

FEDERAL RETIREMENT COVERAGE CORRECTIONS ACT

JULY 14, 1998.—Ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government Reform and Oversight, submitted the following

R E P O R T

[To accompany H.R. 3249]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 3249) to provide for the rectification of certain retirement coverage errors affecting Federal employees, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Federal Retirement Coverage Corrections Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Applicability.
- Sec. 4. Restriction relating to future corrections.
- Sec. 5. Irrevocability of elections.

## TITLE I—DESCRIPTION OF RETIREMENT COVERAGE ERRORS TO WHICH THIS ACT APPLIES AND MEASURES FOR THEIR RECTIFICATION

## Subtitle A—Employee Who Should Have Been FERS Covered, But Who Was Erroneously CSRS Covered or CSRS-Offset Covered Instead

- Sec. 101. Elections.
- Sec. 102. Effect of an election to be transferred from CSRS to FERS to correct a retirement coverage error.
- Sec. 103. Effect of an election to be transferred from CSRS-Offset to FERS to correct a retirement coverage error.
- Sec. 104. Effect of an election to be transferred from CSRS to CSRS-Offset to correct a retirement coverage error.
- Sec. 105. Effect of an election to be restored (or transferred) to CSRS-Offset after having been corrected to FERS from CSRS-Offset (or CSRS).

## Subtitle B—Employee Who Should Have Been FERS Covered, CSRS-Offset Covered, or CSRS Covered, But Who Was Erroneously Social Security-Only Covered Instead

- Sec. 111. Elections.
- Sec. 112. Effect of an election to become FERS covered to correct the retirement coverage error.
- Sec. 113. Effect of an election to become CSRS-Offset covered to correct the retirement coverage error.
- Sec. 114. Effect of an election to become CSRS covered to correct the retirement coverage error.

## Subtitle C—Employee Who Should Have Been Social Security-Only Covered, But Who Was Erroneously FERS Covered, CSRS-Offset Covered, or CSRS Covered Instead

- Sec. 121. Uncorrected error: employee who should be Social Security-Only covered, but who is erroneously FERS covered instead.
- Sec. 122. Uncorrected error: employee who should be Social Security-Only covered, but who is erroneously CSRS-Offset covered instead.
- Sec. 123. Uncorrected error: employee who should be Social Security-Only covered, but who is erroneously CSRS covered instead.
- Sec. 124. Corrected error: situations under sections 121–123.
- Sec. 125. Vested employees excepted from automatic exclusion.

## Subtitle D—Employee Who Should Have Been CSRS Covered or CSRS-Offset Covered, But Who Was Erroneously FERS Covered Instead

- Sec. 131. Elections.
- Sec. 132. Effect of an election to be transferred from FERS to CSRS to correct a retirement coverage error.
- Sec. 133. Effect of an election to be transferred from FERS to CSRS-Offset to correct a retirement coverage error.
- Sec. 134. Effect of an election to be restored to FERS after having been corrected to CSRS.
- Sec. 135. Effect of an election to be restored to FERS after having been corrected to CSRS-Offset.
- Sec. 136. Disqualification of certain individuals to whom same election was previously available.

## Subtitle E—Employee Who Should Have Been CSRS-Offset Covered, But Who Was Erroneously CSRS Covered Instead

- Sec. 141. Automatic transfer to CSRS-Offset.
- Sec. 142. Effect of transfer.

## Subtitle F—Employee Who Should Have Been CSRS Covered, But Who Was Erroneously CSRS-Offset Covered Instead

- Sec. 151. Elections.
- Sec. 152. Effect of an election to be transferred from CSRS-Offset to CSRS to correct the retirement coverage error.
- Sec. 153. Effect of an election to be restored to CSRS-Offset after having been corrected to CSRS.

## Subtitle G—Additional Provisions Relating to Government Agencies

- Sec. 161. Repayment required in certain situations.
- Sec. 162. Equitable sharing of amounts payable to or from the Government if more than one agency involved.
- Sec. 163. Provisions relating to the original responsible agency.

## TITLE II—GENERAL PROVISIONS

- Sec. 201. Identification and notification requirements.
- Sec. 202. Individual appeal rights.
- Sec. 203. Information to be furnished by Government agencies to authorities administering this Act.
- Sec. 204. Social Security records.
- Sec. 205. Conforming amendments respecting Social Security coverage and OASDI taxes.
- Sec. 206. Regulations.
- Sec. 207. All elections to be approved by OPM.
- Sec. 208. Additional transfers to OASDI trust funds in certain cases.
- Sec. 209. Technical and conforming amendments.

## TITLE III—OTHER PROVISIONS

- Sec. 301. Provisions to permit continued conformity of other Federal retirement systems.
- Sec. 302. Certain amounts payable out of the general fund of the Treasury or CSRDF.
- Sec. 303. Individual right of action preserved for amounts not otherwise provided for under this Act.
- Sec. 304. Extension of open enrollment period to employees under the Foreign Service Retirement and Disability System.

## TITLE IV—TAX PROVISIONS

Sec. 401. Tax provisions.

**SEC. 2. DEFINITIONS.**

For purposes of this Act:

