

FEDERAL EMPLOYEE PHASED RETIREMENT ACT

JUNE 15, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4363]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4363) to amend title 5, United States Code, to allow Federal employees to continue their public service while partially retired, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Committee Statement and Views	2
Section-by-Section	4
Explanation of Amendments	6
Committee Consideration	7
Application of Law to the Legislative Branch	7
Statement of Oversight Findings and Recommendations of the Committee	7
Statement of General Performance Goals and Objectives	7
Federal Advisory Committee Act	7
Unfunded Mandate Statement	7
Committee Estimate	7
Budget Authority and Congressional Budget Office Cost Estimate	8
Changes in Existing Law Made by the Bill as Reported	13
Additional Views	23

The amendment is as follows:
At the end of the bill, add the following:

SEC. 3. CONTRIBUTIONS TO THRIFT SAVINGS FUND OF PAYMENTS FOR ACCRUED OR ACCUMULATED LEAVE.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8351(b)(2) of title 5, United States Code, is amended by adding at the end the following:

“(D)(i) A qualified phased retiree may, in addition to any contributions otherwise allowable, contribute to the Thrift Savings Fund by direct transfer any part of any amount otherwise payable to such retiree for accumulated and current accrued annual or vacation leave under section 5551 or 5552.

“(ii) For purposes of this subparagraph, the term ‘qualified phased retiree’ means a phased retiree (as defined by section 8336a) who has completed at least 1 year of service as such a retiree.”.

(b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—Section 8432(a) of title 5, United States Code, is amended by adding at the end the following:

“(4)(A) A qualified phased retiree may, in addition to any contributions otherwise allowable, contribute to the Thrift Savings Fund by direct transfer any part of any amount otherwise payable to such retiree for accumulated and current accrued annual or vacation leave under section 5551 or 5552.

“(B) For purposes of this paragraph, the term ‘qualified phased retiree’ means a phased retiree (as defined by section 8412a) who has completed at least 1 year of service as such a retiree.”.

(c) REGULATIONS.—The Executive Director of the Federal Retirement Thrift Investment Board shall prescribe regulations to carry out the amendments made by this section.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this section, or upon such earlier date as may be established by the Executive Director of the Federal Retirement Thrift Investment Board under the regulations prescribed under subsection (c).

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

Under current law, Federal agencies may offer part-time employment to retirement-eligible workers, but the employee may not begin receiving accrued pension benefits. As a result, most experienced Federal employees elect to retire. The purpose of H.R. 4363, the “Federal Employee Phased Retirement Act,” is to provide agency managers with an additional tool for retaining valuable knowledge and expertise—a tool that also gives Federal employees greater flexibility in planning their careers and retirements.

H.R. 4363 provides the Office of Personnel Management (OPM) the authority to establish a phased retirement program for Federal employees. The bill allows Federal employees to retire from a portion of their full time employment and receive a prorated pension for that service. During phased retirement, Federal employees would work 20 to 80 percent of their full-time schedule and continue to receive a pro-rated salary and pension credit for the time worked. At least 20 percent of the time worked must be used to mentor, unless the individual is employed by the U.S. Postal Service. When the phased retiree fully retires, their annuity would be adjusted, increasing the employee’s lifetime retirement income.

BACKGROUND AND NEED FOR LEGISLATION

Approximately 550,000 full-time career Federal Government employees and U.S. Postal Service employees are currently eligible to

retire.¹ These retirement-eligible employees represent approximately one quarter of the nearly 2.4 million full-time Federal Government and postal employees. More employees will become retirement eligible in the coming years.

This potential “brain drain” represents a significant cost and concern for the American public. First, many of these employees have decades of experience and institutional knowledge, and their retirements could significantly impact the government’s ability to serve the public. Second, upon retirement, these former employees will start drawing from their generous pension programs and the government will seek to hire their replacements.

Currently, Federal employees face one of three choices upon reaching retirement age:

1. Voluntarily retire and collect an annuity based on the pension computation formula.
2. Continue to work full-time, in most cases increasing the number of service years used in calculating their pension.
3. Voluntarily retire and return to Federal employment as a re-employed annuitant. Unless the employee meets certain requirements, their salary will be reduced by the amount of annuity paid for the period of reemployment.

Most long-serving Federal employees elect retirement, where they can begin receiving their pension.

