Federal Employees' Retirement System: Legislation Enacted in the 111th Congress

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Summary

On June 22, 2009, President Barack Obama signed into law H.R. 1256, the Family Smoking Prevention and Tobacco Control Act of 2009 (P.L. 111-31). Title I of Division B of H.R. 1256 is the "Thrift Savings Plan Enhancement Act of 2009". Among other provisions, P.L. 111-31:

- provides for newly hired federal employees to be enrolled automatically in the Thrift Savings Plan (TSP) at a default contribution rate of 3% of pay;
- requires the Federal Retirement Thrift Investment Board to establish within the TSP a qualified Roth contribution program that provides for after-tax contributions and tax-free distributions;
- gives the Federal Retirement Thrift Investment Board authority to include mutual fund investment options in the TSP;
- requires the Thrift Board to submit to Congress an annual report that includes demographic information about TSP participants and fund managers;
- allows the surviving spouse of a deceased TSP participant to leave the decedent's TSP account balance on deposit with the Thrift Savings Plan, and;
- increases the monthly indemnity allowance for surviving spouses of deceased members of the armed forces who are affected by certain benefit offsets.

On October 28, 2009, President Obama signed into law H.R. 2647, the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84). Title XI and Title XIX of P.L. 111-84 contain provisions that affect the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). P.L. 111-84:

- allows federal agencies to appoint individuals receiving annuities under CSRS or FERS to temporary, part-time positions within the federal government without reducing the individual's salary by the amount of the annuity, as is usually required under title 5 of the United States Code.
- requires the computation of an annuity under the Federal Employees' Retirement System to include an employee's unused sick leave in his or her length of service;
- allows certain redeposits to the Civil Service Retirement System for periods of service between October 1990 and February 1991 to exclude interest payments;
- requires CSRS annuities for employees whose careers include part-time service to be computed under the same rules that apply to part-time annuities under FERS;
- allows former employees who withdrew contributions to the FERS at the time of separation from federal service to redeposit those contributions, plus interest, to the FERS in the event that they are re-employed by the federal government; and
- allows certain service performed as an employee of the District of Columbia to be credited as federal service for purposes of determining retirement benefits.

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Thrift Savings Plan Enhancement Act of 2009

On June 22, 2009, President Barack Obama signed into law H.R. 1256, the Family Smoking Prevention and Tobacco Control Act of 2009 (P.L. 111-31). Sections 101 through 110 of Title I of Division B of H.R. 1256 are titled the "Thrift Savings Plan Enhancement Act of 2009".

Automatic Enrollment in the Thrift Savings Plan

Federal employees initially hired into permanent employment on or after January 1, 1984, participate in the Federal Employees' Retirement System (FERS). The FERS comprises three elements: the FERS basic retirement annuity, Social Security, and the Thrift Savings Plan (TSP).[1] Employees can contribute up to $16,500 to the TSP in 2009. Employees aged 50 and older can contribute an additional $5,500. Each employee's employing agency automatically contributes an amount equal to 1% of pay to the TSP on his or her behalf. In addition, employee salary deferrals up to 5% of pay are matched by the employing agency dollar-for-dollar on the first 3% of pay contributed to the TSP and at fifty cents on the dollar for the next 2% of pay contributed. The Federal Retirement Thrift Investment Board reports that 52% of employees enrolled in FERS voluntarily contribute to the TSP program in their first year of eligibility and that 86% contribute by their sixth year of employment.

Prior to enactment of the Thrift Savings Plan Enhancement Act, federal employees were required to elect to defer salary into the TSP. P.L. 111-31 requires newly hired federal employees to be enrolled automatically in the TSP at a default contribution rate of 3% of pay. The Federal Retirement Thrift Investment Board, which oversees the operations of the Thrift Savings Plan, is authorized to set the default rate of contribution no lower than 2% of pay and no higher than 5% of pay. The TSP government bond (the "G" fund) will be the default investment fund for employees who are automatically enrolled in the TSP. Employees will have the option to increase or decrease their contributions, to direct their contributions to one or more other funds within the TSP, or to opt out of participating in the TSP.