- (1) CSRS.—The term “CSRS” means the Civil Service Retirement System.
- (2) CSRDF.—The term “CSRDF” means the Civil Service Retirement and Disability Fund.
- (3) CSRS COVERED.—The term “CSRS covered”, with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, other than those that apply only with respect to an individual described in section 8402(b)(2) of such title.
- (4) CSRS-OFFSET COVERED.—The term “CSRS-Offset covered”, with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, that apply with respect to an individual described in section 8402(b)(2) of such title.
- (5) EMPLOYEE.—The term “employee” means any individual serving in an appointive or elective office or position in the executive, legislative, or judicial branch of the Government who, by virtue of that service, is permitted or required to be CSRS covered, CSRS-Offset covered, FERS covered, or Social Security-Only covered.
- (6) EXECUTIVE DIRECTOR.—The term “Executive Director of the Federal Retirement Thrift Investment Board” or “Executive Director” means the Executive Director appointed under section 8474 of title 5, United States Code.
- (7) FERS.—The term “FERS” means the Federal Employees’ Retirement System.
- (8) FERS COVERED.—The term “FERS covered”, with respect to any service, means service that is subject to chapter 84 of title 5, United States Code.
- (9) GOVERNMENT.—The term “Government” has the meaning given such term by section 8331(7) of title 5, United States Code.
- (10) OASDI TAXES.—The term “OASDI taxes” means the OASDI employee tax and the OASDI employer tax.
- (11) OASDI EMPLOYEE TAX.—The term “OASDI employee tax” means the tax imposed under section 3101(a) of the Internal Revenue Code of 1986 (relating to Old-Age, Survivors and Disability Insurance).
- (12) OASDI EMPLOYER TAX.—The term “OASDI employer tax” means the tax imposed under section 3111(a) of the Internal Revenue Code of 1986 (relating to Old-Age, Survivors and Disability Insurance).
- (13) OASDI TRUST FUNDS.—The term “OASDI trust funds” means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.
- (14) PERIOD OF ERRONEOUS COVERAGE.—The term “period of erroneous coverage” means, in the case of a retirement coverage error, the period throughout which retirement coverage is in effect pursuant to such error (or would have been in effect, but for such error).
- (15) RETIREMENT COVERAGE DETERMINATION.—The term “retirement coverage determination” means a determination by an employee or agent of the Government as to whether a particular type of Government service is CSRS covered, CSRS-Offset covered, FERS covered, or Social Security-Only covered.
- (16) RETIREMENT COVERAGE ERROR.—The term “retirement coverage error” means a retirement coverage determination that, as a result of any error, misrepresentation, or inaction on the part of an employee or agent of the Government (including an error as described in section 163(b)(2)), causes an individual erroneously to be enrolled or not enrolled in a retirement system, as further described in the applicable subtitle of title I.
- (17) SOCIAL SECURITY-ONLY COVERED.—The term “Social Security-Only covered”, with respect to any service, means Government service that constitutes employment under section 210 of the Social Security Act (42 U.S.C. 410), and that—
  - (A) is subject to OASDI taxes; but
  - (B) is not subject to any retirement system for Government employees (disregarding title II of the Social Security Act).
- (18) THRIFT SAVINGS FUND.—The term “Thrift Savings Fund” means the Thrift Savings Fund established under section 8437 of title 5, United States Code.

**SEC. 3. APPLICABILITY.**

- (a) IN GENERAL.—Subject to subsection (b), this Act shall apply with respect to any retirement coverage error that occurs before, on, or after the date of enactment

of this Act, excluding any error corrected within 1 year after the date on which it occurs.

(b) **LIMITATION.**—Nothing in this Act shall affect any retirement coverage or treatment accorded with respect to any individual in connection with any period beginning before the first day of the first applicable pay period beginning on or after January 1, 1984.

**SEC. 4. RESTRICTION RELATING TO FUTURE CORRECTIONS.**

(a) **IN GENERAL.**—Except as otherwise provided in this Act, any individual who, on or after the date of enactment of this Act, becomes or remains affected by a retirement coverage error may not be excluded from or made subject to any retirement system for the sole purpose of correcting such error.

(b) **COORDINATION WITH OTHER LAWS.**—

(1) **IN GENERAL.**—Nothing in this Act shall be considered to preclude an election under the Federal Employees' Retirement System Open Enrollment Act of 1997 (Public Law 105-61; 111 Stat. 1318) or any other voluntary retirement coverage election authorized by statute.

(2) **REGULATIONS.**—The Office of Personnel Management shall prescribe any regulations which may be necessary to apply this Act in the case of any individual who changes retirement coverage pursuant to a voluntary election made other than under this Act.

**SEC. 5. IRREVOCABILITY OF ELECTIONS.**

Any election made (or deemed to have been made) by an employee or any other individual under this Act shall be irrevocable.

## **TITLE I—DESCRIPTION OF RETIREMENT COVERAGE ERRORS TO WHICH THIS ACT APPLIES AND MEASURES FOR THEIR RECTIFICATION**

### **Subtitle A—Employee Who Should Have Been FERS Covered, But Who Was Erroneously CSRS Covered or CSRS-Offset Covered Instead**

**SEC. 101. ELECTIONS.**

(a) **APPLICABILITY.**—This subtitle shall apply in the case of any employee who—

(1) should be (or should have been) FERS covered but, as a result of a retirement coverage error, is (or was) CSRS covered instead; or

(2) should be (or should have been) FERS covered but, as a result of a retirement coverage error, is (or was) CSRS-Offset covered instead.

(b) **UNCORRECTED ERROR.**—If, at the time of making an election under this section, the retirement coverage error described in paragraph (1) or (2) of subsection (a) (as applicable) has not been corrected, the employee affected by such error may elect—

(1) to be FERS covered instead; or

(2) to remain (or instead become) CSRS-Offset covered.

(c) **CORRECTED ERROR.**—If, at the time of making an election under this section, the retirement coverage error described in paragraph (1) or (2) of subsection (a) (as applicable) has been corrected, the employee affected by such error may elect—

(1) to be CSRS-Offset covered instead; or

(2) to remain FERS covered.

(d) **DEFAULT RULE.**—

(1) **IN GENERAL.**—If the employee is given written notice in accordance with section 201 as to the availability of an election under this section, but does not make any such election within the 6-month period beginning on the date on which such notice is so given, the option under subsection (b)(2) or (c)(2), as applicable, shall be deemed to have been elected on the last day of such period.

(2) **CSRS NOT AN OPTION.**—Nothing in this section shall be considered to afford an employee the option of becoming or remaining CSRS covered.

(e) **RETROACTIVE EFFECT.**—An election under this section (including an election by default, and an election to remain covered by the retirement system by which the electing individual is covered as of the date of the election) shall be effective retro-

active to the effective date of the retirement coverage error (as referred to in subsection (a)) to which such election relates.

**SEC. 102. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM CSRS TO FERS TO CORRECT A RETIREMENT COVERAGE ERROR.**

(a) **APPLICABILITY.**—This section shall apply in the case of any employee affected by an error described in section 101(a)(1) who elects the option under section 101(b)(1).

(b) **DISPOSITION OF CONTRIBUTIONS TO THE CSRDF.**—

(1) **EMPLOYEE CONTRIBUTIONS.**—

(A) **TRANSFER TO OASDI TRUST FUNDS.**—There shall be transferred from the CSRDF to the OASDI trust funds an amount—

(i) equal to the amount of the OASDI employee tax that should have been deducted and withheld from the Federal wages of the employee for the period of erroneous coverage involved; but

(ii) not to exceed the amount of the employee's lump-sum credit attributable to the period of erroneous coverage involved.