In its September 2010 legislative proposal, OPM requested phased retirement authority to improve the government’s capacity to “retain and share institutional knowledge.”² H.R. 4363 encompasses OPM’s recommendation, and allows agencies to offer phased-retirement to individuals nearing retirement. Individuals would reduce their employment while continuing to earn additional retirement benefits, pro-rated for the actual hours worked. Individuals opting for phased retirement receive only part of their annuity, resulting in lower annuity outlays from the Civil Service Retirement and Disability Fund. These same individuals would continue to make employee contributions to the retirement fund for their part-time service. The individual’s income during partial retirement would be between full retirement and full employment. At full retirement, the individual would be appropriately compensated for the value of both full-time and part-time service, with a pension greater than if they had fully retired at the time of transition to phased retirement. Non-postal phased retirees would be required to spend a portion of their time mentoring other employees, subject to a waiver.

As part of the Committee’s effort to better align Federal employee benefits with the private sector, H.R. 4363 allows phased retirees to deposit lump-sum payments for unused annual leave into their Thrift Savings Plan (TSP) accounts. These contributions would be subject to the existing Internal Revenue Service (IRS) annual contribution limits. For 2012, this limit is \$17,000.

¹ http://www.washingtonpost.com/local/politics/how-many-Federal-and-postal-employees-are-eligible-to-retire/2011/05/19/AFusIP7G_story.html

² http://www.opm.gov/news_events/congress/proposals/Hiring_Reform.pdf

LEGISLATIVE HISTORY

The Civil Service Retirement Act of 1920 (P.L. 66–215) established pension benefits for civilian Federal employees. Federal civilian employees hired on or after January 1, 1984, were required to participate in Social Security (pursuant to the Social Security Amendments of 1983, P.L. 98–21), which contributed to the development of the Federal Employees’ Retirement System (FERS).³

On March 14, 2012, the Senate passed S. 1813, a bill to reauthorize Federal-aid highway and highway safety construction programs. The bill included a provision to allow phased retirements.

SECTION-BY-SECTION

Section 1. Short title

Establishes the short title of the bill as the “Federal Employee Phased Retirement Act.”

Section 2. Phased retirement authority

Section 2(a) makes changes to chapter 83 of title 5, United States Code, necessary to authorize phased retirement under the Civil Service Retirement System (CSRS).

Subsection (a) of 5 U.S.C. 8336a defines the terms that are used in the new section. Individuals subject to mandatory retirement, such as law enforcement, firefighters, nuclear materials couriers, air traffic controllers, customs and border protection officers, or members of the Capitol Police or Supreme Court Police, may not elect phased retirement.

Subsection (b) allows agencies to offer phased retirement to retirement-eligible employees, subject to OPM regulations. *Subsection (b)(1)* establishes the conditions under which a Federal employee, with the concurrence of the head of the employing agency, can enter phased retirement. It requires that the employee be employed on a full-time basis for the three year period prior to entering phased retirement status.

Subsection (b)(2)(A)–(C) requires that the phased retiree be appointed to a position for which the working percentage is 50 percent. The Director of OPM may establish other phased employment working percentages not less than 20 percent and not more than 80 percent of a work period. The employee’s working percentage may not change during phased retirement.

Subsection (b)(2)(D)(i)–(iii) requires that phased retirees spend a minimum of 20 percent of their working hours mentoring unless exempted by OPM regulations. Phased retirees serving in the United States Postal Service are exempt from the mentoring requirement.

Subsection (b)(3)(A) prevents phased retirees from serving in more than one position at a time. *Subsection (b)(3)(B)* allows employees to transfer to another position as long as the transfer does not result in a change in the working percentage.

Subsection (b)(4) limits retirement-eligible employees to one working percentage election.

³See the Federal Employees’ Retirement Act of 1986, P.L. 99–335.

Subsection (b)(5) prevents phased retirees from selecting alternative forms of annuity (such as lump-sum credit) under section 5 U.S.C. 8343a.

Subsection (c) deals with the computation of a phased retirement annuity. *Subsection (c)(1)* calculates the phased retirement as 100 minus the working percentage multiplied by the amount payable under normal retirement.

Subsection (c)(2) requires that the phased retirement annuity be paid in addition to the basic pay for the position to which a phased retiree is appointed during phased employment.

Subsection (c)(3) applies cost-of-living adjustments to phased retirement annuities in the same manner as full retirement annuities under section 5 U.S.C. 8340.

Subsection (c)(4) prohibits phased retirement annuities from being subject to reduction for any form of survivor annuity, computation of any survivor annuity, or court order requiring a survivor annuity to be provided to any individual. Phased retirement annuities are still subject to court orders providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities.

Subsection (c)(5) clarifies the rules for depositing refunds of service credit.

Subsection (c)(6) requires any deposit, or election of an actuarial annuity reduction in lieu of a deposit, be made at or before the time the employee enters phased retirement. The subsection also establishes rules for service credit if the phased retiree dies in service.

Subsection (c)(7) makes clear the phased retirement annuity begins on the date on which the individual enters phased employment.

