

CRS Report for Congress

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Federal Employees' Retirement Benefits: Bills in the 108th Congress

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Summary

The *Federal Employees Retirement System Act of 1986* (P.L. 99-335) requires all federal employees initially hired into permanent positions after 1983 to be covered by the Federal Employees Retirement System (FERS). 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. This report describes the bills introduced in the 108th Congress that would affect participants in either CSRS or FERS. It begins by summarizing laws enacted during the 107th Congress that affected CSRS or FERS. This report will be updated as further legislative action occurs.

Laws Enacted in the 107th Congress

Voluntary Separation Incentive Payments. The *Homeland Security Act of 2002* (P.L. 107-296) delegated to the Office of Personnel Management (OPM) authority to review and approve requests from federal agencies to offer *voluntary separation incentive payments* of up to \$25,000 to employees in particular occupational groups, organizational units, or geographic locations who retire or resign. The authority to offer separation payments (“buyouts”) applies across all agencies. Buyouts can be used by agencies seeking to reduce their total employment or to reshape their workforce to meet critical agency needs. Agencies seeking approval from OPM must submit a plan that describes the intended use of the buyouts. Payments are to be made from the agencies’ regular appropriations for salaries and are subject to all applicable federal, state, and local income taxes. They are not included in the employee’s basic pay for purposes of calculating the amount of his or her retirement annuity.

Voluntary Early Retirement Authority. Under both CSRS and FERS, a federal employee is eligible for an immediate unreduced retirement annuity at age 55 with 30 or more years of service. Under *voluntary early retirement authority* (VERA), the age and service requirements are reduced to 20 years of federal service at age 50 or 25 years of service, regardless of age. CSRS employees who retire under voluntary early retirement authority have their retirement annuities permanently reduced by 1/6 of 1% for each full

month that they are under age 55 at the time of retirement. This is equivalent to a reduction of 2% for each year that the person is under age 55 at retirement. Employees with service under both CSRS and FERS have the reduction applied only to the CSRS portion of their service. The *Homeland Security Act (P.L. 107-296)* provides that with the approval of OPM, an agency undergoing restructuring or downsizing can offer voluntary early retirement to employees in specific occupational groups, organizational units, or geographic locations. Reductions in annuity amounts for early retirement will continue to apply.

Contributions to the Thrift Savings Plan. The *Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16)* allows individuals who are age 50 or older to make additional contributions to a retirement plan authorized under section 401(k), 403(b), or 457 of the tax code. The maximum permitted additional contribution is \$2,000 in 2003, \$3,000 in 2004, \$4,000 in 2005, and \$5,000 in 2006. This amount will be indexed to inflation in years after 2006. **P.L. 107-304** (November 27, 2002) will allow additional contributions in these amounts to be made to the Thrift Savings Plan (TSP) by federal employees age 50 or older.

Mandatory Retirement Age for Federal Firefighters. Most federal employees can retire at age 55 (increasing to 57 for those born after 1970) if they have completed 30 or more years of service. Federal law enforcement officers and firefighters can retire at age 50 with 20 years of service. Those covered by FERS can retire at any age with 25 years of service. Federal law enforcement officers also are subject to mandatory retirement at age 57, or after 20 years of service if that occurs later. Until recently, federal firefighters were required to retire at age 55. **P.L. 107-27** (August 3, 2001) raised the mandatory retirement age for federal firefighters from 55 to 57.

Non-appropriated Fund Instrumentalities. Individuals employed by non-appropriated fund instrumentalities (NAFIs) are not federal employees and therefore are not eligible to participate in CSRS or FERS. NAFIs include, for example, the base exchanges that operate on the grounds of many military installations. The *National Defense Authorization Act for FY2002 (P.L. 107-107)* allows certain service previously performed as an employee of a NAFI to be credited to CSRS or FERS for employees who later became covered by CSRS or FERS through federal employment.

