

111TH CONGRESS
1ST SESSION

H. R. 1263

To amend title 5, United States Code, to provide for the automatic enrollment of new participants in the Thrift Savings Plan, and to clarify the method for computing certain annuities based on part-time service; to allow certain employees of the District of Columbia to have certain periods of service credited for purposes relating to retirement eligibility; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2009

Mr. LYNCH introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 5, United States Code, to provide for the automatic enrollment of new participants in the Thrift Savings Plan, and to clarify the method for computing certain annuities based on part-time service; to allow certain employees of the District of Columbia to have certain periods of service credited for purposes relating to retirement eligibility; and for other purposes.

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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Federal Retirement Reform Act of 2009”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—THRIFT SAVINGS PLAN ENHANCEMENT

Sec. 101. Short title.

Sec. 102. Automatic enrollments.

Sec. 103. Qualified Roth contribution program.

Sec. 104. Authority to establish self-directed investment window.

Sec. 105. Reporting requirements.

Sec. 106. Acknowledgement of risk.

Sec. 107. Credit for unused sick leave.

**TITLE II—COMPUTATION OF CERTAIN ANNUITIES BASED ON
PART-TIME SERVICE**

Sec. 201. Computation of certain annuities based on part-time service.

Sec. 202. Applicability.

**TITLE III—RETIREMENT CREDIT FOR SERVICE OF CERTAIN EM-
PLOYEES TRANSFERRED FROM DISTRICT OF COLUMBIA SERV-
ICE TO FEDERAL SERVICE**

Sec. 301. Short title.

Sec. 302. Retirement Credit For Service of Certain Employees Transferred
From District of Columbia Service to Federal Service.

Sec. 303. Qualifying District of Columbia Service Defined.

Sec. 304. Certification of Service.

**TITLE IV—DISTRIBUTIONS FROM GOVERNMENTAL RETIREMENT
PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE**

Sec. 401. Distributions from governmental retirement plans for health and
long-term care insurance for Federal annuitants and members
and former members of the Armed Forces of the United
States.

6 **TITLE I—THRIFT SAVINGS PLAN**
7 **ENHANCEMENT**

8 **SEC. 101. SHORT TITLE.**

9 This title may be cited as the “Thrift Savings Plan
10 Enhancement Act of 2009”.

1 **SEC. 102. AUTOMATIC ENROLLMENTS.**

2 (a) IN GENERAL.—Section 8432(b) of title 5, United
3 States Code, is amended by striking paragraphs (2)
4 through (4) and inserting the following:

5 “(2)(A) The Board shall by regulation provide for an
6 eligible individual to be automatically enrolled to make
7 contributions under subsection (a) at the default percent-
8 age of basic pay.

9 “(B) For purposes of this paragraph, the default per-
10 centage shall be equal to 3 percent or such other percent-
11 age, not less than 2 percent nor more than 5 percent, as
12 the Board may by regulation prescribe.

13 “(C) The regulations shall include provisions under
14 which any individual who would otherwise be automatically
15 enrolled in accordance with subparagraph (A) may—

16 “(i) modify the percentage or amount to be con-
17 tributed pursuant to automatic enrollment, effective
18 from the start of such enrollment; or

19 “(ii) decline automatic enrollment altogether.

20 “(D) For purposes of this paragraph, the term ‘eligi-
21 ble individual’ means any individual who, after any regula-
22 tions under subparagraph (A) first take effect, is ap-
23 pointed, transferred, or reappointed to a position in which
24 that individual is eligible to contribute to the Thrift Sav-
25 ings Fund.

1 “(E) Sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1),
 2 8440c(a)(1), 8440d(a)(1), and 8440e(a)(1) shall be ap-
 3 plied in a manner consistent with the purposes of this
 4 paragraph.”.

5 (b) TECHNICAL AMENDMENT.—Section 8432(b)(1)
 6 of title 5, United States Code, is amended by striking the
 7 parenthetical matter in subparagraph (B).

