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117TH CONGRESS
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H. R. 521

To permit disabled law enforcement officers, customs and border protection officers, firefighters, air traffic controllers, nuclear materials couriers, members of the Capitol Police, members of the Supreme Court Police, employees of the Central Intelligence Agency performing intelligence activities abroad or having specialized security requirements, and diplomatic security special agents of the Department of State to receive retirement benefits in the same manner as if they had not been disabled.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2021

Mr. CONNOLLY (for himself, Mr. LANGEVIN, and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on Oversight and Reform, and in addition to the Committees on Intelligence (Permanent Select), and Foreign Affairs, 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

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A BILL

To permit disabled law enforcement officers, customs and border protection officers, firefighters, air traffic controllers, nuclear materials couriers, members of the Capitol Police, members of the Supreme Court Police, employees of the Central Intelligence Agency performing intelligence activities abroad or having specialized security requirements, and diplomatic security special agents of the Department of State to receive retirement benefits in the same manner as if they had not been disabled.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''First Responder Fair Return for Employees on Their Initial Retirement Earned Act of 2021'' or the ''First Responder Fair RETIRE Act''.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) it is in the best national and homeland security interests of the United States for Federal agencies to retain the specialized knowledge and experience of individuals who suffer an injury or illness while serving in a covered position (as defined under the amendments made by this Act); and

(2) Federal agencies should ensure, to the greatest extent possible, that an individual who can no longer carry out the duties of a covered position, and is reappointed to a position in the civil service that is not a covered position, is reappointed within the same Federal agency, in the same geographic location, and at a level of pay commensurate to the position which the individual held immediately prior to such injury or illness.

SEC. 3. RETIREMENT FOR CERTAIN EMPLOYEES.

(a) CSRS.—Section 8336(c) of title 5, United States Code, is amended by adding at the end the following:

"(3)(A) In this paragraph—

"(i) the term 'affected individual' means an individual covered under this subchapter who—

"(I) is performing service in a covered position;

"(II) while on duty, becomes ill or is injured as a direct result of the performance of such duties before the date on which the individual becomes entitled to an annuity under paragraph (1) of this subsection or subsection (e), (m), or (n), as applicable;

"(III) because of the illness or injury described in subclause (II), is permanently unable to render useful and efficient service in the employee's covered position, as determined by the agency in which the individual was serving when such individual incurred the illness or injury; and

"(IV) is appointed to a position in the civil service that—

"(aa) is not a covered position; and

"(bb) is within an agency that regularly appoints individuals to supervisory or

administrative positions related to the activities of the former covered position of the individual;

''(ii) the term 'covered position' means a position as a law enforcement officer, customs and border protection officer, firefighter, air traffic controller, nuclear materials courier, member of the Capitol Police, or member of the Supreme Court Police.

''(B) Unless an affected individual files an election described in subparagraph (E), creditable service by the affected individual in a position described in subparagraph (A)(i)(IV) shall be treated as creditable service in a covered position for purposes of this chapter and determining the amount to be deducted and withheld from the pay of the affected individual under section 8334.

''(C) Subparagraph (B) shall only apply if the affected employee transitions to a position described in subparagraph (A)(i)(IV) without a break in service exceeding 3 days.

''(D) The service of an affected individual shall no longer be eligible for treatment under subparagraph (B) if such service occurs after the individual—

"(i) is transferred to a supervisory or administrative position related to the activities of the former covered position of the individual; or

"(ii) meets the age and service requirements that would subject the individual to mandatory separation under section 8335 if such individual had remained in the former covered position.

"(E) In accordance with procedures established by the Director of the Office of Personnel Management, an affected individual may file an election to have any creditable service performed by the affected individual treated in accordance with this chapter without regard to subparagraph (B).

"(F) Nothing in this paragraph shall be construed to apply to such affected individual any other pay-related laws or regulations applicable to a covered position.".

(b) FERS.—

(1) IN GENERAL.—Section 8412(d) of title 5, United States Code, is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(B) by inserting "(1)" before "An employee"; and

(C) by adding at the end the following:

"(2)(A) In this paragraph—

"(i) the term 'affected individual' means an individual covered under this chapter who—

"(I) is performing service in a covered position;

"(II) while on duty, becomes ill or is injured as a direct result of the performance of such duties before the date on which the individual becomes entitled to an annuity under paragraph (1) of this subsection or subsection (e), as applicable;

"(III) because of the illness or injury described in subclause (II), is permanently unable to render useful and efficient service in the employee's covered position, as determined by the agency in which the individual was serving when such individual incurred the illness or injury; and

"(IV) is appointed to a position in the civil service that—

"(aa) is not a covered position; and

"(bb) is within an agency that regularly appoints individuals to supervisory or administrative positions related to the activities of the former covered position of the individual;

"(ii) the term 'covered position' means a position as a law enforcement officer, customs and border protection officer, firefighter, air traffic controller, nuclear materials courier, member of the Capitol Police, or member of the Supreme Court Police.