(B) **RULE IF THERE ARE EXCESS CSRDF CONTRIBUTIONS.**—If the amount described in subparagraph (A)(ii) exceeds the sum of—

(i) the amount described in subparagraph (A)(i), plus

(ii) the amount that should have been deducted under section 8422 of title 5, United States Code, from pay of such employee for the period of erroneous coverage involved,

the excess shall be refunded to the employee.

(C) **RULE IF CSRDF CONTRIBUTIONS ARE INSUFFICIENT.**—If the amount described in subparagraph (A)(ii) is less than the sum of the respective amounts described in clauses (i) and (ii) of subparagraph (B), the shortfall shall be made up (in such manner as the Director of the Office of Personnel Management, with the concurrence of the Commissioner of Social Security, shall by regulation prescribe) by the agency in or under which the employee is then employed, out of amounts otherwise available in the appropriation, fund, or account from which any OASDI employer tax or contribution to the CSRDF (as applicable) may be made.

(D) **DEFINITION OF LUMP-SUM CREDIT.**—For purposes of this paragraph, the term "lump-sum credit" has the meaning given such term by section 8331 of title 5, United States Code.

(2) **GOVERNMENT CONTRIBUTIONS.**—

(A) **TRANSFER TO OASDI TRUST FUNDS.**—There shall be transferred from the CSRDF to the OASDI trust funds the amount of the OASDI employer tax that should have been paid with respect to the employee for the period of erroneous coverage involved.

(B) **RULE IF THERE ARE EXCESS CSRDF CONTRIBUTIONS.**—If the total Government contributions to the CSRDF that were made with respect to the employee for the period of erroneous coverage involved exceed the sum of—

(i) the amount required to be transferred under subparagraph (A), plus

(ii) the amount that should have been contributed by the Government under section 8423 of title 5, United States Code, for such employee with respect to such period,

the excess shall be transferred to the agency in or under which the employee is then employed, to the credit of the appropriation, fund, or account from which any Government contributions to the CSRDF may be made (to remain available until expended).

(C) **RULE IF CSRDF CONTRIBUTIONS ARE INSUFFICIENT.**—If the total Government contributions to the CSRDF that were made with respect to the employee for the period of erroneous coverage involved are less than the sum of the respective amounts described in clauses (i) and (ii) of subparagraph (B), the shortfall shall be made up by the agency in or under which the employee is then employed, out of amounts otherwise available in the appropriation, fund, or account referred to in subparagraph (B) in such manner as the Director of the Office of Personnel Management, with the concurrence of the Commissioner of Social Security, shall by regulation prescribe.

(c) **MAKEUP CONTRIBUTIONS TO THE THRIFT SAVINGS FUND.**—

(1) **IN GENERAL.**—An employee to whom this section applies is entitled to have contributed to the Thrift Savings Fund on such employee's behalf, in addition to any regular employee or Government contributions that would be permitted

or required for the year in which the contributions under this subsection are made, an amount equal to the sum of—

(A) the amount determined under paragraph (2) with respect to such employee for the period of erroneous coverage involved;

(B) an amount equal to the total contributions that should have been made for such employee under section 8432(c)(1) of title 5, United States Code, for the period of erroneous coverage involved;

(C) an amount equal to the total contributions that should have been made for such employee under section 8432(c)(2) of title 5, United States Code, for the period of erroneous coverage involved (taking into account both the amount referred to in subparagraph (A) and any contributions to the Thrift Savings Fund actually made by such employee with respect to the period involved); and

(D) an amount equal to lost earnings on the amounts referred to in subparagraphs (A) through (C), determined in accordance with paragraph (3).

(2) AMOUNT BASED ON AVERAGE PERCENTAGE OF PAY CONTRIBUTED BY EMPLOYEES DURING PERIOD OF ERRONEOUS COVERAGE.—

(A) IN GENERAL.—The amount determined under this paragraph with respect to an employee for a period of erroneous coverage shall be equal to the amount of the contributions such employee would have made if, during each calendar year in such period, the employee had contributed the percentage of such employee's basic pay for such year specified in subparagraph (B) (determined disregarding any contributions actually made by such employee with respect to the year involved).

(B) PERCENTAGE TO BE APPLIED.—

(i) IN GENERAL.—The percentage to be applied under this subparagraph in the case of any employee with respect to a particular year is—

(I) the average percentage of basic pay that was contributed for such year under section 8432(a) of title 5, United States Code, by full-time FERS covered employees who contributed to the Thrift Savings Fund in such year and for whom a salary rate is recorded (as of June 30 of such year) in the central personnel data file maintained by the Office of Personnel Management; or

(II) if such average percentage for the year in question is unavailable, the average percentage for the most recent year prior to the year in question that is available.

(ii) PERCENTAGE CONTRIBUTED.—For purposes of clause (i)(I), the percentage of basic pay for each employee included in the average shall be determined by dividing the total employee contributions received into the Thrift Savings Plan account of that employee during such year by the annual salary rate for that employee as recorded in the central personnel data file (referred to in clause (i)(I)) as of June 30 of such year.

(C) LIMITATIONS.—In no event may the amount determined under this paragraph for an individual with respect to a year exceed the amount that, if added to the amount of the contributions that were actually made by such individual to the Thrift Savings Fund with respect to such year (if any), would cause the total to exceed—

(i) any limitation under section 415 or any other provision of the Internal Revenue Code of 1986 that would have applied to such employee with respect to such year; or

(ii) any limitation under section 8432(a) or any other provision of title 5, United States Code, that would have applied to such employee with respect to such year.

(3) LOST EARNINGS.—

(A) IN GENERAL.—Lost earnings on any amounts referred to in subparagraph (A), (B), or (C) of paragraph (1) shall, to the extent those amounts are attributable to contributions that should have been made with respect to a particular year, be determined in the same way as if those amounts had in fact been timely contributed and allocated among the TSP investment funds in accordance with—

(i) the investment fund election that was accepted by the employing agency before the date the contribution should have been made and that was still in effect as of that date; or

(ii) if no such election was then in effect for the employee, the investment fund election attributed to such employee with respect to such year.

