Calendar No. 496

112TH CONGRESS } SENATE { REPORT
2d Session } { 112–205

UNITED STATES SECRET SERVICE RETIREMENT ACT OF 2012

REPORT

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1515

TO PERMIT CERTAIN MEMBERS OF THE UNITED STATES SECRET SERVICE AND CERTAIN MEMBERS OF THE UNITED STATES SECRET SERVICE UNIFORMED DIVISION WHO WERE APPOINTED IN 1984, 1985, OR 1986 TO ELECT TO BE COVERED UNDER THE DISTRICT OF COLUMBIA POLICE AND FIREFIGHTER RETIREMENT AND DISABILITY SYSTEM IN THE SAME MANNER AS MEMBERS APPOINTED PRIOR TO 1984

AUGUST 28, 2012.—Ordered to be printed

Filed, under authority of the order of the Senate of August 2, 2012

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Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1515]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1515) to permit certain members of the United States Secret Service and certain members of the United States Secret Service Uniformed Division who were appointed in 1984, 1985, or 1986 to elect to be covered under the District of Columbia Police and Firefighter Retirement and Disability System in the same manner as members appointed prior to 1984, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1515 is to permit certain employees of the U.S. Secret Service (USSS) who were hired between January 1, 1984 and December 31, 1986, to transfer from the Federal Employees' Retirement System (FERS) to the District of Columbia Police and

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Firefighter Retirement and Disability System (DC Retirement System). The bill would thereby resolve a longstanding dispute between the federal government and these employees regarding the employees' appropriate retirement coverage and help ensure that the USSS does not lose a significant number of highly experienced and critical personnel.

II. Background and Need for the Legislation

The Uniformed Division (UD) of the USSS has its origins in a local District of Columbia special police force dedicated to protecting the White House, known as the White House Police. Although UD officers became federal employees in the first half of the last century, the local origins of the USSS led to an unusual situation in which these federal employees, as well as their colleagues in the Secret Service division responsible for protecting current and former Presidents and their families (USSS agents),[1] received their retirement coverage under the DC Retirement System.[2] That began to change in the mid-1980s, when Congress enacted sweeping reforms to Federal employees' retirement coverage. The Federal Employees' Retirement System Act of 1986 (the FERS Act) began the process of phasing out the Civil Service Retirement System (CSRS) by putting most federal employees hired after December 31, 1983 into the Federal Employees' Retirement System, which was slated to be up and running in 1987. The FERS Act required Federal employees participating in FERS to make Social Security contributions and made them eligible for Social Security benefits upon retirement. The FERS Act also established the Thrift Savings Plan (TSP), a defined contribution plan through which each employee contributes into an individual retirement savings account. The Executive Branch has long interpreted the FERS Act as requiring USSS agents and UD officers hired after December 31, 1983 to receive their retirement coverage through FERS, not the DC Retirement System.[3]

Many USSS agents and UD officers hired between January 1, 1984 and December 31, 1986, however, have since their hiring alleged that the USSS, in part as a recruiting and subsequently as a retention tool, promised them eligibility for retirement under the more generous DC Retirement System.[4] Many of them have filed judicial or administrative actions seeking to obtain coverage under the DC Retirement System, but they have thus far been unsuccessful in obtaining relief.[5]

After reviewing the matter, the Committee has determined that the interests of the government in retaining the services of these highly qualified and experienced USSS employees warrant ena-

[1] Unlike Uniformed Division Officers, who were automatically placed into the DC Retirement System, agents who were hired before January 1, 1984 who had accrued 10 years of protection time were eligible to transfer into the DC Retirement System.

[2] The USSS reimburses the District of Columbia on a monthly basis to cover the cost of annuity benefits for UD officers and agents, pursuant to P.L. 71–221 and P.L. 76–847.

[3] *See* USSS memorandum on the District of Columbia Police and Firefighters Retirement and Disability System, March 27, 2001.

[4] Numerous agents and officers submitted letters to senior USSS employees attesting that when they were recruited, they were informed of the generous retirement system and the ability to participate in the DC Retirement System.

[5] The USSS agents and UD officers have pursued actions to participate in the DC Retirement System through the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB), the U.S. Secret Service, and the U.S. District Court for the District of Columbia.

bling certain USSS agents and UD officers to transfer from the FERS system to the DC Retirement System. As an increasing number of this group of agents and officers become eligible for retirement[6] without the option to elect into the DC Retirement System, many are leaving the Secret Service for higher-paying positions in the private sector.[7] The reasons are clear: Secret Service employees participating in the DC Retirement System have a significantly greater incentive to continue working after 20 years of service than do those covered by FERS. Those covered by the DC Retirement System receive an additional 3 percent of their pay for each year they work after twenty years of service, while FERS employees receive only an additional 1 percent for each year over twenty.