Subsection (c)(8) prohibits unused sick leave from being used in the computation of the retirement annuity.

Subsection (d) provides that basic pay, not in excess of the full-time rate of pay for the position, be used when calculating the final annuity.

Subsections (e) and (f) address what happens when a phased retiree elects to fully retire. *Subsection (e)* allows a phased retiree to enter full retirement at any time at which time the phased retiree shall be entitled to a composite retirement annuity. The composite annuity consists of (1) the amount of the phased retirement annuity on the date the individual fully retires (before any reduction for redeposit) plus (2) the percentage of work the employee completed during phased retirement, multiplied by the amount of annuity that would have been payable if the individual had remained employed full-time instead of entering phased retirement (before any reduction for survivor annuity or unpaid redeposit). The sum of these two amounts would be adjusted for any required reductions for survivor annuity or unpaid redeposit under 5 U.S.C. 8334(d)(2).

Subsection (g) allows a phased retiree to return to a full-time work schedule under such procedures and conditions as the Director of OPM may provide and with the concurrence of the head of the employing agency. The subsection makes clear that the phased retirement annuity ends, and the phased retirement period is treated as part-time employment.

Subsection (h) states that, for purposes of survivor annuity benefits, the death of a phased retiree shall be deemed to be the death in service of an employee, and the phased retirement period will be treated as a period of part-time employment.

Subsection (i) makes clear that phased retirees are not considered part-time employees, and thus not subject to the part-time employment conditions under 5 U.S.C. 3401.

Subsection (j) makes phased retirees ineligible for disability retirement.

Subsection (k) establishes the date the phased retiree enters full retirement status as the date of retirement for purposes of determining a survivor annuity.

Subsection (l) provides that a phased retiree is considered to be an employee for purposes of the Thrift Savings Plan and for voluntary retirement contributions under CSRS.

Subsection (m) makes clear that a phased retiree is not subject to salary withholding for receiving an annuity.

Subsection (n) deems a phased retiree to be receiving basic pay at the rate of a full-time employee in the same position for purposes of the Federal Employees' Group Life Insurance Program.

Section 2(b) makes changes to chapter 84 of title 5, United States Code, necessary to authorize phased retirement under FERS. New *section 8412a* of title 5 contains provisions that parallel the provisions of new 5 U.S.C. 3336a with respect to CSRS. *Subsection 8412a(j)* prevents a phased retiree from receiving a FERS supplemental annuity.

Section 3. Contributions to Thrift Savings Fund of payments for accrued or accumulated leave

Section 3 provides that a qualified phased retiree (including postal employees and employees of the Postal Regulatory Commission) may contribute in any pay period any part of any payment that the employee or Member receives as a lump-sum payment for accumulated and accrued annual or vacation leave upon separation or entering active duty. The term qualified phased retiree means a phased retiree who has completed at least one year of service.

EXPLANATION OF AMENDMENTS

Mr. Cummings offered an amendment that cost savings from H.R. 4363 be used towards the unfunded liability created by the Civil Service Retirement and Disability Fund. The amendment was defeated by voice vote.

Mr. Cummings offered an amendment that surplus retirement contributions are returned to the U.S. Postal Service. Mr. Cummings withdrew the amendment.

Mr. Lynch offered an amendment to allow Federal employees to deposit all or part of the lump-sum payment they receive for unused annual leave into their Thrift Savings Plan account. The amendment was modified to apply only to phased retirees (to make the amendment germane) and to incorporate Mr. Issa's second-degree amendment to require individuals to complete at least one year of service as a phased retiree in order to qualify as eligible to make a lump sum deposit. The amendment was agreed to by voice vote.

COMMITTEE CONSIDERATION

On April 18, 2012, the Committee met in open session and ordered reported favorably the bill, H.R. 4363, as amended, by voice vote, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides OPM the authority to establish a phased retirement program for Federal employees. Legislative branch employees and their families, to the extent that they are otherwise eligible for the benefits provided by this legislation, have equal access to its benefits.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

FEDERAL ADVISORY COMMITTEE ACT

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

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 4363 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 4363. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its

report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4363 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 2012.

Hon. DARRELL ISSA,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4363, the Federal Employee Phased Retirement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Amber G. Marcellino.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4363—Federal Employee Phased Retirement Act

Summary: H.R. 4363 would allow eligible federal employees to enter into a phased retirement, during which they continue to work part time while drawing a partial salary and a partial civil service retirement annuity. The bill also would allow participating employees to contribute to their Thrift Savings Plan (TSP) accounts any payment received at retirement for accumulated and accrued annual leave.