"(B) Unless an affected individual files an election described in subparagraph (E), creditable service by the affected individual in a position described in subparagraph (A)(i)(IV) shall be treated as creditable service in a covered position for purposes of this chapter and determining the amount to be deducted and withheld from the pay of the affected individual under section 8422.

"(C) Subparagraph (B) shall only apply if the affected employee transitions to a position described in subparagraph (A)(i)(IV) without a break in service exceeding 3 days.

"(D) The service of an affected individual shall no longer be eligible for treatment under subparagraph (B) if such service occurs after the individual—

"(i) is transferred to a supervisory or administrative position related to the activities of the former covered position of the individual; or

"(ii) meets the age and service requirements that would subject the individual to mandatory sepa-

ration under section 8425 if such individual had remained in the former covered position.

"(E) In accordance with procedures established by the Director of the Office of Personnel Management, an affected individual may file an election to have any creditable service performed by the affected individual treated in accordance with this chapter without regard to subparagraph (B).

"(F) Nothing in this paragraph shall be construed to apply to such affected individual any other pay-related laws or regulations applicable to a covered position.".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Chapter 84 of title 5, United States Code, is amended—

(i) in section 8414(b)(3), by inserting "(1)" after "subsection (d)";

(ii) in section 8415—

(I) in subsection (e), in the matter preceding paragraph (1), by inserting "(1)" after "subsection (d)"; and

(II) in subsection (h)(2)(A), by striking "(d)(2)" and inserting "(d)(1)(B)";

(iii) in section 8421(a)(1), by inserting "(1)" after "(d)";

(iv) in section 8421a(b)(4)(B)(ii), by inserting "(1)" after "section 8412(d)";

(v) in section 8425, by inserting "(1)" after "section 8412(d)" each place it appears; and

(vi) in section 8462(c)(3)(B)(ii), by inserting "(1)" after "subsection (d)".

(B) Title VIII of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.) is amended—

(i) in section 805(d)(5) (22 U.S.C. 4045(d)(5)), by inserting "(1)" after "or 8412(d)"; and

(ii) in section 812(a)(2)(B) (22 U.S.C. 4052(a)(2)(B)), by inserting "(1)" after "or 8412(d)".

(c) CIA EMPLOYEES.—Section 302 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2152) is amended by adding at the end the following:

"(d) EMPLOYEES DISABLED ON DUTY.—

"(1) DEFINITIONS.—In this subsection—

"(A) the term 'affected employee' means an employee of the Agency covered under sub-

chapter II of chapter 84 of title 5, United States Code, who—

"(i) is performing service in a position designated under subsection (a);

"(ii) while on duty in the position designated under subsection (a), becomes ill or is injured as a direct result of the performance of such duties before the date on which the employee becomes entitled to an annuity under section 233 of this Act or section 8412(d)(1) of title 5, United States Code;

"(iii) because of the illness or injury described in clause (ii), is permanently unable to render useful and efficient service in the employee's covered position, as determined by the Director; and

"(iv) is appointed to a position in the civil service that is not a covered position but is within the Agency; and

"(B) the term 'covered position' means a position as—

"(i) a law enforcement officer described in section 8331(20) or 8401(17) of title 5, United States Code;

"(ii) a customs and border protection officer described in section 8331(31) or 8401(36) of title 5, United States Code;

"(iii) a firefighter described in section 8331(21) or 8401(14) of title 5, United States Code;

"(iv) an air traffic controller described in section 8331(30) or 8401(35) of title 5, United States Code;

"(v) a nuclear materials courier described in section 8331(27) or 8401(33) of title 5, United States Code;

"(vi) a member of the United States Capitol Police;

"(vii) a member of the Supreme Court Police;

"(viii) an affected employee; or

"(ix) a special agent described in section 804(15) of the Foreign Service Act of 1980 (22 U.S.C. 4044(15)).

"(2) TREATMENT OF SERVICE AFTER DISABILITY.—Unless an affected employee files an election described in paragraph (3), creditable service by the affected employee in a position described in paragraph (1)(A)(iv) shall be treated as creditable

service in a covered position for purposes of this Act and chapter 84 of title 5, United States Code, including eligibility for an annuity under section 233 of this Act or 8412(d)(1) of title 5, United States Code, and determining the amount to be deducted and withheld from the pay of the affected employee under section 8422 of title 5, United States Code.

"(3) BREAK IN SERVICE.—Paragraph (2) shall only apply if the affected employee transitions to a position described in paragraph (1)(A)(iv) without a break in service exceeding 3 days.

