminate upon the death or remarriage of the annuitant."

²⁵ See the "Appendix" to the "Annual Report of the Proceedings of the Judicial Conference of the United States, September 19-20, 1955," which reports the Special Session of the Judicial Conference held on March 24-25, 1955, at 269.

²⁶ See the "Annual Report of the Proceedings of the Judicial Conference of the United States, September 19-20, 1955," at 23.

of other federal judges. In addition the Conference was expressly endorsing a contributory program, perhaps in response to Senator Douglas' remarks concerning the earlier McCarran-sponsored non-contributory proposal.²⁷

House Judiciary Committee Hearings

By the time the Conference had reaffirmed its recommendations in September of 1955, five different bills had been introduced in the Eighty-fourth Congress to provide annuities for survivors of all Article III judges through programs which required the judges to contribute a percentage of their salaries to a common fund.²⁸ Early in the second session of that Congress, on February 6, 1956, the House Judiciary Committee held hearings on the four House bills, with attention focused mainly upon the Judicial Conference's preferred proposal, H.R. 6974, and recommended committee amendments to that bill.²⁹ The basic objective of H.R. 6974 and its related amendments, as emphasized in testimony offered by Judges John R. Biggs, Jr. and Eugene Worley,³⁰ was a program which would provide not only some financial support for widows and dependent children, but survivorship benefits fully comparable to those then available to Members of Congress under the Civil Service Retirement program.³¹

²⁷ See note 16, *supra*, and accompanying text.

²⁸ The five bills were: H. R. 75; H. R. 678; H. R. 3764; H. R. 6974; and S. 3410. The last two bills were endorsed by the Judicial Conference in letters filed with the Chairmen of both Judiciary Committees. It should be noted that, although the five bills were described as covering Article III judges (those entitled to hold office during good behavior), Supreme Court Justices were not covered, and certain Article I judges (those entitled to hold office only for a specified period of years) from the territories of Hawaii, Puerto Rico, Alaska, Guam, the Virgin Islands, and the Canal Zone were expressly included. Judges of the U.S. Tax Court, who were then also appointed to office under Article I, were not covered, however, because they already had a pension plan of their own which provided survivors' annuities.

²⁹ Hearings on H. R. 75, H. R. 678, H. R. 3764 and H. R. 6974 Before Subcomm. No. 5 of the House Comm. on the Judiciary, 84th Cong. 2d Sess. (1956) (Hereinafter House Hearings, 1956).

³⁰ Judge Biggs was then Chief Judge of the U.S. Court of Appeals for the Third Circuit, and Judge Worley was then a judge on the United States Court of Customs and Patent Appeals. Both were representing the Judicial Conference's Committee on Court Administration.

³¹ Although the Civil Service Retirement program was established in 1920 (Act of May 22, 1920, ch. 195, 41 Stat. 614, as amended 5 U.S.C. § 8301 et. seq. (1967)), and survivor benefits were added to that program in 1940 (Act of Jan. 1, 1940, Pub. L. No. 76-263), Members of Congress first became eligible for retirement benefits through that program under the Legislative Reorganization Act of 1946 (Pub. L. No. 79-601, Title VI, § 602, 60 Stat. 850 (1946)), and for survivorship benefits in 1948 (Act of Feb. 28, 1948, Pub. L. No. 80-428, ch. 84, § 4(G)(c), as amended 5 U.S.C. § 8341 (1967)). Although that 1948 legislation did not provide protection for survivors of Members who died while still in service, such protection was subsequently added in 1954 (Act of March 6, 1954, Pub. L. No. 308, ch. 59, § 1, 68 Stat. 21.) Thus, by 1956, when the House Judiciary Committee was holding its hearings, the survivorship provisions which were applicable to Members of Congress were accurately summarized as follows:

"[T]he widow of a Member covered by the system who dies in office (after having served at least 5 years), if she has been married to him at least 2 years or is the mother of his child, shall be paid an annuity beginning after she reaches age 50 (or before that age if she has children under 18 or disabled) and continuing until death or remarriage, equal to half the potential retirement annuity earned by her husband up to the time of his death. This widow's annuity amounts to 1/2 of a sum equal to 2 1/2 percent of the Member's average annual basic compensation since August 2, 1946, multiplied by his years of service as a Member of Congress and certain active service performed as a member of the Armed Forces and as a legislative employee, plus 1 1/2 percent of such average compensation multiplied by years of prior civilian governmental service. In no case is the widow's annuity to be more than 37 1/2 percent of the basic salary the Member was receiving at the time of his separation from service as a Member. In order that service as a Member of Congress or other prior civilian service may be counted in this computation either the deposit (based on the contribution rates in effect at various periods of time) required by the act must have been made with respect to such service or the Member's potential annuity must be reduced by an amount equal to 10 percent of the unpaid deposit with interest.

"A widow with children would receive an additional annuity for each child equal to the lesser of (a) one-fourth of the Member's potential annuity, (b) \$900 divided by the number of children, or (c) \$360. If the Member leaves no widow but surviving children under 18 or incapable of self-support each child would receive an annuity equal to the widow's annuity but not more than \$1200 divided by the number of children or \$480 whichever is lesser.

"In the event of the death of a Member of Congress after retirement on annuity his widow (if under 50 and having children under 18) would receive an annuity as above stated until age 50 and the children also would receive annuities as above stated. If the Member retired having elected a reduced annuity so as to provide protection for his dependent survivors, his widow after age 50 would receive an annuity equal to one-half the amount of his regular retirement annuity before reduction.

"Whether or not annuities are paid, lump-sum payments at the death of the Member or the last surviving annuitant are made if warranted by the principle embodied in section 12 of the Civil Service Retirement Act that amounts of retirement deposits or deductions not actually used for the payment of annuities shall be returned to the Member's designated beneficiary, next of kin or estate. Such return is also made in case the Member dies in office after less than 5 years' service."—See House Hearings, 1956, at 24-25.

Although the members of the committee were apparently not opposed to the concept of a truly comparable program, two aspects of the program chosen by the Judicial Conference, and embodied in H.R. 6974, were obviously noteworthy departures from the program then available to Members of Congress, and committee members understandably directed their questions to those two deviations.

Percentage-of-Annual-Salary Contribution Rates

The first difference between the programs was that of the percentage of annual salary contributed into the central fund. Under Civil Service Retirement, Members were then contributing 6 percent of their annual salaries of \$22,500, or \$1,350 each year, to their program.³² Under H.R. 6974 the judges would only have been required to contribute 1.5 percent of their annual salaries to their fund. In the case of district court judges, who were then also receiving annual salaries of \$22,500, the yearly contribution would have amounted to \$337.50, \$1,012.50 less than a Member's yearly contribution. When committee members asked supporters of H.R. 6974 to explain why Congressmen had to pay four times more than judges for the same benefits,³³ the explanation offered was that the Congressmen were paying for both their own retirement benefits and their survivors' benefits, while the judges would be paying only for their survivors' benefits. Under the Constitution all Article III judges are guaranteed the salary of their offices for as long as they remain in those offices³⁴ and, under 28 U.S.C. § 371, those judges are able to resign or retire from active service while retaining the salary of their offices for the rest of their lives.³⁵ In essence, Congressmen are required to buy their retirement benefits while judges are not. Therefore, in theory, the rate of contribution for the judicial program did not have to be as high as that for the Members' program. The 1.5 percent-of-annual-salary figure used in H.R. 6974 was then justified with the argument that, of the 6 percent of annual salary contributed by Members, only one-fourth of that amount was required to support their survivors' benefits.³⁶

Although that justification of the 1.5 percent contribution rate was highly questionable, not a single member of the committee explored the question further, even though at least one supporter of H.R. 6974 frankly admitted that the basic premise upon which the entire justification theory was based was uncertain. Mr. Will Shafroth, the Chief of the Division of Procedural Studies and Statistics in the Administrative Office of the U.S. Courts, testified that:

H.R. 6974 provides for a contribution rate of 1½ percent of salary. This amount was arrived at by segregating the cost of survivorship pension from the cost of retirement

³² Act of Feb. 28, 1948, Pub. L. No. 80-426, ch. 84, § 10, 62 Stat. 53, as amended 5 U.S.C. § 8334(c) (1967).

³³ House Hearings, 1956, at 15-16 and 32-34.

³⁴ U.S. Const., art. III, § 1.

³⁵ Under the Act of June 25, 1948, ch. 646, 62 Stat. 903, as amended by the Act of Oct. 31, 1951, ch. 655, § 39, 65 Stat. 724 and the Act of Feb. 10, 1954, ch. 6, § 4(a), 68 Stat. 12 (codified at 28 U.S.C. § 371 (1968)), an Article III judge could, in 1956, either resign from office at age 70 with 10 years of service and continue to draw "the salary which he was receiving when he resigned" for the rest of his life, or retire from regular active service at age 70 with 10 years of service, or at age 65 with 15 years of service, and draw "the salary of the office" for the rest of his life. 28 U.S.C. § 371 has remained unchanged since 1954.

³⁶ House Hearings, 1956, at 15-16, 25, 28, 32-33, and 38-39.

annuities in the civil service retirement system and applying that basis to the judiciary.

* * *

There are no comparable figures for *Congressmen* since their survivorship provisions are of recent origin. * * *³⁷

When Mr. Shafroth made those remarks he was, in essence, telling the committee that, although the 1.5 percent figure might well be accurate for the Civil Service Retirement program *as a whole*, it might very well not be an accurate figure *for Members alone*. In fact the figure was very inaccurate. In 1956 there were only 437 Representatives and 96 Senators sitting in the Eighty-fourth Congress. If all of them had been contributing to the Civil Service Retirement program they would only have constituted one-fourth of one percent of that program's contributing membership.³⁸ Thus, those Members who were participating in the program were enjoying the advantages of membership in one of the largest contributory annuity programs in existence.³⁹ Generally, in any group insurance or annuity program, the larger the membership, the greater the income and investment-earning potential of the fund—and the lower the cost to each individual member. Had those 533 Members been contributing to a group plan open only to Congressmen, the cost of their survivorship benefits would have surely been far greater than 1.5 percent of their annual salaries. Yet the proponents of H.R. 6974 were presuming that the Members' costs, if they did have their own program, would remain the same. That presumption was the very core of their evidence in support of a 1.5 percent contribution rate for a program which, in 1956, could not possibly have had a total membership in excess of 384.⁴⁰ Not surprisingly, the Chairman of the Civil Service Commission cited this completely inaccurate analogy as one of the reasons for the Commission's opposition to enactment of H.R. 6974.⁴¹

Inclusion of All Existing Widows of Former Judges

The second difference between the program proposed in H.R. 6974 and the Members' program was a provision which would have conferred upon every then-existing widow of a former judge an immediate annuity, even though her husband would quite obviously never have made a single contribution to the program. When Chairman Emanuel Celler tried to determine how much that provision would cost contributing judges, the following dialogue resulted:

Mr. CELLER. * * * under this system, what would be the percentage of salary a judge would have to pay * * *? Judge BIGGS. He would pay 1½ percent of his salary.

³⁷ *Id.*, at 38-39.

³⁸ In 1956 there were 2 million contributing members in the Civil Service Retirement Program. Thirty-Sixth Annual Report of the Board of Actuaries of the Civil Service Retirement System for the Fiscal Year Ended June 30, 1956, H.R. Doc. No. 310, 85th Cong. 2d Sess. 4 (1956).

³⁹ Only the Social Security program, which cannot truly be described as an annuities program per se was larger. *Id.*

⁴⁰ In 1956 there were 384 federal judges who would have been eligible to join the program proposed in H.R. 6974. See Annual Report of the Proceedings of the Judicial Conference of the United States, September 19-20, 1956, at 73.

⁴¹ House Hearings, 1956, at 23.

Mr. CELLER. What would it be without the existing widows?

Judge BIGGS. I think it would be the same; the cost of annuities to present widows would be very small, fortunately.⁴²

Judge Biggs then observed that the inclusion of existing widows was "not a complete departure from the Congressional system" because, under the 1954 legislation which had provided coverage for survivors of Members who died while in office,⁴³ all widows of Members who had died while in office between November 4, 1952, and March 6, 1954, were included.⁴⁴ Although Judge Biggs was not asked how many widows were thus included—the answer would have been eight⁴⁵—Congressman Kenneth B. Keating did note that: "In your case, a woman who has become a widow in 1940 or 1930 even would be eligible."⁴⁶ In response, Judge Biggs replied:

That is correct. All I can say, of course, is that the number [of existing judicial widows] is small. Some of these ladies have been in rather difficult straits over the years. The logic of the position may not be unassailable, but the number is small, and I for example, I think would have difficulty in justifying my position * * * would have great difficulty in looking my friend * * * [name of judicial widow] * * * in the eye if she is not included.⁴⁷

In the final analysis, Judge Biggs' very frank response to Congressman Keating's question capsulized the issue; quite obviously the annuities for the existing 115 such widows were badly needed in many cases. Equally obvious, however, was the fact that H.R. 6974 contained no provision for financing them. In addition to its disapproval of the percentage contribution rate of 1.5 percent,⁴⁸ the Civil Service Commission also cited this inclusion of all existing judicial widows as a basis for opposing H.R. 6974.⁴⁹

House Judiciary Committee Action

Following the House hearings, Subcommittee No. 5 of the House Judiciary Committee recommended H.R. 6974 to the full Committee, with the proposed amendments examined during the hearings incorporated as a substitute for the bill's original content. The full committee

⁴² Id., at 14. Judge Biggs had earlier estimated that the cost of annuities for the 111 widows who were in existence several months prior to his testimony would be approximately \$275,000 in the program's first year and less each year thereafter as the number of "blanket-ed in" widows diminished, with a maximum overall cost of \$900,000. Id., at 13. On the day of his testimony there were actually 115 existing judicial widows, and by the time the judicial survivors' annuity program began paying annuities there were 121 existing judicial widows. For the costs actually incurred by the program which was finally enacted, see Table "B", infra. For the cost of annuities to the "blanket-ed in" widows, see Hearings on S. 12 and Related Amendments Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 94th Cong. 1st Sess. (1975), at 60, Table 8.

⁴³ See note 31, supra.

⁴⁴ House Hearings, 1956, at 17.

⁴⁵ See "Biographical Directory of the American Congress, 1974-1975", at 423-434.

⁴⁶ House Hearings, 1956, at 20.

⁴⁷ Id.

⁴⁸ Note 41, supra.

⁴⁹ The Chairman of the Commission stated:

"The Commission cannot favor enactment of any legislation which would extend survivor annuities on a retroactive basis to widows of officials or employees of the Government who died at a time when there was no law in existence providing for such benefits. The Commission has consistently taken the view that such legislation is undesirable and has without exception reported adversely on legislative proposals which would grant such retroactive benefits either to widows of deceased Federal employees generally or to selected groups of the same."—House Hearings, 1956, at 22. See also House Hearings, 1956, at 19-20.

further amended the bill and ordered a clean bill, H.R. 11124,⁵⁰ reported on May 16, 1956.⁵¹ In addition to citing those arguments offered in support of Senator McCarran's bill in 1950,⁵² the House Judiciary Committee Report adopted the justification theory offered by proponents of H.R. 6974⁵³ and recommended a contribution rate of 1.5 percent.⁵⁴ The Report also fully endorsed the conferral of annuities upon all existing widows with the following explanation:

The bill also contains a provision which would provide for the payment of an annuity to the widows of judges who have died prior to the enactment of this legislation. It is the opinion of the committee that equity and justice require that those individuals be included under the provisions of this bill . . . Your committee sees no reason why the Government should not extend some financial assistance to these elderly ladies whose deceased husbands had rendered the Government years of service.⁵⁵

Unfortunately, however, H.R. 11124 included no provision for "Government"—or any other—financing of these annuities.

Senate Judiciary Committee Action

Two days before the House Judiciary Committee filed its report, the Senate Judiciary Committee had filed a report on S. 3410,⁵⁶ the only Senate bill designed to provide annuities to judicial survivors.⁵⁷ S. 3410 was in fact a companion bill to H.R. 6974 and, accordingly, had also received Judicial Conference approval.⁵⁸ Although no hearings were held on S. 3410, the Senate Committee did take notice of the earlier House hearings on H.R. 6974 and received correspondence in support of S. 3410 from several of the witnesses who had appeared before the House Committee.⁵⁹ With the exception of several very minor differences, S. 3410, as recommended, and H.R. 6974, as originally recommended by the House subcommittee,⁶⁰ were identical, as were the Senate Committee's reasons for supporting both the 1.5 percent contribution rate and the inclusion of all existing widows.⁶¹

Floor Debate and Passage of the House and Senate Bills

On May 21, 1956, Chairman Celler moved to suspend the House rules and pass H.R. 11124.⁶² Although several Congressmen strenuously objected to the rushed consideration of the measure,⁶³ the question was called after only forty minutes of debate and the bill

⁵⁰ H.R. 11124, 84th Cong., 2d Sess. (1956) was introduced by Congressman Emanuel Celler, Chairman of the House Judiciary Committee, on May 9, 1956. See 102 Cong. Rec. 7859 (1956).

⁵¹ H.R. Rep. No. 2170, 84th Cong., 2d Sess. 1 (1956).

⁵² See note 12, supra, and accompanying text.

⁵³ See notes 35-36, supra, and accompanying text.

⁵⁴ H.R. Rep. No. 2170, 84th Cong., 2d Sess. 4 (1956).

⁵⁵ Id., at 4.

⁵⁶ S. Rep. No. 1983, 84th Cong., 2d Sess. (1956).

⁵⁷ See note 23, supra.

⁵⁸ See note 23, supra, and S. Rep. No. 1983, 84th Cong., 2d Sess. 2 and 17 (1956).

⁵⁹ S. Rep. No. 1983, 84th Cong., 2d Sess. 6-7, 9-19 (1956).

⁶⁰ See notes 29-49, supra, and accompanying text.

⁶¹ Compare S. Rep. No. 1983, 84th Cong., 2d Sess., 5-6 (1956) with notes 54-55 supra, and accompanying text.

⁶² See 102 Cong. Rec. 8574 (1956).

⁶³ See 102 Cong. Rec. 8577-78 and 8580 (1956). At one point in the debate Mr. Williams of Mississippi noted the Civil Service Commission's refusal to administer the program (See notes 41, 48, and 49, supra, and accompanying text.) and argued that:

"I think the House would be making a grave mistake to pass legislation without giving it full, complete, and thorough consideration and without having every provision in the bill explained to the satisfaction of the membership. We are not being given an opportunity to work our will on this legislation. . . ." 102 Cong. Rec. 8580 (1956).

was passed by a vote of 238 to 52.⁶⁴ Significantly only one opponent questioned the 1.5 percent contribution rate, and his challenge was effectively silenced with the same justification theory offered to the House subcommittee and endorsed in the Committee Report.⁶⁵ No questions were raised regarding the automatic inclusion of existing widows. On the following morning the House requested the Senate's concurrence on H.R. 11124.⁶⁶

Having once passed over⁶⁷ and once deferred consideration of⁶⁸ H.R. 11124, the Senate finally considered its own bill, S. 3410, on July 13, 1956.⁶⁹ Senators Gore and Welker both raised questions concerning the cost of the program, and Senator Gore, estimating that "the 1½ percent [contribution rate] provided in the bill would be sufficient to defray only 40 percent of the cost of the program,"⁷⁰ offered three amendments to S. 3140 designed to provide a "reasonable proximity of actuarial soundness."⁷¹ His amendments (1) required that a judge have actually contributed from his judicial salary for a period of at least five full years before his widow would be entitled to an annuity, (2) required a judge to contribute 3 percent of his annual salary instead of 1.5 percent, and (3) deleted the provision providing annuities to all existing widows.⁷² After those amendments were agreed to, Senator Eastland moved to substitute the amended text of S. 3410 for the text of H.R. 11124, his motion was agreed to, and H.R. 11124, as so amended, was passed.⁷³ Three days later the House disagreed to the Senate's amendments and agreed to the Senate's request for a conference.⁷⁴

Conference Action and Final Passage of H.R. 11124

On July 25, 1956, Senator Eastland presented the Conference Committee Report on H.R. 11124⁷⁵ to the Senate.⁷⁶ The Conference Committee recommended acceptance of the bill as originally passed by the House with one exception; it recommended acceptance of Senator Gore's second amendment requiring the judges to contribute 3 percent, instead of 1.5 percent, of their annual salaries to the program. The Senate agreed to the Conference Committee recommendations. On July 26, 1956, Chairman Celler presented the Conference Committee Report to the House,⁷⁷ it was agreed to without objection,⁷⁸ and on July 27, 1956, the Eighty-Fourth Congress adjourned sine die. Seven days later, on August 3, 1956, President Eisenhower signed H.R. 11124, creating the judicial survivors' annuity program now in existence.⁷⁹

⁶⁴ See 102 Cong. Rec. 8581 (1956).

⁶⁵ See 102 Cong. Rec. 8578 (1956).

⁶⁶ See 102 Cong. Rec. 8643-44 (1956).

⁶⁷ 102 Cong. Rec. 9962 (1956).

⁶⁸ 102 Cong. Rec. 12330 (1956).

⁶⁹ 102 Cong. Rec. 12616-12623 (1956).

⁷⁰ 102 Cong. Rec. 12620 (1956).

⁷¹ *Id.*

⁷² *Id.*

⁷³ 102 Cong. Rec. 12623 (1956).

⁷⁴ 102 Cong. Rec. 12957 (1956). See also 102 Cong. Rec. 13073 (1956), which reports that on July 17, 1956, the Senate agreed to a request from the House for a conference.

⁷⁵ Conf. Rep. No. 2934, 84th Cong., 2d Sess. (1956).

⁷⁶ 102 Cong. Rec. 14433 (1956).

⁷⁷ 102 Cong. Rec. 14755 (1956).

⁷⁸ 102 Cong. Rec. 14758 (1956).

⁷⁹ Act of Aug. 3, 1956, Pub. L. No. 84-973, 70 Stat. 1021 (codified at 28 U.S.C. § 376 (1970), as amended, 28 U.S.C.A. § 376 (Supp. I, 1975)).

COMMENTS

The preceding material would appear to justify two observations by this committee today.

First, although a majority of Congressmen were obviously in favor of providing survivorship benefits for the wives and children of federal judges which would be substantially similar to these benefits available to their own wives and children, they were also very aware of two important differences between the nature of the two occupations. They recognized that a federal judge holds his office for life, while a Congressman must stand for re-election at regular intervals. They also recognized that a judge is accorded—without having to make any contributions—a retirement "salary" identical to his salary of office, while a Congressman must purchase his retirement annuity, which in most cases is substantially smaller than his salary. Although those two facts did not mitigate against the provision of similar survivors' benefits, they did suggest that federal judges enjoyed a significantly greater measure of financial security.

Second, the program which finally was established to provide benefits for judicial survivors, although presumed to be "comparable" to the Civil Service System's program, was in fact not really at all comparable. At every step along the legislative road an inaccurate analogy was drawn to a program one-hundred times larger, yet that analogy was never fully questioned. In its haste to act between mid-May and the end of the session in late July of 1956, Congress overlooked both the limited size of the program's membership and the impact upon the program's fund of immediately bestowing annuities upon 121 existing widows when no provision whatever had been made to finance those annuities. Only Senator Gore's insistence upon a 3-percent contribution rate prevented both Houses from accepting a 1.5-percent contribution rate, one which time and events would only have proven to be twice as inadequate as the 3-percent rate has, in fact, proven to be. In the final analysis, Congress established a program which would have been fiscally unsound even if it had not been immediately burdened with 121 unfinanced annuities.

II. EMERGING PROBLEMS AND CONFLICTING REMEDIAL PROPOSALS—1956-72

THE FIRST 10 YEARS

Although only minor changes were made in sections 375⁸⁰ and 376⁸¹ of Title 28 U.S.C. between 1956 and 1971, it did not take long for the built-in inadequacies of the judicial survivors' annuity pro-

⁸⁰ See note 23, supra, and accompanying text. Although Senator Everett Dirksen introduced a bill, S. 1686, in the 88th Congress (See 109 Cong. Rec. 9859 (1963)) to increase the amount of the annuity provided under § 375 to \$10,000 in accordance with annuities for presidential widows (See note 19, supra.), no hearings were ever held and no action was ever taken on that bill.

⁸¹ In 1958, incidental to Alaska's admission to the Union, § 376's application to Alaska's territorial judges was stricken, with the proviso that those rights already accrued by Alaska's territorial judges under § 376 would not be affected. See Act of July 7, 1958, Pub. L. No. 85-508, § 12(n), 72 Stat. 348. In 1967, incidental to the creation of the Federal Judicial Center, both the Director of that institution and the Director of the Administrative Office of the U.S. Courts were deemed to be federal judges for the purpose of joining the judicial survivors annuity program. See Act of Dec. 20, 1967, Pub. L. 90-219, Title II, § 202, 81 Stat. 668-69. In 1968 subsection (a) of § 376 was amended to permit a judge who was not married at the time of his appointment, and who remained unmarried for more than six months following that appointment, to join the judicial survivors' annuity program within six months of the date upon which he subsequently married. See Act of Aug. 8, 1968, Pub. L. No. 90-466, 82 Stat. 662. See also H.R. Rep. No. 1330, 90th Cong., 2d Sess. (1968) and S. Rep. No. 1464, 90th Cong., 2d Sess. (1968).

gram to become a matter of concern to both the judges and Congress. Recommended reforms were soon proposed by both branches of the Government.

The first such recommendation was the result of the Conference's realization, in March of 1960, that legislated revisions of the Civil Service Retirement program were creating minor disparities between that program and 28 U.S.C. § 376.⁸² By 1962, the Director of the Administrative Office of the U.S. Courts reported that "[C]urrent judicial and survivor participation varies substantially from the forecast contained in a report on an actuarial study conducted as of June 30, 1958 . . .,"⁸³ and in March of 1963 the Judicial Conference was officially informed that the judicial survivors' annuity program was "insufficiently funded."⁸⁴ Thus, within seven years of the program's creation, the judges were beginning to see the consequences of having assumed that their very small program would operate in the same way in which the much larger Civil Service Retirement program operated.

Nevertheless, there is evidence that the very real limitations of a small program were still largely misunderstood. At the Judicial Conference's meeting in September of 1965, Judge Biggs, of the Committee on Court Administration, informed the Conference that the Third Actuarial Valuation of the Judicial Survivors' Annuity Program "indicates . . . that the fund will be completely exhausted by 1984,"⁸⁵ yet that same session of the Conference approved a bill in the 89th Congress which would have *increased* benefits received by existing and future annuitants.⁸⁶ By March of 1966 the judges were studying a proposal under which only the *government's* contributions to the fund would be increased from an amount equal to that contributed by the judges to whatever amount would be necessary to keep the fund solvent,⁸⁷ and one year later the Judicial Conference chose that approach over a recommended merger of their program into the Civil Service Retirement program.⁸⁸

S. 3055 AND S. 3060, 90TH CONGRESS—1966

Within one year after their decision, however, the merger proposal was fully resurrected when Senator Tydings, Chairman of the Senate's Subcommittee on Improvements in Judicial Machinery, introduced S. 3055 as "The Judicial Reform Act."⁸⁹ The bill was, in effect, an "omnibus" approach to a multitude of recommended reforms for the federal judiciary, and Senator Tydings described Title III of S. 3055 as "merger legislation," designed to "make participation in the civil service survivorship plan available to judges and justices alike * * *

⁸² See the "Appendix" to the "Annual Report of the Proceedings of the Judicial Conference of the United States, September 21-23, 1960," which reports the Special Session of the Judicial Conference held on March 10-11, 1960, at 410, where the Conference approved the first draft bill designed to reform the program.

⁸³ See the "Annual Report of the Director of the Administrative Office of the U.S. Courts, 1962," at 156. The reason the actuaries' forecasts were not accurate is that those actuaries never assumed that 121 widows would be receiving annuities which had never been financed.

⁸⁴ See the "Report of the Proceedings of the Judicial Conference of the United States, March 11-12, 1963," at 6.

⁸⁵ See the "Report of the Proceedings of the Judicial Conference of the United States, September 22-23, 1965," at 56.

⁸⁶ *Id.*, at 62, where the Conference approved H.R. 5506, 89th Cong., 1st Sess. (1965).

⁸⁷ See "Report of the Proceedings of the Judicial Conference of the United States, March 10-11, 1966," at 4-5.

⁸⁸ See "Report of the Proceedings of the Judicial Conference of the United States, March 30-31, 1967," at 15.

⁸⁹ S. 3055, 90th Cong., 2d Sess. (1968).

(and to) * * * place * * * judges and Members of Congress on an equal footing * * * at an equal rate of contribution."⁹⁰ Significantly, however, on the same day on which he introduced S. 3055, Senator Tydings introduced S. 3060,⁹¹ a bill designed to provide benefits for judicial widows equal to those received by Members' spouses simply by amending 28 U.S.C. § 376.⁹² S. 3060 was, in fact, the proposal drafted by the Administrative Office of the U.S. Courts and the Judicial Conference's Committee on Court Administration following the Conference's rejection of a merger with the Civil Service program in 1967.⁹³

Senator Tydings introduced his two bills on February 28, 1968,⁹⁴ and on the same day the Judicial Conference withdrew the disapproval of merger it had expressed a year earlier and agreed to temporarily "defer the question of whether it would be desirable to merge the Judicial Survivors' Annuity Fund with the Civil Service Retirement Fund. * * *"⁹⁵ When Judge Biggs appeared before the subcommittee at the end of April, he expressed only his personal preference for the merger proposal, S. 3055,⁹⁶ and one week later, when Darwin H. Anderson, the Chief of the Administrative Office's Division of Business Administration testified, he cautioned that, although S. 3055 was "an excellent proposal" and S. 3060 "would be a very good substitute bill," those opinions should be considered as nothing more than his personal appraisals. He informed the subcommittee that he was emphasizing that fact "because neither of these bills has been considered by the Judicial Conference. * * *"⁹⁷ Both Mr. Anderson's testimony, and that of Andrew E. Ruddock, the Director of Civil Service Commission's Bureau of Retirement and Insurance, were very limited, presenting to the subcommittee little more than a brief review of the perceived deficiencies in the existing judges' program.⁹⁸ Following those hearings, the Judicial Conference, in September, again deferred action, preferring to await the introduction of a revised bill in the 91st Congress.⁹⁹

S. 1511, 91ST CONGRESS—1969

That revised bill, S. 1511, was introduced by Senator Tydings on March 12, 1969,¹⁰⁰ along with S. 1506, a modified version of "The Judicial Reform Act" which he had sponsored in the previous Congress.¹⁰¹ On May 6, 1969 Congressman Peter W. Rodino introduced a

⁹⁰ See Hearings on S. 3055, S. 3060, S. 3061, and S. 3062 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 90th Cong., 2d Sess. (1968) (Hereinafter Senate Hearings, 1968), at 20. In fact Justices, Judges and Members would not have been contributing "equally". Subsection (b)(2) of the proposed new section 8349 of 5 U.S.C. would have required Justices and judges to contribute only 3 percent of their annual salaries. In 1968 Members were contributing 7.5 percent of their annual salaries. See Sec. 301 of S. 3055, 90th Cong., 2d Sess. (1968) as reproduced in the Hearings at 7-8.

⁹¹ S. 3060, 90th Cong., 2d Sess. (1968).

⁹² See the reproduced text of S. 3060 in Senate Hearings, 1968, at 11-15.

⁹³ See note 32, supra, and Senate Hearings, 1968, at 219.

⁹⁴ 114 Cong. Rec. 4486 and 4646 (1968).

⁹⁵ See "Report of the Proceedings of the Judicial Conference of the United States, February 27-28, 1968," at 9.

⁹⁶ Senate Hearings, 1968, at 41.

⁹⁷ *Id.*, at 220 and 228.

⁹⁸ *Id.*, at 220-240. Those 20 pages were the extent of the testimony received concerning the proposed reformation of the judicial survivors' annuity program in a hearing record which ran 311 pages in length.

⁹⁹ See "Report of the Proceedings of the Judicial Conference of the United States, September 19-20, 1968," at 53.

¹⁰⁰ S. 1511, 91st Cong., 1st Sess. (1969).

¹⁰¹ Senator Tydings re-introduced "Judicial Reform Act", S. 1506, 91st Cong., 1st Sess. (1969), was only a slightly modified version of S. 3055, 90th Cong., 2d Sess. (1968). Once again, the proposed merger of the judicial survivors' annuity program into the Civil Service Retirement program was presented as Title III of the bill. S. 1511 was simply a separate presentation of Title III of S. 1506. Other objectives of S. 1506 were also separately introduced as S. 1507, S. 1508, S. 1509, S. 1510, S. 1512, S. 1513, S. 1514, S. 1515, and S. 1516.

companion bill in the House of Representatives,¹⁰² and on June 2 Senator Tyding's subcommittee commenced hearings on his entire reform package.¹⁰³ In the course of those hearings, Title III of S. 1506 and S. 1511, the two "merger proposals," were never accorded more than the most perfunctory attention; any comment upon either went no further than a simple endorsement of the proposals as one means of updating the judges' survivors' program.¹⁰⁴ Nevertheless, the Judicial Conference approved S. 1511 at its October meeting,¹⁰⁵ two years after having expressed a preference for a simple increase in government contributions and reformation of their own program's benefits.¹⁰⁶ Within one month of that reversal in preference, Judge Robert A. Ainsworth, Jr., representing the Conference's Committee on Court Administration, appeared before the Tydings subcommittee to offer testimony regarding "the activities of the Judicial Conference" related to S. 1506.¹⁰⁷ Although Judge Ainsworth reported the Conference's recent "approval, in principle" of S. 1511 and Title III of S. 1506 in his prepared remarks,¹⁰⁸ he never mentioned the judicial survivors' annuity program during his actual testimony. In fact, the matter never was the subject of discussion in any of the remaining hearings held on S. 1506 and its associated bills. The issues of judicial disqualification, judicial removal, filing of financial reports, and so forth, effectively eclipsed any consideration of reforms in the judicial survivors' annuity program by the subcommittee, and there is evidence that the same understandable preoccupation with other matters was experienced by the Judicial Conference.¹⁰⁹

Thus, in the fourteen years since the creation of the program, it had taken the judges seven years to fully recognize its funding inadequacies¹¹⁰ and another six years to reluctantly agree that merging their program with the Civil Service Retirement program was the preferred solution to the problem.¹¹¹

Unfortunately, by the time the merger proposal was finally approved by the Judicial Conference, the financial cost of that solution had become prohibitive. Eleven days before the Conference approved S. 1511 the Ninety-First Congress had amended the Civil Service Retirement law to require that any extension of the Civil Service program's coverage to new groups of employees fully finance the unfunded liability of that coverage in thirty equal installment payments commencing in the fiscal year in which the extension of coverage

¹⁰² H.R. 10951, 91st Cong., 1st Sess. (1969).

¹⁰³ Hearings on S. 1506, S. 1507, S. 1508, S. 1509, S. 1510, S. 1511, S. 1512, S. 1513, S. 1514, S. 1515, and S. 1516 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 91st Cong., 1st Sess. (1969) (Hereinafter Senate Hearings, 1969).

¹⁰⁴ See Senate Hearings, 1969, at 5 and 174.

¹⁰⁵ See "Report of the Proceedings of the Judicial Conference of the United States, October 31—November 1, 1969," at 53.

¹⁰⁶ See notes 87 and 88, supra.

¹⁰⁷ Hearings on S. 1506, S. 1507, S. 1508, S. 1509, S. 1510, S. 1511, S. 1512, S. 1513, S. 1514, S. 1515, and S. 1516 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, 91st Cong., 1st and 2d Sess. (1969 and 1970) (Hereinafter Senate Hearings, 1970), at 5.

¹⁰⁸ Senate Hearings, 1970, at 8.

¹⁰⁹ See "Report of the Proceedings of the Judicial Conference of the United States, March 16-19, 1970," at 9, and "Report of the Proceedings of the Judicial Conference of the United States, October 29-30, 1970," at 76.

¹¹⁰ See notes 83-84, supra, and accompanying text.

¹¹¹ See notes 87-105, supra, and accompanying text.

was to begin.¹¹² On April 27, 1970 Mr. Edwin C. Husted, Chief Actuary in the Civil Service Commission's Bureau of Retirement, Insurance, and Occupational Health informed the Administrative Office that enactment of S. 1511 would, under 5 U.S.C. § 8348(f), require the immediate authorization of at least \$47,400,000, or \$1,580,000 per year for the next thirty fiscal years.¹¹³ Whether the general preoccupation with other proposed judicial reforms, or the overwhelming cost of the proposed merger required by 5 U.S.C. § 8348(f), was the principle reason for Congress' failure to enact S. 1511 in 1970 cannot be determined from available records; perhaps for both reasons, as well as others, the proposal died in Committee at the conclusion of the Ninety-first Congress.

