

Calendar No. 515

117TH CONGRESS
2^D SESSION**H. R. 521****[Report No. 117-173]**

IN THE SENATE OF THE UNITED STATES

JULY 13, 2022

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

SEPTEMBER 28, 2022

Reported by Mr. PETERS, without amendment

AN ACT

To permit disabled law enforcement officers, customs and border protection officers, firefighters, air traffic controllers, nuclear materials couriers, members of the Capitol Police, members of the Supreme Court Police, employees of the Central Intelligence Agency performing intelligence activities abroad or having specialized security requirements, and diplomatic security special agents of the Department of State to receive retirement benefits in the same manner as if they had not been disabled.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “First Responder Fair
3 Return for Employees on Their Initial Retirement Earned
4 Act” or the “First Responder Fair RETIRE Act”.

5 **SEC. 2. SENSE OF CONGRESS.**

6 It is the sense of Congress that—

7 (1) it is in the best national and homeland se-
8 curity interests of the United States for Federal
9 agencies to retain the specialized knowledge and ex-
10 perience of individuals who suffer an injury or illness
11 while serving in a covered position (as defined under
12 the amendments made by this Act); and

13 (2) Federal agencies should ensure, to the
14 greatest extent possible, that an individual who can
15 no longer carry out the duties of a covered position,
16 and is reappointed to a position in the civil service
17 that is not a covered position, is reappointed within
18 the same Federal agency, in the same geographic lo-
19 cation, and at a level of pay commensurate to the
20 position which the individual held immediately prior
21 to such injury or illness.

22 **SEC. 3. RETIREMENT FOR CERTAIN EMPLOYEES.**

23 (a) CSRS.—Section 8336(c) of title 5, United States
24 Code, is amended by adding at the end the following:

25 “(3)(A) In this paragraph—

1 “(i) the term ‘affected individual’ means an in-
2 dividual covered under this subchapter who—

3 “(I) is performing service in a covered po-
4 sition;

5 “(II) while on duty, becomes ill or is in-
6 jured as a direct result of the performance of
7 such duties before the date on which the indi-
8 vidual becomes entitled to an annuity under
9 paragraph (1) of this subsection or subsection
10 (e), (m), or (n), as applicable;

11 “(III) because of the illness or injury de-
12 scribed in subclause (II), is permanently unable
13 to render useful and efficient service in the em-
14 ployee’s covered position, as determined by the
15 agency in which the individual was serving
16 when such individual incurred the illness or in-
17 jury; and

18 “(IV) is appointed to a position in the civil
19 service that—

20 “(aa) is not a covered position; and

21 “(bb) is within an agency that regu-
22 larly appoints individuals to supervisory or
23 administrative positions related to the ac-
24 tivities of the former covered position of
25 the individual;

1 “(ii) the term ‘covered position’ means a posi-
2 tion as a law enforcement officer, customs and bor-
3 der protection officer, firefighter, air traffic con-
4 troller, nuclear materials courier, member of the
5 Capitol Police, or member of the Supreme Court Po-
6 lice.

7 “(B) Unless an affected individual files an election
8 described in subparagraph (E), creditable service by the
9 affected individual in a position described in subparagraph
10 (A)(i)(IV) shall be treated as creditable service in a cov-
11 ered position for purposes of this chapter and determining
12 the amount to be deducted and withheld from the pay of
13 the affected individual under section 8334.

14 “(C) Subparagraph (B) shall only apply if the af-
15 fected employee transitions to a position described in sub-
16 paragraph (A)(i)(IV) without a break in service exceeding
17 3 days.

18 “(D) The service of an affected individual shall no
19 longer be eligible for treatment under subparagraph (B)
20 if such service occurs after the individual—

21 “(i) is transferred to a supervisory or adminis-
22 trative position related to the activities of the former
23 covered position of the individual; or

24 “(ii) meets the age and service requirements
25 that would subject the individual to mandatory sepa-

1 ration under section 8335 if such individual had re-
2 mained in the former covered position.

3 “(E) In accordance with procedures established by
4 the Director of the Office of Personnel Management, an
5 affected individual may file an election to have any cred-
6 itable service performed by the affected individual treated
7 in accordance with this chapter without regard to subpara-
8 graph (B).

9 “(F) Nothing in this paragraph shall be construed
10 to apply to such affected individual any other pay-related
11 laws or regulations applicable to a covered position.”.