To remedy this situation, S. 1515 would offer a very carefully defined group of UD officers and Secret Service agents the opportunity to transfer into the DC Retirement System.[8] Only agents and officers hired between January 1, 1984 and December 31, 1986 would be eligible to transfer into the DC Retirement System. In order to make the transfer, the employees would have to apply and would agree to give up certain benefits established under the FERS Act, such as the agency contributions in their individual TSP accounts. Also, S. 1515 would only apply to current Secret Service employees, and thus, this legislation would not be applicable to current retirees who were hired between January 1, 1984 and December 31, 1986.

III. Legislative History

S. 1515 was introduced by Senator Lieberman on September 6, 2011, and referred to the Committee. The Committee considered the bill at a business meeting on May 16, 2012. The Committee adopted by voice vote a substitute amendment offered by Senator Lieberman and then voted to report the bill, also by voice vote. Chairman Lieberman, Senators Levin, Akaka, Carper, Pryor, Tester, Begich, Collins, and Brown were present for both votes. Senators Coburn, Johnson, and Moran asked by proxy to be recorded as voting against S. 1515.

The substitute amends S. 1515 to require the USSS agents and UD officers covered under S. 1515 to make a lump sum payment for deposit into the USSS appropriations account in order to participate in the DC Retirement System. The substitute also requires the USSS agents and officers who transition into the DC Retirement System to forfeit all contributions to the Thrift Savings Fund made by the Secret Service. Finally, the substitute clarifies that those electing to transfer into the DC Retirement System will be subject to the same provisions governing federal reemployment as other federal retirees, which restrict individuals' ability to receive both a full pension and a salary at the same time.

[6] The number of FERS retirees covered under S. 1515 retiring every year has increased from 4 retirees in Fiscal Year 2004 to 10 retirees in Fiscal Year 2009. Currently, 121 agents and officers hired between 1984 and 1986 are eligible to retire.

[7] According to the USSS, more than 65 percent of the agents and officers eligible to retire hold senior leadership positions within the agency.

[8] The USSS informs the Committee that the bill would apply to approximately 121 employees.

IV. Section-by-Section Analysis

Section 1. Short title

This section provides that the short title of the bill is the "United States Secret Service Retirement Act of 2012."

Section 2. Sense of the Senate

This section provides that it is the sense of the Senate that Secret Service agents and officers hired between January 1, 1984 and December 31, 1986, were promised that, in part as a recruitment and retention tool, that they would be eligible to participate in the District of Columbia Police and Firefighters Retirement System.

Section 3. Authority of certain members of United States Secret Service to elect coverage under District of Columbia Police and Firefighter Retirement System.

This section sets forth the criteria for coverage under S. 1515 and the procedures for transferring covered USSS employees from FERS to the DC Retirement System.

Subsection (a) provides that covered employees, after receiving notification of the transition costs, must make a lump sum payment for deposit into the USSS appropriations account in order to participate in the DC Retirement System. The covered employees who transition into the DC Retirement System will continue to make Social Security contributions and will be entitled to the same benefits, subject to existing offset requirements designed to ensure against overlapping or duplicative contributions and benefits.

Subsection (a) defines "covered employees" as individuals who: (1) were hired as members of the U.S. Secret Service Division (USSS agents) or the U.S. Secret Service Uniformed Division (UD officers) between January 1, 1984 through December 31, 1986; (2) actively performed duties directly related to the protection mission of the USSS for 10 or more years; (3) serve as agents or UD officers on the enactment date of S. 1515; and (4) are covered under FERS on the date of enactment.

Subsection (b) provides that not later than 30 days after the date of enactment of this Act, the Director of the Secret Service must notify each covered employee that he or she is covered by this law. The Director must also notify each covered employee of the transition costs not later than 15 days after determining the costs to transition from FERS to the DC Retirement System.

Subsection (c) provides that within 60 days after the date of enactment of S. 1515, the Office of Pay and Retirement Services of the District of Columbia must calculate the transition costs for each agent and officer covered under S. 1515.

Section 4. Forfeiture of employer contributions for Thrift Savings plan

This section provides that the USSS agents and officers covered under S. 1515 must forfeit all contributions to the Thrift Savings Fund made by an employing agency.