S. 2854, 92D CONGRESS—1972

One feature of S. 1511, however, the inclusion of widows of Supreme Court Justices in the judicial survivors' annuity program,¹¹⁴ was resurrected very quickly in the next Congress. On April 1, 1971 Senator Hruska introduced S. 1479,¹¹⁵ a bill to increase the amount of a Supreme Court Justice's widow's annuity under 28 U.S.C. § 375 from \$5,000 to \$10,000.¹¹⁶ On the same date he also introduced S. 1480,¹¹⁷ a bill to amend 28 U.S.C. § 376 to enable Supreme Court Justices to elect membership in the judicial survivors' annuity program, in lieu of limiting their widows to coverage under 28 U.S.C. § 375.¹¹⁸ Both bills were referred to the Judiciary Committee's Subcommittee on Improvements in Judicial Machinery on April 26, 1971, and on June 25, 1971, the subcommittee forwarded to the main committee a proposed committee report recommending that S. 1479 be passed without amendment.¹¹⁹

At its October meeting, the Judicial Conference approved S. 1479, but refused to approve S. 1480, expressing a preference for full integration with the Civil Service Retirement system.¹²⁰ Exactly two

¹¹² Pub. L. 91-93, Title I, § 103(a), 83 Stat. 137 (1969) added the following new paragraph to 5 U.S.C. § 8348:

"(f) Any statute which authorizes—

"(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 8340 of this title;

"(2) extension of the coverage of this subchapter to new groups or employees; or

"(3) increases in pay on which benefits are computed; is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the Civil Service Retirement System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of coverage, or increase in pay is effective."

¹¹³ Letter from Edwin C. Husted to Edward V. Garabedian, Administrative Office of the U.S. Courts, April 27, 1970, on file in the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

¹¹⁴ See note 88, supra, and accompanying text.

¹¹⁵ S. 1479, 92d Cong., 1st Sess. (1971).

¹¹⁶ See notes 17-24 and 80, supra, and accompanying text.

¹¹⁷ S. 1480, 92d Cong., 1st Sess. (1971).

¹¹⁸ In the Ninety-First Congress S. 1511 and Title III of S. 1506 had, of course, provided for the integration of the Supreme Court Justices into the judicial survivors' annuity program. See note 88, supra, and accompanying text. In addition to those bills, however, the Ninety-First Congress had also seen the introduction of S. 4321, a bill with an identical purpose, and S. 4456, a bill to increase from \$5,000 to \$10,000 the annuities conferred under 28 U.S.C. § 375.

¹¹⁹ Letter from Senator Quentin N. Burdick, Chairman of the Subcommittee on Improvements in Judicial Machinery, to Senator James O. Eastland, Chairman of the Senate Committee on the Judiciary, June 25, 1971, on file in the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary. See also Staff of Senate Subcomm. on Improvements in Judicial Machinery, 92d Cong., 1st Sess., Report on S. 1479 (Comm. Print No. 2, 1971).

¹²⁰ See "Report of the Proceedings of Judicial Conference of the United States, October 28-29, 1971," at 77-78.

weeks later, however—before notice of the Conference's action had been published—Senators Burdick, Hurska, and Hart, in response to wishes expressed by a majority of the members of the Judiciary Committee during executive session consideration of S. 1479,¹²¹ introduced S. 2854, a bill designed to integrate the proposals previously embodied in both S. 1479 and S. 1480.¹²² Five days later, on November 17, 1971 the Administrative Office of the U.S. Courts notified the Judiciary Committee of the Judicial Conference's October decision and forwarded a copy of a draft bill modeled upon S. 1511 from the Ninety-First Congress.¹²³ In spite of that decision however, when a hearing was held on S. 2854 on February 2, 1972,¹²⁴ the Assistant Director of the Administrative Office testified that his office, the Judicial Conference, and all "members of the Supreme Court" supported the bill,¹²⁵ and on June 28, 1972, the Senate Judiciary Committee favorably reported the bill with technical amendments.¹²⁶

As reported S. 2854 authorized the election of membership in the judicial survivors' annuity program by Supreme Court Justices, provided for the gradual phasing out of the noncontributory annuities conferred upon Justices' widows under 28 U.S.C. § 375, and increased the noncontributory annuities, then being received by the six existing widows of former Justices, from \$5000 to \$10,000. Two days later, S. 2854 was passed by the Senate without debate.¹²⁷ A companion bill, H.R. 12101,¹²⁸ was passed by the House on August 7,¹²⁹ after rather lengthy debate, by a vote of 281 to 97. The opposition voiced against H.R. 12101 was not directed against the proposal to reform the annuity program, but rather against the program itself, especially the program's failure to in any way evaluate the needs of individual recipients of non-contributory annuities.¹³⁰ Immediately after the passage of

¹²¹ See a letter from Senator Quentin N. Burdick to Senator Sam J. Ervin, Jr., Feb. 22, 1972, on file in the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary.

¹²² In his introductory remarks, Senator Burdick described the objectives of S. 2854 as follows:

"The purpose of this bill is to bring Supreme Court Justices under the judicial survivors annuity plan and provide for their contribution to the benefits which would be payable to their widows and dependents. The bill would also phase out the noncontributory pension under section 375 of title 28 by providing that the noncontributory pension shall not apply to the widow of any justice who became a member of the court after enactment of this bill. Nor would the noncontributory pension apply to the widow of any existing justice who elected to enter the contributory plan. Thus, eventually, the noncontributory pension would be eliminated completely and Justices of the Supreme Court would be treated the same as all Federal employees, including the elected Members of Congress—all of whom are given the opportunity to contribute to the benefits which might be payable to their widows and dependents."—117 Cong. Rec. S. 18311 (daily ed., Nov. 12, 1971).

¹²³ Letter from William E. Foley, Deputy Director of the Administrative Office of the U.S. Courts, to William P. Westphal, Chief Counsel of the Senate Subcommittee on Improvements in Judicial Machinery, November 17, 1971, on file in the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary.

¹²⁴ Hearings on S. 2854 and S. 1480 Before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, 92d Cong., 2d Sess. (1972) (Hereinafter Senate Hearings, 1972).

¹²⁵ Senate Hearings, 1972, at 10. In fact, the Judicial Conference had not formally approved S. 2854 at the time of the Hearings. See note 120, supra. At the time of the Hearings only the Conference's Committee on Court Administration had approved the bill. See "Report of the Proceedings of the Conference of the United States, April 6-7, 1972," at 24.

¹²⁶ S. Rep. No. 92-929, 92d Cong., 2d Sess. (1972).

¹²⁷ 118 Cong. Rec. S. 10866-67 (daily ed., June 30, 1972).

¹²⁸ H.R. 12101, 92d Cong., 1st Sess. (1972). Congressman Celler had introduced H.R. 12101 on December 8, 1971. No hearings were held on the bill, and it was favorably reported by the House Judiciary Committee on June 19, 1972. H.R. Rep. No. 92-1148, 92d Cong., 2d Sess. (1972).

¹²⁹ See 118 Cong. Rec. H. 7227-32 (daily ed., Aug. 7, 1972).

¹³⁰ In the words of one opponent:

"These are not annuities; they are pensions. They are in fact gratuities . . . The \$5,000 . . . being paid each year to widows of Supreme Court Justices is an outright gift.

" . . . I do not know why Congress ever embarked upon the business of giving \$5,000 a year to the widows of Supreme Court Justices without the slightest evidence of need. Justices of the Supreme Court are paid \$60,000 a year and they can well afford to provide survivor benefits for their families."—118 Cong. Rec. H. 7229 (daily ed., Aug. 7, 1972). In the words of another opponent:

" . . . We are, in effect, going to take care of the dependents . . . of the judiciary who, while well paid, failed to plan for their needs. It is a bad practice for us to do this. . . . It seems to me we are going to find that other unfortunate civil servants [will] come in with demands that we take care of their beneficiaries who may not be as well situated as the members of the judiciary, and it may be that we have as great an obligation for them as we do for the judiciary. Based upon what I have learned here this afternoon [this] does not appear to be a good precedent to establish."—118 Cong. Rec. H. 7230 (daily ed., Aug. 7, 1972).

H.R. 12101, the House moved to consideration of S. 2845, amended that bill by striking all after the enacting clause and substituting the provisions of H.R. 12101, and then passed S. 2845 as amended.¹³¹ Two days later the Senate agreed to the House amendment,¹³² and on August 22nd, the President approved the Act.¹³³

COMMENTS

The pattern of activity between 1956 and 1972 emphasizes one aspect of the efforts to reform the judicial survivors' annuity program very clearly; there was a great deal of uncertainty concerning how the program ought to be reformed. The Judicial Conference, on several occasions, recommended limiting such reforms to simple revisions of their own program,¹³⁴ including at one point increasing the government's "matching amounts," rather than merging with the Civil Service Retirement program,¹³⁵ only to subsequently completely reverse those recommendations.¹³⁶ In Congress bills proposing both limited revisions¹³⁷ and full merger with the Civil Service System¹³⁸ were introduced. In spite of the frequency with which one approach or another was advocated, however, none of the proposals were ever accorded extensive enough consideration to finally resolve which approach would be more suitable. In fact, as the record above clearly indicates, the confusion generated by those alternative proposals progressively rendered the achievement of any resolution of the question more and more difficult. With the single exception of S. 2854 in the Ninety-second Congress,¹³⁹ not a single significant proposal for the reform of the judicial survivor's annuity program was ever reported from committee in either house of Congress in sixteen years.

III. THE DEVELOPMENT OF THE PENDING COMMITTEE RECOMMENDATIONS FOR REFORMING THE JUDICIAL SURVIVORS' ANNUITIES PROGRAM, 1973 TO PRESENT

S. 2014, 93D CONGRESS—1973

In spite of the confusion which had characterized all efforts to reform the judges' program between 1965 and 1972, the Judicial Conference, as one of its first actions at its meeting in April of 1973, "reaffirmed its support of a bill . . . , the effect of which [would be] to merge the Judicial Survivors' Annuity Fund with the Civil Service (Retirement) Fund."¹⁴⁰ In response to the Conference's action, Senator McClellan introduced S. 2014,¹⁴¹ a duplicate of Senator Tyding's earlier merger proposal,¹⁴² on June 18, 1973. One month later, although the Administrative Office informed the Judiciary Committee of the Judicial Con-

¹³¹ 118 Cong. Rec. H. 7232 (daily ed., Aug. 7, 1972).

¹³² 118 Cong. Rec. S. 13049 (daily ed., Aug. 9, 1972).

¹³³ Act of Aug. 22, 1972, Pub. L. No. 92-397, § 1, 86 Stat. 579, amending 28 U.S.C. § 375 and 28 U.S.C. § 376 (1968) (codified at 28 U.S.C.A. § 375 and 28 U.S.C.A. § 376 (Cumulative Annual Pocket Part, 1975)).

¹³⁴ See notes 82, 84 and 86, supra, and accompanying text.

¹³⁵ See notes 87 and 88, supra, and accompanying text.

¹³⁶ See note 105, supra, and accompanying text.

¹³⁷ See notes 91-93, supra, and accompanying text.

¹³⁸ See notes 89, 100 and 102, supra, and accompanying text.

¹³⁹ See notes 114-133, supra, and accompanying text.

¹⁴⁰ See "Report of the Proceedings of the Judicial Conference of the United States, April 5-6, 1973", at 5.

¹⁴¹ S. 2014, 93d Cong., 1st Sess. (1973).

¹⁴² Notes 100-109, supra, and accompanying text.

ference's approval, "in principle", of S. 2014, it also forwarded a draft of a substitute bill which it proposed in lieu of S. 2014 as introduced.¹⁴³

In September, Judge Oren Harris, representing the Judicial Conference, met with the chairman of the Subcommittee on Improvements in Judicial Machinery. At that meeting Senator Burdick, citing the record associated with the creation of the judges' program¹⁴⁴ and the confusion associated with subsequent reform efforts,¹⁴⁵ emphasized his belief that the subcommittee's processing of S. 2014 would have to be both deliberate and thorough. Judge Harris agreed and suggested that the Judicial Conference be fully involved with every aspect of the undertaking. Preparations for evaluation of S. 12 began immediately with a request for the Civil Service Commission's views on S. 2014, including its estimate of the cost to the government of enacting that bill.¹⁴⁶ Four weeks later, when the subcommittee was notified that a Sixth Actuarial Valuation of the Judicial Survivors' Annuity System¹⁴⁷ was scheduled for December, it was agreed that committee hearings on S. 2014 should await both that report and the Civil Service Commission's evaluation of the bill.¹⁴⁸

In February of 1974, the Civil Service Commission informed the committee that it had "no objection to the enactment of S. 2014,"¹⁴⁹ but that:

... enactment of the bill would increase the unfunded liability of the Civil Service Retirement System by \$34.2 million. Under the provisions of 5 U.S.C. 8348(f) this amount would be amortized by 30 equal annual installments of approximately \$2.1 million each [a total of \$63 million].¹⁵⁰

The Commission also noted that the judicial survivors' annuity fund was already inadequately funded and that, "Accordingly the existing contribution rate would probably prove insufficient to meet the long run costs of the judicial system."¹⁵¹ Upon receipt of those views Senator Burdick directed subcommittee staff to investigate the possibility of formulating an alternative method for providing essentially the same improvements in the judges' program at a lower cost to the government. In early March Judge Harris discussed the problems raised by the Civil Service Commission's evaluation with Senators Burdick and McClellan and agreed to seek the Judicial Conference's approval of the committee's efforts to develop an alternative reform measure. The Judicial Conference responded to Judge Harris' report by authorizing the adoption of "a flexible approach" for fashioning a

¹⁴³ See a letter from William E. Foley, Deputy Director of the Administrative Office of the U.S. Courts, to Senator James O. Eastland, Chairman of the Senate Judiciary Committee, July 11, 1973, and a letter from Rowland F. Kirks, Director of the Administrative Office of the U.S. Courts, to Senator James O. Eastland, Chairman of the Senate Judiciary Committee, July 19, 1973, forwarding the proposed substitute bill, on file in the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

¹⁴⁴ See Part I of this Background section of this report.

¹⁴⁵ See Part II of this Background section of this report.

¹⁴⁶ See a letter from Senator James O. Eastland, Chairman of the Senate Judiciary Committee, to Mr. Andrew E. Ruddle, Director, Bureau of Retirement, Insurance and Occupational Health, U.S. Civil Service Commission, September 11, 1973, on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

¹⁴⁷ See Hearings on S. 12 and Related Amendments Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 94th Cong., 1st Sess. 4 (1975) (Hereinafter Senate Hearings, 1975).

¹⁴⁸ See letters from Judge Oren Harris to Judge Myron H. Bright, November 6, 1973, and to Senator Quentin N. Burdick, December 4, 1973, on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Committee on the Judiciary.

¹⁴⁹ Letter from Robert Hampton, Chairman, U.S. Civil Service Comm'n, to Senator James O. Eastland, Chairman of the Senate Judiciary Committee, Feb. 12, 1974, on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

¹⁵⁰ Id.

¹⁵¹ Id.

reform proposal "to achieve the overall objectives" of previous Conference proposals.¹⁵²

Although the Social Security Administration was delayed in completing the Sixth Actuarial Valuation, it was able to notify the Committee in late June that the judges' program was still severely under-financed; it predicted that the valuation, when completed, would reveal that, if the fund were to be raised to the level necessary to keep the program in balance indefinitely, the government would have to immediately appropriate \$7.3 million to the fund.¹⁵³ On July 23rd when the valuation was delivered to the Committee, its findings were in accord with that prediction.¹⁵⁴ By then the subcommittee had already begun arrangements to have a study conducted by the Congress' Joint Economic Committee to determine the costs of alternative proposals for reforming the judges' program.

Given the nature of the Civil Service Commission's evaluation of S. 2014, the findings of the Sixth Actuarial Valuation, and the pending Joint Economic Committee studies, Judge Harris agreed with Senators Burdick and McClellan that a completely new proposal for reform, based upon the information acquired from all three of those sources, should be offered early in the Ninety-Fourth Congress.¹⁵⁵ At its September meeting the Judicial Conference concurred in Judge Harris' decision.¹⁵⁶

S. 12, 94TH CONGRESS—1975

Accordingly, Senator McClellan, on January 15, 1975, reintroduced S. 2014 as S. 12,¹⁵⁷ and on February 25th, the subcommittee forwarded a memorandum analyzing the problems faced by the judges' program and recommending changes to Judge Harris.¹⁵⁸ One week later Judge Harris forwarded a report concerning those recommendations to the Chief Justice and the Judicial Conference, and advised both of the committee's plans to hold hearings in July.¹⁵⁹ In preparation for those hearings the subcommittee staff prepared a draft of an amendment to S. 12, designed to reform the judges' program without merging it into the Civil Service Retirement System. That draft amendment was also designed to achieve as many of S. 12's objectives as possible, while also establishing, for the first time, a fiscally sound program. In late May and early June Judge Harris, the Administrative Office, and the Senate Legislative Counsel's Office reviewed the draft amendment and suggested revisions, and on June 16th, Senator McClellan

¹⁵² See "Report of the Proceedings of the Judicial Conference of the United States, March 7-8, 1974," at 36 and a letter from Judge Oren Harris to William P. Westphal, Chief Counsel, Subcommittee on Improvements in Judicial Machinery, March 12, 1974, on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, recommending the drafting of a substitute "clean bill".

¹⁵³ See a letter from M. Patricia Carroll, Chief, Operations Branch, Administrative Office of the U.S. Courts, to William P. Westphal, Chief Counsel, Subcommittee on Improvements in Judicial Machinery, July 1, 1974, on file with Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary. As alternatives to appropriating the \$7.3 million needed to establish "level-cost balance", the Social Security Administration proposed that either the judges' contribution rate be increased to 3.74 percent of payroll or the government's "matching amounts" be raised to 4.48 percent of payroll.

¹⁵⁴ For the full text of the Sixth Actuarial Report see Senate Hearings, 1975, at 4.

¹⁵⁵ See a letter from Judge Oren Harris to Chief Justice Warren E. Burger, Sep. 16, 1974, on file with the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary.

¹⁵⁶ See "Report of the Proceedings of the Judicial Conference of the United States, September 19-20, 1974," at 47-48.

¹⁵⁷ S. 12, 94th Cong., 1st Sess. (1975).

¹⁵⁸ See letter from William P. Westphal, Chief Counsel of the Subcommittee on Improvements in Judicial Machinery to Judge Oren Harris, Feb. 26, 1975, on file with the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary. For the complete text of the staff memorandum, see Senate Hearings, 1975, at 52.

¹⁵⁹ See a letter from Judge Oren Harris to Chief Justice Warren E. Burger, March 3, 1975, on file with the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary.

introduced the revised draft as Amendment No. 587 to S. 12.¹⁶⁰ That revised draft was then forwarded to both the Civil Service Commission and the Social Security Administration's actuaries for evaluation.¹⁶¹

On July 17, 1975 hearings were held on S. 12 and Amendment No. 587.¹⁶² Judge Harris, representing the Judicial Conference, explained that, although the entire Conference had not met since Amendment No. 587's introduction, the amendment had received the approval of the Eighth Circuit Judicial Council, the Judicial Conference's Committee on Court Administration, and the Executive Committee of the Judicial Conference, which "[u]nder the law, . . . represents the Judicial Conference when it is not in session."¹⁶³ Following the August recess, hearings on S. 12 were resumed on September 10, 1975. At that time proposed amendments to Amendment 587, offered by Senator Metcalf, were received,¹⁶⁴ and recommended revisions were presented by William E. Foley, the Deputy Director of the Administrative Office, and M. Patricia Carroll, the Chief of that Office's Retirement, Insurance, and Payroll Section.¹⁶⁵ One week later a Committee Print of S. 12, as revised in accordance with Amendment 587 and subsequent recommended changes, was made available to Judge Harris for presentation before the Judicial Conference at its September meeting, and on September 25, 1975, the Conference approved that revised proposal.¹⁶⁶

On December 16, 1975 that revised proposal and a "first draft" of this report were circulated to the members of this committee's Subcommittee on Improvements in Judicial Machinery for their approval. At the same time, in accordance with the Congressional Budget Act of 1974, copies of both documents were forwarded to the Congressional Budget Office for the purpose of securing a cost analysis of the bill.¹⁶⁷ Before a majority of the subcommittee members had expressed their views, the Congressional Budget Office notified subcommittee staff that, according to its cost analysis, (1) the proposed bill would fail to guarantee an actuarially sound program, and (2) the most reliable method of establishing that guarantee would be an increase in the contributions paid into the fund by both the judges and the govern-

¹⁶⁰ See 121 Cong. Rec. S. 10663 (daily ed., June 16, 1975). Senator McClellan's introductory remarks and the text of Amendment No. 587 are reproduced in Senate Hearings, 1975, at 25-50.

¹⁶¹ See letters from Senator Quentin N. Burdick to Mr. Thomas A. Tinsley, Director, Bureau of Retirement, Insurance and Occupational Health, U.S. Civil Service Comm'n and to Mr. Carter S. Warfield, Actuary, Social Security Administration, June 23, 1975, on file with the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary.

¹⁶² Note 147, supra.

¹⁶³ Senate Hearings, 1975, at 67-68.

¹⁶⁴ On July 30, 1975, Senator Metcalf had introduced Amendment No. 852 to Amendment No. 587 to S. 12. See 121 Cong. Rec. S. 14378 (daily ed., July 30, 1975). The full text of Senator Metcalf's introductory remarks and Amendment No. 852 are reproduced in Senate Hearings, 1975, at 78.

¹⁶⁵ Senate Hearings, 1975, at 84.

¹⁶⁶ See a letter from William E. Foley, Deputy Director of the Administrative Office of the U.S. Courts, to Senator Quentin N. Burdick, October 8, 1975, in the Communications section of this report, infra, and "Report of the Proceedings of the Judicial Conference of the United States, September 24-25, 1975," at 45.

¹⁶⁷ See Act of July 12, 1974, Pub. L. No. 93-344, Title IV, § 403, 88 Stat. 320, codified at 31 U.S.C. § 1353 (1974), which provides that:

§ 1353. Analysis by Congressional Budget Office

"The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

"(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis for each such estimate; and

"(2) a comparison of the estimate of costs described in paragraph (1) with any available estimate of costs made by such committee or by any Federal agency.

The estimate and comparison so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed."

ment.¹⁶⁸ In light of those findings Senator Burdick conferred with Judge Harris on March 2, 1976 and, as the Judicial Conference's representative, Judge Harris agreed that the necessary adjustments in contribution rates should be made.

¹⁶⁸ Several weeks later the Congressional Budget Office formally transmitted its findings. Those materials are included in the Communications section of this report, infra.

STATEMENT

I. THE EXISTING PROGRAM FOR PROVIDING ANNUITIES TO SURVIVORS OF
FEDERAL JUDGES AND JUSTICES*THE STRUCTURAL FEATURES OF THE PRESENT
PROGRAM*

Under 28 U.S.C. § 376 all male Article III judges, including Justices of the Supreme Court, may elect, within six months of their appointments to the bench, to join the existing judicial survivors' annuity program.¹⁶⁹ Male judges who are unmarried when they are appointed to the bench, and who marry later than six months after their appointment, may elect to join the program within six months of their marriage.¹⁷⁰

"Contributions" and "Deposits"

Commencing with his election to join the program, the Administrative Office of the U.S. Courts withholds 3 percent of a judge's annual salary and deposits that amount into the program's central fund,¹⁷¹ to the credit of that judge's individual account.¹⁷² Each year an amount, equal to that withheld from the judge's salary, is also deposited into the program's central fund from monies appropriated for the operation of the Administrative Office of the U.S. Courts.¹⁷³ The judge's "contributions" from salary, once commenced, can be terminated only by his death or resignation "otherwise than on salary under section 371(a) of [title 28]."¹⁷⁴ This, in effect, means that as long as he is drawing any salary for being a judge, he must continue to contribute 3 percent of that salary to the fund.¹⁷⁵

By virtue of these salary "contributions", the judge establishes the judicial service rendered for that salary as "creditable service" for purposes of computing his survivors' annuities.¹⁷⁶ Under 28 U.S.C. § 376 five full years of "creditable service" are a basic prerequisite

¹⁶⁹ 28 U.S.C. § 376(a) and § 376(b). Supreme Court justices were brought into the program in 1972. See notes 114-133, supra, and accompanying text. Judges of the U.S. Tax Court are today still covered by their own program. Directors of the Administrative Office of the U.S. Courts and of the Federal Judicial Center were brought into the program in 1967. See note 81, supra, and 28 U.S.C. § 376(r) and § 376(s).

¹⁷⁰ See note 81, supra.

¹⁷¹ 28 U.S.C. § 376(b).

¹⁷² 28 U.S.C. § 376(e).

¹⁷³ These "matching amounts" are not specifically authorized by language embodied in 28 U.S.C. § 376. The authority under which they are paid is contained in section 5 of the original act which created the program. See note 79, supra.

¹⁷⁴ 28 U.S.C. § 376(f).

¹⁷⁵ 28 U.S.C. § 371(a) provides that:

"(a) Any justice or judge of the United States appointed to hold office during good behavior who resigns after attaining the age of seventy years and after serving at least ten years continuously or otherwise shall, during the remainder of his lifetime, continue to receive the salary which he was receiving when he resigned."

Very few judges resign from office under 28 U.S.C. § 371(a) because, under 28 U.S.C. § 371(b), a judge "may retain his office but retire from regular active service" and "during the remainder of his lifetime, continue to receive the salary of the office." See note 35, supra. Understandably almost every judge chooses to retire under § 371(b) rather than resign under § 371(a). A very limited number of judges retire under 28 U.S.C. § 372, which governs retirements due to permanent disability. In each of those cases, however, whether a judge resigns under § 371(a) or retires under § 371(b) or § 372, he must, under 28 U.S.C. § 376, continue to contribute 3 percent of whatever salary he receives to the fund.

¹⁷⁶ 28 U.S.C. § 376(c). The manner in which "creditable service" effects the computation of annuities is explained at notes 196-199, infra, and accompanying text.

to establishing a survivor's right to an annuity.¹⁷⁷ Therefore, once a judge has made five years of "contributions", he has satisfied that prerequisite, and the only subsequent event which will invalidate that satisfaction is "absolute" resignation from the bench.¹⁷⁸ Should the judge actually so resign, all amounts which he has "contributed" to the fund will be refunded with interest, and all "matching amounts," deposited into the central fund by the Administrative Office will be retained by the fund.¹⁷⁹

In addition to qualifying his judicial service as "creditable service" for purposes of 28 U.S.C. § 376, by making "contributions" from his judicial salary, a judge may also qualify stipulated prior service to the government as "creditable", by electing to make a "deposit" to the fund to cover that prior service.¹⁸⁰ Service as a federal judge, U.S. Congressman, Delegate, Resident Commissioner, or federal "employee" eligible for membership in the Civil Service Retirement program may be deemed to be "prior service" for purposes of 28 U.S.C. § 376.¹⁸¹ In order to qualify that service as "creditable," a judge must deposit into the fund, with interest, a sum equal to 3 percent of the salary received for that service.¹⁸² These "deposits" are credited to the judge's individual account and may be returned to him upon "absolute resignation", along with the refund of "contributions" from his judicial salary.¹⁸³

One aspect of this process of establishing prior service as "creditable" service warrants special attention. Under 28 U.S.C. § 376, a judge who elects to make a "deposit" to qualify prior service as "creditable service" may also elect to make the "deposit" in installment payments "during the continuance of his judicial service in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts".¹⁸⁴ This "installment payment" mechanism can be of great value to a new judge who has at least five full years of prior service, because by wisely structuring his installment payments, he may be able to establish a survivor's right to an annuity under the program on the day he joins that program. If, for example, a new judge has previously served as a U.S. Attorney for eight years, he need only negotiate an installment payment schedule under which his *first* payment equals three percent of the salary he earned during his *last* five years as a U.S. Attorney and actually make that first payment on the day he joins the court.¹⁸⁵ By doing so he will immediately qualify those five years of "prior service" as years of "creditable service", thus immediately satisfying the minimum "creditable

¹⁷⁷ 28 U.S.C. § 376 (g) and § 376(o).

¹⁷⁸ See note 175, supra.

¹⁷⁹ If the judge resigns, his refund is paid directly to him. See 28 U.S.C. § 376(f). In the event that a judge dies without having rendered five full years of "creditable" service, or dies after having done so, but without a survivor or survivors entitled to receive an annuity, the amount he has paid into his individual account, with interest, is paid out under a statutory plan of descent and distribution. See 28 U.S.C. § 376(i). Any excess amounts left in the individual account following the deaths of all annuitants (or other terminations of annuities—i.e., by marriage, age, etc.) are also paid out under statutory plans of descent and distribution. See 28 U.S.C. § 376(j) and § 376(k).

¹⁸⁰ 28 U.S.C. § 376(c). Although the statutory language used in § 276(c) is "shall deposit", in fact a judge may simply ignore that requirement and nevertheless have his prior service deemed "creditable". If he does so, however, his widow's annuity will be reduced by an amount equal to 10 percent of the required deposit amount. See note 188, infra, and accompanying text.

¹⁸¹ See 28 U.S.C. § 376(c) and § 376(o). For the definition of "employee" which confers eligibility to join the Civil Service Retirement program, see 5 U.S.C. § 8331(l).

¹⁸² 28 U.S.C. § 376(c).

¹⁸³ See note 179, supra.

¹⁸⁴ 28 U.S.C. § 376(c).

¹⁸⁵ 28 U.S.C. § 376(g) specifically states that either the salary contributions required under § 376(b) or the deposits for prior service required under § 376(c) must "have actually been made for the *last* five years" before any annuities may be paid under the program. (Emphasis added)

service" prerequisite which entitles his survivor(s) to an annuity.¹⁸⁶ His one payment will have purchased the security of immediate coverage for his survivors, even if he were to die the next day. In addition to that very valuable feature, the "installment payment" mechanism offers one other advantage to a judge with prior service. Once he has arranged to make installment payments, he has guaranteed that all of his prior service will be "creditable service", even if he subsequently fails to make all of his payments.¹⁸⁷ Should he die before fully paying the "deposit" amount required, however, his widow's annuity "shall be reduced by an amount equal to 10 per centum of the amount of such deposit, . . . unless such widow shall elect to eliminate such service entirely from credit."¹⁸⁸ In the final analysis, the benefit of immediate survivor eligibility is certainly worth risking the possibility of a reduction, which, in most cases, would probably not be very great.

Eligibility Standards for Annuitants

Whether a judge qualifies his survivors for annuities by rendering five years of *judicial* service, for which salary "contributions" are made, or five years of *prior* service, for which "deposits" have been made, once that five-year minimum prerequisite has been satisfied, both his "widow" and any "dependent children" under age 18 will be eligible to receive an annuity under the program.¹⁸⁹ Both the terms "widow" and "dependent children" have been placed in quotation marks because they are given stipulated meanings under 28 U.S.C. § 376.¹⁹⁰ For purposes of the program, the surviving wife of a judge will only qualify as a "widow" if the date of her marriage to the judge preceded the date of his death by two full years or if she is "the mother of issue by such marriage".¹⁹¹ In addition, she will relinquish her status as a "widow", once established, if she remarries.¹⁹² For purposes of the program a surviving child of a judge will only qualify as a "dependent child" if he or she is unmarried and under 18 years of age or, if over age 18, unmarried and "incapable of self-support" due to "physical or mental disability".¹⁹³ By express provision in the statute, any questions concerning either dependency or disability which may arise in connection with eligibility for an annuity under the program are to be determined by the Director of the Administrative Office, and his determination is subject to review only by the Judicial Conference of the United States.¹⁹⁴ The statute also authorizes the Director to determine when guardians or other fiduciaries shall receive annuity amounts on behalf of dependent children or disabled widows.¹⁹⁵

Computation of a Widow's Annuity

The amounts of annuities conferred under the judges' program are determined by relatively simple procedures. A widow's annuity amount is computed using two factors, the "average annual salary" received by the judge during his last five years of "allowable service" and the total

¹⁸⁶ See note 177, supra.

¹⁸⁷ 28 U.S.C. § 376(c).

¹⁸⁸ Id.

¹⁸⁹ 28 U.S.C. § 376(g).

¹⁹⁰ 28 U.S.C. § 376(h).

¹⁹¹ 28 U.S.C. § 376(h)(1).

¹⁹² 28 U.S.C. § 376(h)(2) and § 376(g). See also note 179, supra.

¹⁹³ 28 U.S.C. § 376(h)(2) and § 376(g). It should be noted that stepchildren and adopted children are also eligible to become "dependent" as children who are actually the issue of the judge's marriages.

¹⁹⁴ 28 U.S.C. § 376(h).

¹⁹⁵ 28 U.S.C. § 376(i).

number of years of such "allowable service" which that judge has rendered. The term "allowable service" covers all "creditable service" (i.e. service which the judge has qualified as creditable by making either salary contributions or deposits¹⁹⁶) and up to five full years of honorable active-duty service as a member of the Armed Forces of the United States.¹⁹⁷ Therefore, a judge's total number of years of "allowable service" may include: (1) service as a federal judge; (2) service as a Senator, Representative, Delegate, or Resident Commissioner in Congress; (3) service as a federal "employee" eligible for membership in the Civil Service Retirement program; or (4) from one to five years of honorable active-duty service in the military.¹⁹⁸ Annual salaries received during the last five years of any such service are averaged to determine an "average annual salary" figure. The widow's annuity is then usually determined by multiplying 1.25 percent of that figure by the total number of years of such "allowable service".¹⁹⁹ Thus, if we assume a hypothetical U.S. Court of Appeals judge has died exactly ten years to the day after his appointment to that bench, having previously served as a U.S. Senator for two terms, a staff attorney on the Senate Judiciary Committee for two years, and an officer in the United States Navy on active duty for four years, his widow's annuity would be determined as follows (assuming the judge has made his required deposit for prior service²⁰⁰):

1. Until recently the judge's salary as a U.S. Court of Appeals judge was \$42,500.00.²⁰¹ Using that figure for convenience, his "average annual salary" during his last five years of "allowable service" would be \$42,500.00.²⁰²

2. His total number of years of "allowable service" would be:

Years of judicial service.....	10
Years of Senate service.....	12
Years of staff attorney service.....	2
Years of active-duty service in the Navy.....	4
Total.....	28

3. By multiplying 1.25 percent of his "average annual salary" by his total number of years of "allowable service", the judge's widow's annuity is determined to be:

$$(\$42,500.00 \times .0125) \times 28 = \$14,875.00$$

¹⁹⁶ See notes 171-188, supra, and accompanying text.

¹⁹⁷ 28 U.S.C. § 376(o). The practical effect of this distinction between "creditable service" and "allowable service" is that up to five of a judge's years of active-duty military service may be used in computing his survivors' annuities even though no "contributions" or "deposits" have been required to qualify those years as "creditable." It should be noted, however, that under 28 U.S.C. § 376(o) any years of military service which have been allowed as creditable for purposes of receiving "retirement or retired pay under any other provision of law" may not again be used as years of "allowable service" under 28 U.S.C. § 376. In other words, although the judge need not establish those years of military service as "creditable" with "contributions" or "deposits" into the central fund, he may only claim them as "allowable" if he has never before claimed them under any other federal retirement program.

¹⁹⁸ See 28 U.S.C. § 376(n) and § 376(o).

¹⁹⁹ Id.

²⁰⁰ See notes 180-188, supra, and accompanying text.

²⁰¹ Under the Act of Aug. 9, 1975, Pub. L. No. 94-82, Title II, § 205, 89 Stat. 422, the "Executive Salary Cost-of-Living Adjustment Act", all judicial salaries are now to be adjusted under the same formula used in 5 U.S.C. § 5305 to effect annual adjustments in rates of pay under the General Schedule for federal employees. This is the annual adjustment which occurs in federal salaries each October, in an effort to maintain general "comparability" with salaries in the private sector. See S. Rep. No. 94-333, 94th Cong., 1st Sess. 4-9 (1975). After passage of that legislation, judicial salaries were adjusted in October of 1975 by a 5 percent increase. Circuit court judges now earn \$44,600 and district court judges now earn \$42,000 a year. Salary figures prior to that increase are used here because they would most effect an annuity computed today and because all examples in the elaborate study reproduced in Senate Hearings, 1975, at 53-58 are based upon those older figures. See also note 213, infra.

²⁰² Id.

In one instance the computation method applied above would have to be altered. That instance arises when a judge's years of "allowable service" as an "employee" exceed fifteen. Under 28 U.S.C. § 376 only the first fifteen years of "employee" service may be multiplied by the 1.25 percent of average annual salary factor used above.²⁰⁸ All years of "employee" service in excess of fifteen are not, however, lost; they are instead multiplied by 0.75 percent of the "average annual salary", and the amount derived by that computation is added to the amount derived by using the 1.25 percent factor. Thus, if another U.S. Court of Appeals judge were to also die with exactly ten years of judicial service, but with no prior "allowable service" other than twenty years as a staff attorney for the Senate Judiciary Committee, his widow's annuity would be determined as follows (assuming the judge has made his required deposit for prior service²⁰⁴):

1. Just as in the earlier example, the "average annual salary" figure of \$42,500.00 will be used for convenience.²⁰⁵

2. This judge's total number of years of "allowable service", however, will have to be divided into two categories: that which is to be multiplied by 1.25 percent and the "employee" service beyond 15 years, which is to be multiplied by 0.75 percent:

Years of judicial service.....	10
Years not exceeding 15 as a staff attorney.....	15
Total.....	25
Years exceeding 15 as a staff attorney.....	5

3. By multiplying 1.25 percent of his "average annual salary" by the appropriate twenty-five years of "allowable service" and by multiplying 0.75 percent of that same figure by the appropriate five years of "employee" "allowable service", this judge's widow's annuity is determined to be:

(\$42,500.00 × .0125) × 25.....	\$13, 281. 25
Plus (\$42,500.00 × .0075) × 5.....	\$1, 593. 75

or..... \$14, 875. 00

In both of the cases used above, the assumption has been made that the judges have paid their deposits for prior service in order to qualify their years of prior service as "creditable".²⁰⁶ If they had failed to do so, of course, the annuity amounts shown above would have to be reduced by an amount equal to ten percent of the amount of such deposit.²⁰⁷

One remaining aspect of the program's conferral of a widow's annuity deserves attention. Under the statute, the widow of a judge who dies *without* a "dependent child" may not receive her annuity until she reaches fifty years of age.²⁰⁸ Thus, if the judge's children are all over age 18, but if his widow is only forty-four years of age on the day he dies, she must wait six years before she begins to receive the annuity which her husband purchased for her.

