

FEDERAL RESERVE BOARD RETIREMENT PORTABILITY ACT

MARCH 16, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government Reform, submitted the following

REPORT

[To accompany H.R. 807]

The Committee on Government Reform, to whom was referred the bill (H.R. 807) to amend title 5, United States Code, to provide portability of service credit for persons who leave employment with the Federal Reserve Board to take positions with other Government agencies, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

CONTENTS

	Page
I. Summary of legislation	4
II. Background and need for the legislation	4
III. Legislative hearings and committee actions	5
IV. Committee hearings and written testimony	5
V. Explanation of the bill	7
VI. Compliance with rule XIII	8
VII. Budget analysis and projections	9
VIII. Cost estimate of the Congressional Budget Office	9
IX. Specific constitutional authority for the legislation	9
X. Committee recommendation	9
XI. Congressional Accountability Act; Public Law 104-1	10
XII. Unfunded Mandates Reform Act; Public Law 104-4, sect. 423	10
XIII. Federal Advisory Committee Act (5 U.S.C. App.) section 5(b)	10
XIV. Changes in existing law	10

The amendments are as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Reserve Board Retirement Portability Act”.

SEC. 2. PORTABILITY OF SERVICE CREDIT.

(a) CREDITABLE SERVICE.—

- (1) IN GENERAL.—Section 8411(b) of title 5, United States Code, is amended—
- (A) by striking “and” at the end of paragraph (3);
 - (B) in paragraph (4)—
 - (i) by striking “of the preceding provisions” and inserting “other paragraph”; and
 - (ii) by striking the period at the end and inserting “; and”; and
 - (C) by adding at the end the following:

“(5) a period of service (other than any service under any other paragraph of this subsection, any military service, and any service performed in the employ of a Federal Reserve Bank) that was creditable under the Bank Plan (as defined in subsection (i)), if the employee waives credit for such service under the Bank Plan and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)).

Paragraph (5) shall not apply in the case of any employee as to whom subsection (g) (or, to the extent subchapter III of chapter 83 is involved, section 8332(n)) otherwise applies.”.

- (2) BANK PLAN DEFINED.—Section 8411 of title 5, United States Code, is amended by adding at the end the following:

“(i) For purposes of subsection (b)(5), the term ‘Bank Plan’ means the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter).”.

- (b) EXCLUSION FROM CHAPTER 84.—

(1) IN GENERAL.—Paragraph (2) of section 8402(b) of title 5, United States Code, is amended by striking the matter before subparagraph (B) and inserting the following:

“(2)(A) any employee or Member who has separated from the service after—

“(i) having been subject to—

“(I) subchapter III of chapter 83 of this title;

“(II) subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

“(III) the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act; and

“(ii) having completed—

“(I) at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title;

“(II) at least 5 years of civilian service creditable under subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

“(III) at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act,

determined without regard to any deposit or redeposit requirement under either such subchapter or under such benefit structure, or any requirement that the individual become subject to either such subchapter or to such benefit structure after performing the service involved; or”.

(2) EXCEPTION.—Subsection (d) of section 8402 of title 5, United States Code, is amended to read as follows:

“(d) Paragraph (2) of subsection (b) shall not apply to an individual who—

“(1) becomes subject to—

“(A) subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election;

or

“(B) the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, par-

participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter); and

“(2) subsequently enters a position in which, but for paragraph (2) of subsection (b), such individual would be subject to this chapter.”.

(c) PROVISIONS RELATING TO CERTAIN FORMER EMPLOYEES.—A former employee of the Board of Governors of the Federal Reserve System who—

(1) has at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act;

(2) was subsequently employed subject to the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of chapter 84 of title 5, United States Code); and

(3) after service described in paragraph (2), becomes subject to and thereafter entitled to benefits under chapter 84 of title 5, United States Code, shall, for purposes of section 302 of the Federal Employees’ Retirement System Act of 1986 (100 Stat. 601; 5 U.S.C. 8331 note) be considered to have become subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301 of such Act.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to succeeding provisions of this subsection, this section and the amendments made by this section shall take effect on the date of enactment of this Act.