Bills in the 108th Congress

Annuities Based on Part-time Employment. Employees covered by CSRS who work part-time can experience disproportionately large cuts in their retirement annuities as the result of a regulation adopted by OPM in response to the *Comprehensive Omnibus Budget Reconciliation Act of 1986 (P.L. 99-272)*. This law requires retirement annuities for a federal worker whose career includes part-time employment to be based on the rate of pay that would be paid for full-time service, with the employee's service time prorated for the actual number of hours worked. In its regulation, however, OPM adopted an interpretation of this statute that also applies a lower rate of pay than would be applied if these individuals had worked full-time for their entire careers. Section 203 of **S. 129** (Voinovich) and **H.R. 2191** (Moran) would amend 5 U.S.C. §8339 to clarify that CSRS retirement annuities based in whole or in part on part-time service are to be prorated only for the period of service that was performed on a part-time basis.

Law Enforcement Officer Status for Retirement. For purposes of retirement benefits, title 5 of the U.S. Code 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.”¹ Positions are designated as those of a law enforcement officer by the heads of federal agencies under the guidance of regulations published by OPM.² In addition, Congress has designated officers of the U.S. Capitol Police, the Supreme Court Police, and nuclear materials couriers to be eligible for law enforcement officer retirement benefits. **S. 640** (Leahy), section 4122 of **S. 22** (Daschle), and **H.R. 2260** (Ros-Lehtinen) 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 for purposes of retirement benefits. **S. 816** (Mikulski) would expand the definition of federal law enforcement officer to include (1) any federal employee whose duties *include* investigating and apprehending individuals suspected or convicted of violating the criminal laws of the United States and who is authorized to carry a firearm and (2) employees of the Internal Revenue Service responsible for collecting delinquent taxes.

Disability Retirement for Federal Firefighters. **H.R. 1101** (Rodriguez) and **S. 530** (Kerry) would establish a presumption of work-related disability for federal firefighters who die or become disabled following a diagnosis of heart disease, lung disease, certain cancers, or certain infectious diseases.

Retirement Annuities for Air Traffic Controllers. Air traffic controllers, law enforcement officers, and federal firefighters covered by FERS contribute 1.3% of pay to the Civil Service Retirement and Disability Trust Fund. Regular federal employees contribute 0.8% of pay to the civil service trust fund. (All employees covered by FERS also pay Social Security taxes equal to 6.2% of pay.) Air traffic controllers, law enforcement officers, and firefighters covered by FERS accrue benefits equal to 1.7% of pay for each of the first 20 years of service and 1.0% of pay for each year of service beyond the 20th year. Regular federal employees covered by FERS accrue benefits equal to 1.0% of pay for each year of service. Thus, the contribution rates and benefit accrual rates that apply to air traffic controllers under FERS are identical to those that apply to federal law enforcement officers and federal firefighters. Under both CSRS and FERS, an air traffic controller is required to retire at age 56 or after completing 20 years of service, if later. **H.R. 1244** (Oberstar) would provide that service performed by an air traffic controller who is transferred or promoted to a supervisory or staff position is to be treated as controller service for retirement purposes.

Adjustment to Annuity Computations for Periods of Disability. Under the Internal Revenue Code, employee contributions to the Thrift Savings Plan and private-sector 401(k) plans can be made only from earned income. Injured or disabled federal employees are not permitted to contribute to the Thrift Savings Plan while collecting disability payments or receiving disability compensation from the Office of Workers’ Compensation Programs. To reduce the shortfall in retirement benefits that can affect federal employees who are injured or disabled while performing their jobs, **H.R. 978** (Jo

¹ 5 U.S.C. §§ 8331(20) and 8401(17).

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

Ann Davis) and **S. 481** (Allen) would increase the FERS basic retirement annuity from 1% of basic pay per year of service to 2% of basic pay for the duration of the disability.

