

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 521  
OFFERED BY MRS. CAROLYN B. MALONEY OF  
NEW YORK**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “First Responder Fair  
3 Return for Employees on Their Initial Retirement Earned  
4 Act” or the “First Responder Fair RETIRE Act”.

**5 SEC. 2. SENSE OF CONGRESS.**

6 It is the sense of Congress that—

7 (1) it is in the best national and homeland se-  
8 curity interests of the United States for Federal  
9 agencies to retain the specialized knowledge and ex-  
10 perience of individuals who suffer an injury or illness  
11 while serving in a covered position (as defined under  
12 the amendments made by this Act); and

13 (2) Federal agencies should ensure, to the  
14 greatest extent possible, that an individual who can  
15 no longer carry out the duties of a covered position,  
16 and is reappointed to a position in the civil service  
17 that is not a covered position, is reappointed within

1 the same Federal agency, in the same geographic lo-  
2 cation, and at a level of pay commensurate to the  
3 position which the individual held immediately prior  
4 to such injury or illness.

5 **SEC. 3. RETIREMENT FOR CERTAIN EMPLOYEES.**

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

8 “(3)(A) In this paragraph—

9 “(i) the term ‘affected individual’ means an in-  
10 dividual covered under this subchapter who—

11 “(I) is performing service in a covered po-  
12 sition;

13 “(II) while on duty, becomes ill or is in-  
14 jured as a direct result of the performance of  
15 such duties before the date on which the indi-  
16 vidual becomes entitled to an annuity under  
17 paragraph (1) of this subsection or subsection  
18 (e), (m), or (n), as applicable;

19 “(III) because of the illness or injury de-  
20 scribed in subclause (II), is permanently unable  
21 to render useful and efficient service in the em-  
22 ployee’s covered position, as determined by the  
23 agency in which the individual was serving  
24 when such individual incurred the illness or in-  
25 jury; and

1                   “(IV) is appointed to a position in the civil  
2                   service that—

3                   “(aa) is not a covered position; and

4                   “(bb) is within an agency that regu-  
5                   larly appoints individuals to supervisory or  
6                   administrative positions related to the ac-  
7                   tivities of the former covered position of  
8                   the individual;

9                   “(ii) the term ‘covered position’ means a posi-  
10                  tion as a law enforcement officer, customs and bor-  
11                  der protection officer, firefighter, air traffic con-  
12                  troller, nuclear materials courier, member of the  
13                  Capitol Police, or member of the Supreme Court Po-  
14                  lice.

15                  “(B) Unless an affected individual files an election  
16                  described in subparagraph (E), creditable service by the  
17                  affected individual in a position described in subparagraph  
18                  (A)(i)(IV) shall be treated as creditable service in a cov-  
19                  ered position for purposes of this chapter and determining  
20                  the amount to be deducted and withheld from the pay of  
21                  the affected individual under section 8334.

22                  “(C) Subparagraph (B) shall only apply if the af-  
23                  fected employee transitions to a position described in sub-  
24                  paragraph (A)(i)(IV) without a break in service exceeding  
25                  3 days.

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

4                   “(i) is transferred to a supervisory or adminis-  
5 trative position related to the activities of the former  
6 covered position of the individual; or

7                   “(ii) meets the age and service requirements  
8 that would subject the individual to mandatory sepa-  
9 ration under section 8335 if such individual had re-  
10 mained in the former covered position.

11           “(E) In accordance with procedures established by  
12 the Director of the Office of Personnel Management, an  
13 affected individual may file an election to have any cred-  
14 itable service performed by the affected individual treated  
15 in accordance with this chapter without regard to subpara-  
16 graph (B).