²⁰⁸ 28 U.S.C. § 376(n).

²⁰⁴ See notes 180-188, *supra*, and accompanying text.

²⁰⁵ See note 201, *supra*.

²⁰⁶ See notes 180-188, *supra*, and accompanying text.

²⁰⁷ See note 188, *supra*.

²⁰⁸ 28 U.S.C. § 376(q).

Children's Annuities

Annuities available to "dependent children"²⁰⁹ under the judges' program today are, in some instances, determined by reference to the widows' annuities discussed above, and, in other instances, mandated by the statute.²¹⁰ If a judge is survived by both a widow and dependent children, the statute provides that the widow's annuity payments shall commence immediately and that each child shall receive an immediate annuity equal to the lesser of: (1) one-half the amount of the widow's annuity, divided by the number of children; (2) \$900.00, divided by the number of children; or (3) \$360.00.²¹¹ In essence, the annuity which a "dependent child" will receive as long as the judge's widow is also receiving an annuity will never exceed \$360.00. If the judge is survived only by dependent children, the statute provides that each child shall receive an annuity no greater than \$480.00.²¹²

THE FINANCIAL CONDITION OF THE PRESENT PROGRAM

The following table graphically displays (1) the increase in the actual number of participating judges in the program, (2) the gradual increase in the number of annuitants, and (3) the increase in the average annuity amounts since the program was created in 1956:

TABLE A.—JUDICIAL SURVIVORS ANNUITY PROGRAM—COMPARATIVE STATEMENT OF JUDICIAL PARTICIPATION AND THE NUMBER OF SURVIVOR ANNUITANTS AS OF JUNE 30, FISCAL YEARS 1957-75¹

Fiscal year	Judicial participation			Survivor annuitants	
	Judges on the roll	Judges participating	Percentage	Annuitants	Average annuity
1957.....	386	334	86	116	\$2, 189
1958.....	387	339	88	130	2, 482
1959.....	384	338	88	130	2, 558
1960.....	394	350	89	129	2, 628
1961.....	391	350	89	131	2, 685
1962.....	459	409	89	139	2, 860
1963.....	463	419	90	139	2, 946
1964.....	459	414	90	150	3, 124
1965.....	465	423	91	152	3, 296
1966.....	486	442	91	154	3, 403
1967.....	527	479	91	154	3, 668
1968.....	539	488	91	148	3, 921
1969.....	552	503	91	148	4, 077
1970.....	554	506	91	155	4, 477
1971.....	605	543	90	157	4, 976
1972.....	652	586	90	163	5, 465
1973.....	669	612	91	163	5, 888
1974.....	674	611	91	167	5, 935
1975.....	673	614	91	172	6, 433

¹ These figures have been taken from the Annual Report of the Director of the Administrative Office of the U.S. Courts, 1965, at 129, and from the Annual Report of the Director of the Administrative Office of the U.S. Courts, 1975 (unbound galley page edition), at VI-13, table 4.

Since June 30, 1957, the actual number of participating judges has increased by 84 percent, the number of annuitants has increased by

²⁰⁹ See note 193, *supra*, and accompanying text.

²¹⁰ See generally 28 U.S.C. § 376(g).

²¹¹ 28 U.S.C. § 376(g)(2).

²¹² 28 U.S.C. § 376(g)(3).

48 percent, and the average annuity has increased by 194 percent. That increase in average annuity amounts is a result of the more recent annuities being computed upon the basis of higher total numbers of years of "allowable service" and higher "average annual salaries" during the last five years in office.²¹³

The tables on pages 37 and 38 graphically summarize the financial experiences of the fund in the past nineteen years.

²¹³ From February of 1903 until October of 1975, when judicial salaries were increased in accordance with the "Executive Salary Cost-of-Living Adjustment Act," note 201, supra, federal court judges earned the following salaries:

Date	District judges	Circuit judges
February 1903 to February 1919.....	\$6,000	\$7,000
March 1919 to December 1926.....	7,500	8,500
January 1927 to July 1946.....	10,000	12,000
August 1946 to February 1955.....	15,000	17,500
March 1955 to June 1964.....	22,500	25,500
July 1964 to February 1969.....	30,000	33,000
March 1969 to October 1975.....	40,000	42,500

TABLE B.—COMPARATIVE STATEMENT OF RECEIPTS, DISBURSEMENTS, AND BALANCES IN THE JUDICIAL SURVIVORS' ANNUITY FUND, FISCAL YEARS 1957-75¹

Item	Fiscal year—										
	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	
Balance July 1:											
Investments (face amount).....		\$760,000	\$1,000,000	\$1,103,500	\$1,346,000	\$1,556,000	\$1,771,500	\$2,012,500	\$2,237,500		
Undisbursed balance.....		48,934	37,362	88,218	34,516	28,569	34,401	35,602	41,487		
Balance July 1.....		808,934	1,037,362	1,191,718	1,380,516	1,584,569	1,805,901	2,048,102	2,278,987		
Receipts:											
Salary deductions.....	\$131,440	229,922	221,806	241,003	243,867	260,029	290,242	315,698	380,530		
Agency contributions.....		210,005	221,806	241,003	243,867	260,029	290,242	315,698	380,530		
Service credit payments.....	876,313	45,980	11,283	21,357	14,825	33,511	14,676	13,618	29,311		
Interest on investments.....		27,033	31,208	38,308	48,604	59,871	62,942	76,762	89,302		
Discounts on investments (net).....	9,684	6,552	4,302	4,948	17,484	1,622	11,130	3,359	(-)		
Repayments of accrued interest purchased.....			481		1,584	810		5,608	6,104		
Total receipts.....	1,017,437	519,492	490,886	546,619	570,231	615,872	669,232	730,743	884,572		
Disbursements:											
Payments to annuitants.....	204,885	286,820	327,226	334,577	349,458	374,164	406,016	445,130	481,119		
Death claims.....	1,653	2,792	2,410	10,078	15,005	11,723	18,215	51,005	3,665		
Returns.....	1,775	1,161	6,894	12,891		7,305		1,365	564		
Accrued interest purchased.....	1,190	291		2,275	1,715	1,348	2,800	2,359	6,845		
Total disbursements.....	208,503	291,064	336,530	357,821	366,178	394,540	427,031	499,858	492,193		
Balance June 30:											
Investments (face amount).....	760,000	1,000,000	1,103,500	1,346,000	1,556,000	1,771,500	2,012,500	2,237,500	2,667,500		
Undisbursed balance.....	48,934	37,362	88,218	34,516	28,569	34,401	35,602	41,487	3,866		
Balance June 30.....	808,934	1,037,362	1,191,718	1,380,516	1,584,569	1,805,901	2,048,102	2,278,987	2,671,366		

¹ These figures have been taken from the "Annual Report of the Director of the Administrative Office of the U.S. Courts, 1965," at 130, from the "Annual Report of the Director of the Administrative Office of the U.S. Courts, 1974," at 132, table 5, and from the "Annual Report of the Director of the Administrative Office of the U.S. Courts, 1975" (unbound galley-page edition), at VI-14, table 5.

TABLE B.—COMPARATIVE STATEMENT OF RECEIPTS, DISBURSEMENTS, AND BALANCES IN THE JUDICIAL SURVIVORS' ANNUITY FUND, FISCAL YEARS 1957-75.—Continued

Item	Fiscal year—									
	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Balance July 1:										
Investments (face amount).....	\$2,667,500	\$3,111,500	\$3,583,000	\$4,132,000	\$4,725,000	\$5,510,500	\$6,339,000	\$7,234,000	\$8,148,000	\$9,055,000
Undisbursed balance.....	3,866	743	1,860	3,708	1,994	8,502	11,716	8,625	219	1,642
Balance July 1.....	2,671,366	3,112,243	3,584,860	4,135,708	4,726,994	5,501,998	6,350,716	7,242,625	8,148,219	9,056,642
Receipts:										
Salary deductions.....	398,214	424,908	451,072	502,478	620,109	643,946	706,627	743,128	751,627	813,050
Agency contributions.....	398,214	424,908	451,072	502,478	620,109	643,946	706,627	743,128	751,627	813,050
Service credit payments.....	30,856	33,981	18,484	63,964	24,396	23,059	34,798	102,913	17,252	25,139
Interest on investments.....	107,508	128,628	142,638	171,030	206,852	242,183	301,764	359,867	436,548	533,814
Discounts on investments (net).....	35,665	36,271	80,034	16,215	106,766	91,938	-17,547	6,813	-26,379	-5,133
Repayments of accrued interest.....	1,525	1,137	6,869	8,385	6,290	10,213	9,597	9,125	17,528	2,239,920
Total receipts.....	971,982	1,049,933	1,150,169	1,264,540	1,584,522	1,655,285	1,741,866	1,964,974	1,948,243	2,239,920
Disbursements:										
Payments to annuitants.....	514,163	548,676	575,920	609,096	726,557	765,424	841,847	933,223	975,393	1,094,517
Death claims.....	8,098	24,157	12,712	36,341	52,079	31,388	2,625	115,033	21,040	127,002
Returns.....	7,800	4,384	5,784	17,449	25,543	9,755	5,485	11,125	28,786	56,534
Accrued interest purchased.....	1,044	4,384	4,904	10,367	5,338	9,755	5,485	11,125	1,601	30,790
Total disbursements.....	531,105	577,217	599,320	673,253	809,517	806,567	849,957	1,059,381	1,039,820	1,291,943
Balance June 30:										
Investments (face amount).....	3,111,500	3,583,000	4,132,000	4,725,000	5,510,500	6,339,000	7,234,000	8,148,000	9,055,000	9,990,000
Undisbursed balance.....	743	1,860	3,708	1,995	8,501	11,716	8,625	219	1,642	14,618
Balance June 30.....	3,112,243	3,584,860	4,135,708	4,726,995	5,501,999	6,350,716	7,242,625	8,148,219	9,056,642	10,004,618

1 These figures have been taken from the "Annual Report of the Director of the Administrative Office of the U.S. Courts, 1965," at 130, from the "Annual Report of the Director of the Administrative Office of the U.S. Courts, 1974," at 132, table 3, and from the "Annual Report of the Director of the Administrative Office of the U.S. Courts, 1975" (unbound galley-page edition), at VI-14, table 5.

2 Offset by undeposited withholdings and agency contributions for June 1970, paid on July 1, 1970.

3 May not add due to rounding.

When examining only the correlation of "total receipts" to "total disbursements" in Table "B", there would seem to be a reasonably reassuring pattern of steady growth in the program with "receipts" regularly exceeding "disbursements". Yet, comparing Table "B" to the following two tables, taken from the Sixth Actuarial Report,²¹⁴ rather rapidly dispels that reassurance.

TABLE VIII.—PROGRESS OF THE JUDICIAL SURVIVORS ANNUITY FUND, PAST EXPERIENCE

Fiscal year ¹	[In thousands]				
	Total contribution receipts	Total expenditures	Net income	Investment earnings	Fund at end of period
1957.....	\$1,008	\$208	\$799	\$9	\$809
1958.....	486	291	195	33	1,037
1959.....	455	337	118	36	1,192
1960.....	503	358	146	43	1,381
1961.....	503	364	138	66	1,585
1962.....	554	393	160	71	1,806
1963.....	595	424	171	83	2,048
1964.....	645	498	148	87	2,279
1965.....	790	485	305	144	2,671
1966.....	827	530	298	162	3,112
1967.....	884	573	311	162	3,585
1968.....	920	596	326	225	4,136
1969.....	1,068	663	406	185	4,727
1970.....	1,264	805	460	315	5,502
1971.....	1,311	796	514	335	6,351
1972.....	1,448	845	603	289	7,243
1973.....	1,617	1,048	569	336	7,148

¹ Fiscal year runs from July 1 of preceding year to June 30 of the year indicated.

TABLE VIIIa.—PROGRESS OF THE JUDICIAL SURVIVORS ANNUITY FUND ESTIMATED FUTURE EXPERIENCE UNDER PRESENT FINANCING PROCEDURES

Calendar year	[In thousands]				
	Total contribution receipts	Total expenditures	Net income	Investment earnings	Fund at end of period
1974.....	\$1,488	\$968	\$520	\$466	\$9,583
1975.....	1,490	1,075	415	516	10,514
1976.....	1,493	1,182	311	562	11,387
1977.....	1,495	1,290	206	605	12,198
1978.....	1,498	1,398	100	646	12,944
1979.....	1,500	1,508	-8	682	13,620
1980.....	1,502	1,618	-114	715	14,221
1985.....	1,516	2,170	-653	817	15,957
1990.....	1,532	2,681	-1,148	797	15,248
1995.....	1,551	3,084	-1,533	641	11,873
2000.....	1,571	3,340	-1,770	347	5,817
2005.....	1,591	3,481	-1,890	()	()
2010.....	1,608	3,529	-1,921	()	()
2015.....	1,621	2,479	-1,858	()	()
2020.....	1,629	3,733	-1,744	()	()
Ultimate.....	1,635	3,357	-1,722	()	()

¹ Fund exhausted in 2004.

Although there is a slight discrepancy between the "total receipts" and "total expenditures" figures in Tables "B" and VIII, due to differences between accounting techniques used by the Administrative Office and the Social Security Actuaries,²¹⁵ there is a close correlation.

²¹⁴ See *Senate Hearings, 1975*, at 15.
²¹⁵ Compare the "Receipts" and "Disbursements" accounts method used in Table "B" to the method used to evaluate both of those items in Table VII in the Sixth Actuarial Report, reproduced in *Senate Hearings, 1975*, at 14. The Sixth Actuarial Report table does not reflect "Discounts on investments", "Repayments of accrued interest", or "Accrued interest purchased".

tion between the June 30 "fund balance" figures. That correlation becomes especially disturbing when those figures for fiscal years 1974 and 1975 in Table "B", which reports actual fund experience, are compared to their counterparts in Table VIIIa, which report the actuaries' estimates of future fund experiences as of the latest valuation date, December 31, 1973. The fund's actual balance in the last two years has fallen below the actuarial estimations by approximately \$500,000. If that actual trend continues, the estimated exhaustion of the fund may well occur before the actuarially estimated date of 2004, noted in Table VIIIa.

Whether the estimated date of default is or is not that accurate, however, is immaterial in the judgment of this committee. The fundamental fact which must be accepted is that the program will eventually go bankrupt if corrective action is not instituted in the very near future. Given that unavoidable reality, it is the judgment of this committee that every proposal for liberalized eligibility standards and increased annuity amounts must be carefully evaluated in light of the program's financial condition.

II. RECOMMENDED REFORMS IN THE EXISTING JUDICIAL SURVIVORS' ANNUITY PROGRAM

As documented in the Background section of this report, in the nineteen years which have passed since the creation of the program described above, almost every attempt to improve that program failed, apparently because concerned Members of Congress and the Judicial Conference were seldom, if ever, enthusiastic about the same proposal at the same time.²¹⁶ Throughout those years that lack of consensus was usually the result of conflicting answers to one central question: should the program be reformed by (a) merging it into the Civil Service Retirement program, or (b) extensively restructuring and improving it, without destroying its unique—and, given its membership, perhaps more appropriate—independence? When Senator McClellan first introduced his original proposal two years ago, this committee initiated a serious attempt to not only answer that question, but to work closely with the Judicial Conference in order to insure that that body would find the final answer agreeable. As noted in Part III of the Background section of this report, the committee has successfully formulated an answer and the Judicial Conference has endorsed that answer.²¹⁷ The consensus we have reached is that the extensive revision and improvement of the existing program embodied in S. 12, as amended, is a wiser, far less extravagant, and more appropriate solution to the program's present problems than merging that program into the Civil Service Retirement plan.

Throughout the studies which led to that conclusion this committee has been fully cognizant of the widespread belief that the Eighty-fourth Congress expressed a clear intent to create a judicial survivors' annuities program which would be "fully comparable" to the Civil Service System's program for survivors of Members of Congress. This committee's search of the legislative history, however, as documented

²¹⁶ See notes 89-111 and 134-139, supra, and accompanying text.

²¹⁷ See Part III of the Background section of this report, especially notes 163-166, supra. See also the Communications section of this report, infra.

in Part I of the Background section of this report, strongly suggests that such an intention may have been far more apparent than real.²¹⁸ Still, that same search certainly revealed that the Eighty-fourth Congress did intend a program which would be substantially similar to the Member's program.²¹⁹ Although that distinction may appear to be a fine one, we nevertheless believe it to be an important one. The burdens borne by our judges are certainly great, just as are the burdens borne by Members of Congress. The Constitution, however, distinguishes judicial positions from legislative positions in significant ways. A careful review of this program's legislative history reveals that those distinctions have been relevant in the past²²⁰ and we believe they are still relevant to our effort to structure this reform legislation. The rest of this part of this report will explain our recommendations for improving the judge's program in that context. In many areas the committee is recommending that the judicial program be brought into complete conformity with the Civil Service Retirement program available to Members of Congress. In only a few areas is it not recommending full comparability, and in those instances we believe that realistic differences between the offices of "Judge" and "Member of Congress" are as relevant as are the differences between the size and growth potential of the two programs.

For purposes of convenience, the following presentation of our recommendations has been arranged in three groupings: those which adjust standards of eligibility for annuities; those which increase current annuity amounts; and those which are designed to establish the fiscal stability of the judge's program for the first time since its creation.

RECOMMENDATIONS FOR IMPROVING ELIGIBILITY STANDARDS

Extending Annuities for Dependent Children Who Are Full-Time Students

A dependent child's annuity under the existing judges' program is statutorily terminated when that child becomes 18 years of age unless he or she is "incapable of self-support" due to "physical or mental disability".²²¹ In the case of the dependent child who is pursuing, or wishes to soon commence, his or her higher education, that termination of an annuity might well result in the abdication of that objective. The Civil Service Retirement System has recognized that reality by permitting dependent children, who are full-time students, to continue to receive annuity payments until the first day of July immediately following their twenty-second birthdays, or until the last day of the month during which they cease to be full-time students after becoming eighteen years of age, whichever occurs first.²²² The committee believes that provision of the same extended coverage to dependent children who are full-time students receiving annuities under the judges' program is essential, and recommends the approval of the necessary

²¹⁸ See generally Part I of the Background section of this report. See especially the Comments at the end of Part I.

²¹⁹ Id.

²²⁰ Id.

²²¹ See note 193, supra, and accompanying text.

²²² 5 U.S.C. § 8341(a)(3).

language contained in S. 12, as amended.²²³ Merger with the Civil Service Retirement program would provide exactly the same coverage.

Permitting Widowers as Well as Widows to Receive Annuities

Under the existing judges' program only surviving wives of participating judges are eligible for annuities; surviving husbands are statutorily precluded from the program's coverage.²²⁴ Although the program's failure to provide for annuities to widowers may have been inconsequential when there were no female judges on the bench, that circumstance no longer prevails. In past years, however, as a result of this anomaly in the program, female judges quite logically have never elected to join it.²²⁵ Quite obviously this indirect *de jure* discrimination is inappropriate and unreasonable. Widowers are fully eligible for the same annuities widows receive under the Civil Service Retirement program.²²⁶ The committee recommends approval of the language contained in S. 12, as amended, which would establish equality of eligibility for widowers and widows in the judges' program.²²⁷ Merger with the Civil Service Retirement program would accomplish the same objective.

Reducing the Period of Marriage Required for Eligibility From 2 Years to 1 Year

Under the Civil Service Retirement program today a Member's spouse qualifies for an annuity exactly one year after the date of marriage to the Member.²²⁸ Under the judges' program, the eligibility period is two years.²²⁹ The committee recommends the adoption of a one-year period for the judges' program as well.²³⁰

Permitting Widows and Widowers to Receive an Immediate Annuity Regardless of Age or the Existence of Dependent Children

At present the Civil Service Retirement program's surviving spouses' annuities commence on the day after their husbands or wives die.²³¹ A judge's widow who is not yet fifty years of age will receive her annuity only if the judge is also survived by at least one dependent child.²³² Presumably this age factor was included in the original legislation in the belief that a young widow without children would immediately seek employment, while a young widow with children would be unable to do so.²³³ The committee believes that, whatever purpose may have been served by delaying the commencement of annuity payments until age 50, that purpose is no longer significant. On its face this limitation would appear to frustrate the program's fundamental objectives in the very small number of cases in which a federal judge's widow is less than 50 years of age on the date of her husband's death.²³⁴ The committee, therefore, has eliminated the limitation in the revised statutory language contained in S. 12, as amended.

²²³ See subsections (a)(5)(B) and (h)(3)(B) of the recommended revised section 376 of title 28 contained in Section 2 of S. 12, as amended (Hereinafter referred to as "revised section 376"), presented in the Amendments section of this report, *supra*.

²²⁴ See notes 169-170, *supra*, and accompanying text.

²²⁵ Today there are seven female judges. Not one of them is a member of the judicial survivors' annuity program. See Senate Hearings, 1975, at 62.

²²⁶ 5 U.S.C. § 8341(a).

²²⁷ See subsections (a)(4), (h), (l), and (o) of revised section 376, note 223, *supra*.

²²⁸ 5 U.S.C. § 8341(a).

²²⁹ See note 191, *supra*.

²³⁰ See subsections (a)(3) and (a)(4) of revised section 376, note 223, *supra*.

²³¹ 5 U.S.C. § 8341(c).

²³² See note 208, *supra*, and accompanying text.

²³³ The legislative history of H. R. 11124, note 50, *supra*, contains no discussion of this item.

²³⁴ Today there are only two such widows. See Senate Hearings, 1975, at 62.

Reducing the Required Contribution Period From 5 Years to 18 Months

As explained above, a member of the existing judges' program who has no prior "creditable service" must qualify five full years of his judicial service as "creditable", by contributing three percent of his judicial salary, before his survivors will be eligible for an annuity under the program.²³⁵ The average age of our federal judges at the time of their appointments to the bench has been determined to be 52,²³⁶ and the most recent mortality studies conducted by the Social Security Administration's actuaries indicate that approximately 5 percent of our federal judges might die before reaching 57.²³⁷ Although those statistics might lead to the tentative conclusion that 34 of the 673 judges participating in the program as of 1975 might die before establishing as "creditable" the five full years of service required, in fact there have only been twelve instances in the history of the judges' program in which judges have died before "contributing" from their judicial salaries for five full years.²³⁸

Under the Civil Service Retirement program Members of Congress and employees need only make salary contributions for a period of eighteen months before they have qualified their survivors for annuities.²³⁹ In the twelve instances of judges dying before contributing for five years, noted above, nine of those twelve would have established their survivors' eligibility had an eighteen-month period, rather than a five-year period, of required contributions been in effect.²⁴⁰ Obviously, in those very few cases in which a judge does die at a relatively early age, an eighteen-month required contribution period would be of great value to his survivors. In addition, given the very small number of such premature judicial deaths, the probabilities of such instances being a danger to the program's overall fiscal stability would appear to be very slight. At the committee's request the Administrative Office of the U.S. Courts specifically asked the Social Security Actuaries who prepared the latest actuarial study of the judges' program,²⁴¹ to assess the additional cost to the program of changing the five-year required contribution period for eligibility to an eighteen-month period. The actuaries concluded that the cost would be "negligible"²⁴²

Given that finding the committee recommends the adoption of an eighteen-month period in lieu of a five-year period and has provided for that improvement in S. 12, as amended.²⁴³ Merger with the Civil Service Retirement program would accomplish the same objective.

Reforming the Procedures Governing Deposits for Prior Service

As explained above, judges who have rendered certain service prior to their judicial appointments may, under the existing program, qualify that prior service as "creditable" by electing to make a "deposit" to the program's central fund,²⁴⁴ and one very desirable aspect of that arrangement is the "installment payment" mechanism which enables judges with at least five full years of prior service to establish their survivors' rights to annuities on the day they are appointed to

²³⁵ See notes 171-178, *supra*, and accompanying text.

²³⁶ See Senate Hearings, 1975, at 7.

²³⁷ See Senate Hearings, 1975, at 7 and 12.

²³⁸ See Senate Hearings, 1975, at 62.

²³⁹ 5 U.S.C. § 1841(d) and § 1841(e)(1).

²⁴⁰ See Senate Hearings, 1975, at 62.

²⁴¹ See Senate Hearings, 1975, at 4.

²⁴² See the Estimated Costs and Communications sections of this report, *infra*.

²⁴³ See subsection (h) of revised section 376, note 223, *supra*.

²⁴⁴ See notes 180-182, *supra*, and accompanying text.

the bench.²⁴⁵ Under the Civil Service Retirement program Members have available a very similar arrangement; in their case, however, they need only make an installment payment to cover their last eighteen months of prior service to immediately established their survivor's rights to annuities.²⁴⁶ In studying the proposal to reduce the judges' minimum required "contribution" period to eighteen months,²⁴⁷ the committee also reviewed the merits of reducing the minimum required "deposit" period to eighteen months. Because the judges' program is so much smaller than the Civil Service Retirement program,²⁴⁸ the committee was especially concerned that only an eighteen-month minimum required deposit period, when coupled with the installment-payment mechanism and the very slight ten-percent-reduction penalty for failure to pay the full "deposit",²⁴⁹ might prove to be financially detrimental to the fund.²⁵⁰ If enough judges with a substantial number of years of prior service were to pay only the first installment payment required to qualify their survivors for immediate coverage, and then lapse in all subsequent payments, the income into the fund from such "deposits" might fall far short of the amount needed to support expenditures for annuities based upon the service qualified as "creditable" by that first eighteen-month installment. On the other hand, reducing the minimum required deposit period would obviously be of great benefit to incoming judges. In addition, retaining a five-year minimum required deposit period, while reducing the minimum required contribution period to eighteen months, might well coerce many new judges into waiving their opportunity to qualify their survivors immediately and "gambling" that they would live for the eighteen months. After extensive negotiation with the Administrative Office, the committee decided to recommend an eighteen-month minimum deposit period. The language contained in the committee's recommendation,²⁵¹ however, has been carefully drawn to discourage judges from overlooking the necessity of regularly making required installment payments. Under the committee's recommendation every judge who elects to make installment payments must make a *first* installment payment in an amount "no smaller than that amount necessary to cover at least the last eighteen months of prior creditable civilian service" and he must also make "at least one additional installment payment. . . every eighteen months thereafter until the total of all such deposits have been made".²⁵² The Director of the Administrative Office is authorized to determine what amount is necessary for the first installment payment and is free to arrange the amounts of subsequent installment payments. Thus, only the amount of the first installment payment, the one which qualifies survivors for immediate protection, is not subject to negotiation; subsequent installment payments may be set in accordance with each judge's individual budget. The committee believes that this arrangement provides the Director with the discretion he should have to balance the individual needs of each judge with the best interests of the Judicial Survivors' Annuities Program. In

²⁴⁵ See notes 184-188, supra, and accompanying text.

²⁴⁶ 5 U.S.C. § 1834(d).

²⁴⁷ See notes 235-243, supra, and accompanying text.

²⁴⁸ See notes 32-41, supra, and accompanying text. When the committee inquired, the Civil Service Commission estimated that there are today 1,325,000 retirees and annuitants receiving checks every month.

²⁴⁹ See note 188, supra, and accompanying text.

²⁵⁰ See Senate Hearings, 1975, at 73-74 and 91-93.

²⁵¹ See subsection (d) of revised section 376, note 223, supra.

²⁵² Id.

any case in which a judge fails to make his subsequent installment payments, he suffers no greater penalty than he would under the existing program;²⁵³ yet the committee believes this revised installment-payment procedure provides an improved protection against failures to make such payments through mere oversight. Merger with the Civil Service Retirement program would accomplish the same basic objective.²⁵⁴

RECOMMENDATIONS FOR IMPROVING ANNUITY AMOUNTS

Increasing Annuity Amounts for Dependent Children

Under the existing judges' program, surviving dependent children may not receive more than \$360.00 a year if their father's widow is also receiving an annuity and, if she is not, they may receive no more than \$480.00 a year.²⁵⁵ Under the Civil Service Retirement program, a dependent child of a Member of Congress whose spouse is also receiving an annuity will receive either \$1,466.00, or \$4,399.00 divided by the number of dependent children, whichever is smaller; if the spouse is not receiving an annuity, that child will receive either \$1,760.00, or \$5,279.00 divided by the number of dependent children, whichever is smaller.²⁵⁶ In essence, unless there are more than three dependent children, the Member's surviving child will usually receive an amount approximately four times larger than the judge's surviving child. The committee believes the judge's child should receive an annuity equal to that received by the Member's child and has recommended that change in the judges' program.²⁵⁷ Due to the average age of most judges at the time of their appointments, very few children ever qualify for annuities under the judges' program; today there are only three receiving annuities.²⁵⁸ Therefore, the increase in expenditures under the program will be quite small and, even with the extended coverage for full-time students,²⁵⁹ that increase will not seriously affect the program's financial stability.²⁶⁰

Substituting an "Average Annual Salary" Factor Based Upon the "High 3 Years" of Earnings Rather Than the "Last 5 Years" of Earnings

Under the existing judges' program the computation of a widow's annuity is, in part, based upon the "average annual salary" received by the judge during his "last five years" of creditable service.²⁶¹ Under the Civil Service Retirement program, the same "average annual salary" factor is determined by averaging a Member's "highest three" consecutive years of creditable service salary.²⁶² Due to the Constitution's prohibition against diminutions in judicial salaries,²⁶³ and the fact that very few judges actually serve for less than five years,²⁶⁴ the

²⁵³ See note 188, supra, and accompanying text.

²⁵⁴ See 5 U.S.C. § 8339(l).

²⁵⁵ See notes 211 and 212, supra, and accompanying text.

²⁵⁶ 5 U.S.C. § 8341(e).

²⁵⁷ See subsection (h)(1) of revised section 376, note 223, supra.

²⁵⁸ See Senate Hearings, 1975, at 62.

²⁵⁹ See notes 221-223, supra, and accompanying text.

²⁶⁰ See the Estimated Costs and Communications sections of this report, infra.

²⁶¹ See notes 196-207, supra, and accompanying text.

²⁶² 5 U.S.C. § 8331(4).

²⁶³ See note 34, supra.

²⁶⁴ See notes 237-238, supra, and accompanying text.

existing judges' program's *last-five-years* standard is almost equivalent to a *highest-five-years* standard. Thus, under both programs, the "average annual salary" factor is deliberately designed to guarantee that a contributing member's highest annual earnings will be used in determining the amount of the "basic annuity" received by the survivor. To some extent that approach provides a built-in adjustment for inflation in basic annuities under both programs; as salaries are increased in response to inflationary pressures, the "base" salary figure used in computing annuities also increases, and the smaller the "base period", the larger the amount of the basic annuity. The most advantageous salary factor, for example, would usually be the amount earned during the last year alone.²⁶⁵

When this committee first began evaluating this proposed reform in the program, judicial salaries were still being increased infrequently and at unpredictable intervals.²⁶⁶ As of August 9, 1975, however, they have become subject to annual "comparability adjustments"²⁶⁷ and, given the pattern of inflation within the past decade, an annual increase of *at least* five percent in judicial salaries would be a conservative prediction of future experience. As a result of those annual "comparability adjustments", adoption of a highest-three-year standard in lieu of the last-five-year standard would guarantee both very regular and somewhat larger increases in the amounts used as "average annual salary" factors. That pattern, in turn, would guarantee ever-increasing basic annuity amounts for survivors. If, for example, a U.S. Court of Appeals judge, with 28 years of "allowable service",²⁶⁸ were to die in each of the following years, after having received a 5 percent salary "adjustment" in each year since 1975,²⁶⁹ the applicable "average annual salary" factors and basic annuity amounts would become:

Year	Average annual salary factors	Basic annuity amounts
1976	\$44,633.33	\$15,621.67
1977	46,833.33	16,391.67
1978	49,166.66	17,208.33
1979	51,633.33	18,071.67
1980	54,233.33	18,981.67

Quite obviously the combined effect of the new high-three-year base period and annual comparability adjustments in salaries would insure that *basic* annuities would more accurately reflect changes in the economy from year to year. In fact, due to the percentage multiplication factor used in the computation formula,²⁷⁰ if the high-three-year base period were used, *basic* annuity amounts would *always* increase by the *same* percentage as judicial salaries.

Unfortunately, studies conducted by the Social Security Administration's actuaries, the Congressional Budget Office, and this com-

²⁶⁵ That built-in adjustment does not, however, provide protection against inflation after the annuity commences, a function which is usually performed in annuity programs, if at all, by cost-of-living increases. For a discussion of the cost-of-living increases recommended in S. 12, as amended, see notes 330-346, *infra*, and accompanying text.

²⁶⁶ See note 213, *supra*.

²⁶⁷ See note 201, *supra*.

²⁶⁸ See note 197, *supra*, and the example used in the text of this report at notes 200-202, *supra*.

²⁶⁹ See note 201, *supra*.

²⁷⁰ See notes 200-202, *supra*.

mittee have all shown that that result, if combined with the provision of cost-of-living increases, would lead to such an increase in expenditures in future years that the program, as presently constituted, would never be able to bear the cost.²⁷¹ Those same studies suggest that the most reliable method of financing this reform would be an increase in the program's contribution and deposit rates.²⁷² Thus, the merits of this proposed reform ultimately must be evaluated by answering one question: are the benefits to survivors derived from this change—as well as the provision of cost-of-living increases—worth an increase in contributions by both the judges and the government? After carefully studying the question, this committee has concluded that they are. Throughout the nineteen-year history of this program both the judges and their survivors have consistently faulted the program for its inability to keep pace with an inflationary economy, and this committee recognizes and concurs in that criticism. Although this change in the number of years used to compute the "average annual salary" factor will not compensate annuitants for increases in the cost of living which occur *after* their annuities commence,²⁷³ it will, when combined with annual comparability adjustments in judicial salaries, guarantee that, *on the day* those annuities commence, they will not have already become victims of a seven, five, or even two-year period of inflation. This committee believes that guarantee, when combined with new cost-of-living increases, to be of sufficient value to justify an increase in contributions by both the judges themselves and the government. It accordingly recommends changing the "average annual salary" factor time period from the "last five years" to the "highest three years".²⁷⁴

Increasing the Number of Years of Service Which May Be Deemed "Creditable"

As explained above, the committee is recommending a reduction in the minimum required contribution and deposit periods from five years to eighteen months.²⁷⁵ One result of those reforms will be that annuities may be based, in part, upon fewer years of judicial service than they are under the existing program. Judges, like Members of Congress, will now be able to qualify their survivors for an annuity with as little as eighteen months of service for which contributions or deposits have been made.²⁷⁶ Under both programs, however, there are, in effect, limits upon the maximum number of years of service which can be "credited" for annuity purposes. Under 28 U.S.C. §376, a widow's annuity "shall not exceed 37½ per centum of [the] average annual salary".²⁷⁷ Under the program's annuity computation formula this results in the maximum number of years of "creditable" service being 30 years.²⁷⁸ Under the Civil Service Retirement program, a

²⁷¹ It should be noted that, since contributions into the fund are determined by an established percentage of the judges' annual salaries, each annual salary "adjustment" will result in increased contribution income for the program. All studies show, however, that those increased contributions would not, by themselves, offset the increases in expenditures triggered by those salary adjustments, especially if cost-of-living increases in annuities are authorized. For a discussion of the cost-of-living increases recommended in S. 12, as amended, see notes 330-346, *infra*, and accompanying text.

²⁷² For a detailed explanation of the increases required in "contributions" and "deposits", see notes 365-387, *infra*, and accompanying text.

²⁷³ For a discussion of the recommended reforms which are designed resolve that problem, see notes 336-346, *infra*, and accompanying text.

²⁷⁴ See subsection (1) of revised section 376, note 223, *supra*.

²⁷⁵ See notes 235-254, *supra*, and accompanying text.

²⁷⁶ *Id.*

²⁷⁷ 28 U.S.C. §376(n).

²⁷⁸ See Senate Hearings, 1975, at 54-58, especially Table 2.

