Calendar No. 260

115TH CONGRESS *1st Session*	SENATE	REPORT 115–183

TSP MODERNIZATION ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 873

TO AMEND SECTION 8433 OF TITLE 5, UNITED STATES CODE, TO PROVIDE FOR FLEXIBILITY IN MAKING WITHDRAWALS FROM THE THRIFT SAVINGS FUND

NOVEMBER 8, 2017.—Ordered to be printed

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NOVEMBER 8, 2017.—Ordered to be printed

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

REPORT

[To accompany S. 873]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 873) to amend section 8433 of title 5, United States Code, to provide for flexibility in making withdrawals from the Thrift Savings Fund, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

CONTENTS

I. PURPOSE AND SUMMARY

The TSP Modernization Act of 2017 seeks to provide greater flexibility for Federal employees and retirees to withdraw funds from their Thrift Savings Plan (TSP) accounts. Currently, upon separation from Federal employment, Federal employees are allowed only one partial post-separation withdrawal, after which only full withdrawal options are available.[1] And similarly, for active Federal employees over age 59½, only one partial age-based with-

[1] Fed. Ret. Thrift Inv. Bd., *Withdrawing Your TSP Account After Leaving Federal Service*, TSPBK02, March 2014, at 4.

drawal is allowed. Full withdrawal options include a regular stream of monthly payments, an annuity purchased through the TSP, or a full lump sum. The TSP Modernization Act would allow Federal employees to withdraw their money on an as-needed basis with more flexible rules.

II. Background and the Need for Legislation

The Federal Employees' Retirement System Act of 1986 (FERSA) established the Federal Employees Retirement System (FERS), which includes a defined-contribution plan available to Federal employees, known as the TSP.[2] The FERSA began the transition away from the Civil Service Retirement System, with employees hired after December 31, 1983 eligible for the new system.[3]

The FERSA created different options for TSP withdrawals depending on a participant's Federal service. Participants eligible for retirement and annuity payment under FERS could: (1) withdraw the account in one or more payments; (2) receive an annuity; (3) defer an annuity; or (4) transfer the funds to an IRA or any qualified plan.[4] Those participants not entitled to an annuity (*e.g.*, those with less than five years of Federal service) would have two options: (1) withdraw the funds at age 62; or (2) rollover to an IRA or any qualified pension plan.[5]

As the TSP was implemented, the Federal Retirement Thrift Investment Board (FRTIB) found that these options were confusing to participants and difficult to clearly explain. Congress sought to address these issues through the Federal Workforce Restructuring Act of 1994.[6] The law increased withdrawal flexibility so that all participants, irrespective of eligibility for retirement benefits, would be entitled to all withdrawal options.[7] Additionally, it expanded spousal waiver provisions, which previously applied only to FERS participants who separated with retirement eligibility, to all FERS participants.[8] According to the FRTIB, the law "greatly enhanced communication efforts by reducing the number of complicated forms and communications materials, reduced administrative costs, and improved withdrawal time frames."[9]

April 2017 marked the 30th anniversary of the first contributions made to the TSP. Today more than five million Americans have savings in TSP accounts, worth a combined $512 billion in assets.[10] Yet FRTIB surveys consistently show that participants dislike the plan's lack of withdrawal flexibility.[11] These surveys show "significant participant dissatisfaction with the availability of only one partial withdrawal" and "[m]any participants view the TSP as

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[2] Pub. L. No. 99–335 (codified as amended in scattered sections 5 U.S.C.).

[3] Wilmer L. Kerns, *Federal Employees' Retirement System Act of 1986*, 49 SOCIAL SEC. BULLETIN, no. 11, November 1986, at 5.

[4] Pub. L. No. 99–335 (codified as amended at 5 U.S.C. § 8433).

[5] *Id.*

[6] Pub. L. No. 103–226.

[7] *Id.* at § 9.

[8] *Id.*

[9] *Briefing for Majority Committee Staff Before the Perm. Subcomm. on Investigations of the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2017) (statement of Kim Weaver, Director of External Affairs, Federal Retirement Thrift Investment Board).

[10] Fed. Ret. Thrift Inv. Bd., Fund Info. (July, 2017).