Qualified Roth Contribution Option

P.L. 111-31 directs the Thrift Board to add to the TSP a qualified Roth contribution program.[2] Prior to enactment of the Thrift Savings Plan Enhancement Act, all employee salary deferrals into the TSP were made on a pre-tax basis. Income taxes are deferred on these deferrals until money is withdrawn from the account. Under a qualified Roth contribution program, employee salary deferrals are made with after-tax income. Under federal tax law, only employee contributions can be allocated to a designated Roth account. Employer matching contributions must be allocated to a pre-tax account. Qualified distributions that are attributable to an employee's designated Roth contributions and investment earnings on those contributions will tax-free. The part of the

[1] For more information on FERS, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*, by Patrick Purcell.

[2] The Roth Individual Retirement Account, named for the late Sen. William Roth, was authorized by the Taxpayer Relief Act of 1997, P.L. 105-34. Roth treatment of employee salary deferrals into 401(k) plans and 403(b) retirement annuities was authorized, beginning on January 1, 2006, by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16). For more information, see CRS Report RL34397, *Traditional and Roth Individual Retirement Accounts (IRAs): A Primer*, by John J. Topoleski.

distribution that is attributable to employer matching contributions and investment earnings on the employer contributions will be subject to income taxes.

Authority to Establish a Mutual Fund Window

New investment funds can be added to the TSP only if authorized by Congress. P.L. 111-31 gives the Federal Retirement Thrift Investment Board the authority, in consultation with the Employee Thrift Advisory Council, to include in the TSP a service that allows participants to invest in mutual funds "if the Board determines that such addition would be in the best interests of participants." Any expenses charged for use of the mutual fund window must be borne exclusively by participants who invest in investment options offered through it.

Reporting Requirements

P.L. 111-31 requires the Federal Retirement Thrift Investment Board to submit to Congress each year a report on the operations of the TSP. The report must include information on the number of participants, the median balance in participants' accounts, demographic information on participants, the percentage allocation of amounts among investment funds, the status of the implementation of self-directed investment options, the diversity demographics of any company retained to manage or invest assets of the TSP, and whatever other information that the Board considers appropriate. A copy of the annual report will be made available on the TSP website.

The law requires the Board to include in employees' TSP statements the amount of investment management fees, administrative expenses, and any other fees or expenses paid with respect to each investment fund in the Thrift Savings Plan. The statement also is required to inform participants how they can access the annual report submitted to Congress by the Board. .

Acknowledgment of Risk

Participants in the Thrift Savings Plan who invest in funds that are subject to risk of investment loss, i.e., all funds other than the government bond ("G") fund, must sign an acknowledgement of risk. P.L. 111-31 extends this requirement to any new TSP investment funds that are subject to risk of investment losses.

Subpoena Authority

P.L. 111-31 provides the Executive Director of the Thrift Savings Plan with authority to issue subpoenas requiring the recipient "to produce designated books, documents, records, electronically stored information, or tangible materials" that Executive Director may need to carry out his or her responsibilities under chapter 84 of title 5 of the United States Code.

Amounts in Thrift Savings Funds Subject to Legal Proceedings

P.L. 111-31 provides that amounts in an individual's Thrift Savings Plan account may be subject to court orders for restitution or forfeiture or for the payment of alimony or child support.

Accounts for Surviving Spouses

P.L. 111-31 provides that, subject to certain limitations, the surviving spouse of a deceased Thrift Savings Plan participant can maintain in the TSP the portion of the decedent's account to which the surviving spouse is entitled.

Treatment of Members of the Uniformed Services under the Thrift Savings Plan

Members of the armed forces can contribute to the Thrift Savings Plan, but they do not receive matching contributions from the Department of Defense. P.L. 111-31 requires the Secretary of Defense to report to Congress on the estimated cost of providing a matching payment with respect to contributions made to the Thrift Savings Fund by members of the armed forces and the effect that such a matching payment would have on recruitment and retention.

Survivor Indemnity for Surviving Spouses of Members of the Armed Forces

P.L. 111-31 increases the monthly indemnity allowance for surviving spouses of deceased members of the armed forces who are affected by the required survivor benefit plan annuity offset for dependency and indemnity compensation.[3]

Provisions of the National Defense Authorization Act for Fiscal Year 2010 Affecting CSRS and FERS

Title XI and Title XIX of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84) contain provisions that affect the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS).

Part-time Reemployment

Individuals who are receiving retirement annuities under either the Civil Service Retirement System or the Federal Employees' Retirement System may be reemployed by the federal government. In general, however, an individual may not simultaneously collect a federal civil service retirement annuity and a salary for current employment with the federal government.[4]

Before 1990, there were no exceptions to the prohibition on concurrent receipt of a federal salary and a federal retirement annuity. The Federal Employees' Pay Comparability Act of 1990 (P.L. 101-509) delegated to the Director of the Office of Personnel Management (OPM) authority to waive this prohibition in certain exceptional circumstances, and thus allow a reemployed

[3] For more information, see CRS Report RL31664, *The Military Survivor Benefit Plan: A Description of Its Provisions*, by David F. Burrelli.