8 **SEC. 103. QUALIFIED ROTH CONTRIBUTION PROGRAM.**

9 (a) IN GENERAL.—Subchapter III of chapter 84 of
 10 title 5, United States Code, is amended by inserting after
 11 section 8432c the following:

12 **“§ 8432d. Qualified Roth contribution program**

13 “(a) DEFINITIONS.—For purposes of this section—

14 “(1) the term ‘qualified Roth contribution pro-
 15 gram’ means a program described in paragraph (1)
 16 of section 402A(b) of the Internal Revenue Code of
 17 1986 which meets the requirements of paragraph (2)
 18 of such section; and

19 “(2) the terms ‘designated Roth contribution’
 20 and ‘elective deferral’ have the meanings given such
 21 terms in section 402A of the Internal Revenue Code
 22 of 1986.

23 “(b) AUTHORITY TO ESTABLISH.—The Board shall
 24 by regulation provide for the inclusion in the Thrift Sav-

1 ings Plan of a qualified Roth contribution program, under
 2 such terms and conditions as the Board may prescribe.

3 “(c) REQUIRED PROVISIONS.—The regulations under
 4 subsection (b) shall include—

5 “(1) provisions under which an election to make
 6 designated Roth contributions may be made—

7 “(A) by any individual who is eligible to
 8 make contributions under section 8351,
 9 8432(a), 8440a, 8440b, 8440c, 8440d, or
 10 8440e; and

11 “(B) by any individual, not described in
 12 subparagraph (A), who is otherwise eligible to
 13 make elective deferrals under the Thrift Sav-
 14 ings Plan;

15 “(2) any provisions which may, as a result of
 16 enactment of this section, be necessary in order to
 17 clarify the meaning of any reference to an ‘account’
 18 made in section 8432(f), 8433, 8434(d), 8435,
 19 8437, or any other provision of law; and

20 “(3) any other provisions which may be nec-
 21 essary to carry out this section.”.

22 (b) CLERICAL AMENDMENT.—The analysis for chap-
 23 ter 84 of title 5, United States Code, is amended by insert-
 24 ing after the item relating to section 8432c the following:

“8432d. Qualified Roth contribution program.”.

1 **SEC. 104. AUTHORITY TO ESTABLISH SELF-DIRECTED IN-**
2 **VESTMENT WINDOW.**

3 (a) IN GENERAL.—Section 8438(b)(1) of title 5,
4 United States Code, is amended—

5 (1) in subparagraph (D), by striking “and” at
6 the end;

7 (2) in subparagraph (E), by striking the period
8 and inserting “; and”; and

9 (3) by adding after subparagraph (E) the fol-
10 lowing:

11 “(F) a self-directed investment window, if
12 the Board authorizes such window under para-
13 graph (5).”.

14 (b) REQUIREMENTS.—Section 8438(b) of title 5,
15 United States Code, is amended by adding at the end the
16 following:

17 “(5)(A) The Board may authorize the addition of a
18 self-directed investment window under the Thrift Savings
19 Plan if the Board determines that such addition would be
20 in the best interests of participants.

21 “(B) The self-directed investment window shall be
22 limited to—

23 “(i) low-cost, passively-managed index funds
24 that offer diversification benefits; and

1 “(ii) other investment options, if the Board de-
2 termines the options to be appropriate retirement in-
3 vestment vehicles for participants.

4 “(C) The Board shall ensure that any administrative
5 expenses related to use of the self-directed investment win-
6 dow are borne solely by the participants who use such win-
7 dow.

8 “(D) The Board may establish such other terms and
9 conditions for the self-directed investment window as the
10 Board considers appropriate to protect the interests of
11 participants, including requirements relating to risk dis-
12 closure.

13 “(E) The Board shall consult with the Employee
14 Thrift Advisory Council (established under section 8473)
15 before establishing any self-directed investment window.”.