CBO estimates that enacting the legislation would decrease direct spending by \$427 million and increase revenues by \$24 million over the 2013–2022 period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues. Implementing H.R. 4363 would decrease employer contributions to retirement accounts, thus reducing discretionary spending for those activities; such reductions in spending would be subject to future appropriation actions consistent with the bill.

H.R. 4363 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4363 is shown in the following table. The impact of this legislation falls within nearly all functions of the budget.

	By fiscal year, in millions of dollars—											
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013– 2017	2013– 2022
CHANGES IN DIRECT SPENDING ^a												
Estimated Budget Authority	-9	-26	-45	-54	-53	-52	-50	-49	-46	-42	-187	-427
Estimated Outlays	-9	-26	-45	-54	-53	-52	-50	-49	-46	-42	-187	-427
CHANGES IN REVENUES ^b												
Estimated Revenues	1	2	3	4	4	4	3	3	1	-1	14	24
NET INCREASE OR DECREASE (-) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Impact on Deficits	-9	-28	-48	-58	-57	-55	-54	-51	-47	-41	-201	-451
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	0	-2	-3	-3	-3	-3	-2	-1	0	1	-11	-15
Estimated Outlays	0	-2	-3	-3	-3	-3	-2	-1	0	1	-11	-15
Memorandum:												
Reduction in Offsetting Receipts Resulting from Lower Employer Contributions ^c	0	2	3	3	3	3	2	1	0	1	11	15

Sources: Congressional Budget Office and staff of the Joint Committee on Taxation.

^aFor direct spending, negative numbers indicate a decrease in the deficit.

^bFor revenues, positive numbers indicate a decrease in the deficit.

^cEmployer contributions are intragovernmental transactions that do not affect the deficit; positive numbers indicate a decrease in receipts.

Basis of estimate: For the estimate, CBO assumed that about 1,000 federal employees per year—a mix of employees in the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS)—would enter into phased retirement for a period of three years before fully retiring.¹ During phased retirement, employees would move from a full-time to a part-time work schedule while also drawing a partial retirement benefit. Such employees would continue to make contributions toward retirement and their employing agencies would also continue their corresponding contributions toward retirement on behalf of those employees. To be eligible to participate in phased retirement, employees must be eligible for full retirement.

Because participants in phased retirement would draw a lower retirement benefit than they would have if they had fully retired, CBO estimates that direct spending would be reduced by \$427 million over the 2013–2022 period.

In addition, CBO estimates that H.R. 4363 would increase revenues by \$24 million over the 2013–2022 period. For this estimate, CBO assumed that any employees who enter phased retirement would have otherwise retired and that they would have been replaced by FERS employees. Most CSRS employees pay a rate of 7.0 percent of salary towards retirement, while most FERS employees currently pay a rate of 0.8 percent. As a result, more contributions would be collected from a CSRS employee remaining employed while in phased retirement than would have been collected from a replacement employee covered by FERS. However, the same contributions would be collected from a FERS employee who remained employed while in phased retirement as would have been collected from a replacement employee covered by FERS—except for a small decrease in revenues in later years because of the implementation of revised annuity contribution rates for employees hired after January 1, 2013.² Any participating agency's total expenditures for salaries were assumed to remain the same as under current law.

Because the disparity in rates for CSRS and FERS employees also affects the amount of employer contributions that agencies must pay on behalf of their employees, H.R. 4363 would decrease discretionary spending for those activities by \$15 million over the 2013–2022 period, CBO estimates. However, this bill—or any legislation that would reduce the funds available for a particular discretionary program—would only reduce projected total appropriations if the caps on discretionary spending were also lowered. Without a reduction in the caps, CBO assumes funding for other discretionary programs would fill the gap created by any specific reduction or savings.

H.R. 4363 would allow federal employees who participate in phased retirement and who are eligible to make contributions to the TSP to contribute to it any payment received for accumulated annual leave. Such contributions would be subject to the annual limits that otherwise apply—annual contributions are currently

¹The estimated number of participants is based on assumptions used by the Office of Personnel Management for their evaluation of this proposal.

²Under provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112–96), future federal employees in FERS will eventually contribute 2.3 percent of their salary towards retirement. CBO has incorporated that scheduled increase in its estimate of this bill.

limited to \$17,000 for individuals ages 49 or younger and \$22,500 for individuals ages 50 or older.