12 (b) FERS.—

13 (1) IN GENERAL.—Section 8412(d) of title 5,
14 United States Code, is amended—

15 (A) by redesignating paragraphs (1) and
16 (2) as subparagraphs (A) and (B), respectively;

17 (B) by inserting “(1)” before “An em-
18 ployee”; and

19 (C) by adding at the end the following:

20 “(2)(A) In this paragraph—

21 “(i) the term ‘affected individual’ means an in-
22 dividual covered under this chapter who—

23 “(I) is performing service in a covered po-
24 sition;

1 “(II) while on duty, becomes ill or is in-
2 jured as a direct result of the performance of
3 such duties before the date on which the indi-
4 vidual becomes entitled to an annuity under
5 paragraph (1) of this subsection or subsection
6 (e), as applicable;

7 “(III) because of the illness or injury de-
8 scribed in subclause (II), is permanently unable
9 to render useful and efficient service in the em-
10 ployee’s covered position, as determined by the
11 agency in which the individual was serving
12 when such individual incurred the illness or in-
13 jury; and

14 “(IV) is appointed to a position in the civil
15 service that—

16 “(aa) is not a covered position; and

17 “(bb) is within an agency that regu-
18 larly appoints individuals to supervisory or
19 administrative positions related to the ac-
20 tivities of the former covered position of
21 the individual;

22 “(ii) the term ‘covered position’ means a posi-
23 tion as a law enforcement officer, customs and bor-
24 der protection officer, firefighter, air traffic con-
25 troller, nuclear materials courier, member of the

1 Capitol Police, or member of the Supreme Court Po-
2 lice.

3 “(B) Unless an affected individual files an election
4 described in subparagraph (E), creditable service by the
5 affected individual in a position described in subparagraph
6 (A)(i)(IV) shall be treated as creditable service in a cov-
7 ered position for purposes of this chapter and determining
8 the amount to be deducted and withheld from the pay of
9 the affected individual under section 8422.

10 “(C) Subparagraph (B) shall only apply if the af-
11 fected employee transitions to a position described in sub-
12 paragraph (A)(i)(IV) without a break in service exceeding
13 3 days.

14 “(D) The service of an affected individual shall no
15 longer be eligible for treatment under subparagraph (B)
16 if such service occurs after the individual—

17 “(i) is transferred to a supervisory or adminis-
18 trative position related to the activities of the former
19 covered position of the individual; or

20 “(ii) meets the age and service requirements
21 that would subject the individual to mandatory separa-
22 tion under section 8425 if such individual had re-
23 mained in the former covered position.

24 “(E) In accordance with procedures established by
25 the Director of the Office of Personnel Management, an

1 affected individual may file an election to have any cred-
2 itable service performed by the affected individual treated
3 in accordance with this chapter without regard to subpara-
4 graph (B).

5 “(F) Nothing in this paragraph shall be construed
6 to apply to such affected individual any other pay-related
7 laws or regulations applicable to a covered position.”.

8 (2) TECHNICAL AND CONFORMING AMEND-
9 MENTS.—

10 (A) Chapter 84 of title 5, United States
11 Code, is amended—

12 (i) in section 8414(b)(3), by inserting
13 “(1)” after “subsection (d)”;

14 (ii) in section 8415—

15 (I) in subsection (e), in the mat-
16 ter preceding paragraph (1), by in-
17 serting “(1)” after “subsection (d)”;
18 and

19 (II) in subsection (h)(2)(A), by
20 striking “(d)(2)” and inserting
21 “(d)(1)(B)”;

22 (iii) in section 8421(a)(1), by insert-
23 ing “(1)” after “(d)”;

24 (iv) in section 8421a(b)(4)(B)(ii), by
25 inserting “(1)” after “section 8412(d)”;

1 (v) in section 8425, by inserting “(1)”
2 after “section 8412(d)” each place it ap-
3 pears; and

4 (vi) in section 8462(c)(3)(B)(ii), by
5 inserting “(1)” after “subsection (d)”.

6 (B) Title VIII of the Foreign Service Act
7 of 1980 (22 U.S.C. 4041 et seq.) is amended—

8 (i) in section 805(d)(5) (22 U.S.C.
9 4045(d)(5)), by inserting “(1)” after “or
10 8412(d)”;

11 (ii) in section 812(a)(2)(B) (22
12 U.S.C. 4052(a)(2)(B)), by inserting “(1)”
13 after “or 8412(d)”.

