

TO AMEND TITLE 5, UNITED STATES CODE, TO PROVIDE
 FOR RECALCULATION OF BASIC ANNUITY BENEFITS
 FOR CERTAIN AIR TRAFFIC CONTROLLERS, AND FOR
 OTHER PURPOSES

NOVEMBER 14, 2016.—Committed to the Committee of the Whole House on the
 State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 5341]

The Committee on Oversight and Government Reform, to whom
 was referred the bill (H.R. 5341) to amend title 5, United States
 Code, to provide for recalculation of basic annuity benefits for cer-
 tain air traffic controllers, and for other purposes, having consid-
 ered the same, report favorably thereon without amendment and
 recommend that the bill do pass.

CONTENTS

	Page
Committee Statement and Views	2
Section-by-Section	4
Explanation of Amendments	4
Committee Consideration	4
Roll Call Votes	4
Application of Law to the Legislative Branch	4
Statement of Oversight Findings and Recommendations of the Committee	4
Statement of General Performance Goals and Objectives	4
Duplication of Federal Programs	5
Disclosure of Directed Rule Makings	5
Federal Advisory Committee Act	5
Unfunded Mandate Statement	5
Earmark Identification	5
Committee Estimate	5
Budget Authority and Congressional Budget Office Cost Estimate	6
Changes in Existing Law Made by the Bill, as Reported	6

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 5341 clarifies the basis for calculating retirement benefits for Federal Aviation Administration (FAA) air traffic controllers (ATCs) and certain supervisors of air traffic controllers.

BACKGROUND AND NEED FOR LEGISLATION

FAA air traffic controllers and their managers help ensure the safety of millions of travelers who fly through our nation's airspace each day. In 2003, the Vision 100—Century of Aviation Reauthorization Act (Public Law 108–176) was enacted, allowing certain FAA air traffic controllers to receive an enhanced Federal Employees Retirement System (FERS) annuity accrual benefit of 1.7 percent per year in lieu of the standard one percent rate for most federal employees.¹

The October 2003 Conference Report for Vision 100 indicates that the intent of the sponsors was to provide enhanced retirement benefits to first and second line supervisors as well as front line air traffic controllers:

[C]ontrollers who were promoted to first line supervisors as well as the supervisors of those first line supervisors would continue to accrue the retirement benefits of controllers.²

Section 226 of Vision 100 provides enhanced retirement benefits to ATCs who are “actively engaged in the separation and control of air traffic” as defined in 5 U.S.C. 2109(1)(A)(i).³ Consistent with congressional intent, the FAA interpreted this section to include front-line air traffic controllers and also some first and second-level supervisory air traffic controller positions if, by the nature of their duties, they are required to be “actively engaged in the separation and control of air traffic.” In November 2015, the FAA notified the Office of Personnel Management (OPM) that it certified the service of these individuals, including first and second-level managers, as service qualifying for enhanced annuities under section 226.⁴

In response to the FAA's notification, OPM informed the FAA in March 2016 that its certification of service for air traffic controllers was not in accordance with section 226 of P.L. 108–176 or OPM's guidance on the matter.⁵ In prior guidance issued by OPM in 2006, the agency interpreted section 226 as applying only to the front-line air traffic controller positions and not to those individuals who occupy first or second level supervisory positions.⁶ OPM read distinctions between front-line air traffic control work and supervisory work as mutually exclusive under 5 U.S.C. § 2109(1)(A) and (B).

OPM instructed the FAA to review the records of affected individuals whose service may have been erroneously certified and pro-

¹ Section 226, P.L. 108–176.

² Committee on Conference, *Vision 100—Century of Aviation Reauthorization Act*, 108th Cong. (Oct. 29, 2003) (H. Rept. 108–334).

³ Pub. L. No. 108–176 (2003).

⁴ Letter from Annie B. Andrews, Assistant Administrator for Human Resource Management at FAA, to Kenneth J. Zawodny Jr., Associate Director, Retirement Services at OPM (November 20, 2015).