(B) INVESTMENT FUND ELECTION ATTRIBUTED.—For purposes of subparagraph (A)(ii), the investment fund election attributed to an employee with respect to a particular year is—

(i) the average percentage allocation of TSP contributions among the TSP investment funds from all sources, with respect to that year, except that the investment fund election attributed to contributions in years prior to 1991 shall be the G Fund; or

(ii) if such average percentage allocation for the year in question is unavailable, the average percentage allocation for the most recent year prior to the year in question that is available.

(C) DEFINITION OF INVESTMENT FUND ELECTION, ETC.—For purposes of this paragraph—

(i) the term “investment fund election” means a choice by a participant concerning how contributions to the Thrift Savings Plan shall be allocated among the TSP investment funds;

(ii) the term “participant” means any person with an account in the Thrift Savings Plan, or who would have an account in the Thrift Savings Plan but for an employing agency error (including an error as described in section 163(b)(2));

(iii) the term “TSP investment funds” means the C Fund, the F Fund, the G Fund, and any other investment fund in the Thrift Savings Plan created after December 27, 1996; and

(iv) the terms “C Fund”, “F Fund”, and “G Fund” refer to the funds described in paragraphs (1), (3), and (4), respectively, of section 8438(a) of title 5, United States Code.

(4) MAKEUP CONTRIBUTION TO BE MADE IN A LUMP SUM.—

(A) IN GENERAL.—Any amount to which an employee is entitled under this subsection shall be paid promptly by the agency in or under which the electing employee is (as of the date of the election) employed, in a lump sum, upon notification to such agency under subparagraph (B)(ii) as to the amount due.

(B) BOARD FUNCTIONS.—The regulations under paragraph (6) shall include provisions under which—

(i) each employing agency shall be required to determine and notify the Federal Retirement Thrift Investment Board, in a timely manner, as to any amounts under paragraph (1)(A)–(C) owed by such agency; and

(ii) the Board shall, based on the information it receives from an agency under clause (i), determine lost earnings on those amounts and promptly notify such agency as to the total amounts due from it under this subsection.

(5) JUSTICES AND JUDGES; MAGISTRATES; ETC.—The preceding provisions of this subsection shall not apply in the case of any employee who, pursuant to the election referred to in subsection (a), becomes subject to section 8440a, 8440b, 8440c, or 8440d of title 5, United States Code.

(6) REGULATIONS.—The Executive Director of the Federal Retirement Thrift Investment Board shall prescribe any regulations necessary to carry out this subsection.

**SEC. 103. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM CSRS-OFFSET TO FERS TO CORRECT A RETIREMENT COVERAGE ERROR.**

(a) APPLICABILITY.—This section shall apply in the case of any employee affected by an error described in section 101(a)(2) who elects the option under section 101(b)(1).

(b) EFFECT OF ELECTION.—In the case of an employee described in subsection (a), the following provisions shall apply:

(1) Section 102(b) (relating to disposition of contributions to the CSRDF), but disregarding provisions relating to transfers to OASDI trust funds.

(2) Section 102(c) (relating to makeup contributions to the Thrift Savings Fund).

**SEC. 104. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM CSRS TO CSRS-OFFSET TO CORRECT A RETIREMENT COVERAGE ERROR.**

(a) APPLICABILITY.—This section shall apply in the case of any employee affected by an error described in section 101(a)(1) who elects the option under section 101(b)(2).

(b) SAME AS IN THE CASE OF AN ELECTION TO RATIFY ERRONEOUS CSRS-OFFSET COVERAGE.—

(1) **IN GENERAL.**—The effect of an election described in subsection (a) shall be as described in section 101(b)(2), except that the provisions of section 102(b) shall also apply.

(2) **APPROPRIATE PERCENTAGES TO BE USED IN DETERMINING EMPLOYEE AND GOVERNMENT CONTRIBUTIONS TO CSRDF.**—For purposes of paragraph (1), section 102(b) shall be applied by substituting “the relevant provisions of section 8334(k)” for “section 8422” and “section 8423”.

**SEC. 105. EFFECT OF AN ELECTION TO BE RESTORED (OR TRANSFERRED) TO CSRS-OFFSET AFTER HAVING BEEN CORRECTED TO FERS FROM CSRS-OFFSET (OR CSRS).**

(a) **APPLICABILITY.**—This section shall apply in the case of any employee affected by an error described in paragraph (1) or (2) of section 101(a) who (after having been corrected to FERS coverage) elects the option under section 101(c)(1).

(b) **DISPOSITION OF CONTRIBUTIONS TO THE CSRDF.**—

(1) **IN GENERAL.**—The provisions of section 102(b) shall apply in the case of an employee described in subsection (a), subject to paragraph (2).

(2) **NO TRANSFERS FOR AMOUNTS ALREADY PAID INTO OASDI, ETC.**—For purposes of paragraph (1), section 102(b) shall be applied in conformance with the following:

(A) **NO DOUBLE PAYMENTS INTO OASDI.**—To the extent that the appropriate OASDI employee or employer tax has already been paid for the total period involved (or any portion thereof), reduce the respective amounts required by paragraphs (1)(A)(i) and (2)(A) of section 102(b) accordingly.

(B) **APPROPRIATE PERCENTAGES TO BE USED IN DETERMINING EMPLOYEE AND GOVERNMENT CONTRIBUTIONS TO CSRDF.**—Substitute “the relevant provisions of section 8334(k)” for “section 8422” and “section 8423”.

(C) **APPROPRIATE LUMP-SUM CREDIT TO BE USED.**—Substitute “8401” for “8331” in paragraph (1)(D) thereof.

(D) **PROVISIONS TO BE APPLIED WITH RESPECT TO THE TOTAL PERIOD INVOLVED.**—Substitute “total period involved (as defined by section 105)” for “period of erroneous coverage involved”.

(c) **DISPOSITION OF EXCESS TSP CONTRIBUTIONS.**—

(1) **GOVERNMENT CONTRIBUTIONS.**—All Government contributions made on behalf of the employee to the Thrift Savings Fund that are attributable to the total period involved (including any earnings thereon) shall be forfeited. For the purpose of section 8437(d) of title 5, United States Code, amounts so forfeited shall be treated as if they were amounts forfeited under section 8432(g) of such title.

