

(D)(1) There is established in the Treasury a fund which shall be known as the “Court of Federal Claims Judges Retirement Fund”. The Fund is appropriated for the payment of annuities and other payments under this section.

(2) The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Court of Federal Claims Judges Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(3)(A) There are authorized to be appropriated to the Court of Federal Claims Judges Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

(B) For purposes of subparagraph (A), the term “unfunded liability” means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Court of Federal Claims Judges Retirement Fund, over the balance in the Fund as of the date the unfunded liability is determined. In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

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

(Added Pub. L. 101–650, title III, §306(a)(1), Dec. 1, 1990, 104 Stat. 5105; amended Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–198, §7(a), Dec. 9, 1991, 105 Stat. 1624; Pub. L. 102–572, title IX, §902(a), Oct. 29, 1992, 106 Stat. 4516.)

#### REFERENCES IN TEXT

Section 7447 of the Internal Revenue Code of 1986, referred to in subsec. (f)(2)(C), is classified to section 7447 of Title 26, Internal Revenue Code.

#### AMENDMENTS

1992—Pub. L. 102–572 substituted “United States Court of Federal Claims” for “United States Claims Court” in subsec. (a) and “Court of Federal Claims” for “Claims Court” in section catchline and wherever appearing in text.

1991—Subsec. (f)(2)(A). Pub. L. 102–198, §7(a)(1), inserted “(except for subchapters III and VII)” after “chapter 84”.

Subsec. (f)(2)(D). Pub. L. 102–40 substituted “section 7296 of title 38” for “section 4096 of title 38”.

Subsec. (j)(1). Pub. L. 102–198, §7(a)(2)(A), substituted “paragraph (4)” for “paragraph (2)” and “engages in any such activity” for “so practices law”.

Subsec. (j)(2). Pub. L. 102–198, §7(a)(2)(B), substituted “Subject to paragraph (4), if” for “If”.

Subsec. (j)(3). Pub. L. 102–198, §7(a)(2)(C), inserted “for” after “(other than)”.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of this title.

#### EFFECTIVE DATE

Section applicable to judges of, and senior judges in active service with, the United States Court of Federal

Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101–650, as amended, set out as an Effective Date of 1990 Amendment note under section 8331 of Title 5, Government Organization and Employees.

#### § 179. Personnel application and insurance programs

(a) For purposes of construing and applying title 5, a judge of the United States Court of Federal Claims shall be deemed to be an “officer” under section 2104(a) of such title.

(b)(1)(A) For purposes of construing and applying chapter 89 of title 5, a judge of the United States Court of Federal Claims who—

(i) is retired under subsection (b) of section 178 of this title, and

(ii) at the time of becoming such a retired judge—

(I) was enrolled in a health benefits plan under chapter 89 of title 5, but

(II) did not satisfy the requirements of section 8905(b)(1) of title 5 (relating to eligibility to continue enrollment as an annuitant),

shall be deemed to be an annuitant meeting the requirements of section 8905(b)(1) of title 5, in accordance with the succeeding provisions of this paragraph, if the judge gives timely written notification to the chief judge of the court that the judge is willing to be called upon to perform judicial duties under section 178(d) of this title during the period of continued eligibility for enrollment, as described in subparagraph (B)(ii) or (C)(ii) (whichever applies).

(B) Except as provided in subparagraph (C)—

(i) in order to be eligible for continued enrollment under this paragraph, notification under subparagraph (A) shall be made before the first day of the open enrollment period preceding the calendar year referred to in clause (ii)(II); and

(ii) if such notification is timely made, the retired judge shall be eligible for continued enrollment under this paragraph for the period—

(I) beginning on the date on which eligibility would otherwise cease, and

(II) ending on the last day of the calendar year next beginning after the end of the open enrollment period referred to in clause (i).

(C) For purposes of applying this paragraph for the first time in the case of any particular judge—

(i) subparagraph (B)(i) shall be applied by substituting “the expiration of the term of office of the judge” for the matter following “before”; and

(ii)(I) if the term of office of such judge expires before the first day of the open enrollment period referred to in subparagraph (B)(i), the period of continued eligibility for enrollment shall be as described in subparagraph (B)(ii); but

(II) if the term of office of such judge expires on or after the first day of the open enrollment period referred to in subparagraph (B)(i), the period of continued eligibility shall not end until the last day of the calendar year next beginning after the end of the next full

open enrollment period beginning after the date on which the term expires.

(2) In the event that a retired judge remains enrolled under chapter 89 of title 5 for a period of 5 consecutive years by virtue of paragraph (1) (taking into account only periods of coverage as an active judge immediately before retirement and as a retired judge pursuant to paragraph (1)), then, effective as of the day following the last day of that 5-year period—

(A) the provisions of chapter 89 of title 5 shall be applied as if such judge had satisfied the requirements of section 8905(b)(1)<sup>1</sup> on the last day of such period; and

(B) the provisions of paragraph (1) shall cease to apply.

(3) For purposes of this subsection, the term “open enrollment period” refers to a period described in section 8905(g)(1) of title 5.

(c) For purposes of construing and applying chapter 87 of title 5, including any adjustment of insurance rates by regulation or otherwise, a judge of the United States Court of Federal Claims in regular active service or who is retired under section 178 of this title shall be deemed to be a judge of the United States described under section 8701(a)(5) of title 5.