⁵ Letter from Kenneth J. Zawodny Jr., Associate Director, Retirement Services at OPM, to Annie B. Andrews, Assistant Administrator for Human Resource Management at FAA (February 8, 2016).

⁶ *Id.*

vide corrected records to OPM.⁷ According to OPM’s interpretation of section 226, approximately 185 annuitants who already retired from the FAA with supervisory air traffic controller service should have been credited at the standard rate of one percent instead of the enhanced rate of 1.7 percent.⁸ According to the Congressional Budget Office (CBO), OPM has stated that they intend to seek recovery of any overpayments these 185 annuitants have received.⁹

H.R. 5341 makes a technical amendment to the United States Code to clarify the original congressional intent that air traffic controllers as defined in 5 U.S.C. § 2109(1)(A)(i), front line air traffic managers as defined in 5 U.S.C. § 2109(1)(B), and supervisors as defined in 5 U.S.C. § 8401(35)(B) are entitled to receive the enhanced annuity at 1.7 percent. Moreover, the legislation ensures that the 185 FAA annuitants who have already retired under provisions of P.L. 108–176 continue to receive an annuity calculated at the 1.7 percent rate.

This bill also helps the FAA retain experienced air traffic controllers and managers. According to the Department of Transportation Inspector General, the United States has one of the safest air traffic systems in the world, but maintaining the excellent safety record depends on having a fully staffed and well-trained controller workforce.¹⁰ Since the FAA began implementing the enhanced annuity benefit after the enactment of P.L. 108–176, the enhanced annuity has been an effective tool to encourage air traffic controller managers to remain in management positions and retain key experience. H.R. 5341’s technical fix helps the FAA maintain this important retention tool to encourage seasoned managers to stay at the FAA and help ensure the safety of our nation’s airspace.

H.R. 5341 clarifies congressional intent of P.L. 108–176, and does not expand the scope originally intended.¹¹ For example, management time in positions providing “preflight, inflight, or airport advisory service to aircraft operators” contained in 5 U.S.C. § 2109(A)(ii) are not eligible for the enhanced annuity calculation at the 1.7 percent rate.

LEGISLATIVE HISTORY

H.R. 5341, to amend title 5, United States Code, to provide for recalculation of basic annuity benefits for certain air traffic controllers, was introduced on May 26, 2016, by Representative John Mica (R–FL) and referred to the Committee on Oversight and Government Reform. On July 12, 2016, the Committee on Oversight and Government Reform ordered H.R. 5341 favorably reported by voice vote, without amendment.

⁷*Id.*

⁸Congressional Budget Office Cost Estimate, S. 2658, *Federal Aviation Administration Reauthorization Act of 2016* (April 7, 2016).

⁹*Id.*

¹⁰Dep’t of Transportation Inspect Gen., *FAA Continues to Face Challenges in Ensuring Enough Fully Trained Controllers at Critical Facilities* (Jan. 11, 2016) (AV–2016–104).

¹¹H. Rept. 108–334, Conference Report on H.R. 2115 (October 29, 2003) at 159–160.

SECTION-BY-SECTION

Section 1. Computation of basic annuity for certain air traffic controllers

Subsection (a) amends section 8415(f) of title 5, United States Code, to clarify that current or former air traffic controllers with at least five years of service in any combination of air traffic controller, and first and second level supervisors of an air traffic controller, will receive an annuity calculated at the 1.7 percent rate of the individual's average pay by the years of service.

Subsection (b) makes the effective date of subsection (a) December 12, 2003.

Subsection (c) requires that the Office of Personnel Management establish procedures to notify annuitants affected by this bill, recalculate benefits of affected annuitants, adjust monthly annuity benefits as soon as practicable, and provide any applicable lump sum payments to affected annuitants.

EXPLANATION OF AMENDMENTS

No amendments to H.R. 5341 were offered or adopted during Full Committee consideration of the bill.

COMMITTEE CONSIDERATION

On July 12, 2016 the Committee met in open session and ordered reported favorably the bill, H.R. 5341, by voice vote, a quorum being present.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 5341.

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 clarifies congressional intent regarding air traffic controller retirement accrual. As such this bill does not relate to employment or access to public services and accommodations.