Member may accumulate up to 32 full years of "creditable" service.²⁷⁹ During hearings on this reform legislation, the Judicial Conference proposed that the 32-year standard be adopted in the judicial program.²⁸⁰ This reform would certainly have a very small, if any effect upon the financial stability of the program; today there is not a single annuity based upon the maximum number of years of creditable service.²⁸¹ The committee has accordingly drawn the language of its recommended amendment to allow the crediting of 32 full years of service.²⁸²

Providing Both Retroactive and Prospective Cost-of-Living Increases

When the judicial survivors' annuity program was created in 1956, no provision was made for cost-of-living increases in annuity amounts.²⁸³ In ensuing years, as annuitants under the Civil Service Retirement program repeatedly received automatic increases in their annuities which reflected rises in the Consumer Price Index,²⁸⁴ the absence of any protection against inflation for judicial survivors became a matter of increasing concern among our judges. With the single exception of placing their program in an actuarially sound condition, our judges have deemed no objectives more important than (1) the establishment of a statutorily mandated formula for periodically adjusting their survivors' annuities to offset inflation in the future and (2) the adoption of some formula for compensating existing annuitants for the decreases in purchasing power which they have endured since their annuities commenced.²⁸⁵ As noted above, in our recommendation of a new "average annual salary" factor, this committee fully recognizes the need to make this program more responsive to inflationary influences. It also fully recognizes the compelling necessity of adjusting those annuities now being paid to judicial widows. In doing so, however, we cannot adopt measures which will inevitably undermine the program's actuarial soundness. To promote the former objective at the expense of the latter would merely imitate the errors made in 1956 and guarantee the need for yet further Congressional action in 1996, if not before. Given our efforts to achieve both objectives, no single reform has proven more difficult than the crafting of a cost-of-living increase formula. Since 1974 this committee has studied four different proposed formulas. Our evaluations of all four are presented in the following paragraphs.

1. Adoption of the Civil Service Retirement program's cost-of-living increase formulas.

²⁷⁹ See 5 U.S.C. §8339(c) and §8341(b) and Senate Hearings, 1975, at 54-58, especially Table 2.

²⁸⁰ See Senate Hearings, 1975, at 66, 85, and 93.

²⁸¹ *Id.*

²⁸² See subsection (k) of revised section 376, note 223, *supra*.

²⁸³ At that time cost-of-living increases in the Civil Service Retirement program's annuities were the results of Congressional action taken at arbitrary intervals, and were designed to correct for cumulative decreases in the purchasing power of the dollar. See e.g. Act of June 25, 1958, Pub. L. No. 85-465, 72 Stat. 218, the first cost-of-living increase authorized for the Civil Service Retirement program after enactment of the judges' program in 1956.

²⁸⁴ In 1962 Congress first authorized automatic cost-of-living increases in Civil Service Retirement annuities which were *indirectly* based upon recent rises in the Consumer Price Index. See Act of October 11, 1962, Pub. L. No. 87-793, 76 Stat. 832. Then, in September of 1965, Congress authorized automatic cost-of-living increases which were *directly* correlated to rises in that index, providing a 1 percent increase in annuity amounts for every 1 percent rise every time that index rose by at least 3 percent. See Act of September 27, 1965, Pub. L. No. 89-205, 79 Stat. 840. In 1969 the 4 percent increase in annuities for every 3 percent rise in the index, which is now the operational formula, was enacted. See Act of October 30, 1969, Pub. L. No. 91-93, Title II, § 204, 83 Stat. 139.

²⁸⁵ Annuitants under the existing judicial survivors' annuity program have never received a cost-of-living increase. See Senate Hearings, 1975, at 52, 61, 66-67, 75-76, 78-80, and 84-85.

S. 12, as originally introduced, contained a provision under which every judicial survivors' annuity *in existence* on the legislation's effective date would have been increased "by the same total percent increase used to adjust a survivors' annuity paid from the Civil Service Retirement and Disability Fund with the same commencing date."²⁸⁶ In addition, incidental to complete merger with the Civil Service Retirement program, all those "existing annuities", as well as all judicial survivors' annuities commencing *after* the legislation's effective date would, in the future, "be adjusted and paid in accordance with" the formula governing future Civil Service Retirement cost-of-living increases.²⁸⁷

In order to evaluate both the impact that proposal would have upon existing annuities and the cost that would have to be fully funded by the government if that proposal were adopted,²⁸⁸ the committee, in July of 1974, applied the proposal to all annuities existing on June 30, 1974.²⁸⁹ On that date there were 167 widows receiving judicial survivors' annuities. Of those 167, 39 of them had been "blanketed-into" the program when it was created in 1956.²⁹⁰ All 39, plus 9 others, would have retroactively received *all* cost-of-living increases awarded to Civil Service Retirement annuitants since August of 1958.²⁹¹ Because each subsequent increase would be applied against the amount determined after applying each previous increase, the proposed retroactive application resulted in a dramatic *compounding* impact upon every such annuity. The overall compounded increase for those 48 annuities by June 30, 1974 would have been 115 percent.²⁹² Although the compounded increases for the other 119 widows would have been progressively lower, depending upon the dates upon which their annuities commenced, the dollar cost for the increases in all 167 annuities would have been \$443,944 for the single fiscal year of 1974.²⁹³ That dollar amount would have been equal to 45 percent of the annuity expenditures for that fiscal year.²⁹⁴ Thus, if the proposal had become effective in June of 1974, it would have resulted in an immediate increase in annuity expenditures of approximately 50 percent before any additional annuities commenced.

In light of those economic consequences the committee felt that adoption of the Civil Service Retirement increases, either retroactively or prospectively, would prove too extravagant an undertaking. Developments since 1974 have verified that expectation. Now, only twenty-one months later, the first-year dollar cost of implementing that same proposal for that same group of 167 widows has increased by an astonishing 92 percent, to \$853,830.²⁹⁵ That increase is the result of

²⁸⁶ See Section 3 of S. 12, 94th Cong., 1st Sess. (1975), as introduced on January 15, 1975, reproduced in Senate Hearings, 1975, at 23.

²⁸⁷ *Id.*

²⁸⁸ See note 112, *supra*, and accompanying text.

²⁸⁹ In order to properly assess the impact of proposed formulas for retroactive and prospective cost-of-living increase, it was necessary to "freeze" the program on a selected date. June 30, 1974 was selected because the latest available complete compilation of all information needed for such an assessment had been made as of that date.

²⁹⁰ See notes 42-49 and 55, *supra*, and accompanying text, as well as the Comments at the conclusion of Part I of the Background section of this report.

²⁹¹ The first Civil Service Retirement cost-of-living increase which would have applied to existing judicial survivors under the original bill was that authorized by the Act of June 25, 1958, note 283, *supra*. That increase became effective on August 1, 1958.

²⁹² See Senate Hearings, 1975, at 59.

²⁹³ *Id.*

²⁹⁴ See Table "B", *supra*.

²⁹⁵ See "Adjusted 1974 Civil Service Retirement Cost-of-Living Increase Study", on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

five additional cost-of-living increases having been applied to Civil Service Retirement annuities since the committee's earlier study in 1974, plus the compounding effects of each of those increases;²⁹⁶ in the case of those 48 widows who would receive *all* past increases since 1958, the overall *compounded* rate of increase in each of their annuities would today be 172 percent.²⁹⁷

As demonstrated by the impact of that twenty-one month period from June of 1974 until March of 1976, the most significant aspect of the proposal to apply the Civil Service Retirement program's cost-of-living increase formulas to judicial survivors' annuities is the incredibly rapid rate at which annuity expenditures grow from one year to another. The dollar costs discussed in the preceding paragraph are merely the prices which would have to be paid in the first year alone. Under the original bill's proposal, every new annuity, as well as those discussed above would continue to be increased until the date of each annuitant's death, and each increase would compound upon its predecessor. Under the Civil Service Retirement program today, every annuity is increased by 4 percent for every 3 percent increase in the Consumer Price Index.²⁹⁸ Since its implementation in 1969,²⁹⁹ that "bonus factor" formula has drawn increasing criticism; critics have deemed it not only extravagant but also a contributing factor to the inflation it is presumably designed to offset.³⁰⁰ After President Ford criticized it in his Budget Message to Congress on February 3, 1975, Congressman Henderson introduced a bill to eliminate the 1 percent "bonus" factor,³⁰¹ Senator Mansfield called for an investigation by the Senate Post Office and Civil Service Committee,³⁰² and the Democratic Policy Committee unanimously supported Senator Mansfield's request.³⁰³ Pending the findings of that investigation, the impact which that "bonus" formula may have upon the Civil Service Retirement program will remain a matter of speculation.³⁰⁴ The effect that formula would have upon the much smaller judges' program,³⁰⁵ however, was determined by Congress' Joint Economic Committee over one year ago; it would be disastrous. In August of 1974, at this committee's request, J.E.C.'s staff economists projected the program's anticipated experience under the Civil Service Retirement program's formula through 1980. They found that, at anticipated rates of inflation, the

²⁹⁶ Civil Service Retirement survivors have received increases of 5.5 percent in January of 1974, 6.4 percent in July of 1974, 7.3 percent in January of 1975, 5.1 percent in August of 1975, and 5.4 percent in March of 1976. Due to the fact that each cost-of-living increase is applied against the annuity amount derived after applying the last previous cost-of-living increase, the compounded effect is that of a 33.4 percent increase within 27 months.

²⁹⁷ See note 295, supra.

²⁹⁸ 5 U.S.C. § 8340(b).

²⁹⁹ See Act of Oct. 20, 1969, Pub. L. No. 91-93, Title II, § 204, 83 Stat. 139.

³⁰⁰ See Senate Hearings, 1975, at 59. As an example of newspaper reportage of this material, see Barnes, "Huge Bonus Found in U.S. Pension Plan", Washington Post, Feb. 16, 1975, § A, at 1, col. 8, in which the following appeared:

"Federal retirees can get billions of extra dollars at taxpayer expense because a formula designed to keep their pensions in step with inflation actually propels them ahead.

"The unintended bonus could easily cost taxpayers \$100 billion or more by 1990, according to projections by the Associated Press—projections that Congress failed to make before it approved the formula."

Mr. Barnes also reported that, when he asked a "top staff assistant" who had worked on the 1969 legislation why Congress had not foreseen the problem, " * * * he acknowledged that in 1969 no detailed projections of its effects had been made" and "characterized the formula as 'a throw-in in a bill that had some goodies'". *Id.*, at A-17, col. 8.

³⁰¹ H. R. 3310, 94th Cong., 1st Sess. (1975).

³⁰² See 121 Cong. Rec. S. 2437-38 (daily ed., Feb. 25, 1975).

³⁰³ See 121 Cong. Rec. S. 3175-78 (daily ed., Mar. 5, 1976).

³⁰⁴ As of the date of this report, the Senate committee is awaiting the results of hearings on H. R. 3310, note 280, supra, which the House has not yet been able to schedule.

³⁰⁵ See notes 32-31 and 248, supra, and accompanying text.

program would literally go bankrupt within a decade,³⁰⁶ and their findings have certainly been corroborated by events within the past two years.³⁰⁷ Given the devastating effect the Civil Service Retirement formula would have upon the judges' program, the committee has concluded that an alternative method for providing both retroactive and prospective cost-of-living increases will have to be implemented.

2. Adoption of a 1 percent increase in all annuities for every 1 percent rise in the Consumer Price Index.

When the 1974 studies by this committee and the Joint Economic Committee indicated the inapplicability of the Civil Service Retirement program's formulas, this committee felt that there might nevertheless be merit in evaluating the impact of those formulas, *if* the "bonus factor"³⁰⁸ were deleted from them. In essence this approach would have constituted using a formula similar to that employed by the Civil Service Retirement program between 1965 and 1969, when annuities were increased by 1 percent for every 1 percent increase in the Consumer Price Index.³⁰⁹ After carefully studying such an approach, this committee had to reject it. Although a program with as many members as Civil Service Retirement *might* be able to carry the cost of an automatic cost-of-living increase based *directly* upon rises in the Consumer Price Index, the judicial survivors' annuities program simply could not. If any lesson is to be learned from the Congress' errors in 1956, it is that the judges' program and the Civil Service Retirement program are not "comparable" in size and therefore simply do not have "comparable" growth potential. If every federal judge in the nation were to join the program tomorrow, its investment fund would still not receive enough money from contributions and deposits, even at a moderately increased rate, to produce the earnings needed to support such large increases in annual expenditures.³¹⁰

In March of 1976 committee staff updated the studies it had conducted in late 1974 of the probable costs of adopting the 1 percent increase in annuity amounts for every 1 percent rise in the Consumer Price Index. If we assume that all of the 167 widows receiving annuities in June of 1974 are today still receiving those annuities, and that no new widows have begun receiving annuities since then,³¹¹ the cost of implementing that formula for this year alone would be approximately \$627,000.³¹² While it is true that each of those 167 will die in some future year, the mortality tables used for the program's actuarial studies³¹³ indicate that the last such widow will probably not die for another 30 years. Thus, although another \$627,000 will not be needed next year to pay for the increases over existing annuity amounts, the reduction in that amount from one year to the next will not be great.

³⁰⁶ For a more complete discussion of the Joint Economic Committee's study, see Senate Hearings, 1975, at 58-60.

³⁰⁷ See notes 295-297, supra, and accompanying text.

³⁰⁸ See notes 298-304, supra, and accompanying text.

³⁰⁹ See note 284, supra.

³¹⁰ See Tables "B" and VIIIa, supra.

³¹¹ In fact, of course, several of those widows have died and several new widows have begun to draw annuities; by June 30, 1975, the number of annuitants had increased to 172. See table "A", supra. For purposes of consistency and convenience, however, all financial studies for cost-of-living increase proposals were based upon the same "frozen" list of annuities. See note 289, supra.

³¹² See "Cost-of-Living Increases, Staff Study 3, Chart 1", on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

³¹³ See Senate Hearings, 1975, at 12.

By using the same mortality tables used by the actuaries, and projecting the cost of such retroactive increases over existing annuity amounts year by year, committee staff discovered that the overall cost of those retroactive increases alone, from now until the day the last such annuitant dies, will be approximately \$8,450,000.³¹⁴ That figure, of course, only represents the cost of applying the "one for one" formula *retroactively*; both those 167 widows and all new widows would also receive *future* increases as well. Using the same techniques used by the actuaries for projecting future annuity expenditures, and assuming a quite conservative annual rise in the Consumer Price Index of only 5 percent, the cost of future increases for the 167 existing widows was found to be approximately \$14,938,648.³¹⁵ Thus, by the day the last such widow dies, the increased cost to the program to the one-for-one formula will have become \$23,388,648.³¹⁶ During those thirty years new annuitants will also be receiving additional annuities, and those new annuities will also be increased year by year, generating ever-larger annual expenditures. Quite clearly, even if the Civil Service Program *might* be able to afford such geometric growth and such an astonomic liability, the judicial survivors' annuities program cannot. Just as using the current Civil Service Retirement "bonus factor" formula would quickly bankrupt the judges' program,³¹⁷ adoption of the "one for one" formula would also lead to bankruptcy. Although the program might collapse several years later, it would nevertheless eventually collapse, and the extra few years would be of small comfort to the judges who have invested in it and the annuitants who are dependent upon it.

3. Adoption of the proposals contained in Amendment No. 852.

In addition to the two methods for providing cost-of-living increases discussed above, the committee also studied proposals contained in Amendment No. 852,³¹⁸ offered by Senator Metcalf in July of 1975. Under that amendment, *retroactive* increases in existing annuities would have been as much influenced by the current amount of an annuity as by the length of time since its commencement. Since none of the existing annuitants have ever received any cost-of-living increases, their current annuity amounts are equivalent to their original "basic annuity" amounts. Since that basic annuity amount was determined by a judge's years of contributing service and his highest annual salaries during those years,³¹⁹ it is a true reflection of his investment in the program, and, as such, is intended to govern the "returns" earned on that investment.³²⁰ To consider that basic annuity amount, *as well as* the passage of time since the commencement of the annuity, introduces an element which realistically has no relationship to the purpose of establishing a cost-of-living increase formula—the need to offset the effects of inflation upon a fixed dollar amount. The application of such an approach to the judges' program would therefore reach beyond the mere correction of annuity amounts for losses in purchasing power; it would also result in annuities based

³¹⁴ See note 312 *supra*.

³¹⁵ See "Cost-of-Living Increases, Staff Study 4, Chart 2", on file with the Subcomm. on Improvements in Machinery of the Senate Comm. on the Judiciary.

³¹⁶ *Id.*

³¹⁷ See notes 305 and 306, *supra*, and accompanying text.

³¹⁸ See Senate Hearings, 1975, at 81.

³¹⁹ See notes 196-208 and 261-274, *supra*, and accompanying text.

³²⁰ See notes 261-265, *supra*, and accompanying text.

upon less service being increased to amounts appreciably larger than those annuities based upon many years of contributing service.

Under Amendment No. 852, all *existing* annuities would be immediately increased to at least \$7500, if presently below that amount, and then *further* increased by either (1) retroactively applying all Civil Service Retirement cost-of-living increases awarded since those annuities were commenced, or (2) raising those annuities to amounts equal to "37.5 percent of the *current* salary" of the office in which the widow's decedent husband served immediately prior to his death, whichever is less.³²¹ Of the 167 annuities in existence on June 30, 1974, 109 of them would have to be immediately raised to \$7500 *before* the retroactive cost-of-living increases would be applied. Of those 109 annuities, the 39 being paid to widows who were "blanketed-into" the program in 1965 would then again be increased to the 37.5 percent of *current* salary figure, \$16,725 for widows of courts of appeals judges and \$15,750 for widows of district court judges.³²² Under the existing program, the annuities paid to those 39 widows now cost \$77,628 per year, and the average such annuity is \$1,990.³²³ Under Amendment No. 852, 26 of those annuities would be raised to \$15,750 and 13 of them would be raised to \$16,725. Thus, the total cost for those 39 annuities would become \$626,925 per year, and the average such annuity would become \$16,075, an increase of 708 percent. In contrast, a widow whose husband died in 1973, after contributing \$16,368 to the fund, who now receives an annuity of \$9,515, would find her annuity increased under Amendment No. 852 to \$12,665, an increase of only 33 percent.³²⁴ Thus, Amendment No. 852 would result in a widow whose husband never contributed to the program receiving a larger annuity than one whose husband had, in fact, contributed to the program for 19 years.

In addition to the problem discussed above, the committee found the cost of implementing such large *retroactive* increases prohibitive. Applying the same actuarial techniques used to project the costs of using the Civil Service Retirement program's formulas and the "one for one" Consumer-Price-Index formulas discussed above, committee staff projected the costs of adopting Amendment No. 852's retroactive increase formula. If implemented this year, the first year cost would be \$1,445,000, and the overall cost until the termination by death of the last effected annuity would be \$18,885,000.³²⁵ That last figure covers only the cost of *retroactive* increases into the future; the increased annuities would also be further increased in the future whenever *prospective* cost-of-living increases were applied, and the formula proposed in Amendment No. 852 for determining those future increases proved to be far more expensive in overall costs than the formula for retroactive increases. Under Amendment No. 852, all *future* cost-of-living increases would be based upon the Civil Service Retirement program's cost-of-living increase formula *less* the 1 per-

³²¹ See Senate Hearings, 1975, at 82-83.

³²² The *current* salary for a court of appeals judge is \$44,600. The *current* salary for a district court judge is \$42,000. Both of those figures reflect the October 1975 adjustments made under authority of Pub. L. No. 94-52, note 201, *supra*.

³²³ These figures have been taken from the annuity roll of June 30, 1974, on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

³²⁴ See note 296, *supra*. The annuitant used as an example does exist.

³²⁵ See "Cost-of-Living Increases, Staff Study 3, Chart 1", on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

cent "bonus". In essence that would mean increasing each annuity by 1 percent for every 1 percent increase in the Consumer Price Index, an approach which, as explained above, the Committee studied and rejected as simply too burdensome for an annuity program as small in membership as the judges' program.³²⁶ In addition to that future cost-of-living increase formula, Amendment No. 852 would also have guaranteed every future annuitant a minimum annuity of \$7,500.³²⁷ While it is true that both the Civil Service Retirement and Social Security programs have "floor figures", the figure in both programs today is \$1,224, not \$7,500 per year. Although many of the widows' annuities now being paid under the judges' program are small, they have been determined by the same annuity computation formula used in all other cases, and necessarily reflect the shorter periods of creditable service accumulated by their decedent husbands, the lower salaries earned earlier in this century, or both.³²⁸ When cost projections for this formula were carried forward for the next 30 years, the overall cost to the program of adopting all of the provisions in Amendment No. 852 was found to be approximately \$185 million for the 30-year period.³²⁹ Quite obviously the judicial survivors' annuity program could never remain actuarially sound if required to meet the cost of such rapidly expanding liabilities.

4. Adoption of a retroactive cost-of-living increase formula of one-fifth of one percent for every month an annuity has been in existence and adoption of a prospective cost-of-living increase formula of three percent for every five percent increase in judicial salaries.

When this committee realized in late 1974 that both the current Civil Service Retirement and the "one for one" Consumer Price Index cost-of-living increase formulas would eventually bankrupt the program, it accepted the fact that any *retroactive* increases in existing annuities would have to be funded by a special appropriation from the general treasury and tried to determine if there might be *any* source of increased income from the program which would support less expensive *future* cost-of-living increases. Reasoning that the absence of any provision in the existing program for cost-of-living increases was a problem Congress should have solved long ago, the committee concluded that it would be more appropriate to finance increases for *existing* annuitants from general funds than to require the program itself to bear that expense. At the committee's request the Administrative Office of the U.S. Courts, in late 1974, computed the cost of providing retroactive cost-of-living increases under a formula which would multiply the existing annuity by a given percentage figure for every month each such annuity had been in existence.³³⁰ Under that formula, those who have been receiving annuities for the greatest number of years, and who are the most in need of increases, would receive the largest increases. This arithmetic formula, however, would avoid the highly undesirable compounding effect of using prior Civil Service Retirement formulas. The Administrative Office found that, by increasing every existing annuity by one-fifth of one percent per month, the equivalent of a 2.4 percent increase per year, those widows who were "blanketed-into" the program in 1956 would receive

³²⁶ See notes 308-317, *supra*, and accompanying text.

³²⁷ See Senate Hearings, 1975, at 81.

³²⁸ See notes 196-208 and 261-274, *supra*, and accompanying text.

³²⁹ See "Amendment No. 852 Estimated Costs, Staff Study 2, Chart 3", on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

³³⁰ See Senate Hearings, 1975, at 61.

a 42.8 percent increase in their annuities as of June 30, 1974. If that formula were to be implemented in September of 1976, twenty years after those annuities were commenced, they would be increased by 50 percent. One additional feature of this approach is that every widow will receive an increase based upon the number of months she has been receiving an annuity, necessitated by the increases in the cost of living during those months; in no case, however, will the actual amount of any annuity influence the amount of the increase. Therefore, no widow will find herself receiving less in spite of her husband having served longer or having paid more into the program.

In October of 1975, at the request of this committee, the Social Security Administration's actuaries determined that the cost to the government of implementing this formula would be \$2 million from the day the first such increases are paid until the day the last effected annuity is terminated by death.³³¹ Since then additional studies by both this committee³³² and the Congressional Budget Office³³³ have corroborated that figure. On balance, the committee finds this approach both more appropriate and more economically reasonable than any of the other proposed methods for providing *retroactive* cost-of-living increases and has accordingly recommended its adoption in S. 12, as amended.³³⁴ Because the committee wishes to have these "catch-up" cost-of-living increases provided upon enactment of this legislation, the language used in its amendment is drawn to enable the Administrative Office to compute and pay the increases immediately upon enactment, using monies now in the program's central fund, which will in turn be compensated by an appropriate amount, to be deposited into the fund by the Secretary of the Treasury after the approved appropriations become available.³³⁵

In seeking an alternate formula for determining *prospective* cost-of-living increases the committee noted that past actuarial valuations of the program had consistently ignored three sources of income growth—increases in judicial salaries, the creation of new judgeships, and earnings on fund investments in excess of rather conservative "assumed" interest earnings.³³⁶ We therefore tried to fashion a formula for cost-of-living increases which would be fundable from those three sources. Preliminary projections indicated that, if conservative cost-of-living increases were tied directly to salary increases, the fund might be able to support them. The committee finally settled upon a formula which would increase annuity amounts by 3 percent every time judicial salaries were increased by an increment of 5 percent. By directly correlating increased expenditures to increased income from contributions, any possibility of the program expending monies before additional sums had become available would presumably be avoided. In addition, by using the 3-percent-for-every-5-percent ratio, there would presumably be enough surplus income to finance the increases in "basic annuities" resulting from the higher salaries.³³⁷ In part, the

³³¹ See the letter from Carter S. Warfield, Actuary, Social Security Administration, to M. Patricia Carroll, Chief, Retirement, Insurance, and Payroll Section, Division of Business Administration, Administrative Office of the U.S. Courts, October 6, 1975, which is reproduced in the Communications section of this report, *infra*. See also notes 409-410, *infra*, and accompanying text.

³³² See "Cost-of-Living Increases, Staff Study 3, Chart 1", on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

³³³ See the "Congressional Budget Office Cost Estimate, March 24, 1976", reproduced in the Communications section of this report, *infra*.

³³⁴ See Section 5 of S. 12, as amended, in the Amendments section of this report, *supra*.

³³⁵ *Id.*

³³⁶ See Senate Hearings, 1975, at 6-8 and 52-53.

³³⁷ See notes 261-270, *supra*, and accompanying text.

latter assumption was based upon the reasonable expectation of higher earnings than those assumed by the actuaries, and upon the reality of an ever-increasing number of potential members in the program. As of late 1975, 168 federal judgeships had been authorized since 1956,³³⁸ legislation authorizing another 52 new judgeships was pending in Congress,³³⁹ and the judicial survivors' annuities program's fund investments had consistently earned interest at higher rates than those assumed by the actuaries.³⁴⁰ Given those trends, and the reasonable expectation that they would continue, the committee felt confident that they would generate sufficient earnings to offset the increased expenditures which would result from future cost-of-living increases.

Unfortunately that entire approach was also based, in part, upon an assumed salary increase schedule similar to that experienced by the judiciary before the Executive Salary Cost-of-Living Adjustment Act was passed in October of 1975.³⁴¹ Later studies by both the Social Security Administration's actuaries and the Congressional Budget Office proved that, although the formula might have worked when judicial salaries were increased only at intervals of several years, if they were increased *every* year, as they now will be, a far greater proportion of the increased income into the program will be required to meet the cost of progressively higher "basic annuities".³⁴² The unavoidable conclusion which this committee has had to accept is that *prospective* cost-of-living increases, for annuities commencing in the future,³⁴³ can be financed only by increasing the program's basic contribution income. Accepting that fact, the question then becomes one of choosing the formula which will provide reasonable increases in annuities without requiring an unreasonable increase in contributions.

Among the four formulas studied, the only one which met that requirement was the 3 percent cost-of-living increase for every 5 percent salary increase formula. Studies conducted by the committee, the Social Security Administration's actuaries, and the Congressional Budget Office have all indicated that implementation of that formula can be funded by increasing the program's contribution rate from 3 percent to 4.5 percent.³⁴⁴ Adopting any of the other proposed formulas would inevitably require a larger contribution percentage rate. Although the increases provided by the "three for five" formula will not equal those provided under the Civil Service Retirement "bonus" formula, given the annual "comparability adjustments" in judicial salaries recently authorized,³⁴⁵ they will occur regularly, they will help to offset inflation, and—of very real import—they will be increases which the much smaller judicial survivors' annuity program can afford. In the belief that that salary-increase-related cost-of-living increase formula is the most appropriate, the committee has recommended it in S. 12, as amended.³⁴⁶

³³⁸ In 1956 there were 359 federal judgeships (not including positions on the U.S. Tax Court). See U.S. Budget Appendix, 1956. Today there are 527 federal judgeships. See 28 U.S.C. sections 1, 44, 133, 171, 211 and 251. It should also be noted that every time a judge "resigns" or retires under 28 U.S.C. § 371, see notes 35 and 171, *supra*, he continues to contribute to the program's fund while creating a vacancy to be filled by another contributing judge.

³³⁹ At present both S. 286, 94th Cong., 1st Sess. (1975), which would create 7 new courts of appeals judgeships, and S. 287, 94th Cong., 1st Sess. (1975), which would create 45 additional district court judgeships, are pending before the House Committee on the Judiciary.

³⁴⁰ Compare Senate Hearings, 1975, at 52, Table 1, with the interest earnings listed in Table "B", *supra*.

³⁴¹ See notes 201 and 213, *supra*.

³⁴² See notes 268 and 269, *supra*, and accompanying text.

³⁴³ For an explanation of how prospective cost-of-living increases for annuities in existence on the effective date of this legislation are to be funded see notes 411-413, *infra*, and accompanying text.

³⁴⁴ See note 153, *supra*, and the Communications section of this report, *infra*.

³⁴⁵ See note 201, *supra*.

³⁴⁶ See subsection (m) in revised section 376, note 223, *supra*.

RECOMMENDATIONS FOR FINALLY ESTABLISHING AN ACTUARIALLY SOUND PROGRAM

Eliminating the Existing Fund's Present Deficiency

As explained in Part I of the Background section of this report, a permanent deficiency in the judges' program's central fund was guaranteed on the day the program was created by the inclusion of 121 unfinanced annuities.³⁴⁷ An Administrative Office study reveals that between August of 1956 and the end of fiscal year 1974, 31 percent of the total amount expended for annuities had been paid to the recipients of those unfinanced annuities, the 121 widows who were "blanketed-into" the program on its first day.³⁴⁸ Because their numbers have gradually diminished since 1956, and because new annuitants have begun receiving payments since then, the percentage of annual expenditures allocated to those "blanketed-in" widows has decreased from 100 to 8 over that eighteen-year period.³⁴⁹ Obviously that decrease will continue, and eventually those expenditures for annuities which were never funded will terminate. By the time they do terminate, however, they will have had an impact upon the program's central fund far greater than the loss of the face amounts expended for them. As of June 30, 1974, the dollar amount for such expenditures had almost reached \$3,000,000, an amount equal to 41 percent of the fund's deficiency on that date.³⁵⁰ The actual impact those expenditures have had upon the central fund, however, has been far more extensive than that figure would suggest. Every one of those dollars which has been expended should have been invested in the fund and should have produced additional income through investments at compounding rates before being paid out in annuities. Because the dollars used for those expenditures have been "income" dollars which were never invested, the program has lost the interest on them which would have in turn earned greater interest by compounding over a period of from one to eighteen years.³⁵¹ Thus, not only has the program lost the dollars themselves, it has lost the earnings potential inherent in an investment fund which should have been at least \$3,000,000 larger than it has been. As a result of those losses, the program was suffering from a \$7,300,000 deficiency on December 31, 1973.³⁵² By September of 1975 that deficiency had grown to \$8,200,000.³⁵³ Now, in March of 1976, it is estimated to be \$8,500,000.

According to the last actuarial valuation, that deficiency amount is precisely the amount which the actuaries had determined would be needed to restore the program's actuarial soundness.³⁵⁴ This committee has concluded that that step must be completed before any of the other reforms which we are now recommending can be responsibly authorized.³⁵⁵ Therefore, the question is: what is the best way to repay that deficiency? Although the Social Security Administration's actuaries have, in all six actuarial valuations, recommended increas-

³⁴⁷ See notes 42-49, *supra*, and the Comments at the conclusion of Part I of the Background section of this report, *supra*.

³⁴⁸ Senate Hearings, 1975, at 60.

³⁴⁹ For a tabular presentation of annual dollar amounts and the percentages of annual expenditures paid to the blanketed-in widows, see Senate Hearings, 1975, at 60.

³⁵⁰ See Senate Hearings, 1975, at 60.

³⁵¹ *Id.*

³⁵² *Id.*, at 52.

³⁵³ *Id.*, at 86.

³⁵⁴ *Id.*, at 52.

³⁵⁵ See note 361, *infra*, and accompanying text.

ing the government's "contributions" to the fund—i.e. the "matching amounts" paid into the program each year from the Administrative Office's operational budget³⁵⁶—they have, in the past three valuations, quite logically noted that the fund deficiency could also be repaid with a single deposit equal to the fund deficiency on the date of payment.³⁵⁷ In evaluating both of those repayment methods this committee has concluded that the single deposit approach is far wiser than an increase in government "contributions" for several reasons. Making a single deposit payment would immediately establish the level-cost balance of the current program; open-endedly increasing government matching amounts would not. Making a single deposit payment would immediately strengthen the program's investment fund and generate increased earnings for that fund; increasing matching amounts would, in essence, "amortize" the debt, requiring the government to pay the "carrying cost" for repaying the obligation over an undetermined period of time. Finally, "matching" amounts were never intended to serve as "bail-out" amounts. When the Eighty-fourth Congress created this program in 1956, although it clearly failed to fully comprehend the consequences which would follow from the bill it approved, it nevertheless clearly intended that the program's costs would be shared equally by the judges and the government. This committee does not believe the Ninety-fourth Congress would express any different intention. An increase in both the "contributions" paid by the judges and the "matching amounts" paid by the government for the purpose of meeting *future* obligations is consistent with that intention. An increase only in the government's payments for the purpose of meeting a *current*, if not *long-past*, obligation is not.

This committee has concluded that the immediate repayment of the fund's existing deficiency with one adequate deposit is the most reasonable and appropriate course of action. Therefore S. 12, as amended, provides that the Secretary of the Treasury shall ascertain the extent of the fund's deficiency as of the date this legislation becomes effective and shall, as soon as appropriated funds in that amount become available, deposit those funds in a single payment into the new Judicial Survivors' Annuities Fund which is being created by this legislation to replace the existing fund.³⁵⁸

Statutorily Authorizing the Payment of Matching Funds

As noted above, there is no provision in 28 U.S.C. § 376 today authorizing the payment of "agency contributions" or "matching amounts"; that authority is simply inferred from Section 5 of the Act which created the program.³⁵⁹ As one part of its comprehensive reorganization of the program, this committee is recommending that authorizing language for "matching amounts" be incorporated into the language of the new statute.³⁶⁰

Incorporating the Existing Program into a Completely Restructured New Program

As one incidental aspect of the complete reformation of the program, S. 12, as amended, creates a new "Judicial Survivors' Annuities Fund". All monies now credited to the existing fund will be transferred into

³⁵⁶ See note 173, *supra*, and accompanying text.

³⁵⁷ See Senate Hearings, 1975, at 52, n. 2-4.

³⁵⁸ See Section 4 of S. 12, as amended, in the Amendments section of this report, *supra*, and note 361, *infra*, and accompanying text.

³⁵⁹ Note 173, *supra*.

³⁶⁰ See subsection (c) of revised section 376, note 223, *supra*.

the new fund, and the monies appropriated to restore the program to an actuarially sound condition and to pay for the cost-of-living increases in existing annuities will be deposited into that new fund.³⁶¹

Increasing "Contribution" and "Deposit" Rates from 3 Percent to 4.5 Percent

In order to provide all of the reforms recommended in this report, additional income into the fund is absolutely essential. As explained in greater detail above,³⁶² and in the Estimated Costs section of this report, *infra*, this committee has authorized the full repayment of this program's existing deficiency, and the full funding of all retroactive and prospective cost-of-living increases for *existing* widows,³⁶³ by means of single deposits into the fund as soon as authorized appropriations become available.³⁶⁴ When those payments have been made, the newly created fund will have been established in level-cost balance. In order to maintain that balance, while also providing the increased benefits recommended in this report, this committee, in reliance upon studies conducted by the Social Security Administration's actuaries, the Congressional Budget Office, and committee staff, has recommended that judicial "contributions" and "deposits"—and government "matching amounts"—be increased from 3 percent to 4.5 percent of annual salary as of this legislation's effective date.³⁶⁵ In essence we are recommending that the judges and the government share the costs of the newly balanced program, just as Congress intended that the costs of the existing program be borne equally by both parties when it acted in 1956.

We would note, however, that, although it is this committee's intention that all judges now participating in the existing program, as well as all judges joining the new program, shall be required to begin making "contributions" into the program at the new rate of 4.5 percent upon the legislation's effective date, we do not intend that any judge who has already paid his full "deposit", or is still paying that "deposit" in installment payments,³⁶⁶ in accordance with an agreement in existence on this legislation's effective date, shall now be required to pay that "deposit" at the new 4.5 percent rate. Under language contained in S. 12, as amended,³⁶⁷ this committee intends, first, that every "deposit" agreement in existence upon this legislation's effective date shall be deemed to have entitled both parties to that agreement to rely upon its terms and, second, that those terms shall remain unaffected by enactment of this legislation. We do, however, intend that any judge who commences payment of "deposits" or negotiates an agreement to pay "deposits," after this legislation's effective date shall be required to pay such "deposits" at the new 4.5 percent rate.

III. THE BASIC OBJECTIVE: AN ACTUARIALLY SOUND PROGRAM WHICH PROVIDES REASONABLE BENEFITS

When this committee first began the studies which have now resulted in the recommended reforms discussed above, it found a judicial

³⁶¹ See Section 3 of S. 12, as amended, in the amendments section of this report, *supra*.

³⁶² See notes 347-358, *supra*, and accompanying text.

³⁶³ See notes 330-335, *supra*, and 409-412, *infra*, and accompanying text.

³⁶⁴ See Sections 4 and 5 of S. 12, as amended, in the Amendments section of this report, *supra*.

³⁶⁵ See subsections (b), (c) and (d) of revised section 376, note 223, *supra*.

³⁶⁶ See notes 171-188, *supra*, and accompanying text.