[4] See 5 U.S.C. §8344 (CSRS) and 5 U.S.C. §8468 (FERS).

annuitant to receive both a federal salary and a federal retirement annuity concurrently. Under the 1990 law, the head of an executive branch agency may request that the Director of OPM temporarily waive the prohibition on concurrent receipt of a federal salary and a federal retirement annuity

on a case-by-case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining qualified employees. If a federal annuitant is reemployed under a waiver that allows concurrent receipt of a federal annuity and a federal salary, he or she accrues no new retirement benefits under CSRS or FERS.

The National Defense Authorization Act for Fiscal Year 2004 delegated to the Secretary of Defense authority to hire federal annuitants without reducing their salaries by the amount of their annuities.[5] The approval of the Director of OPM is not required. Under this law, a federal annuitant hired by the Department of Defense is entitled to receive both a federal annuity and the full salary for the position into which he or she is hired. The reemployed annuitant does not accrue additional CSRS or FERS retirement benefits during the period of reemployment.

Except for cases in which a waiver has been granted by the Director of OPM or the Secretary of Defense, a reemployed annuitant's retirement annuity continues during the period of reemployment, and his or her pay is reduced by the amount of the annuity. Reemployed annuitants earn additional retirement benefits while reemployed, unless hired under a waiver granting simultaneous receipt of salary and pension. If the period of reemployment lasts one year or more, the individual is eligible for a supplemental annuity when he or she retires. If the period of reemployment lasts five years or more, the individual can elect a redetermined annuity.

The National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84) allows the head of a federal agency to appoint an individual who is receiving an annuity under CSRS or FERS to a temporary, part-time position in civilian federal employment without the offset to salary otherwise required by law. Employment under this authority is limited to:

- 520 hours of service performed in the six months after the date when the annuity begins;
- 1,040 hours of service performed in any 12-month period; and,
- 3,120 hours of service performed over the individual's lifetime.

The total number of individuals appointed by the head of an agency under this authority may not exceed 2.5% of the total number of full-time employees of the agency. If the total number of appointments exceeds 1% of the number of an agency's full-time employees, the agency must submit to Congress a report explaining the reasons that the number of appointments exceeds this threshold. The GAO will report to Congress within three years of enactment on the use of this authority by federal agencies.

Credit for Unused Sick Leave Under FERS

P.L. 111-84 amends chapter 84 of title 5 such that unused sick leave will be added to the length of service of any individual retiring under the Federal Employees' Retirement System who is

[5] The National Defense Authorization Act for Fiscal Year 2004 (P.L. 108-136, div. A, title XI, Sec. 1101(a)(1), Nov. 24, 2003, 117 Stat. 1621) added a new section 9902(j) to title 5 of the United States Code.

eligible for an immediate annuity.[6] Unused sick leave will be used only for computing the amount of the annuity. It would not be used for determining either the individual's average pay or date of retirement eligibility. The law provides that through December 31, 2013 one-half of an individual's unused sick leave will be added to his or her length of service for purposes of calculating an annuity under FERS. After December 31, 2013 all unused sick leave will be added to an individual's length of service for purposes of calculating his or her annuity under FERS.

Forgiveness of Interest Due on Certain Deposits under the Civil Service Retirement System

Under the Civil Service Retirement System, employees who leave federal service and withdraw their contributions to the CSRS can re-establish credit under the CSRS if they are later re-employed by the federal government by redepositing their prior contributions plus interest to the Civil Service Retirement and Disability Fund (CSRDF). Prior to enactment of The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508), no credit was granted in the computation of a CSRS annuity unless the individual made the required redeposit with interest to the CSRDF.[7] P.L. 101-508 provided that if the period for which a redeposit is required ended before October 1, 1990, and the individual does not make a redeposit with interest to the CSRDF, partial credit will be granted for the period of service for which a redeposit is owed. The employee's CSRS annuity will be actuarially reduced, based on his or her age at retirement and the amount owed to the CSRDF. If the period of service for which a redeposit is owed to the CSRDF ended on or after October 1, 1990, no credit is granted toward a CSRS annuity for that period of service unless the individual makes the required deposit, including interest, to the CSRDF.