(2) PROVISIONS RELATING TO CREDITABILITY AND CERTAIN FORMER EMPLOYEES.—The amendments made by subsection (a) and the provisions of subsection (c) shall apply only to individuals who separate from service subject to chapter 84 of title 5, United States Code, on or after the date of enactment of this Act.

(3) PROVISIONS RELATING TO EXCLUSION FROM CHAPTER.—The amendments made by subsection (b) shall not apply to any former employee of the Board of Governors of the Federal Reserve System who, subsequent to his or her last period of service as an employee of the Board of Governors of the Federal Reserve System and prior to the date of enactment of this Act, became subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, under the law in effect at the time of the individual’s appointment.

SEC. 3. CERTAIN TRANSFERS TO BE TREATED AS A SEPARATION FROM SERVICE FOR PURPOSES OF THE THRIFT SAVINGS PLAN.

(a) AMENDMENTS TO CHAPTER 84 OF TITLE 5, UNITED STATES CODE.—

(1) IN GENERAL.—Subchapter III of chapter 84 of title 5, United States Code, is amended by inserting before section 8432 the following:

“§ 8431. Certain transfers to be treated as a separation

“(a) For purposes of this subchapter, separation from Government employment includes a transfer from a position that is subject to one of the retirement systems described in subsection (b) to a position that is not subject to any of them.

“(b) The retirement systems described in this subsection are—

“(1) the retirement system under this chapter;

“(2) the retirement system under subchapter III of chapter 83; and

“(3) any other retirement system under which individuals may contribute to the Thrift Savings Fund through withholdings from pay.”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 84 of title 5, United States Code, is amended by inserting before the item relating to section 8432 the following:

“8431. Certain transfers to be treated as a separation.”.

(b) CONFORMING AMENDMENTS.—Subsection (b) of section 8351 of title 5, United States Code, is amended by redesignating paragraph (11) as paragraph (8), and by adding at the end the following:

“(9) For the purpose of this section, separation from Government employment includes a transfer described in section 8431.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to transfers occurring before, on, or after the date of enactment of this Act, except that, for purposes of applying such amendments with respect to any transfer occurring before such date of enactment, the date of such transfer shall be considered to be the date of enactment of this Act. The Executive Director (within the meaning of section 8401(13) of title 5, United States Code) may prescribe any regulations necessary to carry out this subsection.

SEC. 4. CLARIFYING AMENDMENTS.

(a) IN GENERAL.—Subsection (f) of section 3304 of title 5, United States Code, as added by section 2 of Public Law 105–339, is amended—

(1) by striking paragraph (4);

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(3) by inserting after paragraph (1) the following:

“(2) If selected, a preference eligible or veteran described in paragraph (1) shall acquire competitive status and shall receive a career or career-conditional appointment, as appropriate.”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if enacted on October 31, 1998.

Amend the title so as to read:

A bill to amend title 5, United States Code, to provide portability of service credit for persons who leave employment with the Federal Reserve Board to take positions with other Government agencies, and for other purposes.

I. SHORT SUMMARY OF LEGISLATION

This bill authorizes Federal Reserve Board employees who transfer to other federal agencies to receive credit under the Federal Employees Retirement System (FERS) for post-1988 Board employment. This legislation also permits employees who have transferred or will transfer to the Board to move the funds in their Thrift Savings Plan (TSP) accounts to the Board’s Thrift Plan. The legislation also provides veterans hired under Public Law 105–339 with the same civil service protections and job opportunities as their co-workers.

II. BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 807, as amended, would permit those employees of the Board of Governors of the Federal Reserve hired after December 31, 1983, when transferring to other federal agencies, to receive credit under the Federal Employees Retirement System (FERS) for their post-1988 Federal Reserve Board employment. Current statutory language prevents the transfer of credit for Board service after 1988. In most circumstances, this has the effect of causing former Board employees to receive a smaller annuity upon retirement than they would were they treated the same as employees of other federal agencies. H.R. 807 corrects this inequity by extending retirement portability for these federal employees.

H.R. 807, as amended, would also allow federal employees who have transferred or will transfer to the Board to move the funds in their Thrift Savings Plan (TSP) accounts to the Board’s Thrift Plan. Under current law, Federal employees participating in the Thrift Savings Plan who transfer to the Federal Reserve Board are not permitted to withdraw funds from their TSP accounts. This is because current law specifies that employees “must separate from government employment” in order to be entitled to withdraw funds.

However, employment at the Board is considered to be “government employment.” Therefore, employees who transfer to the Board and commence participation in the Federal Reserve’s retirement plan may not withdraw the funds in their TSP accounts. H.R. 807 offers a technical correction that remedies this problem by allowing these withdrawals.

H.R. 807, as amended, also perfects Public Law 105–339, the Veterans Employment Opportunities Act of 1998. As enacted, PL 105–339 allows veterans to compete for federal job vacancies previously restricted under internal agency promotion procedures. Under interpretation by the Office of Personnel Management, however, veterans hired under these procedures would not be accorded normal career status and would not enjoy full civil service protections. This amendment cures these problems and ensures that veterans would enjoy all of the promotional rights and protections possessed by other employees in federal service.

III. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

H.R. 807 was introduced on February 23, 1999, by the Honorable Joe Scarborough (R–FL), Chairman of the House Subcommittee on Civil Service. The bill was referred to the House Committee on Government Reform on February 23, 1999, and it was referred to the Subcommittee on Civil Service on February 25, 1999. The Subcommittee held a hearing and a mark up on February 25, 1999. No amendments were offered, and the measure was ordered favorably reported to the full Committee by voice vote. On March 10, 1999, the Committee on Government Reform met to consider the bill. Representative Scarborough offered an amendment in the nature of a substitute, which was approved by voice vote. Representative John L. Mica (R–FL) offered an amendment to the amendment in the nature of a substitute, which was also approved by voice vote. The Committee favorably reported the bill, as amended, to the full house by voice vote.

IV. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

Federal Reserve Board retirement portability

The Subcommittee conducted a hearing comparing the Federal Reserve’s retirement systems with the two major systems available to other federal employees, the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). Mr. Scarborough chaired the hearing, with Mrs. Morella, Mr. Cummings, and Mrs. Norton also participating. Mr. Scarborough noted that the Federal Reserve System operates a well-funded retirement system which provides a more generous retirement benefit to employees at a reduced cost to both the agency and at no cost to taxpayers. When employees transfer to the Federal Reserve from agencies operating under other federal retirement systems, the Federal Reserve has consistently credited their other federal service for purposes of retirement benefits under the Federal Reserve’s retirement systems. Employees being recruited by other federal agencies, however, are not treated reciprocally. Thus, if Federal Reserve employees are being recruited by other agencies, they face the potential of reduced retirement benefits because their service

with the Federal Reserve would not be credited as federal service under FERS. H.R. 807, the Federal Reserve Retirement Portability Act of 1999 would authorize FERS credit for service with the Federal Reserve, thus eliminating this potential obstacle impairing employees' willingness to consider opportunities with other agencies.

Mr. Scarborough contrasted the "pay-as-you-go" funding mechanism of CSRS and FERS, which have unfunded liabilities totaling a reported \$512.4 billion, with the Federal Reserve's asset portfolio consisting of 80 percent common and preferred stocks and other market equities. The Federal Reserve's retirement programs possess \$7 billion in assets which capitalize future retirement benefits. Not only has the fund generated sufficient revenues to pay annuities, but it has provided the source of revenue for both the employer's and the employees' contributions since 1986. In contrast, federal employees and annuitants in CSRS and FERS have experienced delays in payment of their cost-of-living adjustments (COLAs), increases in retirement contributions paid by themselves and their agencies, and intermittent proposals for future reductions in benefits. Such legislation has been part of policy discussions in each recent Reconciliation package. Mr. Scarborough concluded, "The Federal Reserve's management of its retirement system demonstrates that it is possible to fund full benefits for employees without imposing a growing burden on future taxpayers."