Full Agency Funding of CSRS Annuities. *The Civil Service Retirement Amendments of 1969* (P.L. 91-93) require participating employees and their employing agencies each to contribute an amount equal to 7.0% of basic pay to the Civil Service Retirement and Disability Fund to finance retirement benefits under CSRS. The combined contribution of 14% of employee pay does not fully finance the retirement benefits provided under the Civil Service Retirement System. The costs of the CSRS that are not financed by the 7.0% employee and 7.0% agency contributions are attributable mainly to increases in future CSRS benefits that result from (1) employees' annual pay raises, and (2) CSRS annuitants' annual cost-of-living adjustments. In actuarial terms, the employee and agency contributions totaling 14% of pay are equal to the *static normal cost* of CSRS benefits.³ This is the benefit that would be paid if employees received no future pay raises and annuitants received no future cost-of-living adjustments. The *dynamic normal cost* of CSRS pensions includes the cost of financing future benefit increases that result from pay raises and cost-of-living adjustments.⁴ The dynamic normal cost of the CSRS has been estimated by OPM to be an amount equal to 24.4% of employee pay.

Each year, the U.S. Treasury is required by law to contribute to the Civil Service Retirement and Disability Fund an amount that covers some of the 10.4 percentage point difference between the 14% of pay contributed by employees and their employing agencies and the 24.4% normal cost of the program. (The Treasury's contribution does not cover the cost of retiree COLAs.) This is a direct transfer from the general revenues of the Treasury, and does not pass through individual agency budgets. The remaining cost of the CSRS constitutes an *unfunded liability* of the system that eventually will be borne by the Treasury when CSRS annuities are paid to retirees and their surviving dependents. Section 301 of **H.R. 180** (Ryan) would charge each federal agency the full cost of CSRS benefits on an accrual basis, as is done under the Federal Employees Retirement System (FERS). Each agency would contribute to the CSRDF an amount equal to 17.4% of payroll, which represents the dynamic normal cost of CSRS minus the required employee contribution of 7.0% of pay. This proposal was included in the President's budget for FY2003 and the budget for FY2004. The Office of Management and Budget (OMB) states that it "would require agencies to fund the full Government share of the accruing cost of pensions . . . as they are earned by all Federal civilian and military employees."⁵

Pensions for Members Expelled from Congress. **H.R. 1098** (Miller/FL) provides that, if an individual is expelled from Congress, any previous service performed by that individual as a Member of Congress shall be not credited under CSRS or FERS for purposes of determining either eligibility for an annuity or the amount of an annuity.

³ A pension plan's *normal cost* is the level percentage of pay that, invested today at a particular real rate of interest will be sufficient to fully finance the retirement benefits under the plan.

⁴ Two other elements of a pension plan's dynamic normal cost are increases in benefits that result from (1) new or expanded benefits and (2) newly covered groups of workers.

⁵ OMB News Release 2001-47, October 15, 2001.

Indexing Deferred Annuities. The basic retirement annuity under both CSRS and FERS is based on the average of the three highest consecutive years of basic pay. The amount of basic pay used in the calculation of the annuity is the rate of basic pay in the years that the individual was employed. **H.R. 432** (Velazquez) would provide that in the case of an individual who is eligible to receive a deferred annuity, i.e. an annuity that begins a year or more after separation from service, the average pay used in the computation of the annuity will be increased by the percentage adjustments in the rates of pay in the general schedule that have been made since the date of the employee's separation from service. The bill also provides that the widow or widower of a former employee who was eligible for a deferred annuity, but whose death preceded the commencement of the annuity, would be eligible for a survivor annuity under CSRS. A similar provision is already in law with respect to survivor annuities under FERS.

Rights of Former Spouses under Federal Retirement Programs. Subtitle C of **S. 9** (Daschle) would provide (1) that the widow or widower of a former employee who was eligible for a deferred annuity but whose death preceded the commencement of the annuity would be eligible for a survivor annuity under CSRS, and also that a former spouse of a former employee would be eligible for a survivor annuity if such was provided for at the election of the former employee or under the terms of a court order or court-approved property settlement; (2) that payment of an annuity under CSRS or FERS to an alternate payee may include payment to a former spouse; (3) that benefits awarded after an appeal to the Merit Systems Protection Board shall include interest; (4) that income averaging may be applied for tax purposes when a lump sum payment is made as the result of a correction to an annuity under CSRS or FERS; and, (5) that in applying the order of precedence for distributing the Thrift Savings Plan (TSP) account of a deceased employee or former employee, "the widow or widower of the decedent shall be the first party entitled to receive (instead of any designated beneficiary)" the account balance.

