

CRS Report for Congress

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Civil Service Retirement Bills in the 106th Congress

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Summary

Among the civil service retirement issues addressed in bills introduced thus far in the 106th Congress are the correction of retirement coverage errors for federal employees assigned to the wrong retirement system; immediate eligibility for federal employees to participate in the Thrift Savings Plan (TSP); improved portability of pension benefits; and repeal of the temporary increase in employee retirement contributions that was mandated by the Balanced Budget Act of 1997. Other bills would expand TSP eligibility to include members of the armed services; improve pension coverage for temporary and part-time federal employees; and designate several categories of federal employees as law-enforcement officers for purposes of determining their retirement benefits. This report will be updated periodically.

Correcting Retirement Coverage Errors

Under the terms of the "Federal Employees Retirement System Act of 1986" (P.L. 99-335), all federal employees initially hired after 1983 are covered by the Federal Employees Retirement System (FERS). FERS has three components: Social Security, a basic retirement annuity, and the Thrift Saving Plan (TSP). Federal employees hired before 1984 are covered by the Civil Service Retirement System (CSRS) unless they elected to switch to FERS during "open seasons" held in 1987 and 1998. During the late 1980s and early 1990s, several thousand federal employees were assigned to the wrong retirement system by their employing agencies.

Under current law, when retirement coverage errors are discovered, the Office of Personnel Management (OPM) is required to convert the employee to the appropriate retirement system. As a result of these mandatory corrections, many employees will receive substantially smaller retirement annuities than they would have received if they were permitted to remain in the system to which they had been erroneously assigned. Employees erroneously assigned to CSRS and then corrected to FERS face the greatest potential financial hardship. They will receive smaller retirement annuities than they would have received under CSRS; they may be subject to substantial Social Security taxes

retroactively; and they have not had the opportunity to receive government matching payments on contributions to the TSP. **H.R. 416 (Scarborough)**, the “Federal Retirement Coverage Corrections Act,” was passed by the House of Representatives on March 23, 1999. H.R. 416 would permit employees erroneously assigned to CSRS to be covered by “CSRS-Offset,” which provides combined pension and Social Security benefits equivalent to a CSRS annuity. Employees who elect to be corrected to FERS would be eligible for lump-sum contributions to the TSP from their employing agencies equal to the sum of missed contributions and lost investment gains.

S. 1232 (Cochran) was passed by the Senate (as amended by Senate Amendment 2508) on November 3, 1999. It, too, would allow employees who were assigned to the wrong retirement system to elect coverage under FERS or the CSRS-Offset plan. The two bills differ in their treatment of employees who were unable to participate fully in the Thrift Savings Plan (TSP) as a result of a retirement coverage error. H.R. 416 would require the employing agency to make a lump-sum contribution to the TSP to make up for employee contributions that were missed as a result of the error, missed agency automatic contributions, missed agency matching contributions, and lost investment gains. S. 1232 would give the employee an opportunity to make retroactive contributions to the TSP for the period of the coverage error. The employing agency would be required to pay into the TSP an amount equal to missed agency automatic contributions, agency matching contributions, and lost investment gains on these retroactive employee contributions.

On November 18, S. 1232 was returned to the Senate pursuant to H.Res. 394, which states that in the opinion of the House S. 1232 contravenes Section 7 of Article I of the Constitution, requiring all revenue bills to originate in the House. On June 14, 2000 the Senate Committee on Governmental Affairs ordered **S. 2420 (Grassley)** to be reported with an amendment comprising the elements of S. 1232 to which the House stated no objection in H.Res. 394. (S. 2420 would establish a system of long-term care insurance for civilian federal employees, U.S. military personnel, and civilian and military retirees).

Participation in the Thrift Saving Plan

The Thrift Saving Plan (TSP) is a retirement savings plan for federal employees. In 2000, employees covered by the Federal Employees Retirement System (FERS) can contribute the lesser of 10% of pay or \$10,500 to the TSP on a tax-deferred basis. Whether or not an employee covered by FERS contributes to the TSP, his or her employing agency contributes an amount equal to 1% of pay to the TSP. The employing agency also provides a 1% match on the first 3% of pay that an employee contributes to the TSP and 0.5% on the next 2% of pay for a maximum agency contribution equal to 5% of pay. Employees covered by CSRS may contribute up to 5% of pay to the TSP, but they are not eligible for agency matching contributions.

