Calendar No. 219

108th Congress *1st Session*	SENATE	REPORT 108–108

AMENDING CHAPTER 84 OF TITLE 5, UNITED STATES CODE, TO PROVIDE THAT CERTAIN FEDERAL ANNUITY COMPUTATIONS ARE ADJUSTED BY 1 PERCENTAGE POINT RELATING TO PERIODS OF RECEIVING DISABILITY PAYMENTS, AND FOR OTHER PURPOSES

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 481

AMENDING CHAPTER 84 OF TITLE 5, UNITED STATES CODE, TO PROVIDE THAT CERTAIN FEDERAL ANNUITY COMPUTATIONS ARE ADJUSTED BY 1 PERCENTAGE POINT RELATING TO PERIODS OF RECEIVING DISABILITY PAYMENTS, AND FOR OTHER PURPOSES

JULY 21, 2003.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
19–010 WASHINGTON : 2003

COMMITTEE ON GOVERNMENTAL AFFAIRS

SUSAN M. COLLINS, Maine, *Chairman*

TED STEVENS, Alaska
GEORGE V. VOINOVICH, Ohio
NORM COLEMAN, Minnesota
ARLEN SPECTER, Pennsylvania
ROBERT F. BENNETT, Utah
PETER G. FITZGERALD, Illinois
JOHN E. SUNUNU, New Hampshire
RICHARD C. SHELBY, Alabama

JOSEPH I. LIEBERMAN, Connecticut
CARL LEVIN, Michigan
DANIEL K. AKAKA, Hawaii
RICHARD J. DURBIN, Illinois
THOMAS R. CARPER, Delaware
MARK DAYTON, Minnesota
FRANK LAUTENBERG, New Jersey
MARK PRYOR, Arkansas

MICHAEL D. BOPP, *Staff Director and Chief Counsel*
JENNIFER HEMINGWAY, *Professional Staff Member*
MICHAEL RUSSELL, *Staff Director, Subcommittee on Financial Management, the Budget, and International Security*
JOYCE A. RECHTSCHAFFEN, *Minority Staff Director and Counsel*
LAWRENCE B. NOVEY, *Minority Counsel*
JENNIFER TYREE, *Minority Counsel, Subcommittee on Financial Management, the Budget, and International Security*
AMY B. NEWHOUSE, *Chief Clerk*

Calendar No. 219

108th Congress, 1st Session — SENATE — REPORT 108–108

AMENDING CHAPTER 84 OF TITLE 5, UNITED STATES CODE, TO PROVIDE THAT CERTAIN FEDERAL ANNUITY COMPUTATIONS ARE ADJUSTED BY 1 PERCENTAGE POINT RELATING TO PERIODS OF RECEIVING DISABILITY PAYMENTS, AND FOR OTHER PURPOSES

JULY 21, 2003.—Ordered to be printed

Ms. COLLINS, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 481]

The Committee on Governmental Affairs, to which was referred the bill (S. 481) to amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes, having considered the same reports favorably thereon without an amendment and recommends that the bill do pass.

CONTENTS

I. PURPOSE AND SUMMARY

The bill would amend title 5 of the U.S. Code to help injured civilian federal workers recover the retirement benefits they lose while they are off the job receiving worker's compensation. Under current law, employees receiving worker's compensation are precluded from contributing to their retirement savings and from receiving matching funds from the government.

Under S. 481, the loss would be offset by a larger contribution to the employees' direct pension benefit for the time they were receiving worker's compensation, as long as the employee eventually returns to work. The legislation would correct an inadvertent inequity in the calculation of retirement benefits for employees covered under the Federal Employees Retirement System (FERS) .