14 (c) CIA EMPLOYEES.—Section 302 of the Central In-
15 telligence Agency Retirement Act (50 U.S.C. 2152) is
16 amended by adding at the end the following:

17 “(d) EMPLOYEES DISABLED ON DUTY.—

18 “(1) DEFINITIONS.—In this subsection—

19 “(A) the term ‘affected employee’ means
20 an employee of the Agency covered under sub-
21 chapter II of chapter 84 of title 5, United
22 States Code, who—

23 “(i) is performing service in a position
24 designated under subsection (a);

1 “(ii) while on duty in the position des-
2 ignated under subsection (a), becomes ill
3 or is injured as a direct result of the per-
4 formance of such duties before the date on
5 which the employee becomes entitled to an
6 annuity under section 233 of this Act or
7 section 8412(d)(1) of title 5, United States
8 Code;

9 “(iii) because of the illness or injury
10 described in clause (ii), is permanently un-
11 able to render useful and efficient service
12 in the employee’s covered position, as de-
13 termined by the Director; and

14 “(iv) is appointed to a position in the
15 civil service that is not a covered position
16 but is within the Agency; and

17 “(B) the term ‘covered position’ means a
18 position as—

19 “(i) a law enforcement officer de-
20 scribed in section 8331(20) or 8401(17) of
21 title 5, United States Code;

22 “(ii) a customs and border protection
23 officer described in section 8331(31) or
24 8401(36) of title 5, United States Code;

1 “(iii) a firefighter described in section
2 8331(21) or 8401(14) of title 5, United
3 States Code;

4 “(iv) an air traffic controller described
5 in section 8331(30) or 8401(35) of title 5,
6 United States Code;

7 “(v) a nuclear materials courier de-
8 scribed in section 8331(27) or 8401(33) of
9 title 5, United States Code;

10 “(vi) a member of the United States
11 Capitol Police;

12 “(vii) a member of the Supreme Court
13 Police;

14 “(viii) an affected employee; or

15 “(ix) a special agent described in sec-
16 tion 804(15) of the Foreign Service Act of
17 1980 (22 U.S.C. 4044(15)).

18 “(2) TREATMENT OF SERVICE AFTER DIS-
19 ABILITY.—Unless an affected employee files an elec-
20 tion described in paragraph (3), creditable service by
21 the affected employee in a position described in
22 paragraph (1)(A)(iv) shall be treated as creditable
23 service in a covered position for purposes of this Act
24 and chapter 84 of title 5, United States Code, in-
25 cluding eligibility for an annuity under section 233

1 of this Act or 8412(d)(1) of title 5, United States
2 Code, and determining the amount to be deducted
3 and withheld from the pay of the affected employee
4 under section 8422 of title 5, United States Code.

5 “(3) BREAK IN SERVICE.—Paragraph (2) shall
6 only apply if the affected employee transitions to a
7 position described in paragraph (1)(A)(iv) without a
8 break in service exceeding 3 days.

9 “(4) LIMITATION ON TREATMENT OF SERV-
10 ICE.—The service of an affected employee shall no
11 longer be eligible for treatment under paragraph (2)
12 if such service occurs after the employee is trans-
13 ferred to a supervisory or administrative position re-
14 lated to the activities of the former covered position
15 of the employee.

16 “(5) OPT OUT.—An affected employee may file
17 an election to have any creditable service performed
18 by the affected employee treated in accordance with
19 chapter 84 of title 5, United States Code, without
20 regard to paragraph (2).”.

21 (d) FOREIGN SERVICE RETIREMENT AND DIS-
22 ABILITY SYSTEM.—Section 806(a)(6) of the Foreign Serv-
23 ice Act of 1980 (22 U.S.C. 4046(a)(6)) is amended by
24 adding at the end the following:

25 “(D)(i) In this subparagraph—

1 “(I) the term ‘affected special agent’ means an
2 individual covered under this subchapter who—

3 “(aa) is performing service as a special
4 agent;

5 “(bb) while on duty as a special agent, be-
6 comes ill or is injured as a direct result of the
7 performance of such duties before the date on
8 which the individual becomes entitled to an an-
9 nuity under section 811;

10 “(cc) because of the illness or injury de-
11 scribed in item (bb), is permanently unable to
12 render useful and efficient service in the em-
13 ployee’s covered position, as determined by the
14 Secretary; and

15 “(dd) is appointed to a position in the For-
16 eign Service that is not a covered position; and

17 “(II) the term ‘covered position’ means a posi-
18 tion as—

19 “(aa) a law enforcement officer described
20 in section 8331(20) or 8401(17) of title 5,
21 United States Code;

22 “(bb) a customs and border protection offi-
23 cer described in section 8331(31) or 8401(36)
24 of title 5, United States Code;

1 “(cc) a firefighter described in section
2 8331(21) or 8401(14) of title 5, United States
3 Code;

4 “(dd) an air traffic controller described in
5 section 8331(30) or 8401(35) of title 5, United
6 States Code;

7 “(ee) a nuclear materials courier described
8 in section 8331(27) or 8401(33) of title 5,
9 United States Code;

10 “(ff) a member of the United States Cap-
11 itol Police;

12 “(gg) a member of the Supreme Court Po-
13 lice;

14 “(hh) an employee of the Agency des-
15 ignated under section 302(a) of the Central In-
16 telligence Agency Retirement Act (50 U.S.C.
17 2152(a)); or

18 “(ii) a special agent.