16 **SEC. 105. REPORTING REQUIREMENTS.**

17 (a) ANNUAL REPORT.—The Board shall, not later
18 than June 30 of each year, submit to Congress an annual
19 report on the operations of the Thrift Savings Plan. Such
20 report shall include, for the prior calendar year, informa-
21 tion on the number of participants as of the last day of
22 such prior calendar year, the median balance in partici-
23 pants’ accounts as of such last day, demographic informa-
24 tion on participants, the percentage allocation of amounts
25 among investment funds or options, the status of the de-

1 velopment and implementation of the self-directed invest-
 2 ment window, the diversity demographics of any company,
 3 investment adviser, or other entity retained to invest and
 4 manage the assets of the Thrift Savings Fund, and such
 5 other information as the Board considers appropriate. A
 6 copy of each annual report under this subsection shall be
 7 made available to the public through an Internet website.

8 (b) REPORTING OF FEES AND OTHER INFORMA-
 9 TION.—

10 (1) IN GENERAL.—The Board shall include in
 11 the periodic statements provided to participants
 12 under section 8439(c) the amount of the investment
 13 management fees, administrative expenses, and any
 14 other fees or expenses paid with respect to each in-
 15 vestment fund and option under the Thrift Savings
 16 Plan. Any such statement shall also provide a state-
 17 ment notifying participants as to how they may ac-
 18 cess the annual report described in subsection (a), as
 19 well as any other information concerning the Thrift
 20 Savings Plan that might be useful.

21 (2) USE OF ESTIMATES.—For purposes of pro-
 22 viding the information required under this sub-
 23 section, the Executive Director may provide a rea-
 24 sonable and representative estimate of any fees or
 25 expenses described in paragraph (1) and shall indi-

1 cate any such estimate as being such an estimate.
2 Any such estimate shall be based on the previous
3 year's experience.

4 (c) DEFINITIONS.—For purposes of this section—

5 (1) the term “Board” has the meaning given
6 such term by 8401(5) of title 5, United States Code;

7 (2) the term “participant” has the meaning
8 given such term by section 8471(3) of title 5, United
9 States Code; and

10 (3) the term “account” means an account es-
11 tablished under section 8439 of title 5, United
12 States Code.

13 **SEC. 106. ACKNOWLEDGEMENT OF RISK.**

14 (a) IN GENERAL.—Section 8439(d) of title 5, United
15 States Code, is amended—

16 (1) by striking the matter after “who elects to
17 invest in” and before “shall sign an acknowledge-
18 ment” and inserting “any investment fund or option
19 under this chapter, other than the Government Se-
20 curities Investment Fund,”; and

21 (2) by striking “either such Fund” and insert-
22 ing “any such fund or option”.

23 (b) COORDINATION WITH PROVISIONS RELATING TO
24 INVESTMENTS IN THE ABSENCE OF AN ELECTION.—Sub-

1 section (d) of section 8439 of title 5, United States Code
2 (as amended by subsection (a)) is further amended—

3 (1) by redesignating subsection (d) as sub-
4 section (d)(1); and

5 (2) by adding at the end the following:

6 “(2)(A) In the case of an investment made under sec-
7 tion 8438(c)(2) in any fund or option to which paragraph
8 (1) would otherwise apply, the participant involved shall,
9 for purposes of this subsection, be deemed—

10 “(i) to have elected to invest in such fund or
11 option; and

12 “(ii) to have executed the acknowledgement re-
13 quired under paragraph (1).

14 “(B)(i) The Executive Director shall prescribe regu-
15 lations under which written notice shall be provided to a
16 participant whenever an investment is made under section
17 8438(c)(2)(B) on behalf of such participant in the absence
18 of an affirmative election described in section 8438(c)(1).

19 “(ii) The regulations shall ensure that any such no-
20 tice shall be provided to the participant within 7 calendar
21 days after the effective date of the default election.