II. Background and Need for the Legislation

S. 481 was introduced by Senator George Allen of Virginia on February 27, 2003 to help those federal workers who were injured as a result of the terrorist attacks on September 11, 2001. The most notable recipient of this legislation would be Louise Kurtz, an Army accountant who was severely burned on over 70 percent of her body and lost her hands and ears. Her plight was publicized by the Washington Post in 2002.[1] Mrs. Kurtz has worked for the federal government for 14 years. As she is receiving workers' compensation, Mrs. Kurtz is unable to contribute to Social Security or the Thrift Savings Plan (TSP) because those contributions are taken from an employee's wages. This bar results in lost retirement benefits.

S. 481 addresses the situation faced by Mrs. Kurtz and others which results from differences in the construction of the Civil Service Retirement System (CSRS) and the newer Federal Employees Retirement System (FERS). Despite the fact that the total retirement benefits under FERS were intended to be roughly equivalent to the benefits under CSRS, the reliance on TSP and Social Security puts FERS employees who receive workers' compensation at a distinct disadvantage. To ensure parity between CSRS and FERS in this matter, S. 481 would increase the rate at which the FERS direct benefit annuity accrues during a period of disability.

The Civil Service Retirement System and the Federal Employees Retirement System

The Civil Service Retirement System (CSRS)[2] was established in 1920, 15 years before Congress created the Social Security system for workers in the private sector. Because CSRS was designed to provide adequate retirement and disability benefits on its own, federal employees were excluded from participating in Social Security.

In the Social Security Amendments of 1983,[3] Congress mandated participation in Social Security by all civilian federal employees initially hired on or after January 1, 1984. Because Social Security provides both retirement and disability benefits, and because enrolling federal workers in both CSRS and Social Security would have required each employee to contribute more than 13 percent of pay, Congress directed the development of a new federal employee retirement system with Social Security as the cornerstone. The result of these efforts was the Federal Employees Retirement System (FERS),[4] which was enacted on June 6, 1986. The new system, patterned after the retirement programs typical of medium and large employers in the private sector, is comprised of three elements: (1) Social Security, (2) a defined benefit plan (the FERS basic annuity),[5] and (3) a defined contribution plan (the Thrift Savings Plan).

[1] Donna St. George, Alive, but Not the Same; Pain, Loss Are Pentagon Survivor's New Reality, The Washington Post, September 10, 2002, at A01.

[2] Pub. L. No. 66–215.

[3] Pub. L. No. 98–21.

[4] Pub. L. No. 99–335.

[5] In a defined benefit plan, the amount of the retirement benefit is based on an employee's salary and number of years of service. With each year of service, a worker accrues a benefit equal to a fixed dollar amount or a percentage of pay. A defined contribution plan is like a sav-

All permanent federal employees whose initial federal employment began after December 31, 1983, are covered by FERS, as are employees who voluntarily switched from CSRS to FERS during "open seasons" held in 1987 and 1998. Former federal employees who have completed at least five years of service under CSRS and are rehired after a break in service of less than one year can either join FERS or participate in both CSRS and Social Security through the "CSRS offset plan."

Under FERS, workers who have completed at least 30 years of service can retire at age 55. The minimum retirement age will increase beginning with workers born in 1948, eventually reaching age 57 for those born in 1970 or later. Employees with 20 or more years of service can retire at age 60 and those with at least five years of service can retire at age 62. Federal employees and former employees who have completed at least 10 years of service, but fewer than 30 years of service, can receive a reduced FERS pension benefit at age 55.

Under CSRS, the minimum retirement age is 55 for employees with 30 years of federal service, age 60 for those with 20 years of service, and 62 for employees with at least five years of service. CSRS has no provision for early retirement with a reduced benefit, except for special circumstances such as a reduction in force.[6]

Under both CSRS and FERS, the amount of an employee's retirement annuity is based on the average of the individual's highest three consecutive years of basic pay multiplied by their years of service and the rate at which benefits accrue for each year of service. Under FERS, this accrual rate is one percent of base pay per year.[7] Accrual rates are higher under CSRS than under FERS because employees covered by CSRS do not pay Social Security payroll taxes or earn Social Security retirement benefits. Under CSRS the benefit accrual rate increases with length of service. Workers accrue benefits equal to 1.5 percent of high-three average pay for each of their first five years of service; 1.75 percent of high-three pay for years 6 through 10; and 2.0 percent of high-three pay for each year of service after the tenth year. This yields a pension equal to 56.25 percent of high-three average pay after 30 years of federal service under CSRS.