(Added Pub. L. 106-518, title III, §309(a), Nov. 13, 2000, 114 Stat. 2419.)

**[§ 180. Repealed. Pub. L. 106-398, § 1 [[div. A], title VI, § 654(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-165]**

Section, added Pub. L. 102-572, title IX, §903(a), Oct. 29, 1992, 106 Stat. 4517, related to military retirement pay for retired judges.

**EFFECTIVE DATE OF REPEAL**

Repeal effective Oct. 1, 1999, see section 1 [[div. A], title VI, § 654(c)] of Pub. L. 106-398, set out as an Effective Date of 2000 Amendment note under section 371 of this title.

**[CHAPTER 9—REPEALED]**

**[§§ 211 to 216. Repealed. Pub. L. 97-164, title I, § 106, Apr. 2, 1982, 96 Stat. 28]**

Section 211, acts June 25, 1948, ch. 646, 62 Stat. 899; Aug. 25, 1958, Pub. L. 85-755, §1, 72 Stat. 848, provided for creation of United States Court of Customs and Patent Appeals under article III of the United States Constitution and for appointment of a chief judge and four associate judges for that court.

Section 212, act June 25, 1948, ch. 646, 62 Stat. 899, provided for order of precedence of chief judge and associate judges of court.

Section 213, acts June 25, 1948, ch. 646, 62 Stat. 899; Mar. 2, 1955, ch. 9, §1(e), 69 Stat. 10; Aug. 14, 1964, Pub. L. 88-426, title IV, §403(e), 78 Stat. 434; Aug. 9, 1975, Pub. L. 94-82, title II, §205(b)(5), 89 Stat. 422, provided for tenure and salaries of judges.

Section 214, act June 25, 1948, ch. 646, 62 Stat. 899, authorized court to hold court at such times and places as it might fix by rule.

Section 215, act June 25, 1948, ch. 646, 62 Stat. 899, provided that three judges of court constituted a quorum and that concurrence of three judges was necessary to any decision.

Section 216, act June 25, 1948, ch. 646, 62 Stat. 899, provided for filing of written opinions by Court of Customs

and Patent Appeals on appeals from decisions of Patent Office and recording of those opinions in Patent Office.

**EFFECTIVE DATE OF REPEAL**

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

**TRANSFER OF MATTERS AND PETITIONS PENDING IN UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS ON OCTOBER 1, 1982**

For provisions that any matter pending before the United States Court of Customs and Patent Appeals on Oct. 1, 1982, and that any petition for rehearing, reconsideration, alteration, modification, or other change in any decision of the United States Court of Customs and Patent Appeals rendered prior to Oct. 1, 1982, that has not been determined on that date or that is filed after that date, be determined by the United States Court of Appeals for the Federal Circuit, see section 403(b), (c) of Pub. L. 97-164, formerly set out as a note under section 171 of this title.

**CHAPTER 11—COURT OF INTERNATIONAL TRADE**

Sec.	
251.	Appointment and number of judges; offices.
252.	Tenure and salaries of judges.
253.	Duties of chief judge.
254.	Single-judge trials.
255.	Three-judge trials.
256.	Trials at ports other than New York.
257.	Publication of decisions.
258.	Chief judges; precedence of judges.

**HISTORICAL AND REVISION NOTES**

The “Board of General Appraisers” was designated “United States Customs Court” by act May 28, 1926, ch. 411, §1, 44 Stat. 669. General provisions concerning such court were incorporated in section 1518 of title 19, U.S.C., 1940 ed., Customs Duties, until amended by act October 10, 1940, ch. 843, §1, 54 Stat. 1101, adding a new section to the Judicial Code of 1911, when they were transferred to section 296 of title 28, U.S.C., 1940 ed. They are retained in title 28 by this revision.

In this connection former Congressman Walter Chandler said, “Among the major subjects needing study and revision are special courts, such as the Customs Court, which should be fitted into the judicial system.” (See U.S. Law Weekly, Nov. 7, 1939.)

**HISTORY OF COURT**

The United States Customs Court [now Court of International Trade] as “constituted on June 17, 1930”, consisted of nine members as provided by act Sept. 21, 1922, ch. 356, title IV, §518, 42 Stat. 972, which established the Board of General Appraisers, designated the “United States Customs Court” by act May 28, 1926, ch. 411, §1, 44 Stat. 669.

Provisions similar to these were contained in act Sept. 21, 1922, ch. 356, title IV, §518, 42 Stat. 972. That section was superseded by section 518 of the Tariff Act of 1930, and was repealed by section 651 (a)(1) of said 1930 act.

The sentence in the former first paragraph as to sitting in a case previously participated in, is from act Aug. 5, 1909, ch. 6, §28, 36 Stat. 98, which combined and amended Customs Administrative Act June 10, 1890, ch. 407, §12, 26 Stat. 136, and section 31, as added by act May 27, 1908, ch. 205, 35 Stat. 406. Section 12 of the act of 1890 was expressly saved from repeal by act Sept. 21, 1922, ch. 356, title IV, §643, 42 Stat. 989, and prior acts, but its provisions, other than the sentence above mentioned, were omitted from the Code.

Provisions for the review of decisions of Boards of General Appraisers by the Circuit Courts, made by section 15 of the Customs Administrative Act of June 10, 1890, ch. 407, were superseded by provisions for such re-

<sup>1</sup> So in original. Probably should be followed by “of title 5”.