³⁶⁷ See Section 6 of S. 12, as amended, in the Amendments section of this report, *supra*.

survivors' annuities program destined for bankruptcy, yet obviously in need of extensive reform. The proposed solution was to merge the program with the Civil Service Retirement program. Although that solution was at first appealing in its simplicity, not unlike a great many "cheap and easy" solutions, it was neither cheap nor easy. The exorbitant costs of implementing that proposal have already been discussed.³⁶⁸ In addition that proposal faced one other serious obstacle. Cases involving the Civil Service Retirement program have been and will be litigated in our federal courts.³⁶⁹ Under 28 U.S.C. § 455, which establishes the standards our federal judges must follow in disqualifying themselves from cases filed in their courts, there can be no doubt that any judge joining a merged annuities program would have to recuse himself from many, if not all, of those cases.³⁷⁰ Today there are 673 federal court judges who may participate in the program; 614 of them are members of the program.³⁷¹ For that reason alone a separate program would seem essential, even if the costs of merger were not prohibitive. For both reasons, however, this committee believes the recommended reform of the existing judges' program to be a wiser solution.

In its efforts to structure a reformed program the committee was frequently reminded that the Congress had, in 1956, intended to create a program for judges "fully comparable" to the program then available to Members of Congress. As stated in the opening paragraphs of Part II of this Statement section, however, a careful reading of the program's legislative history indicates that that intention "may have been far more apparent than real".³⁷² Part I of this report's Background section strongly suggests that *full* comparability was never really intended and that, even if it was, the legislation which was finally approved very obviously failed to provide it.³⁷³ The question for this committee, then, became should this committee now seek to provide "full comparability", and if so, should it do so retroactively, prospectively, or both? For reasons already explained in the previous discussion of cost-of-living increases, the committee concluded that any effort to achieve exact parity in annuity amounts retroactively would be inappropriate as well as impossible.³⁷⁴ The committee also concluded that a similar effort to achieve exact parity prospectively would also be inappropriate.³⁷⁵

As stated in the opening paragraphs of Part II of this section, the distinctions which actually do exist between the offices of "Judge" and "Member" have been relevant to Congressional evaluations of this program in the past, and this committee finds them as appropriately relevant today.³⁷⁶ Federal judges are appointed for life and draw their full salaries until the day they die;³⁷⁷ members must run for reelection at regular intervals and, when no longer in full "active service," receive only their "retirement pay". In many cases that

³⁶⁸ See notes 112-113, 146-152, and 286-306, supra, and accompanying text.

³⁶⁹ One need only glance over the "Notes of Decisions" in subchapter III of Title 5, United States Code Annotated to understand how frequently the Civil Service Retirement law has been the subject of litigation since its creation in 1920.

³⁷⁰ See 28 U.S.C. § 455, as amended by the Act of Dec. 5, 1974, Pub. L. No. 93-512, 88 Stat. 1609.

³⁷¹ See Table "A", supra.

³⁷² See note 218, supra, and accompanying text.

³⁷³ See note 32-41 and the Comments at the conclusion of Part I of the Background section of this report, supra.

³⁷⁴ See notes 286 and 290-297, supra, and accompanying text.

³⁷⁵ See notes 287 and 298-306, supra, and accompanying text.

³⁷⁶ See note 220, supra, and accompanying text.

³⁷⁷ See notes 35 and 175, supra, and accompanying text.

retirement pay falls well below their full salaries of office and, of course, the Members have purchased that retirement pay with contributions made throughout their active service careers. This committee believes those facts *are* relevant to an evaluation of survivors' annuity amounts simply because a judge enjoys a far greater "job security" and is therefore able to plan for his survivors with far greater certainty than is a Member.

Even more relevant, perhaps, than those observations are the actual facts derived from the committee's full study of the actual amounts available to survivors of judges and Members through their respective programs. During the committee's evaluation of S. 12 and its alternative proposals much comment was received alleging great disparities between annuity amounts received by Members' survivors and annuity amounts received by judges' survivors.³⁷⁸ Although there are large disparities today, they are not the result of the judges' program's computation formula, but rather the result of the facts which affect those cases involving widows whose husbands either received low salaries or failed to accumulate normal periods of creditable service. When the amounts computed under both programs are compared in cases based upon identical periods of creditable service, a judge's surviving widow will *always* receive an annuity *exactly* 10 percent lower than a Member's survivor, if both men have reached age 65 before their deaths or departure from service.³⁷⁹ While it is true that a special provision in the Civil Service Retirement program provides that a Member who dies before age 60 will be credited with the number of years between his age at death and age 60, to bring that provision into direct comparison with judicial experience is to distort to a great extent the realities of judicial experience. As documented in the Sixth Actuarial Report, 61 percent of our federal judges live to be 70 years of age or more, and another 34 percent live to be 55 years of age or more. As of December 31, 1973, 58 percent of the judges participating in the judges' program were over 60 years of age,³⁸⁰ and a study conducted by the Administrative Office in 1972 revealed that the average number of years of *active* service accumulated by judges before their deaths was 19.³⁸¹ What this means is that most judges who do not achieve senior status,³⁸² and most do, do not die until after attaining an appreciable number of years of creditable service under the judicial survivors' annuities program. The fact that in the past nineteen years only 12 judges out of 711 who have been members of the program have died before attaining 5 years of such service fully supports that conclusion.³⁸³ Obviously the *normal* period of creditable service for federal judges will, most often, far exceed the normal period of creditable service for Members and, equally obviously, most judges' service-long salary earnings will exceed most Members' service-long salary earnings. Given the above facts, the committee finds that the actual 10 percent differential between survivors' annuity amounts, which is the *usual* situation, is not that alarming.

³⁷⁸ See Senate Hearings, 1975, at 2 and 78.

³⁷⁹ For an extensive comparison of the methods used to compute both types of annuities and the results of those computations in hypothetical and actual cases, see Senate Hearings, 1975, at 53-58.

³⁸⁰ See Senate Hearings, 1975, at 12, Table IA.

³⁸¹ This unpublished study was conducted by the Division of Business Administration in the Administrative Office of the U.S. Courts at the conclusion of Fiscal Year 1972 for its internal operational purposes. The findings were made available to the committee upon special request.

³⁸² See notes 35 and 175, supra, and accompanying notes.

³⁸³ See note 238, supra, and accompanying text.

In the final analysis this committee's responsibility is not to guarantee every judicial survivor a certain dollar-amount annuity; it is to provide a program through which the judges, by making appropriate contributions, may earn, with their years of service, a reasonable degree of security for their survivors. We believe that the recommendations we are now reporting meet that responsibility. As documented above, our reform proposals are the result of extensive study and consideration; not one of them has been recommended without a complete review of all of its implications.

For almost twenty years the judicial survivors' annuities program has been in existence, and for the same period it has been severely underfunded. That deficiency resulted from errors made by Congress when it created the program. S. 12, as amended, will finally correct that financial deficiency and place the program in an actuarially sound condition.

For almost fourteen years the Judicial Conference and Members of Congress have advocated reforms which would bring the judicial survivors' annuities program into greater conformity with the Civil Service Retirement program, now available to Members of Congress, and for just as long been unable to reach a consensus on how best to do so. S. 12, as amended, has the support of such a consensus; the Judicial Conference approved the amended bill on September 25, 1975.

For almost three years this committee has worked to structure a reform proposal which would, at one time, both bring the judicial survivors' annuities programs' standards of eligibility into complete conformity with the Civil Service Retirement program's *eligibility* standards for Members' annuitants and provide *reasonable increases* in annuity amounts which would not once again undermine the program's fiscal stability. S. 12, as amended, accomplishes those objectives.

ESTIMATED COSTS

As evidenced by the preceding paragraphs concerning recommended improvements in annuity amounts and recommendations for establishing an actuarially sound program, the cost of *every* proposed improvement in the judicial survivors' annuities program is of vital significance. If this Congress creates a new program incapable of maintaining itself financially, we will simply be repeating the same error made by the Eighty-fourth Congress in 1956. Quite obviously, if that earlier Congress had recognized the need to fully fund the cost of the annuities conferred upon the 121 widows who were "blanketed-into" the program then, the deficiency in the existing program would not today total \$8.5 million.³⁸⁴ Therefore, one of this Committee's fundamental objectives has been an accurate estimation of both the cost of each proposed reform and the new program's ability to meet those costs.

Another objective has been the equitable allocation of funding responsibility for the costs of those individual reforms. The Committee has attempted to divide costs in a manner which would insure that present and future contributing members would not be paying for benefits conferred upon existing annuitants. Therefore, the cost of repaying the existing program's deficiency is to be met with appropriations from general revenues.³⁸⁵ The same form of financing is being recommended for the costs of providing both retroactive and prospective cost-of-living increases for *existing* widows.³⁸⁶ In the first instance, there is no doubt that the existing fund deficiency is largely, if not entirely, the result of Congress' errors in 1956.³⁸⁷ In the second instance, although the extent to which Congress bears responsibility for the absence of a cost-of-living adjustment during the past eighteen years is debatable,³⁸⁸ to assess that cost against the program would constitute nothing less than requiring our living judges to underwrite annuities for their deceased colleagues' survivors.

A third objective has been the selection of financing methods which would meet necessary costs as inexpensively as possible. Thus, as previously explained,³⁸⁹ the Committee has concluded that, where possible, the cost of recommended reforms shall be met by making one large deposit into the program's central fund.³⁹⁰ That "prepayment" approach is far less expensive than "amortizing" the cost over an indefinite period of years; it provides the program with a large infusion of investment capital, which will *earn* interest for the program, rather than obligating the government to, in essence, *pay* interest for the privilege of postponing its obligations.

With those three objectives in mind this Committee, in June of 1975, requested that the same Social Security Administration actuaries who

³⁸⁴ See notes 347-358, *supra*, and accompanying text.

³⁸⁵ See notes 347-358, *supra*, and 413-417, *infra*.

³⁸⁶ See note 330, *supra*, and 409-413, *infra*.

³⁸⁷ See generally, the Background section of this report, *supra*. See also notes 347-354, *supra*, and accompanying text.

³⁸⁸ See notes 82-113, *supra*, and accompanying text.

³⁸⁹ See note 357, *supra*, and accompanying text.

³⁹⁰ *Id.* See also notes 409-412 and 413-418, *infra*, and accompanying text.

had prepared the Sixth Actuarial Valuation of the existing judges' program evaluate the recommendations for reform which are set forth in this report.³⁹¹ The Committee asked the actuaries to determine how much each of the proposed improvements would cost and, in anticipation of having to list those costs in this section of this report, asked for estimated dollar-amount figures for the items already identified as burdensome. In October of 1975, a letter prepared by the actuaries in response to that request was received by the Committee. A copy of that letter is included in the Communications section of this report.³⁹² In January of 1976, in anticipation of the requirements of 31 U.S.C. § 1353,³⁹³ the Committee also asked the Congressional Budget Office to prepare a "cost analysis" of S. 12, as then amended.³⁹⁴ Once again, the Committee asked for estimated dollar amount figures. The Estimated Cost Report prepared by the Congressional Budget Office is also included in the Communications section of this report. Although the conclusions reached by both the actuaries and the Congressional Budget Office are in essential agreement, the Budget Office's presentation was understandably more responsive to the purposes served by this section of this report.

That presentation was intentionally designed to specify estimated costs both in terms of any total fund deficiency which might develop in the future and in terms of the costs associated with specific recommended reforms.

In order to determine the extent to which the proposed bill would affect future budgetary planning, C.B.O.'s cost analysis projected estimated revenues and expenditures for a period of seventy-five years, from 1976 through 2050. Although the results obtained by using that technique should not be equated with findings derived from a perfectly programmed actuarial study, they do provide an accurate estimate of costs for the purpose of isolating the proposed new program's future liabilities and, when compared to the findings provided by the Social Security Administration's actuaries, they are reassuringly similar.³⁹⁵

By means of their analysis, the C.B.O.'s economists estimated that the bill which they reviewed would develop a total fund deficiency of \$41.5 million by the year 2050. That fund deficiency was further determined to be the result of the following four cost items:

- (1) an estimated \$8.5 million deficiency in the existing program;
- (2) an approximate cost of \$2 million for retroactive cost-of-living increases in annuities in existence on the legislation's effective date, from that date until the last such annuity would terminate;
- (3) an approximate cost of \$1 million for prospective cost-of-living increases in those same "existing" annuities; and
- (4) an approximate cost of \$30 million resulting from (a) prospective cost-of-living increases in "new" annuities (those commencing *after* the legislation's effective date) and (b) increased

³⁹¹ See note 161, *supra*.

³⁹² See the letter from Carter S. Warfield, Actuary, Social Security Administration, to M. Patricia Carroll, Chief, Retirement, Insurance, and Payroll Section, Division of Business Administration, Administrative Office of the U.S. Courts, October 6, 1975, which is reproduced in the Communications section of this report, *infra*.

³⁹³ See note 167, *supra*.

³⁹⁴ See notes 162-167, *supra*, and accompanying text.

³⁹⁵ Compare the letter, note 392, *supra*, with the "Congressional Budget Office Cost Estimate, March 24, 1976", reproduced in the Communications section of this report, *infra*.

basic annuity amounts resulting from computing all "new" annuities by using an "average annual salary" factor based upon the highest three years of earnings rather than upon the last five years of earning.

Although the proposed bill would have fully funded the cost-of-living increases for annuities in existence on the legislation's effective date, and also would have provided for the immediate payment of the fund deficiency existing on that same date, no provision had then been made to fund the remaining \$30 million deficiency resulting from the cost-of-living increase in "new" annuities and from the new "average annual salary" factor.³⁹⁶ While it would have been possible to meet that future deficiency with a single appropriation, just as the Committee had planned to fund the estimated current deficiency of \$8.5 million, that approach would only have provided necessary financing through the year 2050; at that time a new fund deficiency would have begun to develop. In addition, the adoption of that funding solution would have established a precedent of Congress periodically funding consecutive fund deficiencies indefinitely into the future, a precedent which this Committee does not wish to see established by this legislation.

At the Committee's request, the Congressional Budget Office therefore explored the possibility of an alternative method of financing the deficiency resulting from cost-of-living increases in "new" annuities and from the new "average annual salary" factor. As part of the cost analysis, a calculation of the fund's total deficiency through the year 2050 was conducted using a contribution rate of 4.5 percent of salary, rather than the present contribution rate of 3 percent of salary. According to that calculation the fund's total deficiency by the year 2050 would be approximately \$13 million, an amount equal to the total of all cost items other than cost-of-living increases in "new" annuities and the cost of using the new "average annual salary" factor. Because the proposed bill had already authorized funding for those other items, it appeared that, by amending the bill to require a 4.5 percent contribution rate, the creation of any fund deficiency could be completely avoided, at least through the year 2050. It also appeared that, as long as no additional increases in expenditures beyond those contemplated in the proposed bill—and assumed in the cost analysis—were authorized, the new 4.5 percent contribution rate would prevent the development of a fund deficiency indefinitely into the future, thus fulfilling the bill's basic objective of guaranteeing an actuarially sound program.

Given the findings by both the actuaries and the Congressional Budget Office, the Committee revised the proposed bill to provide that "contributions" and "deposits" made after the Judicial Survivors' Annuities Reform Act's effective date would be assessed at 4.5 percent of a contributing member's annual salary.³⁹⁷

In the following paragraphs the estimated costs of each reform recommended in S. 12, as amended, are explained in detail and in the same order in which those reforms have been discussed in Part II of the Statement section of this report.

³⁹⁶ For the explanation of why the committee had not anticipated this deficiency, see notes 336-341, *supra*, and accompanying text.

³⁹⁷ See notes 168, 266-274, 336-346, and 365-367, *supra*, and accompanying text.

RECOMMENDATIONS FOR IMPROVING ELIGIBILITY STANDARDS

Both the Social Security Administration's actuarial study and the Congressional Budget Office's estimated cost study confirmed the Committee's expectations that not one of the recommended reforms in eligibility standards³⁹⁸ would impose a financial burden upon the new program. In the language used by the actuaries, all of those reforms would have "a negligible cost".³⁹⁹

RECOMMENDATIONS FOR IMPROVING ANNUITY AMOUNTS

Both the Social Security Administration's actuarial analysis and the Congressional Budget Office's cost analysis also confirmed the Committee's expectations that the cost of increasing annuity amounts for dependent children⁴⁰⁰ and the cost of increasing the number of years of service which might be deemed to be "creditable"⁴⁰¹ would both be inconsequential in terms of the funds actuarial soundness.⁴⁰²

A "High 3 Years" "Average Annual Salary" Factor and Prospective Cost-of-Living Increases for FUTURE Surviving Spouses

Both studies, however, as explained above, indicated that the simultaneous adoption of a high-three-year "average annual salary" factor and prospective cost-of-living increases for *future* surviving spouses would, given annual "comparability adjustments" in judicial salaries, result in a future fund deficiency.⁴⁰³ Since both of those reforms will only benefit surviving spouses whose annuities commence *after* the date upon which this legislation becomes effective, the Committee has concluded that the cost of those two reforms should be assessed against the new program, and has accordingly revised the proposed bill to provide for increases in both the "contributions" made by participating judicial officials and the "matching amounts" paid into the program by the government.⁴⁰⁴

Because S. 12, as amended, increases the "contribution" rate from 3 percent to 4.5 percent, the annual "contribution" receipts acquired by the program from both participating judicial officials and the government will increase by 50 percent. According to the latest actuarial valuation of the judicial survivors' annuities program, the government's contributions for calendar year 1977 are estimated to be \$741,000.⁴⁰⁵ Because that valuation was conducted prior to passage of the "Executive Salary Cost-of-living Adjustment Act" last October, that estimated figure must be "adjusted" to reflect "comparability adjustments" in judicial salaries resulting from that legislation. Assuming that judges will receive a 5 percent comparability adjustment in 1976, just as they did in 1975,⁴⁰⁶ that \$741,000 figure for calendar year 1977 becomes \$817,000. If, as anticipated, S. 12, as amended, has become effective by calendar year 1977, that figure will increase by 50 percent and become \$1,226,000. Because the government is already required to pay the original \$817,000 under existing

³⁹⁸ See notes 221-254, *supra*, and accompanying text.

³⁹⁹ See letter, note 392, *supra*.

⁴⁰⁰ See notes 255-260, *supra*, and accompanying text.

⁴⁰¹ See notes 275-282, *supra*, and accompanying text.

⁴⁰² See note 395, *supra*.

⁴⁰³ See note 397, *supra*.

⁴⁰⁴ It should be noted that only "contributions", not "deposits", are "matched" under the program. See notes 171-186 and 359, *supra*, and accompanying text.

⁴⁰⁵ See Senate Hearings, 1975, at 14.

⁴⁰⁶ See note 201, *supra*.

legislation,⁴⁰⁷ however, only the actual amount of the increase, \$409,000, will be a cost to the government of S. 12, as amended. Applying the same calculations to the estimated government "matching amounts" listed in the latest actuarial valuation for calendar years 1977-1981⁴⁰⁸ yields a five-year cost to the government of:

Calendar year	Government contributions	Adjusted at 5 percent a year since 1975	Amount of increases
1977.....	\$741,000	\$817,000	\$409,000
1978.....	742,000	859,000	430,000
1979.....	743,000	903,000	452,000
1980.....	744,000	949,000	475,000
1981.....	745,000	998,000	499,000
Total.....			2,265,000

In the table of estimated costs which is presented at the conclusion of this section of this report, although that five-year figure is shown as a cost to the government of "increasing contribution and deposit rates from 3 percent to 5 percent", it could just as accurately have been apportioned between the costs of "substituting an average annual salary factor based upon the high three years of earnings rather than the last five years of earnings" and "providing prospective cost-of-living increases for future surviving spouses".

Retroactive and Prospective Cost-of-Living Increases for EXISTING Widows

As explained above, the cost of providing *retroactive* cost-of-living increases for all existing widows under the formula recommended in S. 12, as amended, has been estimated to be approximately \$2 million.⁴⁰⁹ That amount covers all expenditures required for increases in *existing* annuities from the effective date of this legislation until the date of death of the last of the existing annuitants. Because those expenditures were never anticipated in 1965, and because assessing them against the new program would result in present contributors financing benefits for survivors of past contributors, as well as for those widows who were "blanketed into" the program, the Committee has concluded that this cost should be assessed against the government. Accordingly, the table presented at the conclusion of this section of this report shows this item as an estimated cost of \$2 million, and S. 12, as amended, provides that an appropriate amount will be deposited into the new fund as soon as authorized monies are made available for that purpose.⁴¹⁰

A similar evaluation has also been made regarding the cost of *prospective* cost-of-living increases for all *existing* widows. *Existing* annuitants will, under S. 12, as amended, be just as eligible for those future cost-of-living increases as will annuitants whose benefits commence after this legislation becomes effective. To assess the cost of prospective cost-of-living increases for those existing widows against the program, however, would be as inappropriate as assessing the cost of their *retroactive* cost-of-living increases against the program.

⁴⁰⁷ See note 171, *supra*.

⁴⁰⁸ See note 405, *supra*.

⁴⁰⁹ See notes 331-333, *supra*, and accompanying text.

⁴¹⁰ See Section 5 of S. 12, as amended, in the Amendments section of this report, *supra*.

The Committee has therefore recommended that that cost also be met by the government. Although the actuaries did not provide an estimated cost figure for that item in the letter of October 6, 1975, when subsequently asked to provide that figure by telephone, Mr. Warfield informed the Committee that, "at the very most, the cost would certainly be no more than half of the estimated cost of the retroactive increases for those annuities," and stated that using a figure of \$1 million, although probably an overestimation, would certainly not be inaccurate as an underestimation. Given the present ages of many of the existing annuitants, that figure is probably a rather comfortable overestimation.⁴¹¹ Nevertheless, in the belief that an overestimation cannot harm the fiscal stability of the fund, while an underestimation certainly would, the Committee has listed that figure in the following table as an estimated cost to the government of S. 12, as amended. It should be noted that, under S. 12, as amended, before that cost to the government is actually met by depositing an appropriate amount into the new fund, a more accurate estimation of that cost will be made and will be used by the Administrative Office in requesting the necessary appropriations.⁴¹²

RECOMMENDATIONS FOR FINALLY ESTABLISHING AN ACTUARIALLY SOUND PROGRAM

Among those recommendations which are designed to establish an actuarially sound program, only the elimination of the existing fund deficiency and the increasing of "contribution" and "deposit" rates will result in additional costs to the government.

As previously explained, the existing program's current fund deficiency is largely the result of the Eighty-fourth Congress' decision to "blanket-into" the program 121 widows in existence on the program's inaugural date without providing the funds to finance their annuities.⁴¹³ That deficit was estimated to be \$7.3 million in December of 1973 and \$8.2 million in September of 1975.⁴¹⁴ Because that amount increases with every passing month, this Committee has assumed that it will be approximately \$8.5 million by the time this legislation becomes effective and has used that figure in the table of estimated costs which follows. As in the case of retroactive cost-of-living increases in existence on the legislation's effective date,⁴¹⁵ however, the language of S. 12, as amended, requires that, before an appropriate amount is deposited into the new fund, an accurate estimation of that cost as of the Act's effective date will be made by the Administrative Office of the U.S. Courts and used in requesting necessary appropriations.⁴¹⁶

The increased cost resulting from increasing "contribution" and "deposit" rates is also thoroughly explained at an earlier point in this report.⁴¹⁷ Because the government will be required to match *only* the increased contributions made by program members,⁴¹⁸ the

⁴¹¹ One study by this committee has indicated that, if fully funded shortly after the Act becomes effective, the cost for this item could be as low as \$700,000. See "Cost-of-living Increases, Staff Study 4, Chart 3," on file with the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary.

⁴¹² See Section 5 of S. 12, as amended, in the Amendments section of this report, supra.

⁴¹³ See note 387, supra.

⁴¹⁴ See notes 352-353, supra, and accompanying text.

⁴¹⁵ See note 358, supra.

⁴¹⁶ See Section 4 of S. 12, as amended, in the Amendments section of this report, supra.

⁴¹⁷ See notes 403-408, supra, and accompanying text.

⁴¹⁸ See note 404, supra.

amounts it is now required to provide for that purpose will increase in future years by 50 percent in each year. As explained above, the anticipated amount of those increases for calendar years 1977-1981 is \$2,300,000,⁴¹⁹ and that is the figure we have listed in the following table.

TABLE C.—Estimated costs of S. 12, as amended

Recommendations for improving eligibility standards:	
1. Extended annuities for dependent children who are full-time students.....	0
2. Permitting widowers as well as widows to receive annuities...	0
3. Reducing the period of marriage required for eligibility from two years to one year.....	0
4. Permitting widows and widowers to receive an annuity regardless of age or the existence of dependent children....	0
5. Reducing the required contribution period from five years to eighteen months.....	0
6. Reforming the procedures governing deposits for prior service.....	0
Recommendations for improving annuity amounts:	
1. Increasing annuity amounts for dependent children.....	0
2. Substituting an "average annual salary" factor based upon the three high years of earnings, rather than upon the last five years of earnings.....	(1)
3. Increasing the number of years of service which may be deemed creditable.....	0
4. Providing retroactive cost-of-living increases for existing widows.....	\$2, 000, 000
5. Providing prospective cost-of-living increases for existing widows.....	1, 000, 000
6. Providing prospective cost-of-living increases for future surviving spouses.....	(1)
Recommendations for establishing an actuarially sound program:	
1. Eliminating the existing fund's deficiency.....	8, 500, 000
2. Statutorily authorizing the payment of "matching amounts".....	0
3. Incorporating the existing program into a completely restructured new program.....	0
4. Increasing "contribution" and "deposit" rates from 3 percent to 4.5 percent.....	² 2, 300, 000
Total.....	13, 800, 000

¹ The cost for this item is included in the cost for increasing "contribution" and "deposit" rates from 3 percent to 4.5 percent.

² This figure reflects the cost for this item for five calendar years (1977-81).

⁴¹⁹ See notes 403-408, supra, and accompanying text.

COMMUNICATIONS

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
SUPREME COURT BUILDING,
Washington, D.C., October 8, 1975.

HON. QUENTIN N. BURDICK,
Chairman, Subcommittee on Improvements in Judicial Machinery,
Committee on the Judiciary U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In supplement to the testimony on September 10, 1975, regarding S. 12, as amended, this is to advise you that the Judicial Conference of the United States, meeting on September 25, 1975 ratified the action of its Executive Committee in approving S. 12, as amended.

Sincerely,

WILLIAM E. FOLEY,
Deputy Director.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
SUPREME COURT BUILDING,
Washington, D.C., October 10, 1975.

MR. BILL WELLER,
Senate Subcommittee on Judicial Improvement,
Senate Office Building, Washington, D.C.

DEAR MR. WELLER: Pursuant to our conversation of October 10, 1975, we are enclosing the Actuary Study for cost estimates for the proposal to increase the annuities paid under the Judicial Survivors Annuity System.

Sincerely yours.

JOSEPH A. LEACH,
Chief, Payroll Section.

Enclosures.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
Baltimore, Md., October 6, 1975.

Mrs. M. PATRICIA CARROLL,
Supreme Court Building, Washington, D.C.

DEAR MRS. CARROLL: Enclosed are the cost estimates for the proposed legislation you requested.

The following proposals have a negligible cost: the reduction in the required period of time that the judge and his spouse be married from two years to one year, any changes in annuity eligibility or annuity amounts to child survivors, the elimination of a minimum age before a spouse can begin receiving an annuity, the annuity to a widower, and the reduction from five years to 18 months in the period that the judge must make contributions for service before his survivors receive protection.

(70)

With regards to the proposal to increase the annuities of widows blanketed-in with the beginning of the Judicial Survivors Annuity System by one-fifth of 1 percent for each month on the rolls, the cost under level salary assumptions is 0.1 percent of payroll or \$310,000. If judges salaries should increase, then the cost as a percent of payroll will decrease; but the cost of the alternative of making an immediate contribution to the trust fund would remain \$310,000.

The proposal to increase widows annuities by 3 percent for every 5 percent increase in judges' salaries was valued under three sets of assumptions: salary increases of 5 percent (and corresponding annuity increases of 3 percent) every year beginning with 1976, salary increases of 5 percent (annuity increases of 3 percent) every other year beginning with 1977, and salary increases of 10 percent (annuity increases of 6 percent) every other year beginning with 1977. Furthermore, the cost of this proposal under each set of assumptions will be given only as a percentage of payroll since the cost of the various assumptions in terms of deposits to the trust fund can only be meaningfully compared if the assumptions are valued under the same salary increase assumptions.

After valuating the proposal under the three sets of assumptions, the results indicate that the higher the increase in judges' salaries and the more frequent the increase, the higher the cost of the proposal. The cost with a 5 percent increase every year beginning with 1976 is 0.9 percent of payroll; for a 5 percent salary increase every other year beginning with 1977, the cost is 0.5 percent of payroll; finally, the cost with a 10 percent salary increase every other year is 0.8 percent of payroll.

The remaining proposals were valued under the same 3 sets of assumptions as well as level salary assumptions. For the proposal to compute annuities using the highest 3 years of salary instead of the highest 5, the higher and more frequent the salary increase, the higher the cost of this proposal. There is no cost under level salary assumptions; the cost with a 5 percent salary increase every year beginning with 1976 is 0.4 percent of payroll, with a 5 percent salary increase every other year beginning with 1977 is 0.2 percent of payroll, and with a 10 percent salary increase every other year is 0.4 percent of payroll. However, salary increases have the reverse effect on cost for the proposal to increase the annuities of all widows currently on the rolls by one-fifth of 1 percent for each month on the rolls. The higher and the more frequent the salary increase, the lower the cost of this proposal. Under level salary assumptions the proposal costs 0.4 percent of payroll; for a 5 percent salary increase every year beginning in 1976, the cost is negligible; for a 5 percent salary increase every other year beginning in 1977, the cost is 0.2 percent of payroll; and for a 10 percent salary increase every other year beginning in 1977, the cost is negligible. In terms of an immediate deposit to the trust fund, this latter proposal costs approximately \$2,000,000 under all 4 salary increase assumptions.

Please forgive the delay in forwarding these results.

Yours truly,

CARTER S. WARFIELD, Actuary.

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., March 24, 1976.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 12, Judicial Survivors' Annuities Reform Act.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin, Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

MARCH 24, 1976.

1. Bill Number: S. 12.
2. Bill Title: Judicial Survivors' Annuities Reform Act.
3. Purpose of Bill: The purpose of the bill is to reform the existing Judicial Survivors' Annuities Program (28 U.S.C. Section 376). The bill contains provisions which liberalize eligibility requirements and benefits for annuitants. Major reforms contained in the bill include: (a) prospective and retroactive cost of living increases for annuitants; (b) changes in the computation of the base annuity based on the highest three years of earnings rather than the average earnings of the last five years; (c) elimination of the program's future deficiency by financially stabilizing the annuity program.
4. Cost Estimate: The major cost provision in the bill is the prospective cost of living increases which specifies a 3 percent increase in annuitant benefits for every five percent increase in judicial salaries. This section, coupled with the changes in the calculation of the base annuity, are predominantly responsible for the large projected fund deficiency. One of the intentions of S. 12 was to ensure the future financial stability of the program through an immediate deposit of funds sufficient to meet projected annuity expenditures. As a result, the cost analysis goes beyond the five year projections to determine the aggregate yearly fund deficiency to year 2050. The cost of all major program reforms are incorporated into the deficiency estimate. The total fund deficiency, the amount required to stabilize the program, was included in the first year of enactment of the bill. The table below summarizes the results.

	<i>(Millions of dollars)</i>
Fund deficiency:	
Fiscal year 1977.....	39.5
Fiscal year 1978.....	
Fiscal year 1979.....	
Fiscal year 1980.....	
Fiscal year 1981.....	
Retroactive cost:	
Fiscal year 1977.....	2.0
Fiscal year 1978.....	
Fiscal year 1979.....	
Fiscal year 1980.....	
Fiscal year 1981.....	
Total.....	41.5

5. Basis for Estimate: The costs of S. 12 were specified in terms of the total deficiency, i.e., the funds which currently must be authorized to meet future liabilities. The deficit calculations are based on the costs associated with three major reforms: (1) prospective cost of living increases, (2) retroactive cost of living increases, and (3) computation of the annuity based on the highest three years of earnings rather than the average of the last five years of earnings. It was assumed throughout the analysis that judges' salaries would increase at a rate of 5 percent yearly. This rate is comparable to the rate of increase of General Schedule federal employees and is applicable to judges as defined by the Executive Salary Cost of Living Adjustment Act. Based on these assumptions, the program's total deficit was estimated at \$41.5 million.

The cost analysis was primarily divided into two parts, i.e., revenue projections and expenditure projections. This analysis produces an estimate of the costs of the provisions contained in S. 12, but should not be considered a substitute for an actuarial study. Because the reforms contained in S. 12 have future budgetary implications, a projection period of seventy-five years was assumed. However, the costs are quite sensitive to the length of the time period.

The revenues of the Judicial program are composed of judicial and government matching contributions and judicial deposits for prior creditable service. The revenue from contributions is based on a closed group of 667 judges receiving a 5 percent salary increase yearly on a \$42,000 salary base. The judges and Federal Government contributions were assumed to be a constant 3 percent of this payroll over the projection period. Deposit amounts are based on current U.S. Attorney salaries with a 5 percent yearly salary increase. It was assumed that judges with creditable service entering the annuity program must deposit into the fund 3 percent of their last eighteen months' salary. It was also assumed that the balance in the fund would be invested at 7.6 percent.

The expenditure projections consist of annuity expenditures and refunds. In calculation of the annuity expenditures, the following assumptions were made: (a) the base year annuities were calculated on the highest three salary years, (b) a three percent yearly increase in annuities per year, (c) an average of twenty-one years of creditable service, (d) a termination rate of 6 percent based on a projection of widows currently receiving benefits, and (e) refund expenditures based on the refunds in Table VIIA of the Hearings.¹

The yearly program deficit was obtained by subtracting expenditures from revenues for each fiscal year. Employing these assumptions, the fund had a \$4.3 million deficit in year 1999. Applying a discount factor of 7.6 percent for each year with a projected deficit, the total fund deficiency was estimated at \$39.5 million. This did not include an additional \$2.0 million for the retroactive cost of living increases for those widows now receiving annuities. The total funding deficiency is therefore \$41.5 million.

As an alternative to this financing method, the Subcommittee on Improvements in Judicial Machinery suggested performing this analysis based on an increase in contributions of 1.5 percent i.e., a total of 4.5 percent. Based on a salary of \$42,000, this would amount

¹ Hearing before the Subcommittee on Improvements in Judiciary Machinery, July 17 and September 10, 1975.

to an increase of approximately \$600 per member for fiscal year 1976. The Federal Government would also increase its contribution per enrollee by an equal amount. Under this assumption, there would be a \$13.0 million fund deficiency.

6. Estimate Comparison: An estimate was prepared by the Social Security Administration's actuarial staff. The fund deficiency was calculated at \$269 million. The difference between the estimates is basically due to the time frame considered in each analysis. The Social Security Administration used an infinite time span for their calculations.

7. Previous CBO Estimate: None.

8. Estimate Prepared By: James V. Manaro (225-5275).

9. Estimate Approved By:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 9, 1976.

HON. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary, U.S. Senate,
Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached revised cost estimate for S. 12, Judicial Survivor's Annuities Reform Act.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

April 9, 1976.

1. Bill Number: S. 12.
2. Bill Title: Judicial Survivors' Annuities Reform Act.
3. Purpose of Bill:

The purpose of the bill is to reform the existing judicial Survivors' Annuities Program (28 USC Section 376). The bill contains provisions which liberalize eligibility requirements and benefits for annuitants. Major reforms contained in the bill include: (a) prospective and retroactive cost of living increases for annuitants; (b) changes in the computation of the base annuity based on the highest three years of earnings rather than the average earnings of the last five years; (c) elimination of the program's future deficiency by financially stabilizing the annuity program; and (d) increasing the judges' and government contributions from 3.0 percent to 4.5 percent of judicial salaries.

4. Cost Estimate:

The cost estimate includes all major provisions as specified in the bill. One of the major intents of S. 12 was to ensure the future financial stability of the program through an immediate deposit of funds sufficient to meet projected annuity expenditures. As a result, the cost

analysis goes beyond the five-year projections to determine the aggregate yearly fund deficiency to year 2050.

The cost of all major reforms, except the retroactive provisions of the bill, were incorporated into the deficiency estimate. The total fund deficiency, the amount required to stabilize the program, was included in the first year of enactment of the bill. In addition to the cost of funding the deficiency, the cost of the retroactive cost of living increases and the additional contribution costs of the federal government, were also included in the estimate. The table below summarizes the results.

	COSTS				
	(In millions of dollars)				
	Fiscal year—				
	1977	1978	1979	1980	1981
Government contributions costs.....	0.4	0.5	0.5	0.5	0.5
Retroactive costs.....	2.0				
Fund deficiency.....	11.0				
Total.....	13.4	.5	.5	.5	.5

5. Basis for Estimate:

The costs of S. 12 were specified in terms of the total fund deficiency, i.e., the funds which currently must be authorized to meet future liabilities. The deficit calculations are based on the costs associated with three major reforms: (1) prospective cost of living increases, (2) retroactive cost of living increases, and (3) computation of the annuity based on the highest three years of earnings rather than the average of the last five years of earnings. It was assumed throughout the analysis that judge's salary would increase at a rate of 5 percent yearly. This rate is comparable to the rate of increase of General Schedule federal employees and is applicable to judges as defined by the Executive Salary Cost of Living Adjustment Act.