For all federal workers covered by FERS, the agency where they are employed contributes an amount equal to 1 percent of the employee's base pay to the Thrift Saving Plan (TSP), even if the employee makes no voluntary contributions to the TSP. Beginning in July 2001, employees covered by FERS were allowed to contribute up to 11 percent of pay to the TSP, and employees covered by CSRS were allowed to contribute up to 6 percent of pay to the TSP. The maximum permissible contribution will rise by 1 percentage point each fiscal year until reaching 15 percent for FERS and 10

ings account maintained on behalf of each participating employee. The amount of retirement benefits that a worker receives will depend on the balance in the account, which is the sum of contributions, plus interest, dividends, and capital gains (or losses).

[6] Agencies undergoing a reduction in force can, with the approval of the Office of Personnel Management, offer retirement to employees age 50 or older with 20 or more years of service or at any age with 25 or more years of service.

[7] Workers with 20 years or more of service under FERS who work until at least age 62 are credited with an accrual rate of 1.1 percent for each year of service. For example, a worker covered by FERS who retires at 61 with 25 years of service will receive a FERS annuity equal to 25 percent of high-three average pay. Delaying retirement by one year would increase the annuity to 28.6 percent of high-three average pay ($26 \times 1.1 = 28.6$).

percent for CSRS in FY2005. In fiscal year 2006, the percentage-of-pay limits will be eliminated, but, the contribution limits under section 402(g) of the Internal Revenue Code of 1986 will continue to apply. All employees covered by FERS receive "agency automatic contributions" of 1 percent of pay. Employee contributions are matched dollar-for-dollar on the first 3 percent of pay and at $.50 on the dollar on the next 2 percent of pay. Thus, the maximum agency contribution is 5 percent of pay.[8] These contributions are made on a pre-tax basis, and neither the employee's contribution nor any investment earnings are taxed until the money is withdrawn from the account. In addition, the first 5 percent of employee pay contributed to the TSP generates agency matching contributions. Workers covered by CSRS also may participate in the TSP, but their total contribution is limited to 7 percent of pay, and they receive no matching contributions from their employing agency.

Because enrollment in CSRS has been closed to new entrants since 1984, the proportion of federal workers covered by FERS has been rising and coverage under CSRS has been declining. Fiscal year 1995 was the first year in which a majority of civilian federal employees (51 percent) were covered by FERS. During FY2000, 62.4 percent of federal employees were covered by FERS.

Inequality between FERS and CSRS when receiving workers' compensation

Under both CSRS and FERS, when an individual receives workers' compensation benefits under Subchapter I of title 5, United States Code, and returns to duty under retirement coverage, that period of time is creditable service in the subsequent computation of retirement benefits.[9] Since CSRS is a one-tier, defined benefit system, an individual's retirement income is the same as if the individual had continued in employment during the period he or she received workers' compensation. However, pensions of workers covered under FERS comprise three separate sources: the FERS direct benefit, Social Security, and the TSP. The FERS direct benefit alone represents only about half of an employee's retirement, and the TSP contribution and the Social Security benefit was designed to supplement the remainder of the retirement package. During periods of workers' compensation, there can be no employer or employee contributions to the TSP and no wage credits are earned toward Social Security benefits.[10] This inequity places a FERS employee at a distinct disadvantage compared to a similarly situated CSRS employee, since the FERS employee receives one-half of the credit towards retirement while on disability that a CSRS employee receives.