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 goal and objective of the bill is to provide for recalculation of basic annuity benefits for certain air traffic controllers.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

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

This bill 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)(1) 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 this bill. However, clause 3(d)(2)(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 of 1974.

Identical provisions to those contained within H.R. 5341 were signed into law on July 15, 2016 (P.L. 114–190), which precludes the Congressional Budget Office from providing an official cost estimate for H.R. 5341 to the Committee. Regarding P.L. 114–190, relative to current law, CBO expects that the proposed change would increase benefits for some existing retirees and increase benefits (and delay retirement) for some future retirees, resulting in an overall net reduction in direct spending of \$8 million over the 2017–2026 period.

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 not received a cost estimate for this bill from the Director of Congressional Budget Office, and instead has included a committee estimate in the section prior to this one.

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, and 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 84—FEDERAL EMPLOYEES' RETIREMENT
SYSTEM**

* * * * *

SUBCHAPTER II—BASIC ANNUITY

* * * * *

§ 8415. Computation of basic annuity

(a) Except as otherwise provided in this section, the annuity of an employee retiring under this subchapter is 1 percent of that individual's average pay multiplied by such individual's total service.

(b) The annuity of a Member, or former Member with title to a Member annuity, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Member or Congressional employee, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 7/10 percent of the individual's average pay by the years of such service.

(c) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years

of service as a Congressional employee or Member, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying $1\frac{7}{10}$ percent of the individual's average pay by the years of such service.

(d) Notwithstanding any other provision of law, the annuity of an individual described in subsection (b) or (c) who is a revised annuity employee or a further revised annuity employee shall be computed in the same manner as in the case of an individual described in subsection (a).

(e) The annuity of an employee retiring under subsection (d) or (e) of section 8412 or under subsection (a), (b), or (c) of section 8425 is—

(1) $1\frac{7}{10}$ percent of that individual's average pay multiplied by so much of such individual's total service as does not exceed 20 years; plus

(2) 1 percent of that individual's average pay multiplied by so much of such individual's total service as exceeds 20 years.

[(f) The annuity of an air traffic controller or former air traffic controller retiring under section 8412(a) is computed under subsection (a), except that if the individual has had at least 5 years of service as an air traffic controller as defined by section 2109(1)(A)(i), so much of the annuity as is computed with respect to such type of service shall be computed by multiplying $1\frac{7}{10}$ percent of the individual's average pay by the years of such service.]

(f) The annuity of an air traffic controller or former air traffic controller retiring under section 8412(a) is computed under subsection (a), except that if the individual has had at least 5 years of service in any combination as—

(1) an air traffic controller as defined by section 2109(1)(A)(i);

(2) a first level supervisor of an air traffic controller as defined by section 2109(1)(A)(i); or

(3) a second level supervisor of an air traffic controller as defined by section 2109(1)(A)(i);

so much of the annuity as is computed with respect to such type of service shall be computed by multiplying $1\frac{7}{10}$ percent of the individual's average pay by the years of such service.

(g)(1) In computing an annuity under this subchapter for an employee whose service includes service performed on a part-time basis—

(A) the average pay of the employee, to the extent that it includes pay for service performed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating the employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

(2) For the purpose of this subsection, employment on a part-time basis shall not be considered to include employment on a temporary or intermittent basis.

(h)(1) The annuity of an employee or Member retiring under section 8412(g) or 8413(b) is computed in accordance with applicable provisions of this section, except that the annuity shall be reduced by five-twelfths of 1 percent for each full month by which the commencement date of the annuity precedes the sixty-second anniversary of the birth of the employee or Member.

(2)(A) Paragraph (1) does not apply in the case of an employee or Member retiring under section 8412(g) or 8413(b) if the employee or Member would satisfy the age and service requirements for title to an annuity under section 8412(a), (b), (d)(2), (e)(2), or (f)(2), determined as if the employee or Member had, as of the date of separation, attained the age specified in subparagraph (B).

(B) A determination under subparagraph (A) shall be based on how old the employee or Member will be as of the date on which the annuity under section 8412(g) or 8413(b) is to commence.