The cost analysis was primarily divided into two parts, i.e., revenue projections and expenditure projections. This analysis produces an estimate of the costs of the provisions contained in S. 12, but should not be considered a substitute for an actuarial study. Because the reforms contained in S. 12 have future budgetary implications, a projection period of seventy-five years was assumed. However, the costs are quite sensitive to the length of the time period.

The revenues of the Judicial program are composed of judicial and government matching contributions and judicial deposits for prior creditable service. The revenue from contributions is based on a closed group of 667 judges receiving a 5 percent salary increase yearly on a \$42,000 salary base. The judges and federal government contributions were assumed to be a constant 4.5 percent of this payroll over the projection period. Deposit amounts are based on current U.S. Attorney salaries with a 5 percent yearly salary increase. It was assumed that judges with creditable service entering the annuity program must deposit into the fund 4.5 percent of their last eighteen months' salary. It was also assumed that the balance in the fund would be invested at 7.6 percent.

The expenditure projections consist of annuity expenditures and refunds. In calculation of the annuity expenditures, the following assumptions were made: (a) the base year annuities were calculated on

the highest three salary years, (b) a three percent yearly increase in annuities per year, (c) an average of twenty-one years of creditable service, (d) a termination rate of 6 percent based on a projection of widows currently receiving benefits, and (e) refund expenditures based on the refunds in Table VIIA of the Hearings.^a

Employing these assumptions, the fund deficiency was estimated at \$11.0 million. Retroactive costs and increased governmental contributions costs were estimated at \$2.0 million and \$5.5 million, respectively.

6. Estimate Comparison:

An estimate was prepared by the Social Security Administration's actuarial staff. The fund deficiency was calculated at \$269 million. The difference between the estimates is basically due to the time frame considered in each analysis. The Social Security Administration used an infinite time span for their calculations and a 3 percent rather than a 4.5 percent contribution rate.

7. Previous CBO Estimate:

A previous estimate was completed on March 24, 1976 by CBO based on a 3 percent contribution rate.

8. Estimate Prepared By: James V. Manaro (225-5275)

9. Estimate Approved By:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

^a Hearing before the Subcommittee on Improvements in Judiciary Machinery, July 17 and September 10, 1975.

SECTIONAL ANALYSIS

Section 1 of the amended bill merely provides a citation title for the Act.

Section 2 of the amended bill completely amends and restructures 28 U.S.C. § 376 in its entirety as follows:

Subsection (a) defines the terms "judicial official", "retirement salary", "widow", "widower", and "child" for purposes of interpreting and applying the Act.

Subsection (b) authorizes the procedures under which required contributions from salary shall be deposited into the Judicial Survivors' Annuities Fund by participating judicial officials.

Subsection (c) authorizes the deposit into the Judicial Survivors' Annuities Fund, from the fund used to compensate a participating judicial official, amounts matching those contributed from salary by that judicial official.

Subsection (d) authorizes the procedures under which deposits shall be made into the Judicial Survivors' Annuities Fund to qualify designated prior governmental service as creditable service under subsection (k) so that it may be used in computing annuity amounts under subsection (l).

Subsection (e) provides that all amounts contributed under subsection (b) and (d) shall be credited to individual accounts in the names of each participating judicial official.

Subsection (f) authorizes the Secretary of the Treasury to invest portions of the Judicial Survivors' Annuities Fund in interest bearing securities and provides that all income thereby derived shall become a part of the Judicial Survivors' Annuities Fund.

Subsection (g) authorizes and governs refunds from the individual accounts created by subsection (e) to any judicial official who resigns from office without receiving any retirement salary.

Subsection (h) stipulates the conditions under which an annuity shall be paid from the Judicial Survivors' Annuities Fund, the amounts of annuities for surviving dependent children, and the conditions under which the payment of annuities shall terminate.

Subsection (i) authorizes the Director of the Administrative Office of the U.S. Courts to determine all questions of dependency or disability arising under this Act, subject only to the review of the Judicial Conference of the United States. Subsection (i) also authorizes the Director to order or direct such medical or other examinations as he may deem to be necessary in the exercise of his authority to determine questions of dependency or disability.

Subsection (j) stipulates the conditions under which annuity payments from the Judicial Survivors' Annuities Fund may be made to guardians or fiduciaries of annuitants.

Subsection (k) defines those years of service rendered by a judicial official which may be deemed creditable years of service to be used in computing an annuity under subsection (l).

Subsection (l) provides the computation formulas to be used in determining the amounts of annuities to be paid from the Judicial Survivors' Annuities Fund.

Subsection (m) authorizes periodic cost-of-living increases in annuities paid from the Judicial Survivors' Annuities Fund and stipulates that the amount of each annuity shall be increased by 3 percent for every 5 percent increase in the salary of the office in which the judicial official, upon whose service the annuity is based, rendered some portion of his or her final eighteen months of creditable service.

Subsection (n) provides for payment of annuities from the Judicial Survivors' Annuities Fund in monthly installments and prohibits the assignment, attachment, garnishment or other legal taking of such annuities.

Subsection (o) provides for a statutory plan of descent and distribution of all monies in a judicial official's individual account, created under subsection (e), in the event such judicial official dies without having enough creditable service to qualify his survivors for an annuity or without being survived by any annuitants.

Subsection (p) provides that, in any case in which all annuities being paid by the Judicial Survivors' Annuities Fund terminate, before the amount credited to the individual account of the judicial official, upon whose service they are based, has been exhausted, any remaining amount in that individual account shall be paid under the same statutory plan of descent and distribution authorized by subsection (o).

Subsection (q) provides that any accrued annuity benefits which remain unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to the annuitant and that those remaining unpaid upon the death of an annuitant shall be paid in accordance with the statutory plan of descent and distribution stipulated in that subsection.

Subsection (r) stipulates that a widow or widower receiving an annuity from the Judicial Survivors' Annuities Fund may receive other annuities as long as they are not also based upon service credited in computing the annuity paid from the Judicial Survivors' Annuities Fund.

Section 3 of the amended bill provides that upon the effective date of the Act, all monies credited to the judicial survivors' annuities fund established by section 2 of the Act of August 3, 1956, as amended, shall be transferred to a new fund which shall be known as "The Judicial Survivors' Annuities Fund" and authorizes the creation of that new fund on the books of the Treasury.

Section 4 of the amended bill provides that, on the effective date of the Act, the Secretary of the Treasury shall ascertain, from the Director of the Administrative Office of the U.S. Courts, the amount of the level cost deficiency existing in judicial survivors' annuity fund, established by section 2 of the Act of August 3, 1956, as amended, on the date of that fund's transfer under Section 3 of the Act, and shall, at the earliest time thereafter when appropriated funds become available, deposit in a single payment that same amount into "The Judicial Survivors' Annuities Fund" created by Section 3 of the Act. Section 4 also authorizes the appropriation of such funds as are necessary for the Secretary of the Treasury to make that deposit.

Section 5 of the amended bill provides that upon the effective date of the Act, each annuity then being paid from the judicial survivors'

annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended shall be increased by an amount equal to one-fifth of 1 percent of the amount of that annuity for every month which has passed since that annuity commenced. Section 5 also authorizes the appropriation of such funds as are needed to effect those increases and provides that they shall, when available, be deposited in the new fund created by Section 3 of the Act. Under this arrangement existing annuitants will be able to receive their increases immediately and the fund will be compensated for those expenditures when the authorized appropriation is subsequently made.

Section 6 of the amended bill provides that although all improvements and reforms effected by the Act shall be conferred upon those now receiving annuities or eligible to receive an annuity (i.e., a widow without dependent children who has not yet reached age 50), no rights or privileges secured under section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended, shall be abrogated by those now receiving annuities or eligible to receive an annuity. Section 6 also stipulates that the rights of any judicial official who elects to join the Judicial Survivors' Annuities program after the effective date of the Act shall be determined only under the provisions of the Act.

Section 7 of the amended bill provides the effective date for the Act.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law is shown in roman, matter repealed enclosed in black brackets, and new matter is printed in italic):

TITLE 28, UNITED STATES CODE

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUDGES

* * * * *

§ 376. Annuities to widows and surviving dependent children of justices and judges of the United States

[(a) Any justice or judge of the United States may by written election filed with the Director of the Administrative Office of the United States Courts within six months after the date on which he takes office (or within six months after the enactment of this section) bring himself within the purview of this section.

[(b) There shall be deducted and withheld from the salary of each justice or judge electing to bring himself within the purview of this section a sum equal to 3 per centum of such justice's or judge's salary, including salary paid after retirement from regular active service under section 371(b) or 372(a) of this title or after retirement from office by resignation on salary under section 371(a) of this title. The amounts so deducted and withheld from the salary of each such justice or judge shall, in accordance with such procedure as may be prescribed by the Comptroller General of the United States, be deposited in the Treasury of the United States to the credit of a fund to be known as the "judicial survivors annuity fund" and said fund is appropriated for the payment of annuities, refunds and al-

allowances as provided by this section. Every justice or judge who elects to bring himself within the purview of this section shall be deemed thereby to consent and agree to the deductions from his salary as provided in this subsection, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all judicial services rendered by such justice or judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the provisions of this section.

[(c) Each justice or judge who has elected to bring himself within the purview of this section shall deposit, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the credit of the judicial survivors annuity fund created by this section a sum equal to 3 per centum of his salary received for service as a justice or judge of the United States (including salary received after retirement from regular active service under section 371(b) or 372(a) of this title and salary received after retirement from office by resignation on salary under section 371(a) of this title), and of his basic salary, pay, or compensation for service as a Senator, Representative, Delegate or Resident Commissioner in Congress and for any other civilian service within the purview of section 707 of title 5. Such interest shall not be required for any period during which the justice or judge was separated from all such service and was not receiving salary under section 371(a) or 373 of this title. Each justice or judge may elect to make such deposits in installments during the continuance of his judicial service in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts. Notwithstanding the failure of a justice or judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the widow of such justice or judge shall be reduced by an amount equal to 10 per centum of the amount of such deposit, computed as of the date of the death of such justice or judge, unless such widow shall elect to eliminate such service entirely from credit under subsection (o) of this section: *Provided*, That no deposit shall be required from a justice or judge for any service rendered prior to August 1, 1920, or for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

[(d) The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, such portions of the judicial survivors annuity fund as in his judgment may not be immediately required for the payment of annuities, refunds and allowances as provided in this section. The income derived from such investments shall constitute a part of said fund for the purpose of paying annuities and of carrying out the provisions of subsections (f), (g), (i), and (j) of this section.

[(e) The amount deposited by or deducted and withheld from the salary of each justice or judge electing to bring himself within the purview of this section for credit to the judicial survivors annuity fund created by this section covering service from and after August 1, 1920, shall be credited to an individual account of such justice or judge.

[(f) If any justice or judge who has elected to bring himself within the purview of this section resigns from office otherwise than on salary

under section 371(a) of this title, the amount credited to his individual account, together with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum, thereafter, compounded on December 31st of each year, to the date of his relinquishment of office, shall be returned to him.

[(g) In case any justice or judge who has elected to bring himself within the purview of this section shall die while in office (whether in regular active service or retired from such service under section 371(b) or 372(a) of this title), or after retirement from office by resignation on salary under section 371(a) of this title, after having rendered at least five years of civilian service computed as prescribed in subsection (o) of this section, for the last five years of which the salary deductions provided for by subsection (b) of this section or the deposits required by subsection (c) of this section have actually been made—

[(1) if such justice or judge is survived by a widow but not by a dependent child, there shall be paid to such widow an annuity beginning with the day of the death of the justice or judge or following the widow's attainment of the age of fifty years, whichever is the later, in an amount computed as provided in subsection (n) of this section; or

[(2) if such justice or judge is survived by a widow and a dependent child or children, there shall be paid to such widow an immediate annuity in an amount computed as provided in subsection (n) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed \$900 per year divided by the number of such children or \$360 per year, whichever is lesser; or

[(3) if such justice or judge leaves no surviving widow or widower but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (2) of this subsection had she survived, but not to exceed \$480 per year.

[(The annuity payable to a widow under this subsection shall be terminable upon her death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of eighteen years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a widow of a justice or judge leaving a dependent child or children of the justice or judge surviving her the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependent child, under this subsection, is terminated, the annuities of any remaining dependent child or children, based upon the service of the same justice or judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such justice or judge.

[(h) As used in this section—

[(1) The term "widow" means a surviving wife of an individual, who either (A) shall have been married to such individual for

at least two years immediately preceding his death or (B) is the mother of issue by such marriage, and who has not remarried.

[(2) The term "dependent child" means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of eighteen years or who because of physical or mental disability is incapable of self-support.

Questions of dependency and disability arising under this section shall be determined by the Director of the Administrative Office of the United States Courts subject to review only by the Judicial Conference of the United States the decision of which shall be final and conclusive. The Director may order or direct at any time such medical or other examinations as he shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity under this section, and may suspend or deny any such annuity for failure to submit to any examination.

[(i) In any case in which (1) a justice or judge who has elected to bring himself within the purview of this section shall die while in office (whether in regular active service or retired from such service under section 371(b) or 372(a) of this title), or after retirement from office by resignation on salary under section 371(a) of this title, before having rendered five years of civilian service computed as prescribed in subsection (o) of this section, or after having rendered five years of such civilian service but without a survivor or survivors entitled to annuity benefits provided by subsection (g) of this section, or (2) the right of all persons entitled to annuity under subsection (g) of this section based on the service of such justice or judge shall terminate before a valid claim therefore shall have been established, the total amount credited to the individual account of such justice or judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum, thereafter, compounded on December 31st of each year, to the date of the death of such justice or judge, shall be paid upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

First, to the beneficiary or beneficiaries whom the justice or judge may have designated by a writing received by the Administrative Office of the United States Courts prior to his death;

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

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

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

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

Sixth, if none of the above, to such other next of kin of such justice or judge as may be determined by the Director of the Administrative Office of the United States Courts to be entitled under the laws of the domicile of such justice or judge at the time of his death.

Determination as to the widow or child of a justice or judge for the purposes of this subsection shall be made by the Director of the Ad-

ministrative Office of the United States Courts without regard to the definition of these terms stated in subsection (h) of this section.

[(j) In any case in which the annuities of all persons entitled to annuity based upon the service of a justice or judge shall terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such justice or judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31st of each year, to the date of the death of such justice or judge, the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (i) of this section.

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

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

Second, if there is no such executor or administrator payment may be made, after the expiration of thirty days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the Director of the Administrative Office of the United States Courts to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

[(l) Where any payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

[(m) Annuities granted under the terms of this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. None of the moneys mentioned in this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

[(n) The annuity of the widow of a justice or judge who has elected to bring himself within the purview of this section shall be an amount equal to the sum of (1) 1¼ per centum of the average annual salary received by such justice or judge for judicial service and any other prior allowable service during the last five years of such service prior to his death, or retirement from office by resignation on salary under section 371(a) of this title, multiplied by the sum of his years of judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the

Armed Forces of the United States, and his years, not exceeding fifteen, of prior allowable service performed as an employee described in section 698(g) of title 5, and (2) $\frac{3}{4}$ of 1 per centum of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed 37 $\frac{1}{2}$ per centum of such average annual salary and shall be further reduced in accordance with subsection (c) of this section, if applicable.

[(o) Subject to the provision of subsection (c) of this section, the years of service of a justice or judge which are allowable as the basis for calculating the amount of the annuity of his widow shall include his years of service as a justice or judge of the United States (whether in regular active service or retired from such service under section 371(b) or 372(a) of this title), his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding five years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of section 707 of title 5.

[(p) Nothing contained in this section shall be construed to prevent a widow eligible therefor from simultaneously receiving an annuity under this section and any annuity to which she would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of her annuity under this section shall not be credited.

[(q) The judges of the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and judges of the United States, as defined in section 451 of this title, who are entitled to hold office only for a term of years shall be deemed judges of the United States for the purposes of this section and shall be entitled to bring themselves within the purview of this section by filing an election as provided in subsection (a) of this section within the time therein specified. In the case of such judges the phrase "retirement from office by resignation on salary under section 371(a) of this title" as used in subsections (b), (c), (g), (i) and (n) of this section shall mean "retirement from office by resignation on salary under section 373 of this title or by removal or failure of reappointment after not less than ten years judicial service", and the phrase "resigns from office otherwise than on salary under section 371(a) of this title" as used in subsection (f) of this section shall mean "resigns from office otherwise than on salary under section 373 of this title or is removed or fails of reappointment after less than ten years judicial service."

[(r) The Director of the Federal Judicial Center shall be deemed a judge of the United States for the purposes of this section and shall be entitled to bring himself within the purview of this section by filing an election as provided in subsection (a) of this section within the time therein specified. As applied to a Director of the Federal Judicial Center, the phrase "retirement from office by resignation on salary under section 371(a) of this title" as used in subsections (b), (c), (g), (i), and (n) of this section shall mean "retirement from office under subsection (c) or (d) of section 627 of this title or by removal after not less than ten years service", the phrase "salary

paid after retirement" as used in subsection (b) of this section shall mean "annuity paid after retirement under subsection (c) or (d) of section 627 of this title", and the phrase "resigns from office other than on salary under section 371(a) of this title" as used in subsection (f) of this section shall mean "resigns from office otherwise than on retirement under subsection (c) or (d) of section 627 of this title or is removed after less than ten years service".

[(s) The Director of the Administrative Office of the United States Courts shall be deemed a judge of the United States for the purposes of this section and shall be entitled to bring himself within the purview of this section by filing an election as provided in subsection (a) of this section within the time therein specified. As applied to a Director of the Administrative Office of the United States Courts, the phrase "retirement from office by resignation on salary under section 371(a) of this title" as used in subsections (b), (c), (g), (i), and (n) of this section shall mean "retirement from office under section 611 of this title or by removal after not less than ten years service", the phrase "salary paid after retirement" as used in subsection (b) of this section shall mean "annuity paid after retirement under section 611 of this title", and the phrase "resigns from office other than on salary under section 371(a) of this title" as used in subsection (f) of this section shall mean "resigns from office otherwise than on retirement under section 611 of this title or is removed after less than ten years service."]

"§ 376. Annuities for survivors of certain judicial officials of the United States

"(a) For the purposes of this section—

"(1) 'judicial official' means:

"(A) a Justice or judge of the United States, as defined by section 451 of this title;

"(B) a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands;

"(C) a Director of the Administrative Office of the United States Courts, after he or she has filed a waiver under subsection (a) of section 611 of this title;

"(D) a Director of the Federal Judicial Center, after he or she has filed a waiver under subsection (b) of section 627 of this title; or

"(E) an Administrative Assistant to the Chief Justice of the United States, after he or she has filed a waiver in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

who notifies the Director of the Administrative Office of the United States Courts in writing of his or her intention to come within the purview of this section within six months after (i) the date upon which he or she takes office, (ii) the date upon which he or she marries, or (iii) the date upon which the Judicial Survivors' Annuities Reform Act becomes effective;

"(2) 'retirement salary' means:

"(A) in the case of a Justice or judge of the United States, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii)

after retirement from office by resignation on salary under subsection (a) of section 371 of this title;

“(B) in the case of a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, salary paid after retirement from office (i) by resignation on salary under section 373 of this title or (ii) by removal or failure of reappointment after not less than ten years’ judicial service;

“(C) in the case of a Director of the Administrative Office of the United States Courts, an annuity paid under subsection (b) or (c) of section 611 of this title;

“(D) in the case of a Director of the Federal Judicial Center, an annuity paid under subsection (c) or (d) of section 627 of this title; and

“(E) in the case of an Administrative Assistant to the Chief Justice of the United States, an annuity paid in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

“(3) ‘widow’ means the surviving wife of a ‘judicial official’, who:

“(A) has been married to him for at least one year on the day of his death; or

“(B) is the mother of issue by that marriage;

“(4) ‘widower’ means the surviving husband of a ‘judicial official’, who:

“(A) has been married to her for at least one year on the day of her death; or

“(B) is the father of issue by that marriage;

“(5) ‘child’ means:

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

“(B) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable educational institution. A child whose twenty-second birthday occurs before July 1, or after August 31, of a calendar year, and while he or she is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July immediately following that birthday. A child who is a student is deemed not to have ceased being a student during an interim period between school years, if that interim period lasts no longer than five consecutive months and if that child shows, to the satisfaction of the Director of the Administrative Office of the United States Courts, that he or she has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester, or other period into which the school year is divided, immediately following that interim period; or

“(C) such unmarried child, regardless of age, who is incapable of self-support because of a mental or physical disability incurred either (i) before age eighteen, or (ii) in the case of a child who is receiving an annuity as a full-time student under subparagraph (5)(B) of this subsection, before the termination of that annuity.

“(b) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary, including any ‘retirement salary’, a sum equal to 4.5 percent of that salary. The amounts so deducted and withheld from the salary of each such judicial official shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be covered into the Treasury of the United States and credited to the ‘Judicial Survivors’ Annuities Fund’ established by section 3 of the Judicial Survivors’ Annuities Reform Act. Such fund shall be used for the payment of annuities, refunds, and allowances as provided by this section. Payment of such salary less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such judicial official during the period covered by such payment, except the rights to those benefits to which such judicial official, or his or her survivors, shall be entitled under the provisions of this section.

“(c) There shall also be deposited to the credit of the ‘Judicial Survivors’ Annuities Fund’, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, amounts matching those deducted and withheld in accordance with subsection (b) of this section. Such deposits shall be taken from the fund used to pay the compensation of the judicial official, and shall immediately become an integrated part of the ‘Judicial Survivors’ Annuities Fund’ for any use required under this section.

“(d) Each judicial official shall deposit, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the ‘Judicial Survivors’ Annuities Fund’:

“(1) a sum equal to 4.5 percent of that salary, including ‘retirement salary’, which he or she has received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section prior to the date upon which he or she filed notice of an intention to come within the purview of this section with the Director of the Administrative Office of the United States Courts; and

“(2) a sum equal to 4.5 percent of the basic salary, pay, or compensation which he or she has received for serving as a Senator, Representative, Delegate, or Resident Commissioner in Congress, or for serving as an ‘employee’, as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

The interest otherwise required by this subsection shall not be required for any period during which a judicial official was separated from all such service and was not receiving any retirement salary.

“Each such judicial official may elect to make such deposits in installments, during the continuance of his or her service in those offices desig-

nated in paragraph (1) of subsection (a) of this section, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts: Provided, That, in each instance in which a judicial official does elect to make such deposits in installments, the Director shall require (i) that the first installment payment made shall be in an amount no smaller than that amount necessary to cover at least the last eighteen months of prior creditable civilian service, and (ii) that at least one additional installment payment shall be made every eighteen months thereafter until the total of all such deposits have been made.

"Notwithstanding the failure of any such judicial official to make all such deposits or installment payments, credit shall be allowed for the service rendered, but the annuity of that judicial official's widow or widower shall be reduced by an amount equal to 10 percent of the amount of such deposits, computed as of the date of the death of such judicial official, unless such widow or widower shall elect to eliminate such service entirely from credit under subsection (k) of this section: Provided, That no deposit shall be required from any such judicial official for any honorable active duty service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or for any other creditable service rendered prior to August 1, 1920.

"(e) The amounts deducted and withheld in accordance with subsection (b) of this section, and the amounts deposited in accordance with subsection (d) of this section, shall be credited to individual accounts in the name of each judicial official from whom such amounts are received, for credit to the 'Judicial Survivors' Annuities Fund'.

"(f) The Secretary of the Treasury shall invest, from time to time, in interest bearing securities of the United States or Federal farm loan bonds, those portions of the 'Judicial Survivors' Annuities Fund' which in his judgment may not be immediately required for the payment of annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of such fund for the purposes of paying annuities and carrying out the provisions of subsections (g), (h), (m), (o), (p), and (q) of this section.

"(g) If any judicial resigns from office without receiving any 'retirement salary', all amounts credited to his or her individual account, together with interest at 4 percent per annum to December 31, 1947; and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this subsection a 'reasonable period of time' shall be presumed to be no longer than one year following the date upon which such judicial official relinquished his or her office.

"(h) Annuities payable under this section shall be paid only in accordance with the following provisions:

"(1) In any case in which a judicial official dies while in office, or while receiving 'retirement salary,' after having completed at least eighteen months of creditable civilian service, as computed in accordance with subsection (k) of this section, for the last eighteen months of which the salary deductions provided by subsection (b) of this section or, in lieu thereof, the deposits required by subsection (d) of this section have actually been made—

"(A) if such judicial official is survived by a widow or widower, but not by a child, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section; or

"(B) if such judicial official is survived by a widow or widower and a child or children, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to:

"(i) \$1,466; or

"(ii) \$4,399, divided by the number of children; whichever is smallest; or

"(C) if such judicial official leaves no surviving widow or widower, but does leave a surviving child or children, there shall be paid to or on behalf of each such child, an immediate annuity equal to:

"(i) the amount of the annuity to which the judicial official's widow or widower would have been entitled under subparagraph (1) (A) of this subsection, had such widow or widower survived the judicial official, divided by the number of children; or

"(ii) \$1,760; or

"(iii) \$5,279, divided by the number of children;

whichever is smallest.

"(2) An annuity payable to a widow or widower under subparagraphs (1)(A) or (1)(B) of this subsection shall be terminated upon his or her death or remarriage.

"(3) An annuity payable to a child under this subsection shall terminate:

"(A) if such child is receiving an annuity based upon his or her status under subparagraph (5)(A) of subsection (a) of this section, on the last day of the month during which he or she becomes eighteen years of age;

"(B) if such child is receiving an annuity based upon his or her status under subparagraph (5)(B) of subsection (a) of this section, either (i) on the first day of July immediately following his or her twenty-second birthday or (ii) on the last day of the month during which he or she ceases to be a full-time student in accordance with subparagraph (5)(B) of subsection (a) of this section, whichever occurs first: Provided, That if such child is rendered incapable of self-support because of a mental or physical disability incurred while receiving that annuity, that annuity shall not terminate, but shall continue without interruption and shall be deemed to have become, as of the date of disability, an annuity based upon his or her status under clause (ii) of subparagraph (5)(C) of subsection (a) of this section;

"(C) if such child is receiving an annuity based upon his or her status under subparagraph (5)(C) of subsection (a) of this section, on the last day of the month during which he or she ceases to be incapable of self-support because of mental or physical disability; or

"(D) on the last day of the month during which such child dies or marries.

"(4) An annuity payable to a child or children under subparagraph (1)(B) of this subsection shall be recomputed and paid as provided in subparagraph (1)(C) of this subsection upon the death, but not upon the remarriage, of the widow or widower who is receiving an annuity under subparagraph (1)(B) of this subsection.

"(5) In any case in which the annuity of a child is terminated, the annuity of each remaining child which is based upon the service of the same judicial official shall be recomputed and paid as though the child whose annuity has been terminated had not survived that judicial official.

"(i) All questions of dependency and disability arising under this section shall be determined by the Director of the Administrative Office of the United States Courts, subject to review only by the Judicial Conference of the United States, and the decision of the Judicial Conference of the United States shall be final and conclusive. The Director may order or direct at any time such medical or other examinations as he deems necessary to determine the facts relative to the nature and degree of disability of any child who is an annuitant, or an applicant for an annuity, under this section, and may suspend or deny any such annuity for failure to submit to any such examination.

"(j) In any case in which a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability, as determined by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary of such claimant by the laws of the State of residence of such claimant, or to any other person who is otherwise legally vested with the care of the claimant or of the claimant's estate, and need not be made directly to such claimant. The Director of the Administrative Office of the United States Courts may, at his or her discretion, determine whether such payment is made directly to such claimant or to such guardian, fiduciary, or other person legally vested with the care of such claimant or the claimant's estate. Where no guardian or other fiduciary of such minor or such person under legal disability has been appointed under the laws of the State of residence of such claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or of the claimant's estate.

"(k) The years of service rendered by a judicial official which may be creditable in calculating the amount of an annuity for such judicial official's widow or widower under subsection (l) of this section shall include—

"(1) those years during which such judicial official served in any of the offices designated in paragraph (1) of subsection (a) of this section, including in the case of a Justice or judge of the United States those years during which he or she continued to hold office following retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title;

"(2) those years during which such judicial official served as a Senator, Representative, Delegate, or Resident Commissioner in Congress, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;

"(3) those years during which such judicial official honorably served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section: Provided, That those years of such military service for which credit has been allowed for the purposes of retirement or retired pay under any other provision of law shall not be included as allowable years of such service under this section; and

"(4) those years during which such judicial official served as an 'employee', as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

For the purposes of this subsection the term 'years' shall mean full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month which numbers less than fifteen full days and including, as one full month, any fractional part of a month which numbers fifteen days or more. Nothing in this subsection shall be interpreted as waiving or canceling that reduction in the annuity of a widow or widower which is required by subsection (d) of this section due to the failure of a judicial official to make those deposits required by subsection (d) of this section.

"(l) The annuity of a widow or widower of a judicial official shall be an amount equal to the sum of—

"(1) $1\frac{1}{4}$ percent of the average annual salary, including 'retirement salary,' which such judicial official received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section (i) during those three years of such service in which his or her annual salary was greatest, or (ii) if such judicial official has so served less than three years, but more than eighteen months, then during the total period of such service prior to his or her death, multiplied by the total of:

"(A) the number of years of creditable service tabulated in accordance with paragraph (1) of subsection (k) of this section; plus

"(B) the number of years of creditable service tabulated in accordance with paragraph (2) of subsection (k) of this section; plus

"(C) the number of years of creditable service tabulated in accordance with paragraph (3) of subsection (k) of this section; plus

"(D) the number of years up to, but not exceeding, fifteen of creditable service tabulated in accordance with paragraph (4) of subsection (k) of this section,

plus:

"(2) three-fourths of 1 percent of such average annual salary, multiplied by the number of years of any prior creditable service, as tabulated in accordance with subsection (k) of this section, not applied under paragraph (1) of this subsection:

Provided, That such annuity shall not exceed 40 percent of such average annual salary and shall be further reduced in accordance with subsection (d) of this section, if applicable.

"(m) Whenever the salary paid for service in one of the offices designated in paragraph (1) of subsection (a) of this section is increased, each annuity payable from the Judicial Survivors' Annuities Fund, which

is based, in whole or in part, upon a decreased judicial official having rendered some portion of his or her final eighteen months of service in that same office, shall also be increased. The actual amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each 5 percent by which such salary has been increased. In the event that such salary is increased by less than 5 percent, there shall be no increase in such annuity.

"(n) Each annuity authorized under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. No annuity authorized under this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

"(o) In any case in which a judicial official dies while in office, or while receiving 'retirement salary', and;

"(1) before having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which the salary deductions provided by subsection (b) of this section or the deposit required by subsection (d) of this section have actually been made; or

"(2) after having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which all such deductions or deposits have been made, but without a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) of this section; or

"(3) the rights of all persons entitled to receive the annuity benefits provided by subsection (h) of this section terminate before a valid claim therefor has been established;

the total amount credited to the individual account of that judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

"First, to the beneficiary or beneficiaries whom that judicial official may have designated in a writing received by the Administrative Office of the United States Courts prior to his or her death;

"Second, if there be no such beneficiary, to the widow or widower of such judicial official;

"Third, if none of the above, to the child or children of such judicial official and the descendants of any deceased children by representation;

"Fourth, if none of the above, to the parents of such judicial official or the survivor of them;

"Fifth, if none of the above, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such judicial official;

"Sixth, if none of the above, to such other next of kin of such judicial official, as may be determined by the Director of the Administrative Office of the United States Courts to be entitled to such payment, under the laws of the domicile of such judicial official, at the time of his or her death.

Such payment shall be a bar to recovery by any other person. For the purposes of this subsection only, a determination that an individual is a widow, widower, or child of a judicial official may be made by the Director of the Administrative Office of the United States Courts without regard to the definitions of those terms contained in paragraphs (3), (4), and (5) of subsection (a) of this section.

"(p) In any case in which all the annuities which are authorized by this section and based upon the service of a given official terminate before the aggregate amount of annuity payments received by the annuitant or annuitants equals the total amount credited to the individual account of such judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, the difference between such total amount, with such interest, and such aggregate amount shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (o) of this section.

"(q) Any accrued annuity benefits remaining unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to that annuitant. Any accrued annuity benefits remaining unpaid upon the death of an annuitant shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

"First, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such annuitant;

"Second, if there is no such executor, executrix, administrator, or administratrix, payments shall be made, after the expiration of sixty days from the date of death of such annuitant, to such individual or individuals as may appear, in the judgment of the Director of the Administrative Office of the United States Courts, to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

"(r) Nothing contained in this section shall be interpreted to prevent a widow or widower eligible for an annuity under this section from simultaneously receiving such an annuity while also receiving any other annuity to which such widow or widower may also be entitled under any other law without regard to this section: Provided, That service used in the computation of the annuity conferred by this section shall not also be credited in computing any such other annuity."

RECOMMENDATIONS

The committee believes that S. 12, as amended, is meritorious and recommends that the bill do pass.

○

JUDICIAL SURVIVORS' ANNUITIES REFORM ACT

SEPTEMBER 17, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DANIELSON, from the Committee on the Judiciary,
submitted the following

REPORT

[Including cost estimate and comparison of the Congressional Budget Office]

[To accompany S. 12]

The Committee on the Judiciary, to whom was referred the bill (S. 12) to amend section 376 of title 28, United States Code, in order to reform and update the existing program for annuities to survivors of Federal Justices and judges, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 11, line 15, strike out "\$1,466" and insert in lieu thereof "\$1,548".

Page 11, line 16, strike out "\$4,399" and insert in lieu thereof "\$4,644".

Page 12, line 4, strike out "\$1,760" and insert in lieu thereof "\$1,860".

Page 12, line 5, strike out "\$5,279" and insert in lieu thereof "\$5,580".

Page 23, line 20, strike out "level cost" and insert in lieu thereof "actuarial".

Page 25, line 7, strike out "or his" and insert "or his or her"; and strike out "of his" and insert "of that individual's".

Page 25, strike out lines 12 through 14 and insert in lieu thereof the following:

SEC. 7. That, at any time within 180 days after the date upon which this Act becomes effective, any judicial official who has, prior to that date, already participated in the judicial survivors annuity program created by the Act of August 3, 1956 (70 Stat. 1021), as amended, shall be entitled to revoke his or her earlier election to participate in that program

and thereby completely withdraw from participation in the Judicial Survivors' Annuities Program created by this Act: *Provided*, That (a) any such revocation may be effected only by means of a writing filed with the Director of the Administrative Office of the United States Courts, (b) any such writing shall be deemed to have become effective no sooner than the date upon which that writing is received by the Director, (c) upon receipt of such a writing by the Director, any and all rights to survivorship benefits for such judicial official's survivors shall terminate, and all amounts credited to such judicial official's individual account, together with interest at 3 percent per annum, compounded on December 31 of each year to that date of revocation, shall thereafter be returned to that judicial official in a lump-sum refund payment, and (d) any judicial official who effects such a revocation and who subsequently again becomes eligible and elects to join the Judicial Survivors' Annuities Program created by this Act under the provisions of section 376 of title 28, United States Code, as amended by this Act, shall be permitted to do so only upon the redeposit of the full amount of the refund obtained under this section plus interest at 3 percent per annum, compounded on December 31 of each year from the date of the revocation until the date upon which that amount is redeposited. Any judicial official who fails to effect a revocation in accordance with the right conferred by this section within 180 days after the date upon which this Act becomes effective shall be deemed to have irrevocably waived the right to that revocation.

SEC. 8. That this Act shall become effective on the first day of the third month following the month in which it is enacted, or on October 1, 1976, whichever occurs last.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to reform and update the existing judicial survivors' annuity program (28 U.S.C. § 376) providing benefits, for surviving spouses and children of all Federal Justices and judges who elect to join that program. Those benefits will be substantially similar to the benefits now conferred upon surviving spouses and children of Members of Congress. S. 12 would (1) place the program in an actuarially sound fiscal condition; (2) provide more liberal eligibility standards and reasonable increases in existing annuity amounts, made necessary by increases in the cost of living since each existing annuity was commenced; and (3) establish a method for providing future periodic increases in annuity amounts by keying them into increases in judicial salaries, rather than endangering the fiscal integrity of the program.

PURPOSE OF THE AMENDMENTS

Although the amendments were adopted in block by the Committee on the Judiciary, they may be summarized as follows.

The purpose of the first four amendments is to raise the eligible annuities for children to an amount equal to those of dependents who

are civil service survivor annuitants. At the time S. 12 was considered by the Senate Judiciary Committee, a lower civil service amount was in effect.

The fifth amendment, by striking the term "level cost" and inserting "actuarial", substitutes a more technically accurate term, and will aid the cost studies.

The sixth amendment makes clear that survivors of female judges are covered, as well as those of male judges.

The seventh amendment provides an option to present members of the program to leave the program, but they must act within 180 days of the effective date of this act. Some judges expressed concern that the increase of their contribution rate—from 3 percent to 4.5 percent of their annual salaries—was too high, and that this option should be given to them. Strict procedures are set by the amendment to insure no person will abuse this provision.