H.R. 208 (Morella) was passed by the House of Representatives on April 20, 1999. The bill would allow “rollover distributions” into the TSP from other tax-qualified retirement savings plans, such as those authorized for private for-profit firms under Section 401(k) of the tax code and private non-profit organizations under Section 403(b). Consequently, workers joining the federal government from private-sector employment could move their accumulated retirement savings from these plans into the TSP. H.R. 208 also would allow employees to make tax-deferred contribution to the TSP immediately upon becoming employed by the federal government. Employees would

continue to be ineligible for a government match on their contributions to the TSP until 6 to 12 months after the date of hire. H.R. 208 would increase government contributions for FERS retirement coverage by 1/100%, the amount that the Congressional Budget Office has estimated would be needed to offset the tax revenue that would be lost as a result of greater tax-deferred contributions to the TSP.

Employees in the private sector who participate in a 401(k) or 403(b) retirement savings plan can contribute up to \$10,500 to their retirement plan on a tax-deferred basis in 2000. Federal employees can contribute the *lesser* of 10% of pay or \$10,500 to the TSP. **H.R. 483 (Morella)** would eliminate the 10% limit on contributions to the TSP by federal employees so that all could contribute up to the maximum amount authorized by Section 402(g) of the Internal Revenue Code, (\$10,500 in 2000). H.R. 483 also contains the same provisions as H.R. 208 allowing rollover distributions to the TSP and immediate employee contributions to the TSP by newly hired federal workers.

Civilian federal employees covered by FERS can contribute up to 10% of pay to the Thrift Savings Plan (TSP) and are eligible for employer matching contributions equal to 5% of pay. Employees covered by CSRS can contribute 5% of pay to the TSP, but they are not eligible for matching contributions. Members of the armed services are covered by a separate retirement system. **S. 297 (Shelby)** and **H.R. 556 (Mica)** would make members of the armed services eligible to participate in the TSP. S. 297 would permit members of the armed services with less than 5 years of service to contribute up to 5% of basic pay to the TSP, while those with more than 5 years of service could contribute 10% of basic pay. The first 5% of pay contributed by eligible individuals would be matched by agency contributions. H.R. 556 would allow eligible members of the armed services to contribute a maximum of 5% of basic pay to the TSP, which would not be eligible for agency matching contributions. The FY2000 Defense Authorization Act (P.L. 106-65) would allow members of the uniformed services on active duty and members of the Ready Reserve to participate in the TSP, provided that during the second session of the 106th Congress legislation is enacted to offset the resulting loss in tax revenue. **H.R. 4173 (Kuykendall)** would allow uniformed military personnel to participate in the TSP under the same terms and conditions as civilian federal employees.

Pension Portability for Employees of the Federal Reserve Board

On March 16, 1999, the House of Representatives passed **H.R. 807 (Scarborough)**, the "Federal Reserve Board Retirement Portability Act." This bill would facilitate employment mobility of employees of the Federal Reserve Board who wish to work in the executive, legislative, or judicial branches by including as creditable service under the Federal Employees Retirement System (FERS) a period of service that was creditable under the "Bank Plan," the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984 participate. Service would be credited under FERS, provided that the employee waives credit for such service under the Bank Plan and makes a payment to the Thrift Savings Fund equal to the amount that would have been deducted from pay had the employee been subject to FERS during that period of service (together with interest on such amount). **S. 1232 (Cochran)** contains provisions similar to those in H.R. 807.