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

20           (b) FERS.—

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

23                           (A) by redesignating paragraphs (1) and

24                           (2) as subparagraphs (A) and (B), respectively;

1 (B) by inserting “(1)” before “An em-  
2 ployee”; and

3 (C) by adding at the end the following:

4 “(2)(A) In this paragraph—

5 “(i) the term ‘affected individual’ means an in-  
6 dividual covered under this chapter who—

7 “(I) is performing service in a covered po-  
8 sition;

9 “(II) while on duty, becomes ill or is in-  
10 jured as a direct result of the performance of  
11 such duties before the date on which the indi-  
12 vidual becomes entitled to an annuity under  
13 paragraph (1) of this subsection or subsection  
14 (e), as applicable;

15 “(III) because of the illness or injury de-  
16 scribed in subclause (II), is permanently unable  
17 to render useful and efficient service in the em-  
18 ployee’s covered position, as determined by the  
19 agency in which the individual was serving  
20 when such individual incurred the illness or in-  
21 jury; and

22 “(IV) is appointed to a position in the civil  
23 service that—

24 “(aa) is not a covered position; and

1                   “(bb) is within an agency that regu-  
2                   larly appoints individuals to supervisory or  
3                   administrative positions related to the ac-  
4                   tivities of the former covered position of  
5                   the individual;

6                   “(ii) the term ‘covered position’ means a posi-  
7                   tion as a law enforcement officer, customs and bor-  
8                   der protection officer, firefighter, air traffic con-  
9                   troller, nuclear materials courier, member of the  
10                  Capitol Police, or member of the Supreme Court Po-  
11                  lice.

12                  “(B) Unless an affected individual files an election  
13                  described in subparagraph (E), creditable service by the  
14                  affected individual in a position described in subparagraph  
15                  (A)(i)(IV) shall be treated as creditable service in a cov-  
16                  ered position for purposes of this chapter and determining  
17                  the amount to be deducted and withheld from the pay of  
18                  the affected individual under section 8422.

19                  “(C) Subparagraph (B) shall only apply if the af-  
20                  fected employee transitions to a position described in sub-  
21                  paragraph (A)(i)(IV) without a break in service exceeding  
22                  3 days.

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

1           “(i) is transferred to a supervisory or adminis-  
2           trative position related to the activities of the former  
3           covered position of the individual; or

4           “(ii) meets the age and service requirements  
5           that would subject the individual to mandatory sepa-  
6           ration under section 8425 if such individual had re-  
7           mained in the former covered position.

8           “(E) In accordance with procedures established by  
9           the Director of the Office of Personnel Management, an  
10          affected individual may file an election to have any cred-  
11          itable service performed by the affected individual treated  
12          in accordance with this chapter without regard to subpara-  
13          graph (B).

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

17                   (2) TECHNICAL AND CONFORMING AMEND-  
18                   MENTS.—

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

21                           (i) in section 8414(b)(3), by inserting  
22                           “(1)” after “subsection (d)”;

23                           (ii) in section 8415—

24                                   (I) in subsection (e), in the mat-  
25                                   ter preceding paragraph (1), by in-

1                   serting “(1)” after “subsection (d)”;

2                   and

3                   (II) in subsection (h)(2)(A), by

4                   striking “(d)(2)” and inserting

5                   “(d)(1)(B)”;

6                   (iii) in section 8421(a)(1), by insert-

7                   ing “(1)” after “(d)”;

8                   (iv) in section 8421a(b)(4)(B)(ii), by

9                   inserting “(1)” after “section 8412(d)”;

10                  (v) in section 8425, by inserting “(1)”

11                  after “section 8412(d)” each place it ap-

12                  pears; and

13                  (vi) in section 8462(c)(3)(B)(ii), by

14                  inserting “(1)” after “subsection (d)”.

15                  (B) Title VIII of the Foreign Service Act

16                  of 1980 (22 U.S.C. 4041 et seq.) is amended—

17                  (i) in section 805(d)(5) (22 U.S.C.

18                  4045(d)(5)), by inserting “(1)” after “or

19                  8412(d)”;

20                  (ii) in section 812(a)(2)(B) (22

21                  U.S.C. 4052(a)(2)(B)), by inserting “(1)”

22                  after “or 8412(d)”.