Because income taxes are deferred on contributions to regular (non-Roth) TSP accounts, and earnings within the accounts would not be taxable, the anticipated increase in contributions would initially result in lower revenues from income taxes. The staff of the Joint Committee on Taxation estimates that the legislation would reduce revenues by an insignificant amount over the 2013–2022 period.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

**CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4363 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
ON APRIL 18, 2012**

	By fiscal year, in millions of dollars—												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013– 2017	2013– 2022	
Statutory Pay-As-You-Go Impact Statutory Pay-As-You-Go Impact													
NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact Statutory Pay-As-You-Go Impact	– 9	– 28	– 48	– 58	– 57	– 55	– 54	– 51	– 47	– 41	– 201	– 201	– 451

Intergovernmental and private-sector impact: H.R. 4363 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Spending: Amber G. Marcellino; TSP Contributions: Joint Committee on Taxation; Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

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

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART G—INSURANCE AND ANNUITIES

* * * * *

CHAPTER 83—RETIREMENT

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

8301. Uniform retirement date.

* * * * *

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

* * * * *

8336a. Phased retirement.

* * * * *

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

§ 8331. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * *

(30) the term “air traffic controller” or “controller” means—

(A) * * *

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2109(1)(B);

[and]

(31) “customs and border protection officer” means an employee in the Department of Homeland Security (A) who holds a position within the GS-1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years[.]; and

(32) “Director” means the Director of the Office of Personnel Management.

* * * * *

§ 8336a. Phased retirement

(a) For the purposes of this section—

(1) the term “composite retirement annuity” means the annuity computed when a phased retiree attains full retirement status;

(2) the term “full retirement status” means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity;

(3) the term “phased employment” means the less-than-full-time employment of a phased retiree;

(4) the term “phased retiree” means a retirement-eligible employee who—

(A) makes an election under subsection (b); and

(B) has not entered full retirement status;

(5) the term “phased retirement annuity” means the annuity payable under this section before full retirement;

(6) the term “phased retirement percentage” means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent;

(7) the term “phased retirement period” means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment;

(8) the term “phased retirement status” means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity;

(9) the term “retirement-eligible employee”—

(A) means an individual who, if the individual separated from the service, would meet the requirements for retirement under subsection (a) or (b) of section 8336; but

(B) does not include an employee, described in section 8335, after the date as of which such employee is required to be separated from the service by reason of such section; and

(10) the term “working percentage” means the percentage of full-time employment equal the quotient obtained by dividing—

(A) the number of hours per pay period to be worked by a phased retiree as scheduled in accordance with subsection (b)(2); by

(B) the number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

(b)(1) With the concurrence of the head of the employing agency, and under regulations promulgated by the Director, a retirement-eligible employee who has been employed on a full-time basis for not less than the 3-year period ending on the date on which the retirement-eligible employee makes an election under this subsection may elect to enter phased retirement status.

(2)(A) Subject to subparagraph (B), at the time of entering phased retirement status, a phased retiree shall be appointed to a position for which the working percentage is 50 percent.

(B) The Director may, by regulation, provide for working percentages different from the percentage specified under subparagraph (A), which shall be not less than 20 percent and not more than 80 percent.

(C) The working percentage for a phased retiree may not be changed during the phased retiree's phased retirement period.

(D)(i) Not less than 20 percent of the hours to be worked by a phased retiree shall consist of mentoring.

(ii) The Director may, by regulation, provide for exceptions to the requirement under clause (i).

(iii) Clause (i) shall not apply to a phased retiree serving in the United States Postal Service. Nothing in this clause shall prevent the application of clause (i) or (ii) with respect to a phased retiree serving in the Postal Regulatory Commission.

(3) A phased retiree—

(A) may not be employed in more than one position at any time; and

(B) may transfer to another position in the same or a different agency, if the transfer does not result in a change in the working percentage.

(4) A retirement-eligible employee may make only one election under this subsection during the retirement-eligible employee's lifetime.

(5) A retirement-eligible employee who makes an election under this subsection may not make an election under section 8343a.

(c)(1) Except as otherwise provided under this subsection, the phased retirement annuity for a phased retiree is the product obtained by multiplying—

(A) the amount of an annuity computed under section 8339 that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired under section 8336 (a) or (b); by

(B) the phased retirement percentage for the phased retiree.

(2) A phased retirement annuity shall be paid in addition to the basic pay for the position to which a phased retiree is appointed during phased employment.

(3) A phased retirement annuity shall be adjusted in accordance with section 8340.

(4)(A) A phased retirement annuity shall not be subject to reduction for any form of survivor annuity, shall not serve as the basis of the computation of any survivor annuity, and shall not be subject to any court order requiring a survivor annuity to be provided to any individual.

(B) A phased retirement annuity shall be subject to a court order providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities.

(5) Any reduction of a phased retirement annuity based on an election under section 8334(d)(2) shall be applied to the phased retirement annuity after computation under paragraph (1).