When the FERS program was created, it was the intent of Congress to ensure that the total retirement benefits under FERS were roughly equivalent to those benefits under CSRS. Since TSP and Social Security represent approximately 1 percent of post-retirement income for each year of service, S. 481 would ensure parity in the computation of the worker's retirement annuity under the

[8] See also Pub. L. No. 107–304, which allows certain catch-up contributions to the Thrift Savings Plan to be made by participants age 50 or over.
[9] 5 U.S.C. § 8332(f), 8411(d).
[10] See §§ 1401 and 3101 of the Internal Revenue Code of 1986 and 5 U.S.C. § 8432.

FERS direct benefit by increasing the rate at which annuity accrues during a period of disability by one percent of base pay. The extra percentage point dedicated to the FERS direct benefit would offset the temporary losses to Social Security and Thrift Savings Plan.

In a March 5, 2003 letter to Senator Peter Fitzgerald, Chairman of the Subcommittee on Financial Management, the Budget, and International Security, the Director of the Office of Personnel Management (OPM), Kay Coles James, stated, "we believe that this proposal offers a reasonable solution to a problem that is not widespread, but is of great significance for the few federal employees affected by it. We support its enactment." OPM further advised that "increased outlays from the Retirement Fund would not be material" under this bill.

III. LEGISLATIVE HISTORY

S. 481 was introduced by Sen. George Allen of Virginia on February 27, 2003, and was referred to the Senate Committee on Governmental Affairs. The bill is cosponsored by Sen. Daniel Akaka of Hawaii, Sen. Hillary Clinton of New York, Sen. Richard Durbin of Illinois, Sen. Ted Stevens of Alaska, and Sen. John Warner of Virginia.

On May 12, 2003, the members of the Governmental Affairs Subcommittee on Financial Management, the Budget, and International Security (FMBIS) unanimously polled out S. 481 to the full Committee.

The Committee convened on June 17, 2003, to consider S. 481 with other legislative and executive items. No amendments were offered to the bill. The Committee ordered the bill reported favorably to the full Senate, as part of an en bloc voice vote. Senators present were as follows: Collins, Lieberman, Voinovich, Coleman, Fitzgerald, Sununu, Levin, Akaka, Durbin, Lautenberg, and Pryor.

S. 481 is similar to S. 2936, which Senator Allen introduced during the 107th Congress on September 13, 2002. On October 8, 2002, S. 2936 was favorably polled out of the Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services. No hearings were held on the bill. On October 9, 2002, the Committee met in open session to consider the bill. At that time, Senator Akaka offered an amendment which made technical corrections to the bill. The Committee ordered favorably reported the bill S. 2936, as amended, a quorum being present. S. 2936 was then passed by the Senate under a unanimous consent agreement. The Senate-passed bill was referred to the House Committee on Government Reform. The 107th Congress adjourned sine die without taking further action on the bill.

The main difference between the two versions is the time requirement for disability to qualify for the adjustment. In S. 2936, the adjustment would have been offered to employees who received disability benefits for at least one year; while in S. 481, those workers who have received workers' compensation benefits for at least two months would qualify for the computation adjustment.

IV. Section-by-Section Analysis

Section 1. Annuity computation adjustments for periods of disability

Under the Internal Revenue Code, employee contributions to the Thrift Savings Plan (TSP) can be made only from earned income. Federal employees who are injured on the job cannot contribute to the Thrift Savings Plan while receiving compensation from the Office of Workers' Compensation Programs for work-related injuries. S. 481 would amend section 8415 of title 5 to reduce the shortfall in retirement benefits that can affect federal employees who are injured while performing their jobs and are unable to contribute to the TSP while receiving worker's compensation payments. The amendment would increase the basic retirement annuity under the Federal Employees' Retirement System (FERS) from 1 percent of basic pay per year of service to 2 percent of basic pay. The increase would be for the duration of any period of creditable federal service, lasting at least two months, during which a federal employee receives compensation for work-related injuries under chapter 81 of title 5.