19 “(ii) Unless an affected special agent files an election
20 described in clause (iv), creditable service by the affected
21 special agent in a position described in clause (i)(I)(dd)
22 shall be treated as creditable service as a special agent
23 for purposes of this subchapter, including determining the
24 amount to be deducted and withheld from the pay of the
25 individual under section 805.

1 “(iii) Clause (ii) shall only apply if the special agent
2 transitions to a position described in clause (i)(I)(dd)
3 without a break in service exceeding 3 days.

4 “(iv) The service of an affected employee shall no
5 longer be eligible for treatment under clause (ii) if such
6 service occurs after the employee is transferred to a super-
7 visory or administrative position related to the activities
8 of the former covered position of the employee.

9 “(v) In accordance with procedures established by the
10 Secretary, an affected special agent may file an election
11 to have any creditable service performed by the affected
12 special agent treated in accordance with this subchapter,
13 without regard to clause (ii).”.

14 (e) IMPLEMENTATION.—

15 (1) OFFICE OF PERSONNEL MANAGEMENT.—
16 Not later than 1 year after the date of enactment
17 of this Act, the Director of the Office of Personnel
18 Management shall promulgate regulations to carry
19 out the amendments made by subsections (a) and
20 (b).

21 (2) CIA EMPLOYEES.—The Director of the
22 Central Intelligence Agency shall promulgate regula-
23 tions to carry out the amendment made by sub-
24 section (c).

1 (3) FOREIGN SERVICE RETIREMENT AND DIS-
2 ABILITY SYSTEM.—The Secretary of State shall pro-
3 mulgate regulations to carry out the amendment
4 made by subsection (d).

5 (4) AGENCY CERTIFICATION.—The regulations
6 promulgated to carry out the amendments made by
7 this Act shall include a requirement that the head
8 of the agency at which an affected employee or spe-
9 cial agent (as the case may be) incurred the applica-
10 ble illness or injury certifies that such illness or in-
11 jury—

12 (A) was incurred in the course of the em-
13 ployee’s or special agent’s duties; and

14 (B) permanently precludes the employee or
15 special agent from rendering useful and effi-
16 cient service in the covered position but would
17 not preclude the employee or special agent from
18 continuing to serve in the Federal service.

19 (5) AGENCY REAPPOINTMENT.—The regula-
20 tions promulgated to carry out the amendments
21 made by this Act shall ensure that, to the greatest
22 extent possible, the head of each agency appoints af-
23 fected employees or special agents to supervisory or
24 administrative positions related to the activities of

1 the former covered position of the employee or spe-
2 cial agent.

3 (6) TREATMENT OF SERVICE.—The regulations
4 promulgated to carry out the amendments made by
5 this Act shall ensure that the creditable service of an
6 affected employee or special agent (as the case may
7 be) that is not in a covered position pursuant to an
8 election made under such amendments shall be
9 treated as the same type of service as the covered
10 position in which the employee or agent suffered the
11 qualifying illness or injury.

12 (f) EFFECTIVE DATE; APPLICABILITY.—The amend-
13 ments made by this Act—

14 (1) shall take effect on the date of enactment
15 of this Act; and

16 (2) shall apply to an individual who suffers an
17 illness or injury described in section
18 8336(c)(3)(A)(i)(II) or section 8412(d)(2)(A)(i)(II)
19 of title 5, United States Code, as amended by this
20 section, section 302(d)(1)(A)(ii) of the Central Intel-
21 ligence Agency Retirement Act, as amended by this
22 section, or section 806(a)(6)(D)(i)(I)(bb) of the For-
23 eign Service Act of 1980, as amended by this sec-
24 tion, on or after the date that is 2 years after the
25 date of enactment of this Act.

1 **SEC. 4. DETERMINATION OF BUDGETARY EFFECTS.**

2 The budgetary effects of this Act, for the purpose of
3 complying with the Statutory Pay-As-You-Go Act of 2010,
4 shall be determined by reference to the latest statement
5 titled “Budgetary Effects of PAYGO Legislation” for this
6 Act, submitted for printing in the Congressional Record
7 by the Chairman of the House Budget Committee, pro-
8 vided that such statement has been submitted prior to the
9 vote on passage.

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AN ACT

To permit disabled law enforcement officers, customs and border protection officers, firefighters, air traffic controllers, nuclear materials couriers, members of the Capitol Police, members of the Supreme Court Police, employees of the Central Intelligence Agency performing intelligence activities abroad or having specialized security requirements, and diplomatic security special agents of the Department of State to receive retirement benefits in the same manner as if they had not been disabled.

SEPTEMBER 28, 2022

Reported without amendment