(6)(A) Any deposit, or election of an actuarial annuity reduction in lieu of a deposit, for military service or for creditable civilian service for which retirement deductions were not made or refunded shall be made by a retirement-eligible employee at or before the time the retirement-eligible employee enters phased retirement status. No such deposit may be made, or actuarial adjustment in lieu thereof elected, at the time a phased retiree enters full retirement status.

(B) Notwithstanding subparagraph (A), if a phased retiree does not make such a deposit and dies in service as a phased retiree, a survivor of the phased retiree shall have the same right to make such deposit as would have been available had the employee not entered phased retirement status and died in service.

(C) If a phased retiree makes an election for an actuarial annuity reduction under section 8334(d)(2) and dies in service as a phased retiree, the amount of any deposit upon which such actuarial reduction shall have been based shall be deemed to have been fully paid.

(7) A phased retirement annuity shall commence on the date on which a phased retiree enters phased employment.

(8) No unused sick leave credit may be used in the computation of the phased retirement annuity.

(d) All basic pay not in excess of the full-time rate of pay for the position to which a phased retiree is appointed shall be deemed to be basic pay for purposes of section 8334.

(e) Under such procedures as the Director may prescribe, a phased retiree may elect to enter full retirement status at any time. Upon making such an election, a phased retiree shall be entitled to a composite retirement annuity.

(f)(1) Except as provided otherwise under this subsection, a composite retirement annuity is a single annuity computed under regulations prescribed by the Director, equal to the sum of—

(A) the amount of the phased retirement annuity as of the date of full retirement, before any reduction based on an election under section 8334(d)(2), and including any adjustments made under section 8340; and

(B) the product obtained by multiplying—

(i) the amount of an annuity computed under section 8339 that would have been payable at the time of full retirement if the individual had not elected a phased retirement and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity or reduction based on an election under section 8334(d)(2); by

(ii) the working percentage.

(2) After computing a composite retirement annuity under paragraph (1), the Director shall adjust the amount of the annuity for any applicable reductions for a survivor annuity and any previously elected actuarial reduction under section 8334(d)(2).

(3) A composite retirement annuity shall be adjusted in accordance with section 8340, except that subsection (c)(1) of that section shall not apply.

(4) In computing a composite retirement annuity under paragraph (1)(B)(i), the unused sick leave to the credit of a phased retiree at the time of entry into full retirement status shall be adjusted by dividing the number of hours of unused sick leave by the working percentage.

(g)(1) Under such procedures and conditions as the Director may provide, and with the concurrence of the head of the employing agency, a phased retiree may elect to terminate phased retirement status and return to a full-time work schedule.

(2) Upon entering a full-time work schedule based upon an election under paragraph (1), the phased retirement annuity of a phased retiree shall terminate.

(3) After the termination of a phased retirement annuity under this subsection, the individual's rights under this subchapter shall be determined based on the law in effect at the time of any subsequent separation from service. For purposes of this subchapter or chapter 84, at time of the subsequent separation from service, the phased retirement period shall be treated as if it had been a period of part-time employment with the work schedule described in subsection (b)(2).

(h) For purposes of section 8341—

(1) the death of a phased retiree shall be deemed to be the death in service of an employee; and

(2) the phased retirement period shall be deemed to have been a period of part-time employment with the work schedule described in subsection (b)(2).

(i) Employment of a phased retiree shall not be deemed to be part-time career employment, as defined in section 3401(2).

(j) A phased retiree is not eligible to apply for an annuity under section 8337.

(k) For purposes of section 8341(h)(4), retirement shall be deemed to occur on the date on which a phased retiree enters into full retirement status.

(l) For purposes of sections 8343 and 8351, and subchapter III of chapter 84, a phased retiree shall be deemed to be an employee.

(m) A phased retiree is not subject to section 8344.

(n) For purposes of chapter 87, a phased retiree shall be deemed to be receiving basic pay at the rate of a full-time employee in the position to which the phased retiree is appointed.

* * * * *

§ 8351. Participation in the Thrift Savings Plan

(a) * * *

(b)(1) * * *

(2)(A) * * *

* * * * *

(D)(i) A qualified phased retiree may, in addition to any contributions otherwise allowable, contribute to the Thrift Savings Fund by direct transfer any part of any amount otherwise payable to such retiree for accumulated and current accrued annual or vacation leave under section 5551 or 5552.

(ii) For purposes of this subparagraph, the term “qualified phased retiree” means a phased retiree (as defined by section 8336a) who has completed at least 1 year of service as such a retiree.

* * * * *

CHAPTER 84—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

SUBCHAPTER I—GENERAL PROVISIONS

Sec. 8401. Definitions.

* * * * *

SUBCHAPTER II—BASIC ANNUITY

8412a. Phased retirement.