"(4) LIMITATION ON TREATMENT OF SERVICE.—The service of an affected employee shall no longer be eligible for treatment under paragraph (2) if such service occurs after the employee is transferred to a supervisory or administrative position related to the activities of the former covered position of the employee.

"(5) OPT OUT.—An affected employee may file an election to have any creditable service performed by the affected employee treated in accordance with chapter 84 of title 5, United States Code, without regard to paragraph (2).".

(d) FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM.—Section 806(a)(6) of the Foreign Serv-

ice Act of 1980 (22 U.S.C. 4046(a)(6)) is amended by adding at the end the following:

"(D)(i) In this subparagraph—

"(I) the term 'affected special agent' means an individual covered under this subchapter who—

"(aa) is performing service as a special agent;

"(bb) while on duty as a special agent, becomes ill or is injured as a direct result of the performance of such duties before the date on which the individual becomes entitled to an annuity under section 811;

"(cc) because of the illness or injury described in item (bb), is permanently unable to render useful and efficient service in the employee's covered position, as determined by the Secretary; and

"(dd) is appointed to a position in the Foreign Service that is not a covered position; and

"(II) the term 'covered position' means a position as—

"(aa) a law enforcement officer described in section 8331(20) or 8401(17) of title 5, United States Code;

"(bb) a customs and border protection officer described in section 8331(31) or 8401(36) of title 5, United States Code;

"(cc) a firefighter described in section 8331(21) or 8401(14) of title 5, United States Code;

"(dd) an air traffic controller described in section 8331(30) or 8401(35) of title 5, United States Code;

"(ee) a nuclear materials courier described in section 8331(27) or 8401(33) of title 5, United States Code;

"(ff) a member of the United States Capitol Police;

"(gg) a member of the Supreme Court Police;

"(hh) an employee of the Agency designated under section 302(a) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2152(a)); or

"(ii) a special agent.

"(ii) Unless an affected special agent files an election described in clause (iv), creditable service by the affected special agent in a position described in clause (i)(I)(dd) shall be treated as creditable service as a special agent

for purposes of this subchapter, including determining the amount to be deducted and withheld from the pay of the individual under section 805.

''(iii) Clause (ii) shall only apply if the special agent transitions to a position described in clause (i)(I)(dd) without a break in service exceeding 3 days.

''(iv) The service of an affected employee shall no longer be eligible for treatment under clause (ii) if such service occurs after the employee is transferred to a supervisory or administrative position related to the activities of the former covered position of the employee.

''(v) In accordance with procedures established by the Secretary, an affected special agent may file an election to have any creditable service performed by the affected special agent treated in accordance with this subchapter, without regard to clause (ii).''.

(e) IMPLEMENTATION.—

(1) OFFICE OF PERSONNEL MANAGEMENT.—Not later than 1 year after the date of enactment of this Act, the Director of the Office of Personnel Management shall promulgate regulations to carry out the amendments made by subsections (a) and (b).

(2) CIA EMPLOYEES.—The Director of the Central Intelligence Agency shall promulgate regula-

tions to carry out the amendment made by subsection (c).

(3) FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM.—The Secretary of State shall promulgate regulations to carry out the amendment made by subsection (d).

(4) AGENCY CERTIFICATION.—The regulations promulgated to carry out the amendments made by this Act shall include a requirement that the head of the agency at which an affected employee or special agent (as the case may be) incurred the applicable illness or injury certifies that such illness or injury—

(A) was incurred in the course of the employee's or special agent's duties; and

(B) permanently precludes the employee or special agent from rendering useful and efficient service in the covered position but would not preclude the employee or special agent from continuing to serve in the Federal service.

(5) AGENCY REAPPOINTMENT.—The regulations promulgated to carry out the amendments made by this Act shall ensure that, to the greatest extent possible, the head of each agency appoints affected employees or special agents to supervisory or

administrative positions related to the activities of the former covered position of the employee or special agent.

(6) TREATMENT OF SERVICE.—The regulations promulgated to carry out the amendments made by this Act shall ensure that the creditable service of an affected employee or special agent (as the case may be) that is not in a covered position pursuant to an election made under such amendments shall be treated as the same type of service as the covered position in which the employee or agent suffered the qualifying illness or injury.

(f) EFFECTIVE DATE; APPLICABILITY.—The amendments made by this Act—

(1) shall take effect on the date of enactment of this Act; and

(2) shall apply to an individual who suffers an illness or injury described in section 8336(c)(3)(A)(i)(II) or section 8412(d)(2)(A)(i)(II) of title 5, United States Code, as amended by this section, section 302(d)(1)(A)(ii) of the Central Intelligence Agency Retirement Act, as amended by this section, or section 806(a)(6)(D)(i)(I)(bb) of the Foreign Service Act of 1980, as amended by this sec-

1 tion, on or after the date that is 2 years after the
2 date of enactment of this Act.

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