Mr. Cummings noted that this retirement portability problem results from an oversight in the Federal Employees Retirement System Act of 1986. It affects approximately 60 current federal employees, and could affect as many as 1,000 employees in the future. Under current law, employment at the Federal Reserve after 1988 does not count as creditable federal service under FERS. H.R. 807 would end the inequity that results from this law, since federal employees transferring to the Federal Reserve already receive reciprocal credit for other federal service. Mr. Cummings noted the parallel with provisions already covering Foreign Service employees, and observed that the bill requires employees to surrender any claims to retirement benefits that could be considered "double dipping." Mrs. Norton noted the importance of removing barriers to transfers between federal agencies when the federal workforce is in transition.

Governor Edward W. Kelley, Jr., of the Federal Reserve reported that the Fed's Board of Governors strongly supports the legislation. He noted that the Board's retirement plans are qualified 401(k) plans under which the Bank and the Board, as employers are required to ensure funding adequate to pay the benefits. At the end of 1998, the current value of plan assets was \$5.8 billion, with benefits accrued to date totaling \$3.5 billion. As a result of the surplus in the asset portfolio, since 1986 the Board's actuaries have concluded that employer contributions were unnecessary. The Federal Reserve Thrift Plan provides a defined contribution benefit, comparable to the Thrift Savings Plan for other federal employees. The Federal Reserve's thrift component, however, offers a post-tax option in addition to the tax deferred component, with employees able to save as much as 20 percent of their income, subject to the Internal Revenue Service annual limits. The retirement fund is supervised by a five-member oversight committee, which functions as a

manager of fund managers, thus distancing itself from individual investment decisions and guarding against potential conflicts of interest. Performance of invested assets is measured against three benchmarks: (1) the expected long-term rate of return for investments, (2) comparison with a 36-month composite return index, and (3) against the plan's peer group in the Wilshire Trust Universe Comparison Service. Governor Kelley reported that the plan met or exceeded each of those benchmarks in recent years. Mrs. Morella noted that the advantage available for Federal Reserve employees to contribute to their defined contribution benefit far exceeds the opportunities available to many lower paid federal employees under either CSRS or FERS. In response, Mr. Kelley observed that many Federal Reserve employees consider their ability to contribute up to the IRS' cap a substantial benefit, and a large portion of these employees take advantage of the additional savings opportunity.

Mr. Flynn observed that very few federal employees are covered in retirement plans comparable to the Federal Reserve's, so comparable legislation is unlikely to be required for other individual-agency federal retirement programs. He agreed that H.R. 807 would extend to Federal Reserve employees flexibility comparable to that already available to members of the Foreign Service. The Office of Personnel Management supports this legislation and assisted in its drafting.

After Mr. Scarborough described the more generous benefits and lesser risk to the government of the Federal Reserve plan, Mr. Kelley noted that the equity component of the Federal Reserve's plan was established in 1934, and that it was, from the start, "able to invest its funds more broadly than the Federal Government had invested its Trust Funds." The Board's plans have done particularly well, he observed, in the long bull market that has occurred since 1982. He further reported that surpluses generated by the retirement program's investments are booked as a credit against Federal Reserve income, so the taxpayers actually benefit from the revenues developed through the Federal Reserve's retirement investment practices. In response to further questioning, Mr. Kelley described firewalls that would prevent the Treasury making claims on surpluses in the Federal Reserve accounts. He contended that, once the funds are transferred to the retirement accounts, they become exclusively and legally dedicated to funding the benefits that the Board has contracted for with its beneficiaries. Mr. Kelley does not believe that it would be possible for the Federal Reserve Board to transfer the funds to the Treasury as was required of the District of Columbia Retirement Board.