* * * * *

SUBCHAPTER II—BASIC ANNUITY

* * * * *

§ 8412a. Phased retirement

(a) For the purposes of this section—

(1) the term “composite retirement annuity” means the annuity computed when a phased retiree attains full retirement status;

(2) the term “full retirement status” means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity;

(3) the term “phased employment” means the less-than-full-time employment of a phased retiree;

(4) the term “phased retiree” means a retirement-eligible employee who—

(A) makes an election under subsection (b); and

(B) has not entered full retirement status;

(5) the term “phased retirement annuity” means the annuity payable under this section before full retirement;

(6) the term “phased retirement percentage” means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent;

(7) the term “phased retirement period” means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment;

(8) the term “phased retirement status” means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity;

(9) the term “retirement-eligible employee”—

(A) means an individual who, if the individual separated from the service, would meet the requirements for retirement under subsection (a) or (b) of section 8412; and

(B) does not include—

(i) an individual who, if the individual separated from the service, would meet the requirements for retirement under subsection (d) or (e) of section 8412; but

(ii) does not include an employee, described in section 8425, after the date as of which such employee is required to be separated from the service by reason of such section; and

(10) the term “working percentage” means the percentage of full-time employment equal to the quotient obtained by dividing—

(A) the number of hours per pay period to be worked by a phased retiree as scheduled in accordance with subsection (b)(2); by

(B) the number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

(b)(1) With the concurrence of the head of the employing agency, and under regulations promulgated by the Director, a retirement-eligible employee who has been employed on a full-time basis for not less than the 3-year period ending on the date on which the retirement-eligible employee makes an election under this subsection may elect to enter phased retirement status.

(2)(A) Subject to subparagraph (B), at the time of entering phased retirement status, a phased retiree shall be appointed to a position for which the working percentage is 50 percent.

(B) The Director may, by regulation, provide for working percentages different from the percentage specified under subparagraph (A), which shall be not less than 20 percent and not more than 80 percent.

(C) The working percentage for a phased retiree may not be changed during the phased retiree’s phased retirement period.

(D)(i) Not less than 20 percent of the hours to be worked by a phased retiree shall consist of mentoring.

(ii) The Director may, by regulation, provide for exceptions to the requirement under clause (i).

(iii) Clause (i) shall not apply to a phased retiree serving in the United States Postal Service. Nothing in this clause shall prevent the application of clause (i) or (ii) with respect to a phased retiree serving in the Postal Regulatory Commission.

(3) A phased retiree—

(A) may not be employed in more than one position at any time; and

(B) may transfer to another position in the same or a different agency, if the transfer does not result in a change in the working percentage.

(4) A retirement-eligible employee may make only one election under this subsection during the retirement-eligible employee's lifetime.

(5) A retirement-eligible employee who makes an election under this subsection may not make an election under section 8420a.

(c)(1) Except as otherwise provided under this subsection, the phased retirement annuity for a phased retiree is the product obtained by multiplying—

(A) the amount of an annuity computed under section 8415 that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired under section 8412 (a) or (b); by

(B) the phased retirement percentage for the phased retiree.

(2) A phased retirement annuity shall be paid in addition to the basic pay for the position to which a phased retiree is appointed during the phased employment.

(3) A phased retirement annuity shall be adjusted in accordance with section 8462.

(4)(A) A phased retirement annuity shall not be subject to reduction for any form of survivor annuity, shall not serve as the basis of the computation of any survivor annuity, and shall not be subject to any court order requiring a survivor annuity to be provided to any individual.

(B) A phased retirement annuity shall be subject to a court order providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities.

(5)(A) Any deposit, or election of an actuarial annuity reduction in lieu of a deposit, for military service or for creditable civilian service for which retirement deductions were not made or refunded, shall be made by a retirement-eligible employee at or before the time the retirement-eligible employee enters phased retirement status. No such deposit may be made, or actuarial adjustment in lieu thereof elected, at the time a phased retiree enters full retirement status.

(B) Notwithstanding subparagraph (A), if a phased retiree does not make such a deposit and dies in service as a phased retiree, a survivor of the phased retiree shall have the same right to make such deposit as would have been available had the employee not entered phased retirement status and died in service.

(6) A phased retirement annuity shall commence on the date on which a phased retiree enters phased employment.

(7) No unused sick leave credit may be used in the computation of the phased retirement annuity.

(d) All basic pay not in excess of the full-time rate of pay for the position to which a phased retiree is appointed shall be deemed to be basic pay for purposes of sections 8422 and 8423.

(e) Under such procedures as the Director may prescribe, a phased retiree may elect to enter full retirement status at any time. Upon making such an election, a phased retiree shall be entitled to a composite retirement annuity.