22 “(C) For purposes of this paragraph, the term ‘par-
23 ticipant’ has the meaning given such term by section
24 8471(3).”.

1 (c) COORDINATION WITH PROVISIONS RELATING TO
2 FIDUCIARY RESPONSIBILITIES, LIABILITIES, AND PEN-
3 ALTIES.—Section 8477(e)(1)(C) of title 5, United States
4 Code, is amended—

5 (1) by redesignating subparagraph (C) as sub-
6 paragraph (C)(i); and

7 (2) by adding at the end the following:

8 “(ii) A fiduciary shall not be liable under subpara-
9 graph (A), and no civil action may be brought against a
10 fiduciary—

11 “(I) for providing for the automatic enrollment
12 of a participant in accordance with section
13 8432(b)(2)(A);

14 “(II) for enrolling a participant in a default in-
15 vestment fund in accordance with section
16 8438(c)(2)(B); or

17 “(III) for allowing a participant to invest
18 through the self-directed investment window or for
19 establishing restrictions applicable to participants’
20 ability to invest through the self-directed investment
21 window.”.

22 **SEC. 107. CREDIT FOR UNUSED SICK LEAVE.**

23 (a) IN GENERAL.—Section 8415 of title 5, United
24 States Code, is amended—

1 (1) by redesignating the second subsection (k)
2 and subsection (l) as subsections (l) and (m), respec-
3 tively; and

4 (2) in subsection (l) (as so redesignated by
5 paragraph (1))—

6 (A) by striking “(l) In computing” and in-
7 serting “(l)(1) In computing”; and

8 (B) by adding at the end the following:

9 “(2) Except as provided in paragraph (1), in com-
10 puting an annuity under this subchapter, the total service
11 of an employee who retires on an immediate annuity or
12 who dies leaving a survivor or survivors entitled to annuity
13 includes the days of unused sick leave to his credit under
14 a formal leave system, except that these days will not be
15 counted in determining average pay or annuity eligibility
16 under this subchapter. For purposes of this subsection, in
17 the case of any such employee who is excepted from sub-
18 chapter I of chapter 63 under section 6301(2)(x)–(xiii),
19 the days of unused sick leave to his credit include any un-
20 used sick leave standing to his credit when he was ex-
21 cepted from such subchapter.”.

22 (b) EXCEPTION FROM DEPOSIT REQUIREMENT.—
23 Section 8422(d)(2) of title 5, United States Code, is
24 amended by striking “section 8415(k)” and inserting
25 “paragraph (1) or (2) of section 8415(l)”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply with respect to annuities computed
 3 based on separations occurring on or after the date of en-
 4 actment of this Act.

5 **TITLE II—COMPUTATION OF**
 6 **CERTAIN ANNUITIES BASED**
 7 **ON PART-TIME SERVICE**

8 **SEC. 201. COMPUTATION OF CERTAIN ANNUITIES BASED**
 9 **ON PART-TIME SERVICE.**

10 Section 8339(p) of title 5, United States Code, is
 11 amended by adding at the end the following:

12 “(3) In the administration of paragraph (1)—

13 “(A) subparagraph (A) of such paragraph shall
 14 apply with respect to service performed before, on,
 15 or after April 7, 1986; and

16 “(B) subparagraph (B) of such paragraph—

17 “(i) shall apply with respect to that portion
 18 of any annuity which is attributable to service
 19 performed on or after April 7, 1986; and

20 “(ii) shall not apply with respect to that
 21 portion of any annuity which is attributable to
 22 service performed before April 7, 1986.”.

23 **SEC. 202. APPLICABILITY.**

24 The amendment made by section 201 shall be effec-
 25 tive with respect to any annuity, entitlement to which is

1 based on a separation from service occurring on or after
2 the date of enactment of this Act.