V. EXPLANATION OF THE BILL AS REPORTED: SECTION-BY-SECTION

Sec. 1. This section states that this Act may be cited as the "Federal Reserve Board Retirement Portability Act."

Sec. 2. This section amends chapter 84 of title 5, United States Code, by providing for retirement service portability for Federal Reserve service after December 31, 1988, for employees who are later employed by other federal agencies.

A new subsection (5) would be added to section 8411(b) to permit Federal Reserve Board employees who transfer to another federal

agency in a position covered by FERS, and who were in the Federal Reserve Board's "Bank Plan," to receive service credit under section 8411 for service credited under the "Bank Plan." The term "Bank Plan" is specifically defined in subsection (5) to refer to the benefit structure of the Federal Reserve System's retirement plan in which employees of the Federal Reserve Board appointed after December 31, 1983, participate. To receive credit under FERS, Federal Reserve Board employees who transfer to a federal agency must waive their credit for service under the "Bank Plan" and they must make a mandatory contribution equal to the amount the transferring employee would have paid if he or she had participated in FERS for his or her entire period of Board employment, plus interest, in order to receive such service credit under FERS.

Section 8402(b)(2)(A) currently states that someone who leaves federal employment having participated in CSRS, or in the equivalent FSPS provisions, and who had 5 years of civilian service under either CSRS or the equivalent FSPS provisions, shall not be permitted to participate in FERS. Section 8402(b)(2)(A) is amended by adding the retirement benefit structure for Federal Reserve Board employees appointed prior to January 1, 1984, which is a Federal Reserve Board retirement plan equivalent to CSRS, so that the same exclusions that apply to CSRS and FSPS participants will apply to Board employees who served under that benefit structure.

Section 8402(d) is amended to exclude those Federal Reserve Board employees who are in the Board's retirement benefit structure for employees hired after December 31, 1983 (this is referred to in a new subsection (5) of section 8411(b) as the "Bank Plan"), from the exclusionary provisions of section 8402(b)(2); therefore, those employees will not be precluded from transferring their service to FERS provided that they transfer to another federal agency.

The provisions of this Act shall apply prospectively, i.e., only individuals who retire after enactment may receive credit for service upon transferring from the Federal Reserve Board to another federal agency.

Sec. 3. This section amends Subchapter III, of chapter 84 of title 5, United States Code, by inserting a section 8431 before section 8432. This is a technical correction that allows federal employees who have transferred or will transfer to the Federal Reserve Board to move the funds in their Thrift Savings Plan (TSP) accounts to the Board's Thrift Plan.

Sec. 4. This section amends Subsection (f) of section 3304 of title 5, United States Code, as added by section 2 of Public Law 105-339. PL 105-339 allows veterans to compete for federal job vacancies previously restricted under internal agency promotion procedures. However, under the interpretation of the Office of Personnel Management, veterans hired under these procedures would not be accorded normal career status and would not enjoy full civil service protections. This clarifying amendment ensures that veterans would enjoy all of the promotional rights and protections enjoyed by their co-workers.

VI. COMPLIANCE WITH RULE XIII

Pursuant to the Rules of the House of Representatives, under the authority of rule XIII, clause 3(c)(1) and clause 3(e), the results and

findings from Committee oversight activities are incorporated in the bill and this report.

VII. BUDGET ANALYSIS AND PROJECTIONS

The budget analysis and projections required by section 308(a) of the Congressional Budget Act of 1974 are contained in the estimate of the Congressional Budget Office.

VIII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

To: George Nesterzuk, Committee on Government Reform.
 From: Eric Rollins, CBO.
 Date: March 15, 1999.
 Re: Preliminary estimate for H.R. 807.