The Committee has been informed that the Senate will concur in all these amendments.

BACKGROUND

The existing judicial survivors' annuity program was created in 1956, after six years of controversial and sporadic consideration by Congress. For a thorough review of past proposals, see the Senate Report on S. 12, Report No. 94-799 (May 6, 1976). When the program was created in 1956, the contribution rate was 3 percent of a judge's annual salary, a rate which was even then fiscally unsound. In addition, the original program blanketed in 121 unfinanced annuities, widows of deceased judges. Subsequent proposals were offered between 1956 and 1972, and reflected much uncertainty by Congress.

One of the most recent proposals (S. 2014, 93d Congress, 1973) would have merged the Judicial Survivors' Annuity Fund with the Civil Service (Retirement) Fund, but the 1974 cost estimate was \$63 million amortized over 30 years. It was then noted that the judicial survivors' annuity fund was inadequately funded and that a higher contribution rate would be necessary. The Social Security Administration, which completed the Sixth Actuarial Valuation of the fund in July 1973, also concluded that the Fund would need an immediate appropriation of \$7.3 million to keep it in balance. The Senate Judiciary Subcommittee on Improvements in Judicial Machinery had meanwhile arranged for a study to be conducted by Congress' Joint Economic Committee to determine the costs of alternative proposals.

Based upon information from all three sources, S. 12 was introduced by Senator McClellan on January 15, 1975. The staff of the Senate Judiciary Subcommittee on Improvements in Judicial Machinery, the Administrative Office, the Senate Legislative Counsel's Office, and Judge Oren Harris, representing the Judicial Conference, reviewed S. 12 and suggested a revised version, which was introduced as Amendment No. 587 on June 16, 1975. Senate hearings were held on both versions on July 17, 1975, and later on September 10, 1975. Recommended revisions were presented by the Administrative Office, and a Committee Print of S. 12, as revised by Amendment 587 and other recommendations, was made available to the Judicial Conference, which approved that revised proposal on Sept. 25, 1975.

Subsequently the proposal was submitted to the Congressional Budget Office to secure a cost analysis of the bill. That office notified the

Subcommittee staff that, according to its analysis the program would not be actuarially sound unless an increase in contributions was made. In March 1976, Judge Harris, as the Judicial Conference's representative, agreed that necessary adjustments should be made, and the amendment was made to raise the contribution from 3 percent to 4.5 percent of the Judge's salary.

On May 6, 1976, the Senate Committee on the Judiciary reported favorably S. 12, amended. It was passed by the Senate on June 22, 1976.

Meanwhile, the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice had held a hearing on H.R. 11320, a companion bill to S. 12. At that hearing on May 20, 1975, the Administrative Office of the U.S. Courts and Judge Harris testified to their preference for S. 12, as it was progressing through the Senate. H.R. 11320 would have been considerably more expensive for the federal government. After S. 12 passed the Senate, the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice met on August 26, 1976, and voted to order the bill favorably as amended by the seven amendments discussed earlier. On September 2, 1976, the Committee on the Judiciary voted to report the bill favorably as amended by the block of seven above-mentioned amendments. Twenty-nine members were present.

STATEMENT

Under 28 U.S.C. §376 all Article III judges, including Justices of the Supreme Court, may elect, within six months of their appointment to the bench, to join the existing judicial survivor's annuity program. Unmarried judges who marry later than six months after their appointment may elect to join the program within six months of their marriage. The present programs has no "opt out" provision for judges who lose their spouses, or other survivors.

The main features of the existing program are set forth below.

"Contributions" and "Deposits"

Commencing with his election to join the program, the Administrative Office of the U.S. Courts withholds 3 percent of a judge's annual salary and deposits that amount into the program's central fund, to the credit of that judge's individual account. Each year an amount, equal to that withheld from the judge's salary, is also deposited into the program's central fund from monies appropriated for the operation of the Administrative Office of the U.S. Courts. The judge's "contributions" from salary, once commenced, can be terminated only by his death or resignation "otherwise than on salary under section 371 (a) of [title 28]." This, in effect, means that as long as he is drawing any salary for being a judge, he must continue to contribute 3 percent of that salary to the fund.

By virtue of these salary "contributions", the judge establishes the judicial service rendered for that salary as "creditable service" for purposes of computing his survivors' annuities. Under 28 U.S.C. § 376 five full years of "creditable service" are a basic prerequisite to establishing a survivor's right to an annuity. Therefore, once a judge has made five years of "contributions", he has satisfied that prerequisite, and the only subsequent event which will invalidate that satisfaction is "absolute" resignation from the bench. Should the judge actually so resign, all amounts which he has "contributed" to the fund will be refunded with interest, and all "matching amounts,"

deposited into the central fund by the Administrative Office will be retained by the fund.

In addition to qualifying his judicial service as "creditable service" for purposes of 28 U.S.C. § 376, by making "contributions" from his judicial salary, a judge may also qualify stipulated prior service to the government as "creditable", by electing to make a "deposit" to the fund to cover that prior service. Service as a federal judge, U.S. Congressman, Delegate, Resident Commissioner, or federal "employee" eligible for membership in the Civil Service Retirement program may be deemed to be "prior service" for purposes of 28 U.S.C. § 376. In order to qualify that service as "creditable," a judge must deposit into the fund, with interest, a sum equal to 3 percent of the salary received for that service. These "deposits" are credited to the judge's individual account and may be returned to him upon "absolute resignation", along with the refund of "contributions" from his judicial salary.

One aspect of this process of establishing prior service as "creditable" service warrants special attention. Under 28 U.S.C. § 376, a judge who elects to make a "deposit" to qualify prior service as "creditable service" may also elect to make the "deposit" in installment payments "during the continuance of his judicial service in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts". This "installment payment" mechanism can be of great value to a new judge who has at least five full years of prior service, because by wisely structuring his installment payments, he may be able to establish a survivor's right to an annuity under the program on the day he joins that program. If, for example, a new judge has previously served as a U.S. Attorney for eight years, he need only negotiate an installment payment schedule under which his *first* payment equals three percent of the salary he earned during his *last* five years as a U.S. Attorney and actually make that first payment on the day he joins the court. By doing so he will immediately qualify those five years of "prior service" as years of "creditable service", thus immediately satisfying the minimum "creditable service" prerequisite which entitles his survivor(s) to an annuity. His one payment will have purchased the security of immediate coverage for his survivors, even if he were to die the next day. In addition to that very valuable feature, the "installment payment" mechanism offers one other advantage to a judge with prior service. Once he has arranged to make installment payments, he has guaranteed that all of his prior service will be "creditable service", even if he subsequently fails to make all of his payments. Should he die before fully paying the "deposit" amount required, however, his widow's annuity "shall be reduced by an amount equal to 10 percent of the amount of such deposit, . . . unless such widow shall elect to eliminate such service entirely from credit." In the final analysis, the benefit of immediate survivor eligibility is certainly worth risking the possibility of a reduction, which, in most cases, would probably not be very great.

Eligibility Standards for Annuitants

Whether a judge qualifies his survivors for annuities by rendering five years of *judicial* service, for which salary "contributions" are made, or five years of *prior* service, for which "deposits" have been

made, once that five-year minimum prerequisite has been satisfied, both his "widow" and any "dependent children" under age 18 will be eligible to receive an annuity under the program. Both the terms "widow" and "dependent children" have been placed in quotation marks because they are given stipulated meanings under 28 U.S.C. § 376. For purposes of the program, the surviving wife of a judge will only qualify as a "widow" if the date of her marriage to the judge preceded the date of his death by two full years *or* if she is "the mother of issue by such marriage". In addition, she will relinquish her status as a "widow", once established, if she remarries. For purposes of the program a surviving child of a judge will only qualify as a "dependent child" if he or she is unmarried and under 18 years of age or, if over 18, unmarried and "incapable of self-support" due to "physical or mental disability". By express provision in the statute, any questions concerning either dependency or disability which may arise in connection with eligibility for an annuity under the program are to be determined by the Director of the Administrative Office, and his determination is subject to review only by the Judicial Conference of the United States. The statute also authorizes the Director to determine when guardians or other fiduciaries shall receive annuity amounts on behalf of dependent children or disabled widows.

Computation of a Widow's Annuity

The amounts of annuities conferred under the judges' program are determined by relatively simple procedures. A widow's annuity amount is computed using two factors, the "average annual salary" received by the judge during his last five years of "allowable service" and the total number of years of such "allowable service" which that judge has rendered. The term "allowable service" covers all "creditable service" (i.e. service which the judge has qualified as creditable by making either salary contributions or deposits) and up to five full years of honorable active-duty service as a member of the Armed Forces of the United States. Therefore, a judge's total number of years of "allowable service" may include: (1) service as a federal judge; (2) service as a Senator, Representative, Delegate, or Resident Commissioner in Congress; (3) service as a federal "employee" eligible for membership in the Civil Service Retirement program; or (4) from one to five years of honorable active-duty service in the military. Annual salaries received during the last five years of any such service are averaged to determine an "average annual salary" figure. The widow's annuity is then usually determined by multiplying 1.25 percent of that figure by the total number of years of such "allowable service". Thus, if we assume a hypothetical U.S. Court of Appeals judge has died exactly ten years to the day after his appointment to that bench, having previously served as a U.S. Senator for two terms, a staff attorney on the Senate Judiciary Committee for two years, and an officer in the United States Navy on active duty for four years, his widow's annuity would be determined as follows (assuming the judge has made his required deposit for prior service):

1. Until recently the judge's salary as a U.S. Court of Appeals judge was \$42,500.00. Using that figure for convenience, his "average annual salary" during his last five years of "allowable service" would be \$42,500.00.

2. His total number of years of "allowable service" would be:

Years of judicial service.....	10
Years of Senate service.....	12
Years of staff attorney service.....	2
Years of active-duty service in the Navy.....	4
Total	28

3. By multiplying 1.25 percent of his "average annual salary" by his total number of years of "allowable service", the judge's widow's annuity is determined to be:

$$(\$42,500.00 \times .0125) \times 28 = \$14,875.00$$

In one instance the computation method applied above would have to be altered. That instance arises when a judge's years of "allowable service" as an "employee" exceed fifteen. Under 28 U.S.C. § 376 only the first fifteen years of "employee" service may be multiplied by the 1.25 percent of average annual salary factor used above. All years of "employee" service in excess of fifteen are not, however, lost; they are instead multiplied by 0.75 percent of the "average annual salary", and the amount derived by that computation is added to the amount derived by using the 1.25 percent factor. Thus, if another U.S. Court of Appeals judge were to also die with exactly ten years of judicial service, but with no prior "allowable service" other than twenty years as a staff attorney for the Senate Judiciary Committee, his widow's annuity would be determined as follows (assuming the judge has made his required deposit for prior service):

1. Just as in the earlier example, the "average annual salary" figure of \$42,500.00 will be used for convenience.

2. This judge's total number of years of "allowable service", however, will have to be divided into two categories: that which is to be multiplied by 1.25 percent and the "employee" service beyond 15 years, which is to be multiplied by 0.75 percent:

Years of judicial service.....	10
Years not exceeding 15 as a staff attorney.....	15
Total	25
Years exceeding 15 as a staff attorney.....	5

3. By multiplying 1.25 percent of his "average annual salary" by the appropriate twenty-five years of "allowable service" and by multiplying 0.75 percent of that same figure by the appropriate five years of "employee" "allowable service", this judge's widow's annuity is determined to be:

$$(\$42,500.00 \times .0125) \times 25 \text{ ----- } \$13,281.25$$

$$\text{Plus } (\$42,500.00 \times .0075) \times 5 \text{ ----- } 1,593.75$$

or ----- 14,875.00

In both of the cases used above, the assumption has been made that the judges have paid their deposits for prior service in order to qualify their years of prior service as "creditable". If they had failed to do so, of course, the annuity amounts shown above would have to be reduced by an amount equal to ten percent of the amount of such deposit.

One remaining aspect of the program's conferral of a widow's annuity deserves attention. Under the statute, the widow of a judge who dies *without* a "dependent child" may not receive her annuity until

she reaches fifty years of age. Thus, if the judge's children are all over age 18, but if his widow is only forty-four years of age on the day he dies, she must wait six years before she begins to receive the annuity which her husband purchased for her.

Children's Annuities

Annuities available to "dependent children" under the judges' program today are, in some instances, determined by reference to the widows' annuities discussed above, and, in other instances, mandated by the statute. If a judge is survived by both a widow and dependent children, the statute provides that the widow's annuity payments shall commence immediately and that each child shall receive an immediate annuity equal to the lesser of: (1) one-half the amount of the widow's annuity, divided by the number of children; (2) \$900.00, divided by the number of children; or (3) \$360.00. In essence, the annuity which a "dependent child" will receive as long as the judge's widow is also receiving an annuity will never exceed \$360.00. If the judge is survived only by dependent children, the statute provides that each child shall receive an annuity no greater than \$480.00.

The development of the program is graphically demonstrated by the following tables:

TABLE A.—JUDICIAL SURVIVORS ANNUITY PROGRAM—COMPARATIVE STATEMENT OF JUDICIAL PARTICIPATION AND THE NUMBER OF SURVIVOR ANNUITANTS AS OF JUNE 30, FISCAL YEARS 1957-75¹

Fiscal year	Judicial participation			Survivor annuitants	
	Judges on the roll	Judges participating	Percentage	Annuitants	Average annuity
1957	386	334	86	116	\$2,189
1958	387	339	88	130	2,482
1959	384	338	88	130	2,558
1960	394	350	89	129	2,628
1961	391	350	89	131	2,685
1962	459	409	89	139	2,860
1963	463	419	90	139	2,946
1964	459	414	90	150	3,124
1965	465	423	91	152	3,296
1966	486	442	91	154	3,403
1967	527	479	91	154	3,668
1968	539	488	91	148	3,921
1969	552	503	91	148	4,077
1970	554	506	91	158	4,477
1971	605	543	90	157	4,976
1972	652	586	90	163	5,465
1973	669	612	91	163	5,888
1974	674	611	91	167	5,935
1975	673	614	91	172	6,433

¹ These figures have been taken from the Annual Report of the Director of the Administrative Office of the U.S. Courts, 1965, at 129, and from the Annual Report of the Director of the Administrative Office of the U.S. Courts, 1975 (unbound galley page edition), at VI-13, table 4.

In the past two years the fund's actuarial balance has fallen below the actuarial estimations by approximately \$500,000. If that trend continues, funds may be exhausted in the next thirty years, or sooner. Corrective action is needed, and the Committee agrees that an increased contribution rate as well as an infusion of immediate assets of approximately 8.5 million dollars is necessary to eliminate the fund's existing deficiency.

The Committee also accepts the fact that two million dollars will be necessary for retroactive cost-of-living increases for existing widows; and one million dollars for prospective cost-of-living in-

creases for existing widows. Presently, some widows receive an annuity as low as \$68 per month, and twenty-five percent of the 172 widows are eligible for welfare. The total federal cost of the program for FY 1977 would be 13.8 million dollars. Thereafter the annual government contribution, matched by judicial contributions, would be approximately \$500,000. (See Congressional Budget Office estimate.)

In order to continue to attract contributors to the program and to upgrade the benefits to match the increased contributions, S. 12 would also provide the following changes in existing law:

1. Increases the dollar amounts of annuities to dependent children to make them comparable to those of dependent civil service annuitants.

2. Substitutes a "high-3-year" salary factor for the existing "last-5-year" salary factor used in computing basic annuity amounts.

3. Increases the number of years of service which may be deemed "creditable" for purposes of computing all annuities to allow a survivor to qualify if the judge has eighteen months of service for which contributions or deposits have been made. Presently a five-year minimum period exists. S. 12 raises the maximum creditable period from 30 years to 32, to coincide with Members of Congress.

4. Provides both retroactive and prospective cost-of-living increases which are fair and yet actuarially sound. Existing widows will receive a one-time retroactive increase of one-fifth of one percent for every month an annuity has been in existence. All annuitants will receive a prospective increase of three percent of the basic annuity for every five percent increase in judicial salaries. This formula allows the surplus income to finance the increases in basic annuities resulting from higher salaries.

5. Extends the annuity coverage for dependent children who are full-time students. The present law terminates a child's annuity when that person becomes 18 years of age unless incapable of physical support due to physical or mental disability. S. 12 would extend that coverage, as the Civil Service Retirement System does, until the dependent child terminates as a full-time student, or until the first day of July immediately following his or her twenty-second birthday, whichever occurs first.

6. Permits widowers as well as widows to receive an annuity.

7. Reduces the required marital period for eligibility from 2 years to 1 year, as the civil service system does.

8. Permits all widows and widowers to receive an immediate annuity upon the death of their spouse, regardless of age. The present program requires that a widow be at least 50 years old to be eligible, unless she has a dependent child under 18 years of age. The change reflects the civil service standard.

9. Reduces the required contribution period from 5 years to 18 months. Presently only twelve judges have died before contributing from their salaries for five full years.

10. Reduces the minimum required contribution for prior service from 5 years to 18 months. Every judge must make his first install-

¹ For a thorough analysis of these changes, see S. Rpt. 94-799, and the Hearings before the Subcommittee on Improvements in Judicial Machinery, Senate Committee on the Judiciary, July 17 and September 10, 1975.

ment payment for prior service no smaller than the amounts necessary to cover at least the last eighteen months of creditable service.

The Committee believes that the increased contribution requirement and more liberal eligibility standards will provide for a fair and fiscally sound program.

OVERSIGHT

Oversight of the federal courts and the programs administered by the Administrative Office of the U.S. Courts is the responsibility of the Committee on the Judiciary. The hearing on May 20, 1976, though mainly legislative, did offer the Committee an oversight opportunity. The Committee intends to exercise its oversight on a regular basis in regard to the administration of this program and specifically on enforcement of contracts for deposits for prior service.

STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

No statement has been received on the legislation by the Committee on Government Operations.

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

Pursuant to clause 7, rule XII of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the Committee estimates the following costs of the Commission.

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 9, 1976.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate
Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached revised cost estimate for S. 12, Judicial Survivor's Annuity Reform Act.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN, *Director*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

APRIL 9, 1976.

1. Bill number: S. 12.
2. Bill title: Judicial Survivors' Annuity Reform Act.
3. Purpose of bill:

The purpose of the bill is to reform the existing Judicial Survivors' Annuity Program (28 U.S.C. Section 376). The bill contains provisions which liberalize eligibility requirements and benefits for annuitants. Major reforms contained in the bill include: (a) prospective and retroactive cost of living increases for annuitants; (b) changes in the computation of the base annuity based on the highest three years of earnings rather than the average earnings of the last five years;

(c) elimination of the program's future deficiency by financially stabilizing the annuity program; and (d) increasing the judges' and government contributions from 3.0 percent to 4.5 percent of judicial salaries.

4. Cost estimate:

The cost estimate includes all major provisions as specified in the bill. One of the major intents of S. 12 was to ensure the future financial stability of the program through an immediate deposit of funds sufficient to meet projected annuity expenditures. As a result, the cost analysis goes beyond the five-year projections to determine the aggregate yearly fund deficiency to year 2050.

The cost of all major reforms, except the retroactive provisions of the bill, were incorporated into the deficiency estimate. The total fund deficiency, the amount required to stabilize the program, was included in the first year of enactment of the bill. In addition to the cost of funding the deficiency, the cost of the retroactive cost of living increases and the additional contribution costs of the federal government, were also included in the estimate. The table below summarizes the results.

	COSTS				
	[In millions of dollars]				
	Fiscal year—				
	1977	1978	1979	1980	1981
Government contributions costs.....	0.4	0.5	0.5	0.5	0.5
Retroactive costs.....	2.0				
Fund deficiency.....	11.0				
Total.....	13.4	.5	.5	.5	.5

5. Basis for estimate:

The costs of S. 12 were specified in terms of the total fund deficiency, i.e., the funds which currently must be authorized to meet future liabilities. The deficit calculations are based on the costs associated with three major reforms: (1) prospective cost of living increases, (2) retroactive cost of living increases, and (3) computation of the annuity based on the highest three years of earnings rather than the average of the last five years of earnings. It was assumed throughout the analysis that judge's salary would increase at a rate of 5 percent yearly. This rate is comparable to the rate of increase of General Schedule federal employees and is applicable to judges as defined by the Executive Salary Cost of Living Adjustment Act.

The cost analysis was primarily divided into two parts, i.e., revenue projections and expenditure projections. This analysis produces an estimate of the costs of the provisions contained in S. 12, but should not be considered a substitute for an actuarial study. Because the reforms contained in S. 12 have future budgetary implications, a projection period of seventy-five years was assumed. However, the costs are quite sensitive to the length of the time period.

The revenues of the Judicial program are composed of judicial and government matching contributions and judicial deposits for prior creditable service. The revenue from contributions is based on a closed group of 667 judges receiving a 5 percent salary increase yearly on a

\$42,000 salary base. The judges and federal government contributions were assumed to be a constant 4.5 percent of this payroll over the projection period. Deposit amounts are based on current U.S. Attorney salaries with a 5 percent yearly salary increase. It was assumed that judges with creditable service entering the annuity program must deposit into the fund 4.5 percent of their last eighteen months' salary. It was also assumed that the balance in the fund would be invested at 7.6 percent.

The expenditure projections consist of annuity expenditures and refunds. In calculation of the annuity expenditures, the following assumptions were made: (a) the base year annuities were calculated on the highest three salary years, (b) a three percent yearly increase in annuities per year, (c) an average of twenty-one years of creditable service, (d) a termination rate of 6 percent based on a projection of widows currently receiving benefits, and (e) refund expenditures based on the refunds in Table VIIA of the Hearings.²

Employing these assumptions, the fund deficiency was estimated at \$11.0 million. Retroactive costs and increased governmental contributions costs were estimated at \$2.0 million and \$.5 million, respectively.

6. Estimate comparison:

An estimate was prepared by the Social Security Administration's actuarial staff. The fund deficiency was calculated at \$269 million. The difference between the estimates is basically due to the time frame considered in each analysis. The Social Security Administration used an infinite time span for their calculations and a 3 percent rather than a 4.5 percent contribution rate.

7. Previous CBO estimate:

A previous estimate was completed on March 24, 1976 by CBO based on a 3 percent contribution rate.

8. Estimate prepared by: James V. Manaro.

9. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

The legislation will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

COMMITTEE VOTE

S. 12, as amended, was ordered reported favorably by voice vote of the Committee on Sept. 2, 1976. Twenty-nine members were present.

SECTIONAL ANALYSIS

Section 1 of the amended bill merely provides a citation title for the Act.

Section 2 of the amended bill completely amends and restructures 28 U.S.C. § 376 in its entirety as follows:

² Hearing before the Subcommittee on Improvements in Judicial Machinery, July 17 and September 10, 1975.

Subsection (a) defines the terms "judicial official", "retirement salary", "widow", "widower", and "child" for purposes of interpreting and applying the Act.

Subsection (b) authorizes the procedures under which required contributions from salary shall be deposited into the Judicial Survivors' Annuities Fund by participating judicial officials.

Subsection (c) authorizes the deposit into the Judicial Survivors' Annuities Fund, from the fund used to compensate a participating judicial official, amounts matching those contributed from salary by that judicial official.

Subsection (d) authorizes the procedures under which deposits shall be made into the Judicial Survivors' Annuities Fund to qualify designated prior governmental service as creditable service under subsection (k) so that it may be used in computing annuity amounts under subsection (l).

Subsection (e) provides that all amounts contributed under subsection (b) and (d) shall be credited to individual accounts in the names of each participating judicial official.

Subsection (f) authorizes the Secretary of the Treasury to invest portions of the Judicial Survivors' Annuities Fund in interest bearing securities and provides that all income thereby derived shall become a part of the Judicial Survivors' Annuities Fund.

Subsection (g) authorizes and governs refunds from the individual accounts created by subsection (e) to any judicial official who resigns from office without receiving any retirement salary.

Subsection (h) stipulates the conditions under which an annuity shall be paid from the Judicial Survivors' Annuities Fund, the amounts of annuities for surviving dependent children, and the conditions under which the payment of annuities shall terminate.

Subsection (i) authorizes the Director of the Administrative Office of the U.S. Courts to determine all questions of dependency or disability arising under this Act, subject only to the review of the Judicial Conference of the United States. Subsection (i) also authorizes the Director to order or direct such medical or other examinations as he may deem to be necessary in the exercise of his authority to determine questions of dependency or disability.

Subsection (j) stipulates the conditions under which annuity payments from the Judicial Survivors' Annuities Fund may be made to guardians or fiduciaries of annuitants.

Subsection (k) defines those years of service rendered by a judicial official which may be deemed creditable years of service to be used in computing an annuity under subsection (l).

Subsection (l) provides the computation formulas to be used in determining the amounts of annuities to be paid from the Judicial Survivors' Annuities Fund.

Subsection (m) authorizes periodic cost-of-living increases in annuities paid from the Judicial Survivors' Annuities Fund and stipulates that the amount of each annuity shall be increased by 3 percent for every 5 percent increase in the salary of the office in which the judicial official, upon whose service the annuity is based, rendered some portion of his or her final eighteen months of creditable service.

Subsection (n) provides for payment of annuities from the Judicial Survivors' Annuities Fund in monthly installments and prohibits the

assignment, attachment, garnishment or other legal taking of such annuities.

Subsection (o) provides for a statutory plan of descent and distribution of all monies in a judicial official's individual account, created under subsection (e), in the event such judicial official dies without having enough creditable service to qualify his survivors for an annuity or without being survived by any annuitants.

Subsection (p) provides that, in any case in which all annuities being paid by the Judicial Survivors' Annuities Fund terminate, before the amount credited to the individual account of the judicial official, upon whose service they are based, has been exhausted, any remaining amount in that individual account shall be paid under the same statutory plan of descent and distribution authorized by subsection (o).

Subsection (q) provides that any accrued annuity benefits which remain unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to the annuitant and that those remaining unpaid upon the death of an annuitant shall be paid in accordance with the statutory plan of descent and distribution stipulated in that subsection.

Subsection (r) stipulates that a widow or widower receiving an annuity from the Judicial Survivors' Annuities Fund may receive other annuities as long they are not also based upon service credited in computing the annuity paid from the Judicial Survivors' Annuities Fund.

Section 3 of the amended bill provides that upon the effective date of the Act, all monies credited to the judicial survivors' annuities fund established by section 2 of the Act of August 3, 1956, as amended, shall be transferred to a new fund which shall be known as "The Judicial Survivors' Annuities Fund" and authorizes the creation of that new fund on the books of the Treasury.

Section 4 of the amended bill provides that, on the effective date of the Act, the Secretary of the Treasury shall ascertain, from the Director of the Administrative Office of the U.S. Courts, the amount of the actuarial deficiency existing in judicial survivors' annuity fund, established by section 2 of the Act of August 3, 1956, as amended, on the date of that fund's transfer under Section 3 of the Act, and shall, at the earliest time thereafter when appropriated funds become available, deposit in a single payment that same amount into "The Judicial Survivors' Annuities Fund" created by Section 3 of the Act. Section 4 also authorizes the appropriation of such funds as are necessary for the Secretary of the Treasury to make that deposit.

Section 5 of the amended bill provides that upon the effective date of the Act, each annuity then being paid from the judicial survivors' annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended shall be increased by an amount equal to one-fifth of 1 percent of the amount of that annuity for every month which has passed since that annuity commenced. Section 5 also authorizes the appropriation of such funds as are needed to effect those increases and provides that they shall, when available, be deposited in the new fund created by Section 3 of the Act. Under this arrangement existing annuitants will be able to receive their increases immediately and the fund will be compensated for those expenditures when the authorized appropriation is subsequently made.

Section 6 of the amended bill provides that although all improvements and reforms effected by the Act shall be conferred upon those now receiving annuities or eligible to receive an annuity (i.e., a widow without dependent children who has not yet reached age 50), no rights or privileges secured under section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended, shall be abrogated by those now receiving annuities or eligible to receive an annuity. Section 6 also stipulates that the rights of any judicial official who elects to join the Judicial Survivors' Annuities program after the effective date of the Act shall be determined only under the provisions of the Act.

Section 7 of the amended bill provides that a judicial officer who has participated in the program prior to 180 days after the effective date of the act may drop the program, but may not again join the program, unless he or she leaves the office, and later receives another judicial position, and again becomes eligible for the program. The procedures set in the amendment are meant to eliminate any potential abuses in the program.

Section 8 states the effective date of the Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italics*):

TITLE 28, UNITED STATES CODE

* * * * *

§ 376. Annuities to widows and surviving dependent children of justices and judges of the United States

[(a) Any justice or judge of the United States may by written election filed with the Director of the Administrative Office of the United States Courts within six months after the date on which he takes office or within six months after he marries bring himself within the purview of this section.

[(b) There shall be deducted and withheld from the salary of each justice or judge electing to bring himself within the purview of this section a sum equal to 3 per centum of such justice's or judge's salary, including salary paid after retirement from regular active service under section 371(b) or 372(a) of this title or after retirement from office by resignation on salary under section 371(a) of this title. The amounts so deducted and withheld from the salary of each such justice or judge shall, in accordance with such procedure as may be prescribed by the Comptroller General of the United States, be deposited in the Treasury of the United States to the credit of a fund to be known as the "judicial survivors annuity fund" and said fund is appropriated for the payment of annuities, refunds and allowances as provided by this section. Every justice or judge who elects to bring himself within the purview of this section shall be deemed thereby to consent and agree to the deduction from his salary as provided in this subsection, and payment less such deductions shall be a full and com-

plete discharge and acquittance of all claims and demands whatsoever for all judicial services rendered by such justice or judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the provisions of this section.

[(c) Each justice or judge who has elected to bring himself within the purview of this section shall deposit, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the credit of the judicial survivors annuity fund created by this section a sum equal to 3 per centum of his salary received for service as a justice or judge of the United States (including salary received after retirement from regular active service under section 371(b) or 372(a) of this title and salary received after retirement from office by resignation on salary under section 371(a) of this title), and of his basic salary, pay, or compensation for service as a Senator, Representative, Delegate or Resident Commissioner in Congress and for any other civilian service within the purview of section 707 of title 5. Such interest shall not be required for any period during which the justice or judge was separated from all such service and was not receiving salary under section 371(a) or 373 of this title. Each justice or judge may elect to make such deposits in installments during the continuance of his judicial service in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts. Notwithstanding the failure of a justice or judge to make such deposit, credit shall be allowed for the service rendered, but the annuity of the view of such justice or judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death or such justice or judge, unless such widow shall elect to eliminate such service entirely from credit under subsection (o) of this section: *Provided*, That no deposit shall be required from a justice or judge for any service rendered prior to August 1, 1920, or for any honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States.

[(d) The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, such portions of the judicial survivors annuity fund as in his judgment may not be immediately required for the payment of annuities, refunds and allowances as provided in this section. The income derived from such investments shall constitute a part of said fund for the purpose of paying annuities and of carrying out the provisions of subsections (f), (g), (i), and (j) of this section.

[(e) The amount deposited by or deducted and withheld from the salary of each justice or judge electing to bring himself within the purview of this section for credit to the judicial survivors annuity fund created by this section covering service from and after August 1, 1920, shall be credited to an individual account of such justice or judge.

[(f) If any justice or judge who has elected to bring himself within the purview of this section resigns from office otherwise than on salary under section 371 (a) of this title, the amount credited to his individual account, together with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum, thereafter, compounded on December 31st of each year, to the date of his relinquishment of office, shall be returned to him.

[(g) In case any justice or judge who has elected to bring himself within the purview of this section shall die while in office (whether in regular active service or retired from such service under section 371(b) or 372(a) of this title), or after retirement from office by resignation on salary under section 371(a) of this title, after having rendered at least five years of civilian service computed as prescribed in subsection (o) of this section, for the last five years of which the salary deductions provided for by subsection (b) of this section or the deposits required by subsection (c) of this section have actually been made—

[(1) if such justice or judge is survived by a widow but not by a dependent child, there shall be paid to such widow an annuity beginning with the day of the death of the justice or judge or following the widow's attainment of the age of fifty years, whichever is the later, in an amount computed as provided in subsection (n) of this section; or

[(2) if such justice or judge is survived by a widow and a dependent child or children, there shall be paid to such widow an immediate annuity in an amount computed as provided in subsection (n) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow, but not to exceed \$900 per year divided by the number of such children or \$360 per year, whichever is lesser; or

[(3) if such justice or judge leaves no surviving widow or widower but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such widow would have been entitled under paragraph (2) of this subsection had she survived, but not to exceed \$480 per year.

[(The annuity payable to a widow under this subsection shall be terminable upon her death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of eighteen years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a widow of a justice or judge leaving a dependent child or children of the justice or judge surviving her the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependent child, under this subsection, is terminated, the annuities of any remaining dependent child or children, based upon the service of the same justice or judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such justice or judge.

[(h) As used in this section—

[(1) The term "widow" means a surviving wife of an individual, who either (A) shall have been married to such individual for at least two years immediately preceding his death or (B) is the mother of issue by such marriage, and who has not remarried.

[(2) The term "dependent child" means an unmarried child, including a dependent stepchild or an adopted child, who is under the age of eighteen years or who because of physical or mental disability is incapable of self-support.

Questions of dependency and disability arising under this section shall be determined by the Director of the Administrative Office of the United States Courts subject to review only by the Judicial Conference of the United States the decision of which shall be final and conclusive. The Director may order or direct at any time such medical or other examinations as he shall deem necessary to determine the facts relative to the nature and degree of disability of any dependent child who is an annuitant or applicant for annuity under this section, and may suspend or deny any such annuity for failure to submit to any examination.

(i) In any case in which (1) a justice or judge who has elected to bring himself within the purview of this section shall die while in office (whether in regular active service or retired from such service under section 371(b) or 372(a) of this title), or after retirement from office by resignation on salary under section 371(a) of this title, before having rendered five years of civilian service computed as prescribed in subsection (o) of this section, or after having rendered five years of such civilian service but without a survivor or survivors entitled to annuity benefits provided by subsection (g) of this section, or (2) the right of all persons entitled to annuity under subsection (g) of this section based on the service of such justice or judge shall terminate before a valid claim therefor shall have been established, the total amount credited to the individual account of such justice or judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum, per annum, thereafter, compounded on December 31st of each year, to the date of the death of such justice or judge, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

First, to the beneficiary or beneficiaries whom the justice or judge may have designated by a writing received by the Administrative Office of the United States Courts prior to his death;

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

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

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

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

Sixth, if none of the above, to such other next of kin of such justice or judge as may be determined by the Director of the Administrative Office of the United States Courts to be entitled under the laws of the domicile of such justice or judge at the time of his death.

Determination as to the widow or child of a justice or judge for the purposes of this subsection shall be made by the Director of the Administrative Office of the United States Courts without regard to the definition of these terms stated in subsection (h) of this section.

(j) In any case in which the annuities of all persons entitled to annuity based upon the service of a justice or judge shall terminate before the aggregate amount of annuity paid equals the total amount

credited to the individual account of such justice or judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31st of each year, to the date of the death of such justice or judge, the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (i) of this section.

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

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

Second, if there is no such executor or administrator payment may be made, after the expiration of thirty days from the date of the death of such person, to such individual or individuals as may appear in the judgment of the Director of the Administrative Office of the United States Courts to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

(l) Where any payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

(m) Annuities granted under the terms of this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. None of the moneys mentioned in this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(n) The annuity of the widow of a justice or judge who has elected to bring himself within the purview of this section shall be an amount equal to the sum of (1) $1\frac{1}{4}$ per centum of the average annual salary received by such justice or judge for judicial service and any other prior allowable service during the last five years of such service prior to his death, or retirement from office by resignation on salary under section 371(a) of this title, multiplied by the sum of his years of judicial service, his years of prior allowable service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of prior allowable service performed as a member of the Armed Forces of the United States, and his years, not exceeding fifteen, of prior allowable service performed as an employee described in section 698(g) of title 5, and (2) $\frac{3}{4}$ of 1 per centum of such average annual salary multiplied by his years of any other prior allowable service, but such annuity shall not exceed $37\frac{1}{2}$ per centum of such average annual

salary and shall be further reduced in accordance with subsection (c) of this section, if applicable.

[(o) Subject to the provisions of subsection (c) of this section, the years of service of a justice or judge which are allowable as the basis for calculating the amount of the annuity of his widow shall include his years of service as a justice or judge of the United States (whether in regular active service or retired from such service under section 371(b) or 372(a) of this title), his years of service as a Senator, Representative, Delegate, or Resident Commissioner in Congress, his years of active service as a member of the Armed Forces of the United States not exceeding five years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and his years of any other civilian service within the purview of section 707 of title 5.

[(p) Nothing contained in this section shall be construed to prevent a widow eligible therefor from simultaneously receiving an annuity under this section and any annuity to which she would otherwise be entitled under any other law without regard to this section, but in computing such other annuity service used in the computation of her annuity under this section shall not be credited.