V. Evaluation of Regulatory Impact

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the "regulatory impact which would be incurred in carrying out this bill." Carrying out S. 481 would have no regulatory impact.

VI. CBO Cost Estimate

S. 481—A bill to amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes

Summary: S. 481 would increase federal retirement benefits for certain employees who suffer a workplace injury and then return to work for the federal government. Specifically, the legislation would apply to employees who are covered by the Federal Employees' Retirement Program (FERS) and collect worker compensation payments under the Federal Employees' Compensation Act (FECA) for at least two months before returning to work. CBO estimates this legislation would increase direct spending on retirement benefits by $1 million in 2004, $16 million during the 2004–2008 period, and $68 million during the 2004–2013 period.

S. 481 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.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 481 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

	By fiscal year, in millions of dollars—										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN DIRECT SPENDING											
Federal retirement benefits:											
Estimated budget authority	0	1	2	3	4	6	7	9	10	12	14
Estimated outlays	0	1	2	3	4	6	7	9	10	12	14

Basis of estimate

Direct spending

Under current law, most federal employees who participate in the FERS program earn retirement benefits at the rate of 1 percent for each year of creditable service. Time spent on FECA is considered creditable service under FERS. (In contrast, Social Security ignores time spent on the FECA rolls, and FECA participants cannot contribute to the Thrift Savings Plan.) S. 481 would increase the annual accrual rate from 1 percent to 2 percent during any period in which a FERS employee has collected FECA benefits, provided the employee spent a total of at least two months on FECA. Fractions of a year spent receiving FECA benefits would be credited at the higher accrual rate on a pro-rated basis. The legislation would only apply to federal workers who separate from federal service after the bill is enacted, regardless of when the FECA benefits were received. Therefore, outlays for retirement benefits would increase as those workers who have previously collected FECA benefits begin to retire.

Based on data provided by the Department of Labor, CBO projects that between 4,500 and 5,500 FERS employees return to federal service each year after having spent at least two months receiving FECA benefits. The average amount of time on FECA for these workers is about six months. Based on this information, CBO estimates S. 481 would increase direct spending on retirement benefits by $1 million in 2004, $16 million during the 2004–2008 period, and $68 million during the 2004–2013 period. For the purposes of this cost estimate, CBO assumes the legislation will become effective in October 2003.

Spending subject to appropriation

FERS is financed on an accrual basis with agencies and employees sharing the cost of financing the program. The contribution rate for employees is fixed in law, but the percent of payroll that agencies pay toward FERS is determined by the actuarial costs of the program. Increasing FERS benefits would cause the program's actuarial costs to increase, which could cause agency agency contributions to increase. Any increase in agency retirement contributions would be classified as spending subject to appropriation. However, CBO estimates that the cost increases projected to occur under S. 481 would not be large enough to require a change in agency contribution rates.

Intergovernmental and private-sector impact: S. 481 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Geoffrey Gerhardt; Impact on the private sector; Paige Piper/Bach; Impact on state, local, and tribal governments: Majorie Miller.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VII. CHANGES TO EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III—EMPLOYEES

Subpart G—Insurance and Annuities

CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Subchapter II—Basic Annuity

SEC. 8415. COMPUTATION OF BASIC ANNUITY.

* * * * * * *

【i】 *(k)* In computing an annuity under this subchapter 【5 USCS 8410 et seq.】, 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 an average pay or annuity eligibility under this subchapter 【5 USCS 8410 et seq.】.

(l) 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.

* * * * * * *

SEC. 8422. DEDUCTIONS FROM PAY; CONTRIBUTIONS FOR OTHER SERVICE.

* * * * * * *

(d)(1) Under such regulations as the Office may prescribe, amounts deducted under subsection (a) shall be entered on individual retirement records.

(2) Deposit may not be required for days of unused sick leave credited under section 8415 【(i)】 *(k)*.

○