23                  (c) CIA EMPLOYEES.—Section 302 of the Central In-

24                  telligence Agency Retirement Act (50 U.S.C. 2152) is

25                  amended by adding at the end the following:



1       “(d) EMPLOYEES DISABLED ON DUTY.—

2               “(1) DEFINITIONS.—In this subsection—

3                       “(A) the term ‘affected employee’ means  
4                       an employee of the Agency covered under sub-  
5                       chapter II of chapter 84 of title 5, United  
6                       States Code, who—

7                               “(i) is performing service in a position  
8                               designated under subsection (a);

9                               “(ii) while on duty in the position des-  
10                              ignated under subsection (a), becomes ill  
11                              or is injured as a direct result of the per-  
12                              formance of such duties before the date on  
13                              which the employee becomes entitled to an  
14                              annuity under section 233 of this Act or  
15                              section 8412(d)(1) of title 5, United States  
16                              Code;

17                              “(iii) because of the illness or injury  
18                              described in clause (ii), is permanently un-  
19                              able to render useful and efficient service  
20                              in the employee’s covered position, as de-  
21                              termined by the Director; and

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

1           “(B) the term ‘covered position’ means a  
2           position as—

3                   “(i) a law enforcement officer de-  
4                   scribed in section 8331(20) or 8401(17) of  
5                   title 5, United States Code;

6                   “(ii) a customs and border protection  
7                   officer described in section 8331(31) or  
8                   8401(36) of title 5, United States Code;

9                   “(iii) a firefighter described in section  
10                  8331(21) or 8401(14) of title 5, United  
11                  States Code;

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

15                  “(v) a nuclear materials courier de-  
16                  scribed in section 8331(27) or 8401(33) of  
17                  title 5, United States Code;

18                  “(vi) a member of the United States  
19                  Capitol Police;

20                  “(vii) a member of the Supreme Court  
21                  Police;

22                  “(viii) an affected employee; or

23                  “(ix) a special agent described in sec-  
24                  tion 804(15) of the Foreign Service Act of  
25                  1980 (22 U.S.C. 4044(15)).

1           “(2) TREATMENT OF SERVICE AFTER DIS-  
2 ABILITY.—Unless an affected employee files an elec-  
3 tion described in paragraph (3), creditable service by  
4 the affected employee in a position described in  
5 paragraph (1)(A)(iv) shall be treated as creditable  
6 service in a covered position for purposes of this Act  
7 and chapter 84 of title 5, United States Code, in-  
8 cluding eligibility for an annuity under section 233  
9 of this Act or 8412(d)(1) of title 5, United States  
10 Code, and determining the amount to be deducted  
11 and withheld from the pay of the affected employee  
12 under section 8422 of title 5, United States Code.

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

17           “(4) LIMITATION ON TREATMENT OF SERV-  
18 ICE.—The service of an affected employee shall no  
19 longer be eligible for treatment under paragraph (2)  
20 if such service occurs after the employee is trans-  
21 ferred to a supervisory or administrative position re-  
22 lated to the activities of the former covered position  
23 of the employee.

24           “(5) OPT OUT.—An affected employee may file  
25 an election to have any creditable service performed

1 by the affected employee treated in accordance with  
2 chapter 84 of title 5, United States Code, without  
3 regard to paragraph (2).”.

4 (d) FOREIGN SERVICE RETIREMENT AND DIS-  
5 ABILITY SYSTEM.—Section 806(a)(6) of the Foreign Serv-  
6 ice Act of 1980 (22 U.S.C. 4046(a)(6)) is amended by  
7 adding at the end the following:

8 “(D)(i) In this subparagraph—

9 “(I) the term ‘affected special agent’ means an  
10 individual covered under this subchapter who—

11 “(aa) is performing service as a special  
12 agent;

13 “(bb) while on duty as a special agent, be-  
14 comes ill or is injured as a direct result of the  
15 performance of such duties before the date on  
16 which the individual becomes entitled to an an-  
17 nuity under section 811;