[11] Fed. Ret. Thrift Inv. Bd., Ann. Rep. of the Thrift Sav. Plan Required by § 105 of the TSP Enhancement Act of 2009 (2017), at 2.

overly restrictive."[12] The plan's overly restrictive partial withdrawal rules have caused workers to cash out from their TSP entirely, often into higher fee private retirement accounts.[13]

In addition, the FRTIB surveyed options offered by other defined contribution plans, both in the private sector and state/local governments.[14] While there is no single private sector standard, it is clear that the bulk of the other plans provide significantly greater withdrawal flexibility than is currently offered by the TSP.[15] Other plans also tend to offer greater ability to make multiple partial withdrawals as well as make more frequent changes to their monthly payment amounts.[16]

The TSP Modernization Act of 2017 would provide more options to Federal employees and members of the uniformed services who would like greater flexibility in accessing their TSP retirement savings. The bill would amend section 8433, Title 5, to allow for multiple partial post-separation withdrawals, and multiple age-based withdrawals. Allowing multiple partial post-separation and age-based withdrawals would enable Federal employees to withdraw their money on an as-needed basis. In addition to enabling multiple post-separation and age-based withdrawals, S. 873 would make the following changes to the withdrawal rules:

- for participants who choose to withdraw their money via periodic payments, they may revise the timing and amounts of periodic payments;
- separated federal employees will have the option of combining partial withdrawals or taking an annuity with periodic payments; and
- the bill eliminates automatic annuities as the default option if participants do not elect an alternative.

III. Legislative History

Senator Rob Portman (R–OH) introduced S. 873 on April 6, 2017, with Senator Thomas R. Carper (D–DE). The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 873 at a July 26, 2017 business meeting.

The Committee ordered S. 873 reported favorably on July 26, 2017, by voice vote *en bloc*. Senators present were Johnson, Portman, Lankford, Daines, McCaskill, Tester, Heitkamp, Peters, Hassan and Harris. Consistent with Committee Rule 11, the Committee reports the bill with a technical amendment by mutual agreement of the Chairman and Ranking Member.

IV. Section-by-Section Analysis of the Bill, as Reported

Section 1. Short title

This section provides the bill's short title, the "TSP Modernization Act of 2017."

[12] Memorandum from Greg Long, Exec. Dir., Fed. Ret. Thrift Inv. Bd., to Fed. Ret. Thrift Inv. Bd. Members (July 7, 2015).
[13] *Id.*
[14] *Id.*
[15] Vanguard, How America Saves 2016 97 (2016).
[16] *Id.*

Section 2. Thrift Savings Plan account withdrawal flexibility

Section (a)(1) would eliminate the restriction that participants cannot take partial post-separation withdrawals if they've already taken a partial in-service withdrawal and would permit multiple post-separation withdrawals.

Section (a)(2) would permit, but does not require, the Executive Director of the Federal Retirement Thrift Investment Board to limit the number of post-separation withdrawals. This language would allow the FRTIB to address the situation of administrative costs increasing unexpectedly as a result of this legislative change.

Section (b) permits the Executive Director to allow participants to stop periodic payments by regulation. In conjunction with existing Section 8433(b)(4), it would also permit the Executive Director to allow participants to elect an annuity while receiving monthly payments.

Section (c) eliminates the withdrawal election deadline. TSP participants are required to make a post-separation withdrawal election by April 1st of the year following the year in which they turn 70½ and are separated from Federal service. This withdrawal election deadline is independent of the IRS requirement to begin distributing required minimum distributions (RMDs) annually by April 1st of the year following the year in which they are 70½ and separated from Federal service. This amendment does not impact the RMD rules.

Section (d) permits multiple age-based withdrawals.

Section (e) contains a technical amendment eliminating the reference to paragraphs (1) and (2) of section (h) and replacing it with the correct reference paragraphs (1) and (2) of section 8433(f) to conform to amendments made by Public Law 103–226.

Section (f) requires the FRTIB Executive Director to issue regulations to implement this Act, as soon as administratively practicable.

Section (g) contains the effective date of the legislation. The amendments shall take effect on the date of enactment and shall apply on and after the effective date of the regulations issued under section (f).