Section 5. Treatment of reemployed annuitants

This section provides that USSS annuitants covered under S. 1515 who transition into the DC Retirement System and accept full time employment with another federal agency will be subject to the same pension offset provisions under title 5, United States Code, that currently apply to reemployed annuitants under the Federal Employees Retirement System and the Civil Service Retirement System.

Section 6. PAYGO compliance

This section provides that the budgetary effects of the Secret Service Retirement Act shall be determined by the "Budgetary Effects of PAYGO Legislation."

V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of S. 1515. The Committee agrees with the Congressional Budget Office (CBO) that the bill would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). The Committee also agrees with CBO that the bill contains no new private-sector mandates as defined in UMRA. The enactment of this legislation will not have significant regulatory impact.

VI. Congressional Budget Office Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 1, 2012.

Hon. Joseph I. Lieberman,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1515, the United States Secret Service Retirement Act of 2012.

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

Sincerely,

Robert A. Sunshine
(For Douglas W. Elmendorf, Director).

Enclosure.

S. 1515—United States Secret Service Retirement Act of 2012

Summary: S. 1515 would permit certain current employees of the U.S. Secret Service hired between January 1, 1984, and December 31, 1986, to move from the Federal Employees Retirement System (FERS) to the District of Columbia Police and Firefighter Retirement and Disability System (D.C. system). The bill would require that agents who elect to change systems pay for the additional retirement benefits provided under the D.C. system over the next 11 years (referred to in the bill as transition costs). This bill also would require Secret Service agents who choose to be covered under the D.C. system to forfeit all contributions to the Thrift Savings Plan (TSP) made on their behalf by the Secret Service or any other agencies.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

CBO estimates that enacting S. 1515 would, on net, generate an insignificant amount of budgetary savings over the 2013–2022 period. Increased direct spending resulting from the additional retirement benefits under the D.C. system would total $7 million over the 10-year period, but those costs would be offset by the payment in 2013 of transition costs by employees who switch retirement plans. Such employees would also convert from contributing to FERS (which would reduce revenues), to contributing to the D.C. system (which would increase offsetting receipts by a similar amount).

Because S. 1515 would require the District of Columbia to determine the cost for some members of the Secret Service to switch to the D.C. system, the bill would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the mandate would be minimal and would not exceed the threshold established in UMRA for intergovernmental mandates ($73 million in 2012, adjusted annually for inflation). This bill contains no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1515 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

	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	−7	1	1	1	1	1	1	1	1	1	−4	*
Estimated Outlays	−7	1	1	1	1	1	1	1	1	1	−4	*
CHANGES IN REVENUES												
Estimated Revenues	*	*	*	0	0	0	0	0	0	0	*	*

Note: * = between −$500,000 and zero: Components may not sum to totals because of rounding.
[a] CBO estimates that discretionary costs of S. 1515 would not be significant.

Basis of estimate: For the purposes of this estimate, CBO assumes that S. 1515 will be enacted late in 2012. Based on information from the Secret Service and the Office of Management and Budget, CBO estimates that 121 employees would be eligible to transfer to the D.C. retirement system under this bill. However, based on an analysis of the costs and benefits to individuals faced with the option of making the switch, CBO estimates that it is unlikely that more than 10 percent of eligible employees would choose to make that change. The number of employees taking advantage of this option would probably be small because the cost they would face to switch retirement systems (on average, between $300,000 and $400,000) would be very high. Furthermore, the net benefit over time of switching would not be large.

Direct spending and revenues

Because the D.C. system provides a higher basic pension than FERS, the current retirement plan for the eligible Secret Service employees, CBO estimates that enacting the bill would result in additional federal costs of about $7 million for benefit payments over the 2013–2022 period if 10 percent of eligible employees transfer. (The D.C. system is run by the government of Washington, D.C., but receives a payment from the federal government to cover certain federal employees.) That additional spending would be partially offset by the higher contributions totaling less than $500,000 that employees would make to the D.C. system over the 10-year period. The bill also would require that all employees electing to move to the D.C. system pay for the additional retirement benefits they would receive through 2022. The transactions for this cohort of employees in the D.C. system would be recorded in the federal budget. CBO estimates those one-time payments would increase offsetting receipts (a credit against direct spending) by about $7 million in 2013.

In addition, the bill would reduce revenues by less than $500,000 over the 2013–2022 period, because individuals who elect to transfer to the D.C. system would no longer contribute to FERS. (Contributions to FERS are classified as revenues.)