3 **TITLE III—RETIREMENT CREDIT**
4 **FOR SERVICE OF CERTAIN**
5 **EMPLOYEES TRANSFERRED**
6 **FROM DISTRICT OF COLUM-**
7 **BIA SERVICE TO FEDERAL**
8 **SERVICE**

9 **SEC. 301. SHORT TITLE.**

10 This Act may be cited as the “District of Columbia
11 Court, Offender Supervision, Parole, and Public Defender
12 Employees Equity Act of 2009”.

13 **SEC. 302. RETIREMENT CREDIT FOR SERVICE OF CERTAIN**
14 **EMPLOYEES TRANSFERRED FROM DISTRICT**
15 **OF COLUMBIA SERVICE TO FEDERAL SERV-**
16 **ICE.**

17 (a) IN GENERAL.—Any individual who is treated as
18 an employee of the Federal government for purposes of
19 chapter 83 or chapter 84 of title 5, United States Code,
20 on or after the date of enactment of this Act who per-
21 formed qualifying District of Columbia service shall be en-
22 titled to have such service included in calculating the indi-
23 vidual’s creditable service under sections 8332 or 8411 of
24 title 5, United States Code, but only for purposes of the
25 following provisions of such title:

1 (1) Sections 8333 and 8410 (relating to eligi-
2 bility for annuity).

3 (2) Sections 8336 (other than subsections (d),
4 (h), and (p) thereof) and 8412 (relating to imme-
5 diate retirement).

6 (3) Sections 8338 and 8413 (relating to de-
7 ferred retirement).

8 (4) Sections 8336(d), 8336(h), 8336(p), and
9 8414 (relating to early retirement).

10 (5) Section 8341 and subchapter IV of chapter
11 84 (relating to survivor annuities).

12 (6) Section 8337 and subchapter V of chapter
13 84 (relating to disability benefits).

14 (b) TREATMENT OF DETENTION OFFICER SERVICE
15 AS LAW ENFORCEMENT OFFICER SERVICE.—Any portion
16 of an individual's qualifying District of Columbia service
17 which consisted of service as a detention officer under sec-
18 tion 2604(2) of the District of Columbia Government
19 Comprehensive Merit Personnel Act of 1978 (sec. 1–
20 626.04(2), D.C. Official Code) shall be treated as service
21 as a law enforcement officer under sections 8331(20) or
22 8401(17) of title 5, United States Code, for purposes of
23 applying subsection (a) with respect to the individual.

24 (c) SERVICE NOT INCLUDED IN COMPUTING
25 AMOUNT OF ANY ANNUITY.—Qualifying District of Co-

1 lumbia service shall not be taken into account for purposes
2 of computing the amount of any benefit payable out of
3 the Civil Service Retirement and Disability Fund.

4 **SEC. 303. QUALIFYING DISTRICT OF COLUMBIA SERVICE**
5 **DEFINED.**

6 In this title, “qualifying District of Columbia service”
7 means any of the following:

8 (1) Service performed by an individual as a
9 nonjudicial employee of the District of Columbia
10 courts—

11 (A) which was performed prior to the ef-
12 fective date of the amendments made by section
13 11246(b) of the Balanced Budget Act of 1997;
14 and

15 (B) for which the individual did not ever
16 receive credit under the provisions of sub-
17 chapter III of chapter 83 or chapter 84 of title
18 5, United States Code (other than by virtue of
19 section 8331(1)(iv) of such title).

20 (2) Service performed by an individual as an
21 employee of an entity of the District of Columbia
22 government whose functions were transferred to the
23 Pretrial Services, Parole, Adult Supervision, and Of-
24 fender Supervision Trustee under section 11232 of
25 the Balanced Budget Act of 1997—

1 (A) which was performed prior to the ef-
2 fective date of the individual's coverage as an
3 employee of the Federal Government under sec-
4 tion 11232(f) of such Act; and

5 (B) for which the individual did not ever
6 receive credit under the provisions of sub-
7 chapter III of chapter 83 or chapter 84 of title
8 5, United States Code (other than by virtue of
9 section 8331(1)(iv) of such title).