As you requested, I have reviewed H.R. 807, the Federal Reserve Board Retirement Portability Act, as reported by the Committee on Government Reform on March 10, 1999. The bill would make changes to the Federal Employees' Retirement System (FERS) and the Thrift Savings Plan (TSP) that would benefit certain employees who have worked for both the federal government and the Federal Reserve Board of Governors.

I estimate that H.R. 807 would not have a significant impact on the federal budget during the 2000–2004 period. Discretionary spending would decline by about \$10,000 annually because the bill would allow certain employees to be covered by the Civil Service Retirement System's offset provisions instead of FERS, which has higher agency retirement contributions and requires agencies to make matching TSP contributions. Direct spending would increase slightly because the decline in agency retirement contributions would also reduce receipts received by the Civil Service trust fund. The bill would not have a significant impact on federal retirement benefits because the employees affected by the bill are generally still in the middle of their careers. Finally, revenues would increase by about \$5,000 annually as employees make deposits to the Civil Service trust fund to receive credit under FERS for prior Federal Reserve service.

Because this bill would affect direct spending and receipts, pay-as-you-go procedures would apply. This estimate is preliminary and subject to change. If you have any questions, please feel free to call me.

IX. SPECIFIC CONSTITUTIONAL AUTHORITY FOR THIS LEGISLATION

Clauses 1 and 18 of Article I, Sec. 8 of the Constitution grant Congress the power to enact this law.

X. COMMITTEE RECOMMENDATION

On March 10, 1999, a quorum being present, the Committee ordered the bill, as amended, favorably reported.

Committee on Government Reform, 106th Congress, Rollcall Vote

Dated: March 10, 1999.

Final: Passage of H.R. 807, as amended.

Offered by: Hon. Joe Scarborough (FL).

Adopted by voice vote.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1;
SECTION 102(B)(3)

H.R. 807 affects employees of the legislation branch who transfer to the Federal Reserve Board, as well as employees who move from the Federal Reserve Board into the legislative branch.

XII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104-4;
SECTION 423

In the opinion of the Committee, H.R. 807 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not have any significant effects on the budgets of state, local, or tribal governments.

XIII. FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP.) SECTION
5(B)

The Committee finds that H.R. 807 does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

XIV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart B—Employment and Retention

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**CHAPTER 33—EXAMINATION, SELECTION, AND
PLACEMENT**

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**SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND
APPOINTMENT**

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§ 3304. Competitive service; examinations

(a) * * *

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(f)(1) Preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of active service may not be denied the opportunity to compete for vacant positions for which the agency making the announcement will accept applications from individuals outside its own workforce under merit promotion procedures.

(2) *If selected, a preference eligible or veteran described in paragraph (1) shall acquire competitive status and shall receive a career or career-conditional appointment, as appropriate.*

[(2)] (3) This subsection shall not be construed to confer an entitlement to veterans' preference that is not otherwise required by law.

[(3)] (4) The area of consideration for all merit promotion announcements which include consideration of individuals of the Federal workforce shall indicate that preference eligibles and veterans who have been separated from the armed forces under honorable conditions after 3 years or more of active service are eligible to apply. The announcements shall be publicized in accordance with section 3327.

[(4) The Office of Personnel Management shall establish an appointing authority to appoint such preference eligibles and veterans.]

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Subpart G—Insurance and Annuities

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CHAPTER 83—RETIREMENT

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

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§ 8351. Participation in the Thrift Savings Plan

(a) * * *

(b)(1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to employees and Members making contributions to the Thrift Savings Fund under subsection (a) of this section.

* * * * *

[(11)] (8) In applying section 8432b to an employee contributing to the Thrift Savings Fund after being restored to or reemployed in a position subject to this subchapter, pursuant to chapter 43 of title 38—

(A) any reference in such section to contributions under section 8432(a) shall be considered a reference to employee contributions under this section;

(B) the contribution rate under section 8432b(b)(2)(A) shall be the maximum percentage allowable under subsection (b)(2) of this section; and

(C) subsections (c) and (d) of section 8432b shall be disregarded.