(2) **EMPLOYEE CONTRIBUTIONS.**—The election referred to in subsection (a) shall not be taken into account for purposes of any determination relating to the disposition of any employee contributions to the Thrift Savings Fund, attributable to the total period involved, that were in excess of the maximum amount that would have been allowable under applicable provisions of subchapter III of chapter 83 of title 5, United States Code (including any earnings thereon).

(d) **DEFINITION OF TOTAL PERIOD INVOLVED.**—For purposes of this section, the term “total period involved” means the period beginning on the effective date of the retirement coverage error involved and ending on the day before the date on which the election described in subsection (a) is made.

**Subtitle B—Employee Who Should Have Been FERS Covered, CSRS-Offset Covered, or CSRS Covered, But Who Was Erroneously Social Security-Only Covered Instead**

**SEC. 111. ELECTIONS.**

(a) **APPLICABILITY.**—This subtitle shall apply in the case of any employee who—

(1) should be (or should have been) FERS covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead;

(2) should be (or should have been) CSRS-Offset covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead; or

(3) should be (or should have been) CSRS covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead.

(b) **UNCORRECTED ERROR.**—If, at the time of making an election under this section, the retirement coverage error described in paragraph (1), (2), or (3) of sub-

section (a) (as applicable) has not been corrected, the employee affected by such error may elect—

(1)(A) in the case of an error described in subsection (a)(1), to be FERS covered as well;

(B) in the case of an error described in subsection (a)(2), to be CSRS-Offset covered as well; or

(C) in the case of an error described in subsection (a)(3), to be CSRS covered instead; or

(2) to remain Social Security-Only covered.

(c) CORRECTED ERROR.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, there shall be submitted to the Congress a proposal (including any necessary draft legislation) to carry out the policy described in paragraph (2).

(2) POLICY.—Under the proposal, any employee with respect to whom the retirement coverage error described in paragraph (1), (2), or (3) of subsection (a) (as applicable) has already been corrected, but under terms less advantageous to the employee than would have been the case under this Act, shall be afforded a reasonable opportunity to obtain treatment comparable to the treatment afforded under this Act.

(3) JOINT ACTION.—This subsection shall be carried out by the Director of the Office of Personnel Management, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board and the Commissioner of Social Security.

(d) DEFAULT RULE.—In the case of any employee to whom subsection (b) applies, if the employee is given written notice in accordance with section 201 as to the availability of an election under this section, but does not make any such election within the 6-month period beginning on the date on which such notice is so given, the option under subsection (b)(2) shall be deemed to have been elected on the last day of such period.

(e) RETROACTIVE EFFECT.—An election under this section (including an election by default, and an election to remain covered by the retirement system by which the electing individual is covered as of the date of the election) shall be effective retroactive to the effective date of the retirement coverage error (as referred to in subsection (a)) to which such election relates.

**SEC. 112. EFFECT OF AN ELECTION TO BECOME FERS COVERED TO CORRECT THE RETIREMENT COVERAGE ERROR.**

(a) APPLICABILITY.—This section shall apply in the case of any employee affected by an error described in section 111(a)(1) who elects the option under section 111(b)(1)(A).

(b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—Upon notification that an employee has made an election under this section, the agency in or under which such employee is employed shall promptly pay to the CSRDF, in a lump sum, an amount equal to the sum of—

(1) the amount that should have been deducted and withheld from the pay of the employee for the period of erroneous coverage involved under section 8422 of title 5, United States Code; and

(2) the Government contributions that should have been paid for the period of erroneous coverage involved under section 8423 of title 5, United States Code.

(c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAVINGS FUND.—Section 102(c) shall apply in the case of an employee described in subsection (a).

**SEC. 113. EFFECT OF AN ELECTION TO BECOME CSRS-OFFSET COVERED TO CORRECT THE RETIREMENT COVERAGE ERROR.**

(a) APPLICABILITY.—This section shall apply in the case of any employee affected by an error described in section 111(a)(2) who elects the option under section 111(b)(1)(B).

(b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—Upon notification that an employee has made an election under this section, the agency in or under which such employee is employed shall promptly pay to the CSRDF, in a lump sum, an amount equal to the sum of—

(1) the amount that should have been deducted and withheld from the pay of the employee for the period of erroneous coverage involved under section 8334 of title 5, United States Code; and

(2) the Government contributions that should have been paid under section 8334 of title 5, United States Code, for the period of erroneous coverage involved.

(c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAVINGS FUND.—

(1) IN GENERAL.—Makeup contributions to the Thrift Savings Fund shall be made by the employing agency in the same manner as described in section 102(c) (but disregarding subparagraphs (B) and (C) of paragraph (1) thereof, and the other provisions of section 102(c) to the extent that they relate to those subparagraphs).

(2) APPROPRIATE PERCENTAGES, ETC. TO BE USED.—For purposes of paragraph (1), section 102(c) shall be applied—

(A) by substituting “section 8351(b)” for “section 8432(a)” and by substituting “CSRS covered and CSRS-Offset covered” for “FERS covered” in paragraph (2)(B)(i) thereof; and

(B) by substituting “section 8351(b)(2)” for “section 8432(a)” in paragraph (2)(C)(ii) thereof.

**SEC. 114. EFFECT OF AN ELECTION TO BECOME CSRS COVERED TO CORRECT THE RETIREMENT COVERAGE ERROR.**

(a) APPLICABILITY.—This section shall apply in the case of any employee affected by an error described in section 111(a)(3) who elects the option under section 111(b)(1)(C).

(b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

(1) IN GENERAL.—Upon notification that an employee has made an election under this section, the agency in or under which such employee is employed shall promptly pay to the CSRDF, in a lump sum, an amount equal to the sum of—

(A) the amount that should have been deducted and withheld from the pay of the employee for the period of erroneous coverage involved under section 8334 of title 5, United States Code; and

(B) the Government contributions that should have been paid under such section for the period of erroneous coverage involved.

(2) AGENCY TO BE REIMBURSED FOR CERTAIN AMOUNTS.—

(A) IN GENERAL.—The employee for whom the payment under paragraph (1) is made shall repay to the agency (referred to in paragraph (1)) an amount equal to the OASDI employee taxes refunded or refundable to such employee for any portion of the period of erroneous coverage involved (computed in such manner as the Director of the Office of Personnel Management, with the concurrence of the Secretary of the Treasury, shall by regulation prescribe), not to exceed the amount described in paragraph (1)(A).