P.L. 111-84 provides that if the required redeposit is the result of a refund of CSRS contributions to an employee that was made during the period from October 1, 1990, to February 28, 1991, no interest is required to be paid on the redeposit to the CSRDF. This provision is applicable only to annuities paid to individuals who retire on or after the date of enactment of P.L. 111-84.

Computation of CSRS Annuities for Individuals with Part-Time Service

Under both CSRS and FERS, retirement annuities are based on an individual's length of service and the average of their highest three consecutive years of basic pay, called "high-three" average pay. For employees under FERS, part-time service is credited toward an annuity on a prorated basis, and an individual's high-three average pay is always the pay applicable the grade and step for his or her position. The employee's length of service is prorated for any period of part-time service. For example, if an employee's federal career consisted of 22 years of full-time service and three years of half-time service, his or her FERS annuity would be based on a career equal to 23.5 years of full-time service.[8]

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[6] For more information, see CRS Report RL32596, *Sick Leave: Usage Rates and Leave Balances for Employees in Major Federal Retirement Systems*, by Curtis W. Copeland.

[7] 5 U.S.C. § 8334(d)(1).

[8] For purposes of determining retirement eligibility, this person would be credited with 25 years of service; however, the computation of his or her annuity would be based on the full-time equivalent years of service.

Prior to enactment of P.L. 111-84, employees under CSRS were subject to a further reduction in their annuities if their careers include part-time service. Regulations published by the Office of Personnel Management in the 1980s applied two measures of high-three pay to the annuity calculation of employees under CSRS whose careers include part-time service. Under the OPM regulations, all service prior to April 7, 1986 (the date on which Congress amended the law governing computation of annuities based on part-time service) was included in the annuity computation at the high-three average pay *actually received* by the individual, while service after that date was credited at the high-three pay for the position that the individual occupied.

For example, an employee might have worked full-time for 24 years and switched to part-time for six years before retiring. The person's high-three average pay at the end of those 24 years may have been $60,000. This is both the high-three average pay for the position the individual occupied and the high-three pay he or she actually received. Assuming that he or she switched to a half-time schedule for the final six years of his or her career, and that over those six years the high-three average pay for his or her position increased to $70,000, there will be a difference in the high-three average for his or her position and the high-three pay he or she actually received ($70,000 vs. $60,000). In this case, all service performed before April 7, 1986, would be included in the annuity computation at a high-three average pay of $60,000 and service after that date would be included in the annuity computation at a high-three average pay of $70,000.

P.L. 111-84 requires OPM to calculate annuities under CSRS for employees whose careers include part-time service in the same manner as annuities are calculated for employees with part-time service under FERS. An employee's high-three average pay in all cases will be the high-three average pay for the position he or she occupied, and the employee's length of service will be prorated to its full-time equivalent length of service.

Redeposits Under the Federal Employees' Retirement System

Under both the CSRS and FERS, employees are vested in a future retirement annuity after five years of service. The service of employees who separate from federal employment continues to be credited toward a future retirement annuity unless they withdraw their contributions to the Civil Service Retirement and Disability Fund. If a former employee left his or her contributions in the CSRDF and is later re-employed by the federal government, his or her prior service is combined with the re-employment service in determining both retirement eligibility and the amount of the retirement annuity.

Employees under CSRS who leave federal service and withdraw their contributions to the CSRS can re-establish credit under the CSRS if they are later re-employed by the federal government by redepositing their prior contributions, plus interest, to the CSRDF. In order to discourage departing employees from withdrawing their deposits to the CSRDF, and thus potentially forfeiting any future retirement annuity they may have earned, the 1986 FERS statute prohibited employees who have previously separated from federal employment and withdrawn their contributions to the CSRDF from redepositing those contributions into the CSRDF in the event that they are re-employed by the federal government.

P.L. 111-84 allows reemployed individuals under FERS who withdrew their contributions to the CSRDF when they separated from federal employment to re-establish title to a FERS annuity for their prior federal service by redepositing their earlier contributions, plus interest, to the CSRDF.

Retirement Credit for Employees of the District of Columbia Government

Under the Balanced Budget Act of 1997 (P.L. 105-33), some employees of the District of Columbia were made federal employees. P.L. 111-84 credits certain service these individuals performed as employees of the District of Columbia as federal service for purposes of determining their retirement benefits.

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