Spending subject to appropriation

The bill would authorize an appropriation of $75,000 to the District of Columbia to calculate the transition costs. CBO estimates that the other discretionary costs would not be significant. All of the discretionary budgetary effects of implementing S. 1515 would be subject to the availability of appropriated funds.

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 S. 1515, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS ON MAY 16, 2012

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022
	NET INCREASE OR DECREASE (−) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	−7	1	1	1	1	1	1	1	1	1	−4	0

Note: Components may not sum to totals because of rounding.

Estimated impact on state, local, and tribal governments: The bill would impose an intergovernmental mandate by requiring the Office of Pay and Retirement Services of the District of Columbia to determine the cost for some members of the Secret Service to change retirement plans. Based on information from agency sources, CBO estimates that the cost of the mandate would be minimal and would not exceed the threshold established in UMRA for intergovernmental mandates ($73 million in 2012, adjusted annually for inflation). The bill would authorize the appropriation of $75,000 for the District to carry out the requirement.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Santiago Vallinas and Sheila Dacey; 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.

VII. Changes in Existing Law Made by the Bill, as Reported

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following 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):

DISTRICT OF COLUMBIA OFFICIAL CODE

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DIVISION I—GOVERNMENT OF DISTRICT

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TITLE 5—POLICE, FIREFIGHTERS, AND CHIEF MEDICAL EXAMINER

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CHAPTER 7—POLICE AND FIREFIGHTERS RETIREMENT AND DISABILITY

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§ 5–703. United States Secret Service Division; transfer of civil service funds; credit for prior service with other police forces

[Whenever any member] *(1) In General.—Whenever any member* of the United States Secret Service Division has actively performed duties other than clerical for 10 years or more directly related to the protection of the President, such member shall be authorized to transfer all funds to his credit in the Civil Service Retirement and Disability Fund continued by §§ 8331(5) and 8348 of Title 5, United States Code, to the general revenues of the District of Columbia and after the transfer of such funds the salary of such member shall be subject to the same deductions for credit to the general revenues of the District of Columbia as the deductions from salaries of other members under this subchapter, and he shall be entitled to the same benefits as the other members to whom such sections apply. Any member of the United States Secret Service Division appointed from the United States Secret Service Uniformed Division and assigned to duties directly related to the protection of the President shall receive credit for periods of prior service with the Metropolitan Police force, the United States Park Police force, or the United States Secret Service Uniformed Division toward the required 10 years or more service.

(2) Coverage of Certain Other Employees of Secret Service.—

(A) In general.—Paragraph (1) shall apply with respect to a covered employee in the same manner as such paragraph applies to an individual who is authorized to make a transfer of funds under such paragraph, but only if—

(i) not later than 60 days after receiving notification of the transition cost associated with the application of paragraph (1) to the covered employee (as provided under section 3(b)(2) of the United States Secret Service Retirement Act of 2012), the covered employee provides a notification to the Director of the United States Secret Service containing such information and assurances as the Director may require; and

(ii) on or before the date the covered employee provides a notification under clause (i), the employee makes a lump sum payment in an amount equal to the transition cost associated with the application of paragraph (1) to the covered employee, determined in accordance with section 3(c) of the United States Secret Service Retirement Act of 2012, for deposit into the Contributions for Annuity Benefits, United States Secret Service appropriations account of the Department of Homeland Security.

(B) ADJUSTMENT TO REFLECT SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS.—In the case of a covered employee who authorizes a transfer of funds under paragraph (1), such covered employee shall be subject to the same deductions and shall be entitled to the same benefits as provided for under paragraph (1), subject to offset in accordance with section 103(e) of Public Law 100–238 (5 U.S.C. 8334 note).

(C) COVERED EMPLOYEE DEFINED.—In this paragraph, the term "covered employee" means an individual who—

(i) was appointed during 1984, 1985, or 1986—

(I) as a member of the United States Secret Service Uniformed Division as defined under section 10201(1) of title 5, United States Code; or

(II) to the United States Secret Service as a criminal investigator as defined under section 5545a(a)(2) of title 5, United States Code;

(ii) has actively performed duties other than clerical for 10 or more years directly related to the protection mission of the United States Secret Service described under section 3056 of title 18, United States Code;

(iii) is serving as an officer or member of the United States Secret Service Uniformed Division as defined under section 10201(1) of title 5, United States Code, or is employed by the United States Secret Service as a criminal investigator as defined under section 5545a(a)(2) of title 5, United States Code; and

(iv) is covered under the Federal Employees' Retirement System under chapter 84 of title 5, United States Code, on the date of enactment of this paragraph.

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