(B) RIGHT OF RECOVERY; WAIVER.—If the employee fails to repay the amount required under subparagraph (A), a sum equal to the amount outstanding is recoverable by the Government from the employee (or the employee’s estate, if applicable) by—

(i) setoff against accrued pay, compensation, amount of retirement credit, or another amount due the employee from the Government; and

(ii) such other method as is provided by law for the recovery of amounts owing to the Government.

The head of the agency concerned may waive, in whole or in part, a right of recovery under this paragraph if it is shown that recovery would be against equity and good conscience or against the public interest.

(C) TREATMENT OF AMOUNTS REPAYED OR RECOVERED.—Any amount repaid by, or recovered from, an individual (or an estate) under this paragraph shall be credited to the appropriation account from which the amount involved was originally paid.

(c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAVINGS FUND.—In the case of an employee described in subsection (a), makeup contributions to the Thrift Savings Fund shall be made in the same manner as described in section 113(c).

**Subtitle C—Employee Who Should Have Been Social Security-Only Covered, But Who Was Erroneously FERS Covered, CSRS-Offset Covered, or CSRS Covered Instead**

**SEC. 121. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, BUT WHO IS ERRONEOUSLY FERS COVERED INSTEAD.**

(a) IN GENERAL.—Except as provided in section 125, this section shall apply in the case of any employee who should be Social Security-Only covered but, as a result of a retirement coverage error, is FERS covered instead.

(b) **AUTOMATIC EXCLUSION FROM FERS.**—An employee described in subsection (a) shall not, by reason of the retirement coverage error described in subsection (a), be eligible to be treated as an individual who is FERS covered.

(c) **DISPOSITION OF CONTRIBUTIONS TO THE CSRDF.**—

(1) **EMPLOYEE CONTRIBUTIONS.**—There shall be paid to the employee, from the CSRDF, any lump-sum credit to which such employee would be entitled under section 8424 of title 5, United States Code, to the extent attributable to the period of erroneous coverage involved.

(2) **GOVERNMENT CONTRIBUTIONS.**—There shall be transferred from the CSRDF to the agency in or under which the employee is then employed, to the credit of the appropriation, fund, or account of such agency from which any Government contributions to the CSRDF may be made (to remain available until expended), an amount equal to the Government contributions, attributable to such employee for the period of erroneous coverage involved, that were made under section 8423 of title 5, United States Code.

(d) **DISPOSITION OF TSP CONTRIBUTIONS.**—

(1) **GOVERNMENT CONTRIBUTIONS.**—All Government contributions made on behalf of the employee to the Thrift Savings Fund that are attributable to the period of erroneous coverage involved (including any earnings thereon) shall be forfeited in the same manner as described in section 105(c).

(2) **EMPLOYEE CONTRIBUTIONS.**—Notwithstanding any other provision of this section or any other provision of law, any contributions made by the employee to the Thrift Savings Fund during the period of erroneous coverage involved (including any earnings thereon) shall be treated as if such employee had then been correctly covered.

**SEC. 122. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, BUT WHO IS ERRONEOUSLY CSRS-OFFSET COVERED INSTEAD.**

(a) **IN GENERAL.**—Except as provided in section 125, this section shall apply in the case of any employee who should be Social Security-Only covered but, as a result of a retirement coverage error, is CSRS-Offset covered instead.

(b) **AUTOMATIC EXCLUSION FROM CSRS-OFFSET.**—An employee described in subsection (a) shall not, by reason of the retirement coverage error described in subsection (a), be eligible to be treated as an individual who is CSRS-Offset covered.

(c) **DISPOSITION OF CONTRIBUTIONS TO THE CSRDF.**—

(1) **EMPLOYEE CONTRIBUTIONS.**—There shall be paid to the employee, from the CSRDF, the lump-sum credit to which such employee would be entitled under section 8342 of title 5, United States Code, to the extent attributable to the period of erroneous coverage involved.

(2) **GOVERNMENT CONTRIBUTIONS.**—There shall be transferred from the CSRDF to the agency in or under which the employee is then employed, to the credit of the appropriation, fund, or account of such agency from which any Government contributions to the CSRDF may be made (to remain available until expended), an amount equal to the Government contributions that were made under section 8334 of title 5, United States Code, and attributable to such employee for the period of erroneous coverage involved.

(d) **DISPOSITION OF TSP CONTRIBUTIONS.**—In the case of an employee described in subsection (a), section 121(d)(2) shall apply.

**SEC. 123. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, BUT WHO IS ERRONEOUSLY CSRS COVERED INSTEAD.**

(a) **IN GENERAL.**—Except as provided in section 125, this section shall apply in the case of any employee who should be Social Security-Only covered but, as a result of a retirement coverage error, is CSRS covered instead.

(b) **AUTOMATIC EXCLUSION FROM CSRS.**—An employee described in subsection (a) shall not, by reason of the retirement coverage error described in subsection (a), be eligible to be treated as an individual who is CSRS covered.

(c) **DISPOSITION OF CONTRIBUTIONS TO THE CSRDF.**—

(1) **IN GENERAL.**—In the case of an employee described in subsection (a), section 102(b) shall apply.

(2) **IRRELEVANT PROVISIONS TO BE DISREGARDED.**—For purposes of paragraph (1), section 102(b) shall be applied disregarding paragraphs (1)(B)(ii) and (2)(B)(ii) thereof.

(d) **DISPOSITION OF TSP CONTRIBUTIONS.**—In the case of an employee described in subsection (a), section 121(d)(2) shall apply.

**SEC. 124. CORRECTED ERROR: SITUATIONS UNDER SECTIONS 121-123.**

(a) **IN GENERAL.**—Not later than 6 months after the date of enactment of this Act, there shall be submitted to the Congress a proposal (including any necessary draft legislation) to carry out the policy described in subsection (b).

(b) **POLICY.**—Under the proposal, any employee with respect to whom the applicable retirement coverage error (referred to in section 121, 122, or 123, as applicable) has already been corrected, but under terms less advantageous to the employee than would have been the case under this Act, shall be afforded a reasonable opportunity to obtain treatment comparable to the treatment afforded under this Act.

(c) **JOINT ACTION.**—This section shall be carried out by the Director of the Office of Personnel Management, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board and the Commissioner of Social Security.

