Calendar No. 274

116TH CONGRESS
1st Session

SENATE

REPORT
116–153

END PLUSH RETIREMENTS ACT

REPORT

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 439

TO ALLOW MEMBERS OF CONGRESS TO OPT OUT OF THE FEDERAL EMPLOYEES RETIREMENT SYSTEM, AND ALLOW MEMBERS WHO OPT OUT OF THE FEDERAL EMPLOYEES RETIREMENT SYSTEM TO CONTINUE TO PARTICIPATE IN THE THRIFT SAVINGS PLAN

OCTOBER 28, 2019.—Ordered to be printed

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END PLUSH RETIREMENTS ACT

OCTOBER 28, 2019.—Ordered to be printed

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

R E P O R T

[To accompany S. 439]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 439), to allow Members of Congress to opt out of the Federal Employees Retirement System, and allow Members who opt out of the Federal Employees Retirement System to continue to participate in the Thrift Savings Plan, having considered the same, reports favorably without amendment and recommends the bill do pass.

CONTENTS

I. PURPOSE AND SUMMARY

S. 439 allows Members of the U.S. House of Representatives to opt-out of the annuity plan under the Federal Employees Retirement System (FERS), the retirement system for employees of the Federal Government that consists of an annuity plan, the Thrift Savings Plan (TSP), and Social Security. The bill also allows any Member of Congress who opts out of the annuity plan to continue to hold a TSP account.

II. Background and the Need for Legislation

FERS is the retirement system for employees of the Federal Government, including Members of Congress, which consists of an annuity plan, the TSP, and Social Security.[1] Under the annuity plan, Members can receive a pension at age 62 after only five years of service in Congress, the Federal Government, or both.[2] Members can receive a pension at age 50 if they have served for 20 years and at any younger age if they have completed 25 years of service.[3] The TSP portion of FERS is a retirement savings and investment plan that allows Members to decide on the amount they wish to invest into a TSP account that then accumulates earnings over time.[4] TSP is similar to 401(k) plans offered in the private sector, and a Member can continue investing into his or her TSP account after leaving Congress or Federal service.[5]

Under Federal law, all Members of Congress are automatically enrolled in FERS.[6] If a Member does not want to pay into the annuity plan of FERS, and thus not receive a pension upon leaving Federal service or reaching retirement age, he or she may do so only if the Member is a Senator or has served in the U.S. House of Representatives since before September 30, 2003.[7] However, if a Member elects not to participate in the annuity plan, he or she is also ineligible to participate in TSP.[8] Further, Members of the U.S. House of Representatives who began serving after September 30, 2003, are not permitted to opt-out of the annuity plan.[9]

S. 439 allows all Members to choose a retirement plan that they feel is appropriate. Under S. 439, all Members, regardless of when they first began serving in Congress, may elect not to receive the annuity plan under FERS. The bill allows all Members to maintain an account under the TSP plan and determine the amount they will contribute from their own income towards their retirement savings.

III. Legislative History

Senator Mike Braun (R–IN) introduced S. 439, the End Plush Retirements Act, on February 12, 2019. The bill was referred to the Committee on Homeland Security and Governmental Affairs.

The Committee considered S. 439 at a business meeting on July 24, 2019 and the bill was ordered reported favorably by voice vote *en bloc* with Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen present.

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[1] Off. of Personnel Mgmt., FERS Information, *available at* https://www.opm.gov/retirement-services/fers-information.

[2] 5 U.S.C. § 8412(c).

[3] 5 U.S.C. § 8412(f).

[4] Federal Retirement Thrift Investment Board, About the TSP: Purpose and History, *available at* https://www.tsp.gov/PlanParticipation/AboutTheTSP/index.html.

[5] *Id.*

[6] *See* 5 U.S.C. § 8402.

[7] 5 U.S.C. § 8401(20).

[8] 5 U.S.C. § 8431(a).

[9] 5 U.S.C. § 8401(20).

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

Section 1. Short title

This section established the short title of the bill as the "End Plush Retirements Act."

Sec. 2. Making FERS optional for members

This section allows Members to adjust the retirement benefits they receive under FERS.

Subsection (a) allows all Members of Congress, regardless of the date on which they began serving in Congress, to opt-out of participating in the annuity plan under FERS. Subsection (b) allows Members who have opted out of FERS to participate in TSP.

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 (UMRA) and would impose no costs on state, local, or tribal governments.

VI. Congressional Budget Office Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 16, 2019.

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. 439, the End Plush Retirements Act.

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

Sincerely,

Phillip L. Swagel.

Enclosure.