U.S. Postal Service Funding of CSRS. In November 2002, OPM notified the U.S. Postal Service (USPS) that because past contributions have been earning interest at a higher rate than presumed in the statutory funding formula, the USPS will eventually overfund its obligation to CSRS by \$71 billion. On April 2, 2003, the Senate passed **S. 380** (with an amendment) by unanimous consent. On April 8, 2003, S. 380 was passed by the House of Representatives by a vote of 424 - 0. It became P.L. 108-018 on April 23, 2003. The law requires the Postal Service to contribute annually to the CSRDF on behalf of employees covered by CSRS an amount equal to the dynamic normal cost of CSRS (24.4% of payroll) minus the amount contributed by employees (7.0% of pay). Thus, the required Postal Service contribution will be equal to 17.4% of payroll. Because the dynamic normal cost of CSRS includes the effects of future employee pay raises and retiree COLAs, the law repeals prior provisions of law that required the Postal Service to amortize over 30 years and 15 years, respectively, the increases in future CSRS annuities that result from annual employee pay raises and retiree COLAs. The result will be that the Postal Service's payments to CSRS will be reduced, but its financial obligations to CSRS will be fully met.⁶ The law requires OPM to estimate any "supplemental liability" of the Postal Service with respect to CSRS benefits, which the Postal Service must amortize (pay off, with interest) over 40 years. OPM will compute the amount of any savings resulting from enactment of the legislation. Any savings realized in fiscal years 2003 and

⁶ For more information on S. 380 and H.R. 735, see CRS Report RL31684.

2004 will be used to reduce the debt owed by the Postal Service to the Federal Financing Bank of the Treasury.

Allowing payment of CSRS and FERS benefits to certain trusts under the Social Security Act. Eligibility for benefits under state Medicaid programs is usually limited to individuals whose income and assets do not exceed limits established under state or federal law. Section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)) allows certain disabled individuals to qualify for benefits under Medicaid by placing assets that would otherwise exceed the eligibility limit into a qualifying trust. Title 5 of the U.S. Code allows CSRS or FERS benefits that are payable to a minor or a disabled adult to be paid that individual's guardian or legally designated fiduciary. **S. 776** (Campbell) would authorize OPM to pay CSRS or FERS benefits for a minor or disabled adult into a trust that qualifies under section 1917(d)(4) of the Social Security Act.

Department of Defense Personnel Policies. Under current law, a federal agency undergoing restructuring or downsizing can – with the approval of OPM – offer voluntary early retirement to employees in specific occupational groups, organizational units, or geographic locations who are age 50 or older and have at least 20 years of service, or are any age and have at least 25 years of service. Also with the approval of OPM, a federal agency may offer voluntary separation incentive payments of up to \$25,000 to employees who retire or resign. The full amount must be repaid if individual is re-employed by the federal government within five years. **H.R. 1588** (Hunter) and **S. 1166** (Collins) would authorize the Secretary of Defense – without OPM review – to offer (1) early retirement to employees who are age 50 or older with 20 years of service or any age with 25 years of service and (2) separation incentive pay of up to \$25,000 to DOD employees who retire or resign. Re-employment within DOD would be prohibited for 12 months after receipt of separation pay unless the prohibition is waived by the Secretary case-by-case. Anyone who is re-employed by the federal government within 5 years of receiving separation pay would be required to repay the full amount to the DOD.

H.R. 1588 also would provide that if a retired federal employee who is receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed by the Department of Defense, his or her annuity would continue. The employee would not accrue additional credit under either CSRS or FERS during this period of re-employment. H.R. 1588 also would allow the Secretary of Defense to appoint American citizens age 55 or older into positions in the excepted service (i.e., not part of the competitive civil service) for a period not to exceed two years (plus a possible additional two-year reappointment.) The appointed individual could not displace another DOD employee or be in reduction-in-force status from an equivalent job in DOD, and must be qualified for the job, “as determined by the Secretary.” An individual appointed to such a position who is receiving an annuity, pension, Social Security, retired pay or similar payment would not have such payment reduced as a result of the appointment.