**SEC. 125. VESTED EMPLOYEES EXCEPTED FROM AUTOMATIC EXCLUSION.**

(a) **IN GENERAL.**—Nothing in this subtitle shall, by reason of any retirement coverage error, result in the automatic exclusion of any employee from FERS, CSRS-Offset, or CSRS if, as of the date on which notice of such error is given (in accordance with section 201), such employee's rights have vested under the retirement system involved.

(b) **VESTING.**—For purposes of this section, vesting of rights shall be considered to have occurred if, as of the date as of which the determination is made, the employee has completed at least 5 years of civilian service, taking into account only creditable service under section 8332 or 8411 of title 5, United States Code.

(c) **ELECTIONS.**—

(1) **ERRONEOUSLY FERS COVERED.**—Any employee affected by an error described in section 121 who is determined under this section to satisfy subsection (b) may elect—

- (A) to be treated in accordance with section 121; or
- (B) to remain FERS covered.

(2) **OTHER CASES.**—Any employee affected by an error described in section 122 or 123 who is determined under this section to satisfy subsection (b) may elect—

- (A) to be treated in accordance with section 122 or 123 (as applicable);

or

- (B) to remain (or instead become) CSRS-Offset covered.

(d) **EFFECT OF AN ELECTION TO BE TRANSFERRED FROM CSRS TO CSRS-OFFSET.**—In the case of an employee affected by an error described in section 123 who elects the option under subsection (c)(2)(B), the effect of the election shall be the same as described in section 104.

(e) **DEFAULT RULE.**—If the employee does not make any election within the 6-month period beginning on the date on which the appropriate notice is given to such employee, the option under paragraph (1)(B) or (2)(B) of subsection (c), as applicable, shall be deemed to have been elected as of the last day of such period. Nothing in this section shall be considered to afford an employee the option of becoming or remaining CSRS covered.

(f) **RETROACTIVE EFFECT.**—An election under this section (including an election by default, and an election to remain covered by the retirement system by which the electing individual is covered as of the date of the election) shall be effective retroactive to the effective date of the retirement coverage error to which the election relates.

(g) **SPECIAL RULE IN CASE OF DISABILITY.**—If, as of the date referred to in subsection (a), the employee is entitled to receive an annuity under chapter 83 or 84 of title 5, United States Code, based on disability, or compensation under subchapter I of chapter 81 of such title for injury to, or disability of, such employee, subsections (a) and (b) shall be applied by substituting (for the date that would otherwise apply) the date as of which entitlement to such annuity or compensation terminates (if at all).

(h) **NOTIFICATION.**—Any notice under section 201 shall include such additional information or other modifications as the Office of Personnel Management may by regulation prescribe in connection with the situations covered by this subtitle, particularly as they relate to the consequences of being vested or not vested.

## **Subtitle D—Employee Who Should Have Been CSRS Covered or CSRS-Offset Covered, But Who Was Erroneously FERS Covered Instead**

### **SEC. 131. ELECTIONS.**

- (a) **APPLICABILITY.**—This subtitle shall apply in the case of any employee who—
- (1) should be (or should have been) CSRS covered but, as a result of a retirement coverage error, is (or was) FERS covered instead; or
  - (2) should be (or should have been) CSRS-Offset covered but, as a result of a retirement coverage error, is (or was) FERS covered instead.
- (b) **UNCORRECTED ERROR.**—If, at the time of making an election under this section, the retirement coverage error described in paragraph (1) or (2) of subsection (a) (as applicable) has not been corrected, the employee affected by such error may elect—
- (1)(A) in the case of an error described in subsection (a)(1), to be CSRS covered instead; or
  - (B) in the case of an error described in subsection (a)(2), to be CSRS-Offset covered instead; or
  - (2) to remain FERS covered.
- (c) **CORRECTED ERROR.**—If, at the time of making an election under this section, the retirement coverage error described in paragraph (1) or (2) of subsection (a) (as applicable) has been corrected, the employee affected by such error may elect—
- (1) to be FERS covered instead; or
  - (2)(A) in the case of an error described in subsection (a)(1), to remain CSRS covered; or
  - (B) in the case of an error described in subsection (a)(2), to remain CSRS-Offset covered.
- (d) **DEFAULT RULE.**—If the employee is given written notice in accordance with section 201 as to the availability of an election under this section, but does not make any such election within the 6-month period beginning on the date on which such notice is so given, the option under subsection (b)(2) or (c)(2), as applicable, shall be deemed to have been elected on the last day of such period.
- (e) **RETROACTIVE EFFECT.**—An election under this section (including an election by default, and an election to remain covered by the retirement system by which the electing individual is covered as of the date of the election) shall be effective retroactive to the effective date of the retirement coverage error (as referred to in subsection (a)) to which such election relates.

### **SEC. 132. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM FERS TO CSRS TO CORRECT A RETIREMENT COVERAGE ERROR.**

- (a) **APPLICABILITY.**—This section shall apply in the case of any employee affected by an error described in section 131(a)(1) who elects the option available to such employee under section 131(b)(1)(A).
- (b) **MAKEUP CONTRIBUTIONS TO THE CSRDF.**—
- (1) **IN GENERAL.**—Upon notification that an employee has made an election under this section, the agency in or under which such employee is employed shall promptly pay to the CSRDF, in a lump sum, an amount equal to the excess of—
    - (A) the amount by which—
      - (i) the amount that should have been deducted and withheld from the pay of the employee for the period of erroneous coverage involved under section 8334 of title 5, United States Code, exceeds
      - (ii) the amount that was actually deducted and withheld from the pay of the employee for the period of erroneous coverage involved under section 8422 of such title (and not refunded), over
    - (B) the amount by which—
      - (i) the amount of the Government contributions actually made under section 8423 of such title with respect to the employee for the period of erroneous coverage involved, exceeds
      - (ii) the amount of the Government contributions that should have been made under section 8334 of such title with respect to the employee for the period of erroneous coverage involved.
  - (2) **AGENCY TO BE REIMBURSED FOR CERTAIN AMOUNTS.**—
    - (A) **IN GENERAL.**—The employee for whom the payment under paragraph (1) is made shall repay to the agency (referred to in paragraph (1)) an amount equal to the OASDI employee taxes refunded or refundable to such

employee for any portion of the period of erroneous coverage involved (computed in such manner as the Director of the Office of Personnel Management, with the concurrence of the Commissioner of Social Security, shall by regulation prescribe), not to exceed the amount described in paragraph (1)(A).