Temporary Employment; Part-Time Work; Survivor Annuities

H.R. 1606 (Kanjorski) and **S. 1881 (Dodd)** would permit federal employees who had temporary appointments at any time between December 31, 1988 and January 1, 1999 and who subsequently became full-time employees to receive service credit under FERS for their period(s) of service. To receive such credit, eligible employees would be required to make a deposit to the Civil Service trust fund equal to 1.3% of basic pay for the period of temporary service, plus interest if applicable. **S. 772 (Robb)** and **H.R. 4569 (Moran, VA)** would clarify the process by which part-time service is credited toward retirement annuities under CSRS. Both specify that the pro-ration of retirement annuities for part-time service is to be applied only to the period of service that was performed on a part-time basis.

Under current law, a retired employee who remarries and wishes to designate his or her spouse for a survivor annuity, must do so within 2 years of remarriage or the death of the previous spouse, whichever comes later. **S. 948 (Robb)** would permit the Office of Personnel Management to waive the 2-year limit on such designations.

Employees who work for a non-appropriated fund instrumentality (NAFI), such as the post exchanges on military bases, do not participate in the Civil Service Retirement System. **H.R. 2686 (Davis/VA)** would allow federal employees with at least 5 years of service to receive credit under CSRS for employment at a NAFI between 1966 and 1986, provided that the employee makes a deposit to the Civil Service Retirement and Disability Fund of the amount that would have been withheld under CSRS.

Classification of Federal Employees as Law-Enforcement Officers

Workers in the executive branch who are covered by the Federal Employee Retirement System (FERS) become eligible for an immediate, unreduced annuity at age 55 if they have completed at least 30 years of service.¹ In recognition of the unique demands faced by law enforcement personnel in the performance of their duties, Congress has provided for individuals employed in this capacity by the federal government to become eligible to retire at younger ages and with fewer years of service. Federal law enforcement officers can retire with an immediate, unreduced annuity at age 50 with 20 years of service, or at any age with 25 years of service. In addition, federal law enforcement personnel accrue benefits at a faster rate than other federal employees (1.7% per year rather than 1.0%) and, once retired, they receive annual cost-of-living adjustments regardless of age.² Federal law enforcement personnel also are subject to mandatory retirement at age 57 or after 20 years of service, if that date occurs later.

¹ Workers with 10 or more years of service are eligible for a reduced annuity beginning at age 55. For workers with fewer than 30 years of service who retire before age 62, the retirement annuity is permanently reduced by 5% for each year between the worker's age at retirement and age 62. A worker retiring at age 55 with 20 years of service under FERS will be eligible for an annuity equal to 13% of his or her high-3 average pay: $(20 \times .01 \times (1 - (.05 \times 7))) = .13$.

² Law enforcement personnel have an additional 0.5% withheld from their pay in recognition of their faster accrual of benefits. Most federal annuitants covered by FERS receive COLAs only at age 62 and older. Exceptions are disabled annuitants and survivor annuitants.

For purposes of retirement benefits, federal law defines a law enforcement officer as an individual whose duties “are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States.”³ In general, positions are designated as those of a law enforcement officer by the heads of federal agencies under the guidance of regulations published by the Office of Personnel Management.⁴ Congress has designated in statute some specific classes of federal employees as law enforcement officers under the federal retirement systems. **H.R. 583 (Davis/VA)** would amend 5 U.S.C. §§ 8331(20) and 8401(17) to include assistant United States Attorneys among the statutorily defined categories of law enforcement officers. **H.R. 1228 (Filner)** would amend Title 5 to designate as law enforcement officers certain employees of the Immigration and Naturalization Service (INS), the Internal Revenue Service (IRS), the U.S. Customs Service, the Department of Defense, the Bureau of Engraving and Printing, the Postal Service, the Secret Service, and the Drug Enforcement Administration. **S. 718 (Mikulski)** would designate as law enforcement officers certain employees of the INS, the IRS, and the U.S. Customs Service.

Several bills introduced in the 106th Congress would affect the computation of retirement annuities or the age of retirement for federal law enforcement officers or firefighters. **H.R. 1769 (Cummings)** would amend Title 5 to ensure that law enforcement officers with 20 or more years of service who retire through an involuntary separation (other than for misbehavior) or for reasons of disability receive an annuity computed according to the benefit formula applicable to law enforcement officers who retire at the normal retirement age. **H.R. 424 (Traficant)** would raise the age of mandatory retirement for members of the United States Capitol Police from 57 to 60. **H.R. 1748 (Mink)** would raise the mandatory retirement age for all federal law enforcement officers from 57 to 60. **H.R. 460 (Gallegly)** would establish a mandatory retirement age for federal firefighters at the age which applies to federal law enforcement officers (age 57 or after 20 years of service, if later).