(i)(1) In applying subsection (a) with respect to an employee under paragraph (2), the percentage applied under such subsection shall be 1.1 percent, rather than 1 percent.

(2) This subsection applies in the case of an employee who—

(A) retires entitled to an annuity under section 8412; and

(B) at the time of the separation on which entitlement to the annuity is based, is at least 62 years of age and has completed at least 20 years of service;

but does not apply in the case of a Congressional employee, military technician (dual status), law enforcement officer, member of the Supreme Court Police, firefighter, nuclear materials courier, air traffic controller, or customs and border protection officer

(j) The annuity of a Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member in that position to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, shall, subject to a deposit in the Fund as provided under section 8422(g), be computed as though the rate of basic pay which would otherwise have been in effect during that period of service had been in effect.

(k)(1) For purposes of this subsection, the term “physicians comparability allowance” refers to an amount described in section 8331(3)(H).

(2) Except as otherwise provided in this subsection, no part of a physicians comparability allowance shall be treated as basic pay for purposes of any computation under this section unless, before the date of the separation on which entitlement to annuity is based, the separating individual has completed at least 15 years of service as a Government physician (whether performed before, on, or after the date of the enactment of this subsection).

(3) If the condition under paragraph (2) is met, then, any amounts received by the individual in the form of a physicians comparability allowance shall (for the purposes referred to in paragraph (2)) be treated as basic pay, but only to the extent that such amounts are attributable to service performed on or after the date of the enactment of this subsection, and only to the extent of the percentage allowable, which shall be determined as follows:

If the total amount of service performed, on or after the date of the enactment of this subsection, as a Government physician is:	Then, the percent-age allowable is:
Less than 2 years	0
At least 2 but less than 4 years	25
At least 4 but less than 6 years	50
At least 6 but less than 8 years	75
At least 8 years	100.

(4) Notwithstanding any other provision of this subsection, 100 percent of all amounts received as a physicians comparability allowance shall, to the extent attributable to service performed on or after the date of the enactment of this subsection, be treated as basic pay (without regard to any of the preceding provisions of this subsection) for purposes of computing—

(A) an annuity under section 8452; and

(B) a survivor annuity under subchapter IV, if based on the service of an individual who dies before separating from service.

(1) The annuity of an employee retiring under this chapter with service credited under section 8411(b)(6) shall be reduced by the amount necessary to ensure that the present value of the annuity payable to the employee under this subchapter is actuarially equivalent to the present value of the annuity that would be payable to the employee under this subchapter if it were computed—

(1) on the basis of service that does not include service credited under section 8411(b)(6); and

(2) assuming the employee separated from service on the actual date of the separation of the employee.

The amount of the reduction shall be computed under regulations prescribed by the Office of Personnel Management for the administration of this subsection.

(m)(1) In computing an annuity under this subchapter, the total service of an employee who retires from the position of a registered nurse with the Veterans Health Administration on an immediate annuity, or dies while employed in that position leaving any survivor entitled to an annuity, includes the days of unused sick leave to the credit of that employee under a formal leave system, except that such days shall not be counted in determining average pay or annuity eligibility under this subchapter.

(2)(A) Except as provided in paragraph (1), in computing an annuity under this subchapter, the total service of an employee who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes the applicable percentage of the days of unused sick leave to his credit under a formal leave system and for which days the employee has not received payment, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter. For purposes of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 under section 6301(2)(x) through (xiii), the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.

(B) For purposes of subparagraph (A), the term “applicable percentage” means—

(i) 50 percent in the case of an annuity, entitlement to which is based on a death or other separation occurring during the period beginning on the date of enactment of this paragraph and ending on December 31, 2013; and

(ii) 100 percent in the case of an annuity, entitlement to which is based on a death or other separation occurring after December 31, 2013.

(n) In the case of any annuity computation under this section that includes, in the aggregate, at least 2 months of credit under section 8411(d) for any period while receiving benefits under subchapter I of chapter 81, the percentage otherwise applicable under this section for that period so credited shall be increased by 1 percentage point.

* * * * *

