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Department of Defense  
**INSTRUCTION**

**AD-A270 225**



December 13, 1989  
NUMBER 1412.4

ASD(FM&P)

**SUBJECT:** Special Retirement and Survivor Benefits for Judges of the United States Court of Military Appeals

- References:**
- (a) Public Law 100-456, "National Defense Authorization Act for Fiscal Year 1989," Section 722, September 29, 1988
  - (b) Title 5, United States Code, Chapters 83 and 84
  - (c) Title 5, Code of Federal Regulations, Section 843.308

**A. PURPOSE**

This Instruction implements special retirement and survivor benefits for judges of the United States Court of Military Appeals as provided by reference (a).

**B. APPLICABILITY AND SCOPE**

This Instruction applies to:

1. The Office of the Secretary of Defense and Washington Headquarters Services.
2. Judges of the United States Court of Military Appeals whose terms of service on such court end on or after September 29, 1988, and who complete their terms.
3. Former judges of the United States Court of Military Appeals who completed their terms of service on the court for which they were appointed and who are separated from civilian service in the Federal Government on or after September 29, 1988.

**C. POLICY**

1. In accordance with reference (a), judges or former judges of the United States Court of Military Appeals who meet the applicability criteria in section B., above, may elect an annuity equal to 80 percent of the rate of pay for a judge in active service on the United States Court of Military Appeals as of the date on which the judge or former judge is separated from civilian service. The annuity, if elected, shall be in place of any other annuity for which the judge or former judge may be eligible at the time of such election (whether an immediate or deferred annuity) under subchapter III of Chapter 83 or 84 of reference (b) or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

2. Reference (a) also requires that the Secretary of Defense prescribe, by regulation, a program to provide annuities for survivors and former spouses of judges and former judges who elect to receive the special retirement annuity. The survivor benefits referred to here are post-retirement survivor benefits as

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opposed to benefits that accrue to survivors as a result of an employee's death in-service. The law also requires that these special post-retirement survivor benefits be consistent, to the maximum extent possible, with the survivor benefits applicable to other Federal employees. It is DoD policy that the post-retirement survivor benefits of a judge of the United States Court of Military Appeals who elects the special retirement annuity shall be identical to the post-retirement survivor benefits of the retirement system to which the judge belonged while federally employed. More details are provided on the survivor benefits in section E., below.

3. Cost-of-living adjustments (COLAs) shall be made to the special retirement and survivor annuities at the same time and at the same percentages applicable under the Civil Service Retirement System (CSRS) or Federal Employees' Retirement System (FERS), depending, again, on the retirement system to which the retired judge belonged while federally employed. In the case of the FERS COLAs, however, these will be made without regard to the age of the annuitant.

4. In accordance with Section 722 (a)(8) of P.L. 100-456 (reference (a)), the special retirement and survivor annuities paid under this Instruction shall be paid out of the Department of Defense Military Retirement Fund.

#### D. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall:

a. Establish policies and procedures and issue additional instructions, as necessary, to ensure proper administration of the special retirement and survivor annuity provisions applicable to judges and former judges of the United States Court of Military Appeals.

b. Develop and implement the necessary changes in the Department of Defense Military Retirement Fund system to provide for the annuities prescribed in this Instruction.

c. Effect the cost-of-living adjustments to the retirement and survivor annuities of the judges and their survivors as prescribed in this Instruction.

#### E. PROCEDURES

1. Judges of the United States Court of Military Appeals are civilian employees of the Federal Government and, as such, are subject to all of the provisions in Chapters 83 and 84 of 5 U.S.C. (reference (b)) that pertain to the particular retirement system to which they belong. Such provisions include, but are not limited to, retirement fund contributions, disability retirement provisions, death benefits, thrift savings fund benefits, etc. The special provisions of this Instruction become effective only at the time the judge or former judge separates from service.

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2. If a judge or former judge who was covered by the CSRS while federally employed elects the special retirement annuity provided by P.L. 100-456 (reference (a)), the post-retirement survivor benefit provisions that will pertain will be those of the CSRS. Therefore, in providing for a survivor annuity, the retiring judge's annuity shall be reduced by 2½ percent of any amount up to \$3,600 specified as a base for the survivor benefit plus 10 percent of any amount over \$3,600 so specified. The survivor annuity shall be 55 percent of the retiring employee's annuity or whatever portion of it that is specified as a base for the benefits.

3. If a judge or former judge who was covered by the FERS while federally employed elects the special retirement annuity provided by reference (a), the post-retirement survivor benefit provisions that will pertain will be those of the FERS. Therefore, in providing for a survivor annuity, the retiring judge's annuity will be reduced by 10 percent if a maximum survivor annuity is elected, or by 5 percent if a partial survivor annuity is jointly elected by the retiring judge and the retiring judge's spouse. The survivor annuity shall be 50 percent of the unreduced annuity if a maximum survivor annuity is elected, or 25 percent of the unreduced annuity if a partial annuity is elected, plus a special supplemental annuity payable until age 60 if the surviving spouse will not be eligible for Social Security survivor benefits until age 60. The details of the special supplemental annuity provision are found in reference (c).

4. In addition to the basic provisions described in subsections E.2. and E.3., above, all of the other rules and regulations, including any future rules and regulations, that pertain to CSRS and FERS post-retirement survivor benefits, COLAs, rights of spouses, rights of former spouses, recomputation of annuities upon the death of a spouse, children's benefits, etc., shall be applicable to those judges who elect the special retirement annuity provided under this Instruction.

**F. EFFECTIVE DATE**

This Instruction is effective immediately.

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