10 (3) Service performed by an individual as an
11 employee of the District of Columbia Public De-
12 fender Service—

13 (A) which was performed prior to the ef-
14 fective date of the amendments made by section
15 7(e) of the District of Columbia Courts and
16 Justice Technical Corrections Act of 1998; and

17 (B) for which the individual did not ever
18 receive credit under the provisions of sub-
19 chapter III of chapter 83 or chapter 84 of title
20 5, United States Code (other than by virtue of
21 section 8331(1)(iv) of such title).

22 (4) In the case of an individual who was an em-
23 ployee of the District of Columbia Department of
24 Corrections who was separated from service as a re-
25 sult of the closing of the Lorton Correctional Com-

1 plex and who was appointed to a position with the
2 Bureau of Prisons, the District of Columbia courts,
3 the Pretrial Services, Parole, Adult Supervision, and
4 Offender Supervision Trustee, the United States Pa-
5 role Commission, or the District of Columbia Public
6 Defender Service, service performed by the indi-
7 vidual as an employee of the District of Columbia
8 Department of Corrections—

9 (A) which was performed prior to the ef-
10 fective date of the individual's coverage as an
11 employee of the Federal Government; and

12 (B) for which the individual did not ever
13 receive credit under the provisions of sub-
14 chapter III of chapter 83 or chapter 84 of title
15 5, United States Code (other than by virtue of
16 section 8331(1)(iv) of such title).

17 **SEC. 304. CERTIFICATION OF SERVICE.**

18 The Office of Personnel Management shall accept the
19 certification of the appropriate personnel official of the
20 government of the District of Columbia or other inde-
21 pendent employing entity concerning whether an indi-
22 vidual performed qualifying District of Columbia service
23 and the length of the period of such service the individual
24 performed.

1 **TITLE IV—DISTRIBUTIONS FROM**
2 **GOVERNMENTAL RETIRE-**
3 **MENT PLANS FOR HEALTH**
4 **AND LONG-TERM CARE IN-**
5 **SURANCE**

6 **SEC. 401. DISTRIBUTIONS FROM GOVERNMENTAL RETIRE-**
7 **MENT PLANS FOR HEALTH AND LONG-TERM**
8 **CARE INSURANCE FOR FEDERAL ANNU-**
9 **ITANTS AND MEMBERS AND FORMER MEM-**
10 **BERS OF THE ARMED FORCES OF THE**
11 **UNITED STATES.**

12 (a) IN GENERAL.—Subsection (l) of section 402 of
13 the Internal Revenue Code (relating to distributions from
14 governmental plans for health and long-term care insur-
15 ance) is amended by inserting “, a Federal annuitant, or
16 a member or former member of the uniformed services of
17 the United States” after “eligible retired public safety offi-
18 cer”.

19 (b) DEFINITIONS.—Paragraph (4) of section 402(l)
20 of such Code (relating to definitions) is amended by add-
21 ing at the end the following new subparagraphs:

22 “(E) FEDERAL ANNUITANT.—The term
23 ‘Federal annuitant’ means an annuitant, as de-
24 fined by paragraph (3) of section 8901 of title
25 5, United States Code.

1 “(F) MEMBER OR FORMER MEMBER OF
2 THE UNIFORMED SERVICES OF THE UNITED
3 STATES.—The term ‘member or former member
4 of the uniformed services of the United States’
5 shall have the same meaning given such term in
6 chapter 55 of title 10, United States Code.”.

7 (c) CONFORMING AMENDMENTS.—Paragraphs
8 (3)(B) and (4)(D) of section 402(l) of such Code are each
9 amended by inserting “, Federal annuitant, or member or
10 former member of the uniformed services of the United
11 States, as the case may be,” after “eligible retired public
12 safety officer” both places it appears.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to distributions in taxable years
15 beginning after December 31, 2008.

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