(f)(1) Except as provided otherwise under this subsection, a composite retirement annuity is a single annuity computed under regulations prescribed by the Director, equal to the sum of—

(A) *the amount of the phased retirement annuity as of the date of full retirement, including any adjustments made under section 8462; and*

(B) *the product obtained by multiplying—*

(i) *the amount of an annuity computed under section 8412 that would have been payable at the time of full retirement if the individual had not elected a phased retirement and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any adjustment to provide for a survivor annuity; by*

(ii) *the working percentage.*

(2) *After computing a composite retirement annuity under paragraph (1), the Director shall adjust the amount of the annuity for any applicable reductions for a survivor annuity.*

(3) *A composite retirement annuity shall be adjusted in accordance with section 8462, except that subsection (c)(1) of that section shall not apply.*

(4) *In computing a composite retirement annuity under paragraph (1)(B)(i), the unused sick leave to the credit of a phased retiree at the time of entry into full retirement status shall be adjusted by dividing the number of hours of unused sick leave by the working percentage.*

(g)(1) *Under such procedures and conditions as the Director may provide, and with the concurrence of the head of employing agency, a phased retiree may elect to terminate phased retirement status and return to a full-time work schedule.*

(2) *Upon entering a full-time work schedule based on an election under paragraph (1), the phased retirement annuity of a phased retiree shall terminate.*

(3) *After termination of the phased retirement annuity under this subsection, the individual's rights under this chapter shall be determined based on the law in effect at the time of any subsequent separation from service. For purposes of this chapter, at the time of the subsequent separation from service, the phased retirement period shall be treated as if it had been a period of part-time employment with the work schedule described in subsection (b)(2).*

(h) *For purposes of subchapter IV—*

(1) *the death of a phased retiree shall be deemed to be the death in service of an employee;*

(2) *except for purposes of section 8442(b)(1)(A)(i), the phased retirement period shall be deemed to have been a period of part-time employment with the work schedule described in subsection (b)(2) of this section; and*

(3) *for purposes of section 8442(b)(1)(A)(i), the phased retiree shall be deemed to have been at the full-time rate of pay for the position occupied.*

(i) *Employment of a phased retiree shall not be deemed to be part-time career employment, as defined in section 3401(2).*

(j) *A phased retiree is not eligible to receive an annuity supplement under section 8421.*

(k) *For purposes of subchapter III, a phased retiree shall be deemed to be an employee.*

(l) For purposes of section 8445(d), retirement shall be deemed to occur on the date on which a phased retiree enters into full retirement status.

(m) A phased retiree is not eligible to apply for an annuity under subchapter V.

(n) A phased retiree is not subject to section 8468.

(o) For purposes of chapter 87, a phased retiree shall be deemed to be receiving basic pay at the rate of a full-time employee in the position to which the phased retiree is appointed.

* * * * *

SUBCHAPTER III—THRIFT SAVINGS PLAN

* * * * *

§ 8432. Contributions

(a)(1) * * *

* * * * *

(4)(A) A qualified phased retiree may, in addition to any contributions otherwise allowable, contribute to the Thrift Savings Fund by direct transfer any part of any amount otherwise payable to such retiree for accumulated and current accrued annual or vacation leave under section 5551 or 5552.

(B) For purposes of this paragraph, the term “qualified phased retiree” means a phased retiree (as defined by section 8412a) who has completed at least 1 year of service as such a retiree.

* * * * *

ADDITIONAL VIEWS

As co-sponsor, along with Chairman Darrell Issa and Subcommittee Chairman Dennis Ross, of H.R. 4363, the Federal Employee Phased Retirement Act, I strongly support this legislation, as ordered reported by the Committee on April 18, 2012.

In light of the many bills introduced in this Congress attacking the pay and benefits of our middle class federal workers, it is noteworthy that Committee members on both sides of the aisle were able to come together to support this pro-federal workforce and good government bill. This bill is a win-win for our dedicated civil servants and for the federal government and the American people. The legislation would allow our federal employees to continue to serve the public while they transition to retirement at the end of their careers. The federal government and the American public would also benefit through cost savings and the efficient transfer of knowledge from one generation of federal workers to another.

I appreciate the Committee's bipartisan approval of the amendment I offered to allow phased retirees to deposit lump-sum payments for unused annual or vacation leave into their Thrift Savings Plan accounts upon separation. However, I strongly believe that this option should be expanded and made available to all federal employees as well as members of our armed forces. I will continue to work with my colleagues to support and advance legislation that would help all federal civilian and military personnel achieve their retirement savings goals.

STEPHEN F. LYNCH.

○