Civil Service Retirement and Disability Fund

H.R. 82 (Bilirakis) would take the CSRDF “off budget.” Receipts and disbursements of the fund would not be included in the budgetary totals of the President’s budget proposals or in Congressional budget resolutions. **H.R. 633 (Bartlett)** would direct the CSRDF and other federal trust funds to invest the assets of the funds in the common stocks of private corporations.⁵ Under current law, the CSRDF is required to use any excess of receipts over disbursements to purchase U.S. Treasury securities.

Retirement for Members of Congress

³ 5 U.S.C. §§ 8331(20) and 8401(17).

⁴ 5 C.F.R. §§ 831.901-831.911 and §§ 842.801-842.809.

⁵ For a discussion of the budgetary and accounting issues relevant to taking the CSRDF off-budget and to investing the assets of the fund in private-sector financial instruments, see CRS Report RL30023, *Civil Service Retirement Programs: Financing and Budget Status*, by Pat Purcell.

H.R. 95 (Coble) would make members of Congress ineligible to participate in the Federal Employees Retirement System. Members who have become vested in a FERS retirement annuity under 5 U.S.C. § 8410 would continue to be eligible to receive an annuity. **H.Con.Res. 3 (Coble)** is a concurrent resolution that would express the sense of the Congress that retirement benefits for Members of Congress should not be subject to cost-of-living adjustments. **S. 1326 (Frist)** would make members of Congress ineligible to participate in CSRS or FERS, except that each would be allowed to participate in the Thrift Savings Plan during the 12 years beginning on the date his or her first term begins

Repeal of Temporary Increase in Retirement Contributions

The Balanced Budget Act of 1997 (P.L. 105-33) mandated a temporary increase of 0.5% in employee contributions under both CSRS and FERS, which is to be phased in over 3 years. Employee contributions are to increase by 0.25% on January 1, 1999; by a further 0.15% on January 1, 2000; and by 0.1% on January 1, 2001. Employee contributions will revert to their previous levels on January 1, 2003. The higher contributions will not increase the benefit accruals of federal employees under either CSRS or FERS. **H.R. 2631 (Davis/VA)** and **S. 1472 (Sarbanes)** would repeal the increases in employee contributions that were mandated by the Balanced Budget Act. The President's proposed budget for FY2001 includes a legislative initiative to repeal the increase in employee contributions required by the BBA.

Other Bills that Would Affect Civil Service Retirement Programs

H.R. 207 (Morella) would amend the definition of basic pay used for computing a retirement annuity for government physicians to include comparability allowances (as defined at 5 U.S.C. § 5948) paid to such physicians. **S. 940 (Specter)** would provide the Department of Veterans Affairs with temporary authority to offer voluntary separation incentives to reduce and restructure staff levels. The separation incentives would be in the form of lump-sum payments not to exceed \$25,000 for each eligible employee.

Civil Service Retirement for Military Reserve Technicians

Military reserve technicians are civilian federal employees who work full-time in support of the reserve components of the military. They are covered by CSRS or FERS. In most cases, reserve technicians also must be members of a military reserve unit. Discharge from the military reserves usually results in termination as a reserve technician. The FY2000 Defense Authorization Act (P.L. 106-65) makes reserve technicians who were hired on or before February 10, 1996 eligible for an immediate retirement annuity at age 50 after completing 25 years of service. Reserve technicians hired after that date will be eligible for an immediate retirement annuity at age 50 after completing 20 years of service or at any age after completing 25 years of service. **S. 1883 (Bingaman)** would make military reserve technicians eligible for an immediate retirement annuity under either CSRS or FERS at age 50 after completing 20 years of service or at any age after completing 25 years of service in the event the technician is discharged from the military.