[(q) The judges of the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and judges of the United States, as defined in section 451 of this title, who are entitled to hold office only for a term of years shall be deemed judges of the United States for the purposes of this section and shall be entitled to bring themselves within the purview of this section by filing an election as provided in subsection (a) of this section within the time therein specified. In the case of such judges the phrase "retirement from office by resignation on salary under section 371(a) of this title" as used in subsections (b), (c), (g), (i) and (n) of this section shall mean "retirement from office by resignation on salary under section 373 of this title or by removal or failure of reappointment after not less than ten years judicial service", and the phrase "resigns from office otherwise than on salary under section 371(a) of this title" as used in subsection (f) of this section shall mean "resigns from office otherwise than on salary under section 373 of this title or is removed or fails of reappointment after less than ten years judicial service".

[(r) The Director of the Federal Judicial Center shall be deemed a judge of the United States for the purposes of this section and shall be entitled to bring himself within the purview of this section by filing an election as provided in subsection (a) of this section within the time therein specified. As applied to a Director of the Federal Judicial Center, the phrase "retirement from office by resignation on salary under section 371(a) of this title" as used in subsections (b), (c), (g), (i), and (n) of this section shall mean "retirement from office under subsection (c) or (d) of section 627 of this title or by removal after not less than ten years service", the phrase "salary paid after retirement" as used in subsection (b) of this section shall mean "annuity paid after retirement under subsection (c) or (d) of section 627 of this title", and the phrase "resigns from office other than on salary under section 371(a) of this title" as used in subsection (f) of this section shall mean "resigns from office otherwise than on retire-

ment under subsection (c) or (d) of section 627 of this title or is removed after less than ten years service".

[(s) The Director of the Administrative Office of the United States Courts shall be deemed a judge of the United States for the purposes of this section and shall be entitled to bring himself within the purview of this section by filing an election as provided in subsection (a) of this section within the time therein specified. As applied to a Director of the Administrative Office of the United States Courts, the phrase "retirement from office by resignation on salary under section 371(a) of this title" as used in subsections (b), (c), (g), (i), and (n) of this section shall mean "retirement from office under section 611 of this title or by removal after not less than ten years service", the phrase "salary paid after retirement" as used in subsection (b) of this section shall mean "annuity paid after retirement under section 611 of this title", and the phrase "resigns from office other than on salary under section 371(a) of this title" as used in subsection (f) of this section shall mean "resigns from office otherwise than on retirement under section 611 of this title or is removed after less than ten years service".]

§ 376. Annuities for survivors of certain judicial officials of the United States

(a) For the purposes of this section—

(1) "judicial official" means:

(A) a Justice or judge of the United States, as defined by section 451 of this title;

(B) a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands;

(C) a Director of the Administrative Office of the United States Courts, after he or she has filed a waiver under subsection (a) of section 611 of this title;

(D) a Director of the Federal Judicial Center, after he or she has filed a waiver under subsection (b) of section 627 of this title; or

(E) an administrative assistant to the Chief Justice of the United States, after he or she has filed a waiver in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

who notifies the Director of the Administrative Office of the United States Courts in writing of his or her intention to come within the purview of this section within six months after (i) the date upon which he or she takes office, (ii) the date upon which he or she marries, or (iii) the date upon which the Judicial Survivors' Annuities Reform Act becomes effective;

(2) "retirement salary" means:

(A) in the case of a Justice or judge of the United States, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title;

(B) in the case of a judge of the United States District Court for the District of the Canal Zone, the District Court

of Guam, or the District Court of the Virgin Islands, salary paid after retirement from office (i) by resignation on salary under section 373 of this title or (ii) by removal or failure of reappointment after not less than ten years' judicial service;

(C) in the case of a Director of the Administrative Office of the United States Courts, an annuity paid under subsection (b) or (c) of section 611 of this title;

(D) in the case of a Director of the Federal Judicial Center, an annuity paid under subsection (c) or (d) of section 627 of this title; and

(E) in the case of an administrative assistant to the Chief Justice of the United States, an annuity paid in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

(3) "widow" means the surviving wife of a "judicial official", who:

(A) has been married to him for at least one year on the day of his death; or

(B) is the mother of issue by that marriage;

(4) "widower" means the surviving husband of a "judicial official", who:

(A) has been married to her for at least one year on the day of her death; or

(B) is the father of issue by that marriage;

(5) "child" means:

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

(B) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable educational institution. A child whose twenty-second birthday occurs before July 1, or after August 31, of a calendar year, and while he or she is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July immediately following that birthday. A child who is a student is deemed not to have ceased being a student during an interim period between school years, if that interim period lasts no longer than five consecutive months and if that child shows, to the satisfaction of the Director of the Administrative Office of the United States Courts, that he or she has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester, or other period into which the school year is divided, immediately following that interim period; or

(C) such unmarried child, regardless of age, who is incapable of self-support because of a mental or physical disability incurred either (i) before age eighteen, or (ii) in the case of a child who is receiving an annuity as a full-time student

under subparagraph (5)(B) of this subsection, before the termination of that annuity.

(b) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary, including any "retirement salary", a sum equal to 4.5 percent of that salary. The amounts so deducted and withheld from the salary of each such judicial official shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be covered into the Treasury of the United States and credited to the "Judicial Survivors' Annuities Fund" established by section 3 of the Judicial Survivors' Annuities Reform Act. Such fund shall be used for the payment of annuities, refunds, and allowances as provided by this section. Payment of such salary less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such judicial official during the period covered by such payment, except the rights to these benefits to which such judicial official, or his or her survivors, shall be entitled under the provisions of this section.

(c) There shall also be deposited to the credit of the "Judicial Survivors' Annuities Fund", in accordance with such procedures as may be prescribed by the Comptroller General of the United States, amounts matching those deducted and withheld in accordance with subsection (b) of this section. Such deposits shall be taken from the fund used to pay the compensation of the judicial official, and shall immediately become an integrated part of the "Judicial Survivors' Annuities Fund" for any use required under this section.

(d) Each judicial official shall deposit, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the "Judicial Survivors' Annuities Fund":

(1) a sum equal to 4.5 percent of that salary, including "retirement salary", which he or she has received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section prior to the date upon which he or she filed notice of an intention to come within the purview of this section with the Director of the Administrative Office of the United States Courts; and

(2) a sum equal to 4.5 percent of the basic salary, pay, or compensation which he or she has received for serving as a Senator, Representative, Delegate, or Resident Commissioner in Congress, or for serving as an "employee", as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

The interest otherwise required by this subsection shall not be required for any period during which a judicial official was separated from all such service and was not receiving any retirement salary.

Each such judicial official may elect to make such deposits in installments, during the continuance of his or her service in those offices designated in paragraph (1) of subsection (a) of this section, in such amounts and under such conditions as may be determined in each in-

stance by the Director of the Administrative Office of the United States Courts: Provided, That, in each instance in which a judicial official does elect to make such deposits in installments, the Director shall require (i) that the first installment payment made shall be in an amount no smaller than that amount necessary to cover at least the last eighteen months of prior creditable civilian service, and (ii) that at least one additional installment payment shall be made every eighteen months thereafter until the total of all such deposits have been made.

Notwithstanding the failure of any such judicial official to make all such deposits or installment payments, credit shall be allowed for the service rendered, but the annuity of that judicial official's widow or widower shall be reduced by an amount equal to 10 percent of the amount of such deposits, computed as of the date of the death of such judicial official, unless such widow or widower shall elect to eliminate such service entirely from credit under subsection (k) of this section: Provided, That no deposit shall be required from any such judicial official for any honorable active duty service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or for any other creditable service rendered prior to August 1, 1920.

(e) The amounts deducted and withheld in accordance with subsection (b) of this section, and the amounts deposited in accordance with subsection (d) of this section, shall be credited to individual accounts in the name of each judicial official from whom such amounts are received, for credit to the "Judicial Survivors' Annuities Fund".

(f) The Secretary of the Treasury shall invest, from time to time, in interest bearing securities of the United States or Federal farm loan bonds, those portions of the "Judicial Survivors' Annuities Fund" which in his judgment may not be immediately required for the payment of annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of such fund for the purposes of paying annuities and carrying out the provisions of subsections (g), (h), (m), (o), (p), and (q) of this section.

(g) If any judicial official resigns from office without receiving any "retirement salary", all amounts credited to his or her individual account, together with interest at 4 percent per annum to December 31, 1947; and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this subsection a "reasonable period of time" shall be presumed to be no longer than one year following the date upon which such judicial official relinquished his or her office.

(h) Annuities payable under this section shall be paid only in accordance with the following provisions:

(1) In any case in which a judicial official dies while in office, or while receiving "retirement salary", after having completed at least eighteen months of creditable civilian service, as computed in accordance with subsection (k) of this section, for the last eighteen months of which the salary deductions provided by subsection (b) of this section or, in lieu thereof, the deposits required by subsection (d) of this section have actually been made—

(A) if such judicial official is survived by a widow or widower, but not by a child, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section; or

(B) if such judicial official is survived by a widow or widower and a child or children, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (l) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to:

(i) \$1,548; or

(ii) \$4,644, divided by the number of children;

whichever is smallest; or

(C) if such judicial official leaves no surviving widow or widower, but does leave a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to:

(i) the amount of the annuity to which the judicial official's widow or widower would have been entitled under subparagraph (1) (A) of this subsection, had such widow or widower survived the judicial official, divided by the number of children; or

(ii) \$1,860; or

(iii) \$5,580, divided by the number of children;

whichever is smallest.

(2) An annuity payable to a widow or widower under subparagraphs (1) (A) or (1) (B) of this subsection shall be terminated upon his or her death or remarriage.

(3) An annuity payable to a child under this subsection shall terminate:

(A) if such child is receiving an annuity based upon his or her status under subparagraph (2) (A) of subsection (a) of this section, on the last day of the month during which he or she becomes eighteen years of age;

(B) if such child is receiving an annuity based upon his or her status under subparagraph (5) (B) of subsection (a) of this section, either (i) on the first day of July immediately following his or her twenty-second birthday or (ii) on the last day of the month during which he or she ceases to be a full-time student in accordance with subparagraph (5) (B) of subsection (a) of this section, whichever occurs first: Provided, That if such child is rendered incapable of self-support because of a mental or physical disability incurred while receiving that annuity, that annuity shall not terminate, but shall continue without interruption and shall be deemed to have become, as of the date of disability, an annuity based upon his or her status under clause (ii) of subparagraph (5) (C) of subsection (a) of this section;

(C) if such child is receiving an annuity based upon his or her status under subparagraph (5) (C) of subsection (a) of this section, on the last day of the month during which

he or she ceases to be incapable of self-support because of mental or physical disability; or

(D) on the last day of the month during which such child dies or marries.

(4) An annuity payable to a child or children under subparagraph (1)(B) of this subsection shall be recomputed and paid as provided in subparagraph (1)(C) of this subsection upon the death, but not upon the remarriage, of the widow or widower who is receiving an annuity under subparagraph (1)(B) of this subsection.

(5) In any case in which the annuity of a child is terminated, the annuity of each remaining child which is based upon the service of the same judicial official shall be recomputed and paid as though the child whose annuity has been terminated had not survived that judicial official.

(i) All questions of dependency and disability arising under this section shall be determined by the Director of the Administrative Office of the United States Court, subject to review only by the Judicial Conference of the United States, and the decision of the Judicial Conference of the United States shall be final and conclusive. The Director may order or direct at any time such medical or other examinations as he deems necessary to determine the facts relative to the nature and degree of disability of any child who is an annuitant, or an applicant for an annuity, under this section, and may suspend or deny any such annuity for failure to submit to any such examination.

(j) In any case in which a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability, as determined by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary of such claimant by the laws of the State of residence of such claimant, or to any other person who is otherwise legally vested with the care of the claimant or of the claimant's estate, and need not be made directly to such claimant. The Director of the Administrative Office of the United States Courts may, at his or her discretion, determine whether such payment is made directly to such claimant or to such guardian, fiduciary, or other person legally vested with the care of such claimant or the claimant's estate. Where no guardian or other fiduciary of such minor or such person under legal disability has been appointed under the laws of the State of residence of such claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or of the claimant's estate.

(k) The years of service rendered by a judicial official which may be creditable in calculating the amount of an annuity for such judicial official's widow or widower under subsection (l) of this section shall include—

(1) those years during which such judicial official served in any of the offices designated in paragraph (1) of subsection (a) of this section, including in the case of a Justice or judge of the United States those years during which he or she continued to hold office following retirement from regular active service under subsection

(b) of section 371 or subsection (a) of section 372 of this title;

(2) those years during which such judicial official served as a Senator, Representative, Delegate, or Resident Commissioner in Congress, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;

(3) those years during which such judicial official honorably served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section: Provided, That those years of such military service for which credit has been allowed for the purposes of retirement or retired pay under any other provision of law shall not be included as allowable years of such service under this section; and

(4) those years during which such judicial official served as an "employee", as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

For the purposes of this subsection the term "years" shall mean full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month which numbers less than fifteen full days and including, as one full month, any fractional part of a month which numbers fifteen full days or more. Nothing in this subsection shall be interpreted as waiving or canceling that reduction in the annuity of a widow or widower which is required by subsection (d) of this section due to the failure of a judicial official to make those deposits required by subsection (d) of this section.

(l) The annuity of a widow or widower of a judicial official shall be an amount equal to the sum of—

(1) $1\frac{1}{4}$ percent of the average annual salary, including retirement salary, which such judicial official received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section (i) during those three years of such service in which his or her annual salary was greatest, or (ii) if such judicial official has so served less than three years, but more than eighteen months, then during the total period of such service prior to his or her death, multiplied by the total of:

(A) the number of years of creditable service tabulated in accordance with paragraph (1) of subsection (k) of this section; plus

(B) the number of years of creditable service tabulated in accordance with paragraph (2) of subsection (k) of this section; plus

(C) the number of years of creditable service tabulated in accordance with paragraph (3) of subsection (k) of this section; plus

(D) the number of years up to, but not exceeding, fifteen of creditable service tabulated in accordance with paragraph (4) of subsection (k) of this section,

plus:

(2) three-fourths of 1 percent of such average annual salary, multiplied by the number of years of any prior creditable service, as tabulated in accordance with subsection (k) of this section, not applied under paragraph (1) of this subsection:

Provided, That such annuity shall not exceed 40 percent of such average annual salary and shall be further reduced in accordance with subsection (d) of this section, if applicable.

(m) Whenever the salary paid for service in one of the offices designated in paragraph (1) of subsection (a) of this section is increased each annuity payable from the "Judicial Survivors' Annuities Fund," which is based, in whole or in part, upon a deceased judicial official having rendered some portion of his or her final eighteen months of service in that same office, shall also be increased. The actual amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each 5 percent by which such salary has been increased. In the event that such salary is increased by less than 5 percent, there shall be no increase in such annuity.

(n) Each annuity authorized under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. No annuity authorized under this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(o) In any case in which a judicial official dies while in office, or while receiving "retirement salary", and:

(1) before having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which the salary deductions provided by subsection (b) of this section or the deposit required by subsection (d) of this section have actually been made; or

(2) after having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which all such deductions or deposits have been made, but without a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) of this section; or

(3) the rights of all persons entitled to receive the annuity benefits provided by subsection (h) of this section terminate before a valid claim therefor has been established;

the total amount credited to the individual account of that judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

First, to the beneficiary or beneficiaries whom that judicial official may have designated in a writing received by the Administrative Office of the United States Courts prior to his or her death;

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

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

Fourth, if none of the above, to the parents of such judicial official or the survivor of them;

Fifth, if none of the above, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such judicial official;

Sixth, if none of the above, to such other next of kin of such judicial official, as may be determined by the Director of the Administrative Office of the United States Courts to be entitled to such payment, under the laws of the domicile of such judicial official, at the time of his or her death.

Such payment shall be a bar to recovery by any other person. For the purposes of this subsection only, a determination that an individual is a widow, widower, or child of a judicial official may be made by the Director of the Administrative Office of the United States Courts without regard to the definitions of those terms contained in paragraphs (3), (4), and (5) of subsection (a) of this section.

(p) In any case in which all the annuities which are authorized by this section and based upon the service of a given official terminate before the aggregate amount of annuity payments received by the annuitant or annuitants equals the total amount credited to the individual account of such judicial official, established under subsection (e) of this section with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official's death, the difference between such total amount, with such interest, and such aggregate amount shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (o) of this section.

(q) Any accrued annuity benefits remaining unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to that annuitant. Any accrued annuity benefits remaining unpaid upon the death of an annuitant shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

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

Second, if there is no such executor, executrix, administrator, or administratrix, payments shall be made, after the expiration of sixty days from the date of death of such annuitant, to such individual or individuals as may appear, in the judgment of the Director of the Administrative Office of the United States Courts, to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

(r) Nothing contained in this section shall be interpreted to prevent a widow or widower eligible for an annuity under this section from simultaneously receiving such an annuity while also receiving any other annuity to which such widow or widower may also be entitled under any other law without regard to this section: Provided, That service used in the computation of the annuity conferred by this section shall not also be credited in computing any such other annuity.

* * * * *

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To amend section 376 of title 28, United States Code, in order to reform and update the existing program for annuities to survivors of Federal Justices and judges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Survivors' Annuities Reform Act".

SEC. 2. That section 376 of title 28 of the United States Code is amended to read as follows:

“§ 376. Annuities for survivors of certain judicial officials of the United States

“(a) For the purposes of this section—

“(1) ‘judicial official’ means:

“(A) a Justice or judge of the United States, as defined by section 451 of this title;

“(B) a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands;

“(C) a Director of the Administrative Office of the United States Courts, after he or she has filed a waiver under subsection (a) of section 611 of this title;

“(D) a Director of the Federal Judicial Center, after he or she has filed a waiver under subsection (b) of section 627 of this title; or

“(E) an administrative assistant to the Chief-Justice of the United States, after he or she has filed a waiver in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

who notifies the Director of the Administrative Office of the United States Courts in writing of his or her intention to come within the purview of this section within six months after (i) the date upon which he or she takes office, (ii) the date upon which he or she marries, or (iii) the date upon which the Judicial Survivors' Annuities Reform Act becomes effective;

“(2) ‘retirement salary’ means:

“(A) in the case of a Justice or judge of the United States, as defined by section 451 of this title, salary paid (i) after retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title, or (ii) after retirement from office by resignation on salary under subsection (a) of section 371 of this title;

“(B) in the case of a judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, salary paid after retirement from office (i) by resignation on salary under section 373 of this title or (ii) by removal or failure of reappointment after not less than ten years' judicial service;

“(C) in the case of a Director of the Administrative Office of the United States Courts, an annuity paid under subsection (b) or (c) of section 611 of this title;

“(D) in the case of a Director of the Federal Judicial Center, an annuity paid under subsection (c) or (d) of section 627 of this title; and

“(E) in the case of an administrative assistant to the Chief Justice of the United States, an annuity paid in accordance with both subsection (a) of section 677 and subsection (a) of section 611 of this title;

“(3) ‘widow’ means the surviving wife of a ‘judicial official’, who:

“(A) has been married to him for at least one year on the day of his death; or

“(B) is the mother of issue by that marriage;

“(4) ‘widower’ means the surviving husband of a ‘judicial official’, who:

“(A) has been married to her for at least one year on the day of her death; or

“(B) is the father of issue by that marriage;

“(5) ‘child’ means:

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

“(B) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable educational institution. A child whose twenty-second birthday occurs before July 1, or after August 31, of a calendar year, and while he or she is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July immediately following that birthday. A child who is a student is deemed not to have ceased being a student during an interim period between school years, if that interim period lasts no longer than five consecutive months and if that child shows, to the satisfaction of the Director of the Administrative Office of the United States Courts, that he or she has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester, or other period into which the school year is divided, immediately following that interim period; or

“(C) such unmarried child, regardless of age, who is incapable of self-support because of a mental or physical disability incurred either (i) before age eighteen, or (ii) in the case of a child who is receiving an annuity as a full-time student under subparagraph (5)(B) of this subsection, before the termination of that annuity.

“(b) Every judicial official who files a written notification of his or her intention to come within the purview of this section, in accordance with paragraph (1) of subsection (a) of this section, shall be deemed thereby to consent and agree to having deducted and withheld from his or her salary, including any ‘retirement salary’, a sum equal to 4.5 percent of that salary. The amounts so deducted and withheld from the salary of each such judicial official shall, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, be covered into the Treasury of the United States and credited to the ‘Judicial Survivors’ Annuities Fund’ established by

section 3 of the Judicial Survivors' Annuities Reform Act. Such fund shall be used for the payment of annuities, refunds, and allowances as provided by this section. Payment of such salary less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such judicial official during the period covered by such payment, except the rights to those benefits to which such judicial official, or his or her survivors, shall be entitled under the provisions of this section.

“(c) There shall also be deposited to the credit of the ‘Judicial Survivors’ Annuities Fund’, in accordance with such procedures as may be prescribed by the Comptroller General of the United States, amounts matching those deducted and withheld in accordance with subsection (b) of this section. Such deposits shall be taken from the fund used to pay the compensation of the judicial official, and shall immediately become an integrated part of the ‘Judicial Survivors’ Annuities Fund’ for any use required under this section.

“(d) Each judicial official shall deposit, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the credit of the ‘Judicial Survivors’ Annuities Fund’:

“(1) a sum equal to 4.5 percent of that salary, including ‘retirement salary’, which he or she has received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section prior to the date upon which he or she filed notice of an intention to come within the purview of this section with the Director of the Administrative Office of the United States Courts; and

“(2) a sum equal to 4.5 percent of the basic salary, pay, or compensation which he or she has received for serving as a Senator, Representative, Delegate, or Resident Commissioner in Congress, or for serving as an ‘employee’, as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

The interest otherwise required by this subsection shall not be required for any period during which a judicial official was separated from all such service and was not receiving any retirement salary.

“Each such judicial official may elect to make such deposits in installments, during the continuance of his or her service in those offices designated in paragraph (1) of subsection (a) of this section, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts: *Provided*, That, in each instance in which a judicial official does elect to make such deposits in installments, the Director shall require (i) that the first installment payment made shall be in an amount no smaller than that amount necessary to cover at least the last eighteen months of prior creditable civilian service, and (ii) that at least one additional installment payment shall be made every eighteen months thereafter until the total of all such deposits have been made.

“Notwithstanding the failure of any such judicial official to make all such deposits or installment payments, credit shall be allowed for the service rendered, but the annuity of that judicial official’s widow or widower shall be reduced by an amount equal to 10 percent of the amount of such deposits, computed as of the date of the death of such judicial official, unless such widow or widower shall elect to eliminate such service entirely from credit under subsection (k) of this section:

Provided, That no deposit shall be required from any such judicial official for any honorable active duty service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, or for any other creditable service rendered prior to August 1, 1920.

“(e) The amounts deducted and withheld in accordance with subsection (b) of this section, and the amounts deposited in accordance with subsection (d) of this section, shall be credited to individual accounts in the name of each judicial official from whom such amounts are received, for credit to the ‘Judicial Survivors’ Annuities Fund’.

“(f) The Secretary of the Treasury shall invest, from time to time, in interest bearing securities of the United States or Federal farm loan bonds, those portions of the ‘Judicial Survivors’ Annuities Fund’ which in his judgment may not be immediately required for the payment of annuities, refunds, and allowances as provided in this section. The income derived from such investments shall constitute a part of such fund for the purposes of paying annuities and carrying out the provisions of subsections (g), (h), (m), (o), (p), and (q) of this section.

“(g) If any judicial official resigns from office without receiving any ‘retirement salary,’ all amounts credited to his or her individual account, together with interest at 4 percent per annum to December 31, 1947; and at 3 percent annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this subsection a ‘reasonable period of time’ shall be presumed to be no longer than one year following the date upon which such judicial official relinquished his or her office.

“(h) Annuities payable under this section shall be paid only in accordance with the following provisions:

“(1) In any case in which a judicial official dies while in office, or while receiving ‘retirement salary,’ after having completed at least eighteen months of creditable civilian service, as computed in accordance with subsection (k) of this section, for the last eighteen months of which the salary deductions provided by subsection (b) of this section or, in lieu thereof, the deposits required by subsection (d) of this section have actually been made—

“(A) if such judicial official is survived by a widow or widower, but not by a child, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (1) of this section; or

“(B) if such judicial official is survived by a widow or widower and a child or children, there shall be paid to such widow or widower an annuity, beginning on the day on which such judicial official died, in an amount computed as provided in subsection (1) of this section, and there shall also be paid to or on behalf of each such child an immediate annuity equal to:

“(i) \$1,548; or

“(ii) \$4,644, divided by the number of children;

whichever is smallest; or

“(C) if such judicial official leaves no surviving widow or widower, but does leave a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to:

“(i) the amount of the annuity to which the judicial official’s widow or widower would have been entitled under subparagraph (1)(A) of this subsection, had such widow or widower survived the judicial official, divided by the number of children; or

“(ii) \$1,860; or

“(iii) \$5,580, divided by the number of children;

whichever is smallest.

“(2) An annuity payable to a widow or widower under subparagraphs (1)(A) or (1)(B) of this subsection shall be terminated upon his or her death or remarriage.

“(3) An annuity payable to a child under this subsection shall terminate:

“(A) if such child is receiving an annuity based upon his or her status under subparagraph (5)(A) of subsection (a) of this section, on the last day of the month during which he or she becomes eighteen years of age;

“(B) if such child is receiving an annuity based upon his or her status under subparagraph (5)(B) of subsection (a) of this section, either (i) on the first day of July immediately following his or her twenty-second birthday or (ii) on the last day of the month during which he or she ceases to be a full-time student in accordance with subparagraph (5)(B) of subsection (a) of this section, whichever occurs first: *Provided*, That if such child is rendered incapable of self-support because of a mental or physical disability incurred while receiving that annuity, that annuity shall not terminate, but shall continue without interruption and shall be deemed to have become, as of the date of disability, an annuity based upon his or her status under clause (ii) of subparagraph (5)(C) of subsection (a) of this section;

“(C) if such child is receiving an annuity based upon his or her status under subparagraph (5)(C) of subsection (a) of this section, on the last day of the month during which he or she ceases to be incapable of self-support because of mental or physical disability; or

“(D) on the last day of the month during which such child dies or marries.

“(4) An annuity payable to a child or children under subparagraph (1)(B) of this subsection shall be recomputed and paid as provided in subparagraph (1)(C) of this subsection upon the death, but not upon the remarriage, of the widow or widower who is receiving an annuity under subparagraph (1)(B) of this subsection.

“(5) In any case in which the annuity of a child is terminated, the annuity of each remaining child which is based upon the service of the same judicial official shall be recomputed and paid as though the child whose annuity has been terminated had not survived that judicial official.

“(i) All questions of dependency and disability arising under this section shall be determined by the Director of the Administrative Office of the United States Courts, subject to review only by the Judicial Conference of the United States, and the decision of the Judicial Conference of the United States shall be final and conclusive. The Director may order or direct at any time such medical or other examinations as he deems necessary to determine the facts relative to the nature and degree of disability of any child who is an annuitant, or an applicant for an annuity, under this section, and may suspend or

deny any such annuity for failure to submit to any such examination.

“(j) In any case in which a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability, as determined by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary of such claimant by the laws of the State of residence of such claimant, or to any other person who is otherwise legally vested with the care of the claimant or of the claimant’s estate, and need not be made directly to such claimant. The Director of the Administrative Office of the United States Courts may, at his or her discretion, determine whether such payment is made directly to such claimant or to such guardian, fiduciary, or other person legally vested with the care of such claimant or the claimant’s estate. Where no guardian or other fiduciary of such minor or such person under legal disability has been appointed under the laws of the State of residence of such claimant, the Director of the Administrative Office of the United States Courts shall determine the person who is otherwise legally vested with the care of the claimant or of the claimant’s estate.

“(k) The years of service rendered by a judicial official which may be creditable in calculating the amount of an annuity for such judicial official’s widow or widower under subsection (l) of this section shall include—

“(1) those years during which such judicial official served in any of the offices designated in paragraph (1) of subsection (a) of this section, including in the case of a Justice or judge of the United States those years during which he or she continued to hold office following retirement from regular active service under subsection (b) of section 371 or subsection (a) of section 372 of this title;

“(2) those years during which such judicial official served as a Senator, Representative, Delegate, or Resident Commissioner in Congress, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section;

“(3) those years during which such judicial official honorably served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section: *Provided*, That those years of such military service for which credit has been allowed for the purposes of retirement or retired pay under any other provision of law shall not be included as allowable years of such service under this section; and

“(4) those years during which such judicial official served as an ‘employee’, as that term is defined in subsection (1) of section 8331 of title 5, prior to assuming the responsibilities of any of the offices designated in paragraph (1) of subsection (a) of this section.

For the purposes of this subsection the term ‘years’ shall mean full years and twelfth parts thereof, excluding from the aggregate any fractional part of a month which numbers less than fifteen full days and including, as one full month, any fractional part of a month which numbers fifteen full days or more. Nothing in this subsection shall be interpreted as waiving or canceling that reduction in the annuity of a widow or widower which is required by subsection (d) of this section due to the failure of a judicial official to make those deposits required by subsection (d) of this section.

“(l) The annuity of a widow or widower of a judicial official shall be an amount equal to the sum of—

“(1) $1\frac{1}{4}$ percent of the average annual salary, including retirement salary, which such judicial official received for serving in any of the offices designated in paragraph (1) of subsection (a) of this section (i) during those three years of such service in which his or her annual salary was greatest, or (ii) if such judicial official has so served less than three years, but more than eighteen months, then during the total period of such service prior to his or her death, multiplied by the total of:

“(A) the number of years of creditable service tabulated in accordance with paragraph (1) of subsection (k) of this section; plus

“(B) the number of years of creditable service tabulated in accordance with paragraph (2) of subsection (k) of this section; plus

“(C) the number of years of creditable service tabulated in accordance with paragraph (3) of subsection (k) of this section; plus

“(D) the number of years up to, but not exceeding, fifteen of creditable service tabulated in accordance with paragraph (4) of subsection (k) of this section,

plus:

“(2) three-fourths of 1 percent of such average annual salary, multiplied by the number of years of any prior creditable service, as tabulated in accordance with subsection (k) of this section, not applied under paragraph (1) of this subsection:

Provided, That such annuity shall not exceed 40 percent of such average annual salary and shall be further reduced in accordance with subsection (d) of this section, if applicable.

“(m) Whenever the salary paid for service in one of the offices designated in paragraph (1) of subsection (a) of this section is increased, each annuity payable from the ‘Judicial Survivors’ Annuities Fund’, which is based, in whole or in part, upon a deceased judicial official having rendered some portion of his or her final eighteen months of service in that same office, shall also be increased. The actual amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date on which the increase in salary becomes effective, by 3 percent for each 5 percent by which such salary has been increased. In the event that such salary is increased by less than 5 percent, there shall be no increase in such annuity.

“(n) Each annuity authorized under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued. No annuity authorized under this section shall be assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

“(o) In any case in which a judicial official dies while in office, or while receiving ‘retirement salary’, and;

“(1) before having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which the salary deductions provided by subsection (b) of this section or the deposit required by subsection (d) of this section have actually been made; or

“(2) after having completed eighteen months of civilian service, computed in accordance with subsection (k) of this section, during which all such deductions or deposits have been made, but without a survivor or survivors who are entitled to receive the annuity benefits provided by subsection (h) of this section; or

“(3) the rights of all persons entitled to receive the annuity benefits provided by subsection (h) of this section terminate before a valid claim therefor has been established; the total amount credited to the individual account of that judicial official, established under subsection (e) of this section, with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official’s death, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

“First, to the beneficiary or beneficiaries whom that judicial official may have designated in a writing received by the Administrative Office of the United States Courts prior to his or her death;

“Second, if there be no such beneficiary, to the widow or widower of such judicial official;

“Third, if none of the above, to the child or children of such judicial official and the descendants of any deceased children by representation;

“Fourth, if none of the above, to the parents of such judicial official or the survivor of them;

“Fifth, if none of the above, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such judicial official;

“Sixth, if none of the above, to such other next of kin of such judicial official, as may be determined by the Director of the Administrative Office of the United States Courts to be entitled to such payment, under the laws of the domicile of such judicial official, at the time of his or her death.

Such payment shall be a bar to recovery by any other person. For the purposes of this subsection only, a determination that an individual is a widow, widower, or child of a judicial official may be made by the Director of the Administrative Office of the United States Courts without regard to the definitions of those terms contained in paragraphs (3), (4), and (5) of subsection (a) of this section.

“(p) In any case in which all the annuities which are authorized by this section and based upon the service of a given official terminate before the aggregate amount of annuity payments received by the annuitant or annuitants equals the total amount credited to the individual account of such judicial official, established under subsection (e) of this section with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31, of each year, to the date of that judicial official’s death, the difference between such total amount, with such interest, and such aggregate amount shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (o) of this section.

“(q) Any accrued annuity benefits remaining unpaid upon the termination of an annuity, other than by the death of an annuitant, shall be paid to that annuitant. Any accrued annuity benefits remaining unpaid upon the death of an annuitant shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

“First, to the duly appointed executor, executrix, administrator, or administratrix of the estate of such annuitant;

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“Second, if there is no such executor, executrix, administrator, or administratrix, payments shall be made, after the expiration of sixty days from the date of death of such annuitant, to such individual or individuals as may appear, in the judgment of the Director of the Administrative Office of the United States Courts, to be legally entitled thereto, and such payment shall be a bar to recovery by any other individual.

“(r) Nothing contained in this section shall be interpreted to prevent a widow or widower eligible for an annuity under this section from simultaneously receiving such an annuity while also receiving any other annuity to which such widow or widower may also be entitled under any other law without regard to this section: *Provided*, That service used in the computation of the annuity conferred by this section shall not also be credited in computing any such other annuity.”

SEC. 3. That on the date upon which this Act becomes effective there shall be established on the books of the Treasury a fund which shall be known as “The Judicial Survivors’ Annuities Fund”, and all money credited to the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended, shall be transferred to the credit of the Judicial Survivors’ Annuities Fund established by this section.

SEC. 4. That on the date upon which this Act becomes effective the Secretary of the Treasury shall ascertain from the Director of the Administrative Office of the United States Courts the amount of the actuarial deficiency in the fund transferred by section 3 of this Act on the date of that fund’s transfer and, at the earliest time thereafter at which appropriated funds in that amount shall become available, the Secretary shall deposit such funds, in a single payment, into the Judicial Survivors’ Annuities Fund established by section 3 of this Act. Such funds as are necessary to carry out this section are hereby authorized to be appropriated.

SEC. 5. That on the date upon which this Act becomes effective each annuity then being paid to a widow from the judicial survivors annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended, shall be increased by an amount equal to one-fifth of 1 percent of the amount of such annuity multiplied by the number of months which have passed since the commencement of that annuity. For the purposes of this section, any fractional part of a month which numbers less than fifteen full days shall be excluded from the computation of the number of months and any fractional part of a month which numbers fifteen full days or more shall be included in the computation as one full month. Such funds as are necessary to carry out this section are authorized to be appropriated and, upon appropriation, shall be deposited by the Secretary of the Treasury, in a single payment, to credit of the Judicial Survivors’ Annuities Fund established by section 3 of this Act.

SEC. 6. That the benefits conferred by this Act shall, on the date upon which this Act becomes effective, immediately become available to any individual then receiving an annuity under section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended: *Provided*, That although the rights of any judicial official electing to come within the purview of section 376 of title 28, United States Code, on or after the date upon which this Act becomes effective, shall be determined exclusively under the provisions of that section as amended by this Act, nothing in this Act shall be interpreted to cancel, abrogate, or diminish any rights to which an individual or his or her survivors may be entitled by virtue of that individuals having contributed to the judicial survivors

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annuity fund established by section 2 of the Act of August 3, 1956 (70 Stat. 1021), as amended, before the date upon which this Act becomes effective.

SEC. 7. That, at any time within one hundred and eighty days after the date upon which this Act becomes effective, any judicial official who has, prior to that date, already participated in the judicial survivors annuity program created by the Act of August 3, 1956 (70 Stat. 1021), as amended, shall be entitled to revoke his or her earlier election to participate in that program and thereby completely withdraw from participation in the judicial survivors' annuities program created by this Act: *Provided*, That (a) any such revocation may be effected only by means of a writing filed with the Director of the Administrative Office of the United States Courts, (b) any such writing shall be deemed to have become effective no sooner than the date upon which that writing is received by the Director, (c) upon receipt of such a writing by the Director, any and all rights to survivorship benefits for such judicial official's survivors shall terminate, and all amounts credited to such judicial official's individual account, together with interest at 3 percent per annum, compounded on December 31 of each year to that date of revocation, shall thereafter be returned to that judicial official in a lump-sum refund payment, and (d) any judicial official who effects such a revocation and who subsequently again becomes eligible and elects to join the judicial survivors annuities program created by this Act under the provisions of section 376 of title 28, United States Code, as amended by this Act, shall be permitted to do so only upon the redeposit of the full amount of the refund obtained under this section plus interest at 3 percent per annum, compounded on December 31 of each year from the date of the revocation until the date upon which that amount is redeposited. Any judicial official who fails to effect a revocation in accordance with the right conferred by this section within one hundred and eighty days after the date upon which this Act becomes effective shall be deemed to have irrevocably waived the right to that revocation.

SEC. 8. That this Act shall become effective on the first day of the third month following the month in which it is enacted, or on October 1, 1976, whichever occurs last.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*