S. 439, End Plush Retirements Act
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on July 24, 2019

By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	*	*	*
Revenues	0	-1	-3
Increase or Decrease (-) in the Deficit	*	1	3
Spending Subject to Appropriation (Outlays)	*	-3	not estimated

Statutory pay-as-you-go procedures apply?	Yes	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between -$500,000 and $500,000.

S. 439 would allow Members of the House of Representatives who are elected after enactment and all Senators, including those elected before enactment, to opt out of the Federal Employee Retirement System (FERS) and still participate in the Thrift Savings Plan (TSP). Under current law:

- Members of the House of Representatives who entered office in fiscal year 2004 or later may not opt out of FERS. Members who entered office before that date can opt out, but if they do so, they also lose their ability to participate in the TSP.
- Senators can opt out of FERS, regardless of when they entered office, but are then unable to participate in the TSP.

CBO estimates that enacting S. 439 would reduce revenues by $3 million over the 2020–2029 period, because retirement contributions paid by some Members of Congress while in office would decline. (Retirement contributions by federal employees are recorded as revenues in the federal budget.) CBO estimates that enacting the bill also would reduce direct spending by an insignificant amount over the same period, mainly related to eliminating retirement annuities. In addition, CBO estimates that implementing the bill would reduce spending subject to appropriation by $3 million over the 2020–2024 period, assuming appropriations are reduced by the estimated amounts.

Revenues: On the basis of a historical review, an average of 43 new Members begin serving in each session of Congress. Under S. 439, CBO assumes that 25 percent of new Members in each session of Congress (an average of 11 Members) would opt out of FERS. If Members opt out, the portion of their salaries that would have been deposited as revenues into the Civil Service Retirement and Disability Fund (CSRDF) would instead be paid to them directly and revenues to the government would decline. The required contribution rate for newly elected Members is 4.4 percent of salary (salaries currently equal $174,000 for Members not in leadership roles). Thus, eliminating those contributions would reduce revenues by $3 million over the 2020–2029 period, CBO estimates, but that amount would change if the number of Members choosing to opt out was larger or smaller than CBO's estimate.

Direct Spending: For most of the Members who would opt out of FERS, the reduction in direct spending from eliminating future payments for retirement benefits would occur after the 2020–2029 period; the average length of service for Members retiring under FERS is about 16 years. Some Members are eligible to retire with as few as five years of service (at age 62 or older), though the annuities associated with short periods of service are relatively small. Thus, enacting the bill would reduce direct spending over the 2020–2029 period by an insignificant amount, CBO estimates.

If any current Senators were to opt out of FERS because of the bill's provisions allowing them to continue to participate in the TSP, enacting S. 439 would increase direct spending. Those Senators would receive a refund of the contributions they paid into FERS prior to opting out; those refunds would be recorded as increases in direct spending. CBO expects that the Senators who would choose to opt out as a result of the bill would be a small number of those who were relatively recently elected; as a result, the increase in direct spending from refunded contributions for that group would be insignificant, and likely smaller than the reductions in direct spending from eliminated retirement benefits.

Spending Subject to Appropriation: Opting out of FERS would eliminate the retirement contributions paid on those Members' behalf by their employing House of Congress—which would reduce spending subject to appropriation by $3 million over the 2020–2024 period, CBO estimates. However, those contributions (paid at a rate of 14.2 percent of salary, including an increase that goes into effect in 2020) are recorded as intragovernmental transactions that have no net effect on the deficit: They are paid from the salaries and expenses accounts of Congress and deposited into the CSRDF as offsetting receipts, or reductions in direct spending. (The effect on direct spending, however, is not attributed to the cost estimate because the deposit of those receipts is subject to future appropriation action.)

The CBO staff contact for this estimate is Amber Marcellino. The estimate was reviewed 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 the bill, 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 ORGANIZATIONS 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 I—General Provisions

SEC. 8401.

For the purpose of this chapter—

(1) * * *

* * * * * * *

(20) ❲the term "Member" has❳ *the term "Member"—*

(A) has the same meaning as provided in section 2106, except that, *subject to subparagraph (B),* such term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in the Federal Employees' Retirement System ❲, and who (in the case of an individual who is a Member of the House of Representatives, including a Delegate or Resident Commissioner to the Congress) serves as a Member prior to the date of the enactment of the Legislative Branch Appropriations Act, 2004❳; *and*

(B) for the purposes of subchapter III, has the same meaning as provided in section 2106, without regard to whether the individual elects not to participate in the Federal Employees' Retirement System.

* * * * * * *

Subchapter III—Thrift Savings Plan

SEC. 8431. CERTAIN TRANSFERS TO BE TREATED AS A SEPARATION.

(a) For purposes of this subchapter, *except as provided in section 840(20)(B),* separation from Government employment includes a transfer from a position that is subject to one of the retirement systems described in subsection (b) to a position that is not subject to any of them.

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