(9) *For the purpose of this section, separation from Government employment includes a transfer described in section 8431.*

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CHAPTER 84—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

8401. Definitions.

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SUBCHAPTER III—THRIFT SAVINGS PLAN

8431. *Certain transfers to be treated as a separation.*

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SUBCHAPTER I—GENERAL PROVISIONS

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§ 8402. Federal Employees’ Retirement System; exclusions

(a) The provisions of this chapter comprise the Federal Employees’ Retirement System.

(b) The provisions of this chapter shall not apply with respect to—

(1) * * *

[(2)(A) any employee or Member who has separated from the service after—

[(i) having been subject to subchapter III of chapter 83 of this title, or subchapter I of chapter 8 of the Foreign Service Act of 1980; and

[(ii) having completed at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title, or at least 5 years of civilian service creditable under subchapter I of the Foreign Service Act of 1980 (determined without regard to any deposit or redeposit requirement under either such subchapter, or any requirement that the individual become subject to either such subchapter after performing the service involved); or]

(2)(A) *any employee or Member who has separated from the service after—*

(i) *having been subject to—*

(I) *subchapter III of chapter 83 of this title;*

(II) *subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or*

(III) *the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act; and*

(ii) *having completed—*

(I) at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title;

(II) at least 5 years of civilian service creditable under subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

(III) at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act,

determined without regard to any deposit or redeposit requirement under either such subchapter or under such benefit structure, or any requirement that the individual become subject to either such subchapter or to such benefit structure after performing the service involved; or

* * * * *

[(d) Paragraph (2) of subsection (b) shall not apply to an individual who becomes subject to subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election and who subsequently enters a position in which, but for such paragraph (2), he would be subject to this chapter.]

(d) Paragraph (2) of subsection (b) shall not apply to an individual who—

(1) becomes subject to—

(A) subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election; or

(B) the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter); and

(2) subsequently enters a position in which, but for paragraph (2) of subsection (b), such individual would be subject to this chapter.

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SUBCHAPTER II—BASIC ANNUITY

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§ 8411. Creditable service

(a) * * *

(b) For the purpose of this chapter, creditable service of an employee or Member includes—

(1) * * *

* * * * *

(3) except as provided in subsection (f) or (h), any civilian service (performed before January 1, 1989, other than any service under paragraph (1) or (2)) which, but for the amendments made by subsections (a)(4) and (b) of section 202 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter); **[and]**

(4) a period of service (other than any service under any **[of the preceding provisions]** *other paragraph* of this subsection and other than any military service) that was creditable under the Foreign Service Pension System described in subchapter II of chapter 8 of the Foreign Service Act of 1980, if the employee or Member waives credit for such service under the Foreign Service Pension System and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e))**[.]; and**

(5) *a period of service (other than any service under any other paragraph of this subsection, any military service, and any service performed in the employ of a Federal Reserve Bank) that was creditable under the Bank Plan (as defined in subsection (i)), if the employee waives credit for such service under the Bank Plan and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)).*

Paragraph (5) shall not apply in the case of any employee as to whom subsection (g) (or, to the extent subchapter III of chapter 83 is involved, section 8332(n)) otherwise applies.

* * * * *

(i) For purposes of subsection (b)(5), the term "Bank Plan" means the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified

in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter).

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SUBCHAPTER III—THRIFT SAVINGS PLAN

§ 8431. *Certain transfers to be treated as a separation*

(a) For purposes of this subchapter, separation from Government employment includes a transfer from a position that is subject to one of the retirement systems described in subsection (b) to a position that is not subject to any of them.

(b) The retirement systems described in this subsection are—

- (1) the retirement system under this chapter;*
- (2) the retirement system under subchapter III of chapter 83;*

and

- (3) any other retirement system under which individuals may contribute to the Thrift Savings Fund through withholdings from pay.*

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