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 this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

VI. Congressional Budget Office Cost Estimate

August 17, 2017.

Hon. Ron Johnson,
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. 873, the TSP Modernization Act of 2017.

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

Sincerely,

Keith Hall.

Enclosure.

S. 873—TSP Modernization Act of 2017

S. 873 would expand the withdrawal options for participants in the Thrift Savings Plan (TSP), the federal government's defined-contribution retirement plan. Currently, participants may only make one partial withdrawal after they turn 59½ while employed or one such withdrawal after they retire. (A partial withdrawal is a single withdrawal up to the full balance in the participant's account that is not repeated regularly.) Enacting S. 873 would allow an unlimited number of such withdrawals.

The staff of the Joint Committee on Taxation estimate that enacting S. 873 would affect revenues because TSP participants would be able to withdraw funds differently than under current law and those withdrawals could affect the timing of taxes paid on the withdrawn amounts; those effects, however, would be negligible. Because the bill would affect revenues, pay-as-you-go procedures apply. Enacting the bill would not affect direct spending.

CBO estimates that enacting S. 873 would not increase net direct spending or significantly affect on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 873 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On August 16, 2017, CBO transmitted an estimate for H.R. 3031, as ordered reported by the House Committee on Oversight and Government Reform on July 19, 2017. The two bills are similar and the estimated budgetary effects are the same.

The CBO staff contact for this estimate is Dan Ready. The estimate was approved by H. Samuel Papenfuss, 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, changes in existing law made by S. 873 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

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TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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PART III—EMPLOYEES

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Subpart G—Insurance and Annuities

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CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

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Subchapter III—Thrift Savings Plan

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SEC. 8432b. CONTRIBUTIONS OF PERSONS WHO PERFORM MILITARY SERVICE.

(a) * * *

* * * * * * *

(h)(1) * * *

(2)(A) An employee to whom this section applies may elect, for purposes of ❲section 8433(d), or paragraph (1) or (2) of section 8433(h)❳ *subsection (d) or (f) of section 8433*, as the case may be, to have such employee's separation (described in subsection (a)(1)) treated as if it had never occurred.

* * * * * * *

SEC. 8433. BENEFITS AND ELECTION OF BENEFITS.

(a) * * *

(b) * * *

(c)(1) In addition to the right provided under subsection (b) to withdraw the balance of the account, an employee or Member who separates from Government service ❲and who has not made a withdrawal under subsection (h)(1)(A) may make one withdrawal❳ *may make 1 or more withdrawals* of any amount as a single payment in accordance with subsection (b)(2) from the employee's or Member's account.

* * * * * * *

(4) * * *

(5) Withdrawals under this subsection shall be subject to such other conditions as the Executive Director may prescribe by regulation.

(d)(1) * * *

(2) A former employee or Member may not ⟦change an⟧ *return a payment that was made under an* election under this section on or after the date on which ⟦a payment⟧ *such payment* is made in accordance with such election or, in the case of an election to receive an annuity, the date on which an annuity contract is purchased to provide for the annuity elected by the former employee or Member.

(e) * * *

(f)⟦(1) Notwithstanding⟧ *Notwithstanding* subsection (b), if an employee or Member separates from Government employment, and such employee's or Member's nonforfeitable account balance is less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment, unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.

⟦(2) Unless otherwise elected under this section, and subject to paragraph (1), benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on April 1 of the year following the latest of the year in which—

⟦(A) the employee, Member, former employee, or former Member becomes 70½ years of age; or

⟦(B) the employee, Member, former employee, or former Member separates from Government employment.⟧

(g) * * *

(h)(1) An employee or Member may apply, before separation, to the Board for permission to withdraw an amount from the employee's or Member's account based upon—

(A) the employee or Member having attained age 59½; or

(B) financial hardship.

⟦(2) A withdrawal under paragraph (1)(A) shall be available to each eligible participant one time only.⟧

⟦(3)⟧ *(2)* A withdrawal under paragraph (1)(B) shall be available only for an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member.

⟦(4)⟧ *(3)* Withdrawals under paragraph (1) shall be subject to such other conditions as the Executive Director may prescribe by regulation.

⟦(5)⟧ *(4)* A withdrawal may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.

○