18 “(cc) because of the illness or injury de-  
19 scribed in item (bb), is permanently unable to  
20 render useful and efficient service in the em-  
21 ployee’s covered position, as determined by the  
22 Secretary; and

23 “(dd) is appointed to a position in the For-  
24 eign Service that is not a covered position; and

1           “(II) the term ‘covered position’ means a posi-  
2           tion as—

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

6                   “(bb) a customs and border protection offi-  
7                   cer described in section 8331(31) or 8401(36)  
8                   of title 5, United States Code;

9                   “(cc) a firefighter described in section  
10                  8331(21) or 8401(14) of title 5, United States  
11                  Code;

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

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

18                  “(ff) a member of the United States Cap-  
19                  itol Police;

20                  “(gg) a member of the Supreme Court Po-  
21                  lice;

22                  “(hh) an employee of the Agency des-  
23                  ignated under section 302(a) of the Central In-  
24                  telligence Agency Retirement Act (50 U.S.C.  
25                  2152(a)); or

1                   “(ii) a special agent.

2                   “(ii) Unless an affected special agent files an election  
3 described in clause (iv), creditable service by the affected  
4 special agent in a position described in clause (i)(I)(dd)  
5 shall be treated as creditable service as a special agent  
6 for purposes of this subchapter, including determining the  
7 amount to be deducted and withheld from the pay of the  
8 individual under section 805.

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

12                   “(iv) The service of an affected employee shall no  
13 longer be eligible for treatment under clause (ii) if such  
14 service occurs after the employee is transferred to a super-  
15 visory or administrative position related to the activities  
16 of the former covered position of the employee.

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

22                   (e) IMPLEMENTATION.—

23                   (1) OFFICE OF PERSONNEL MANAGEMENT.—

24                   Not later than 1 year after the date of enactment  
25 of this Act, the Director of the Office of Personnel

1 Management shall promulgate regulations to carry  
2 out the amendments made by subsections (a) and  
3 (b).

4 (2) CIA EMPLOYEES.—The Director of the  
5 Central Intelligence Agency shall promulgate regula-  
6 tions to carry out the amendment made by sub-  
7 section (c).

8 (3) FOREIGN SERVICE RETIREMENT AND DIS-  
9 ABILITY SYSTEM.—The Secretary of State shall pro-  
10 mulgate regulations to carry out the amendment  
11 made by subsection (d).

12 (4) AGENCY CERTIFICATION.—The regulations  
13 promulgated to carry out the amendments made by  
14 this Act shall include a requirement that the head  
15 of the agency at which an affected employee or spe-  
16 cial agent (as the case may be) incurred the applica-  
17 ble illness or injury certifies that such illness or in-  
18 jury—

19 (A) was incurred in the course of the em-  
20 ployee's or special agent's duties; and

21 (B) permanently precludes the employee or  
22 special agent from rendering useful and effi-  
23 cient service in the covered position but would  
24 not preclude the employee or special agent from  
25 continuing to serve in the Federal service.

1           (5) AGENCY REAPPOINTMENT.—The regula-  
2           tions promulgated to carry out the amendments  
3           made by this Act shall ensure that, to the greatest  
4           extent possible, the head of each agency appoints af-  
5           fected employees or special agents to supervisory or  
6           administrative positions related to the activities of  
7           the former covered position of the employee or spe-  
8           cial agent.

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

18          (f) EFFECTIVE DATE; APPLICABILITY.—The amend-  
19          ments made by this Act—

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

22                (2) shall apply to an individual who suffers an  
23                illness or injury described in section  
24                8336(c)(3)(A)(i)(II) or section 8412(d)(2)(A)(i)(II)  
25                of title 5, United States Code, as amended by this



1 section, section 302(d)(1)(A)(ii) of the Central Intel-  
2 ligence Agency Retirement Act, as amended by this  
3 section, or section 806(a)(6)(D)(i)(I)(bb) of the For-  
4 eign Service Act of 1980, as amended by this sec-  
5 tion, on or after the date that is 2 years after the  
6 date of enactment of this Act.