(B) **RIGHT OF RECOVERY; WAIVER.**—If the employee fails to repay the amount required under subparagraph (A), a sum equal to the amount outstanding is recoverable by the Government from the employee (or the employee's estate, if applicable) by—

- (i) setoff against accrued pay, compensation, amount of retirement credit, or another amount due the employee from the Government; and
- (ii) such other method as is provided by law for the recovery of amounts owing to the Government.

The head of the agency concerned may waive, in whole or in part, a right of recovery under this paragraph if it is shown that recovery would be against equity and good conscience or against the public interest.

(C) **TREATMENT OF AMOUNTS REPAYED OR RECOVERED.**—Any amount repaid by, or recovered from, an individual (or an estate) under this paragraph shall be credited to the appropriation, fund, or account from which the amount involved was originally paid.

(c) **DISPOSITION OF EXCESS TSP CONTRIBUTIONS.**—Section 105(c) shall apply in the case of an employee described in subsection (a).

**SEC. 133. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM FERS TO CSRS-OFFSET TO CORRECT A RETIREMENT COVERAGE ERROR.**

(a) **APPLICABILITY.**—This section shall apply in the case of any employee affected by an error described in section 131(a)(2) who elects the option available to such employee under section 131(b)(1)(B).

(b) **EFFECT.**—The effect of an election referred to in subsection (a) shall be substantially the same as that described in section 105.

**SEC. 134. EFFECT OF AN ELECTION TO BE RESTORED TO FERS AFTER HAVING BEEN CORRECTED TO CSRS.**

(a) **APPLICABILITY.**—This section shall apply in the case of any employee affected by an error described in section 131(a)(1) who elects the option under section 131(c)(1).

(b) **EFFECT.**—The effect of an election referred to in subsection (a) shall be substantially the same as that described in section 102.

**SEC. 135. EFFECT OF AN ELECTION TO BE RESTORED TO FERS AFTER HAVING BEEN CORRECTED TO CSRS-OFFSET.**

(a) **APPLICABILITY.**—This section shall apply in the case of any employee affected by an error described in section 131(a)(2) who elects the option under section 131(c)(1).

(b) **EFFECT.**—The effect of an election referred to in subsection (a) shall be substantially the same as that described in section 103.

**SEC. 136. DISQUALIFICATION OF CERTAIN INDIVIDUALS TO WHOM SAME ELECTION WAS PREVIOUSLY AVAILABLE.**

Notwithstanding any other provision of this subtitle, an election under this subtitle shall not be available in the case of any individual to whom an election under section 846.204 of title 5 of the Code of Federal Regulations (as in effect as of January 1, 1997) was made available in connection with the same error pursuant to notification provided in accordance with such section.

## **Subtitle E—Employee Who Should Have Been CSRS-Offset Covered, But Who Was Erroneously CSRS Covered Instead**

**SEC. 141. AUTOMATIC TRANSFER TO CSRS-OFFSET.**

(a) **APPLICABILITY.**—This subtitle shall apply in the case of any employee who should be (or should have been) CSRS-Offset covered but, as a result of a retirement coverage error, is (or was) CSRS covered instead.

(b) **UNCORRECTED ERROR.**—If the error has not been corrected, the employee shall be treated in the same way as if such employee had instead been CSRS-Offset covered, effective retroactive to the effective date of such error.

(c) CORRECTED ERROR.—If the error has been corrected, the correction shall (to the extent not already carried out) be made effective retroactive to the effective date of such error.

**SEC. 142. EFFECT OF TRANSFER.**

The effect of a transfer under section 141 shall be as set forth in regulations which the Office of Personnel Management shall prescribe consistent with section 104.

## **Subtitle F—Employee Who Should Have Been CSRS Covered, But Who Was Erroneously CSRS-Offset Covered Instead**

**SEC. 151. ELECTIONS.**

(a) APPLICABILITY.—This subtitle shall apply in the case of any employee who should be (or should have been) CSRS covered but, as a result of a retirement coverage error, is (or was) CSRS-Offset covered instead.

(b) UNCORRECTED ERROR.—If, at the time of making an election under this section, the retirement coverage error described in subsection (a) has not been corrected, the employee affected by such error may elect—

- (1) to be CSRS covered instead; or
- (2) to remain CSRS-Offset covered.

(c) CORRECTED ERROR.—If, at the time of making an election under this section, the retirement coverage error described in subsection (a) has been corrected, the employee affected by such error may elect—

- (1) to be CSRS-Offset covered instead; or
- (2) to remain CSRS covered.

(d) DEFAULT RULE.—If the employee is given written notice in accordance with section 201 as to the availability of an election under this section, but does not make any such election within the 6-month period beginning on the date on which such notice is so given, the option under subsection (b)(2) or (c)(2), as applicable, shall be deemed to have been elected on the last day of such period.

(e) RETROACTIVE EFFECT.—An election under this section (including an election by default, and an election to remain covered by the retirement system by which the electing individual is covered as of the date of the election) shall be effective retroactive to the effective date of the retirement coverage error (as referred to in subsection (a)) to which such election relates.

**SEC. 152. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM CSRS-OFFSET TO CSRS TO CORRECT THE RETIREMENT COVERAGE ERROR.**

(a) APPLICABILITY.—This section shall apply in the case of any employee affected by an error described in section 151(a) who elects the option available to such employee under section 151(b)(1).

(b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

(1) IN GENERAL.—Upon notification that an employee has made an election under this section, the agency in or under which such employee is employed shall promptly pay to the CSRDF, in a lump sum, an amount equal to the amount by which—

(A) the amount that should have been deducted and withheld from the pay of the employee for the period of erroneous coverage involved under section 8334 of title 5, United States Code (by virtue of being CSRS covered), exceeds

(B) any nonrefunded amounts actually deducted and withheld from the pay of the employee for the period of erroneous coverage involved under such section (pursuant to CSRS-Offset coverage).

(2) AGENCY TO BE REIMBURSED FOR CERTAIN AMOUNTS.—

(A) IN GENERAL.—The employee for whom the payment under paragraph (1) is made shall repay to the agency (referred to in paragraph (1)) an amount equal to the OASDI employee taxes refunded or refundable to such employee for any portion of the period of erroneous coverage involved (computed in such manner as the Director of the Office of Personnel Management, with the concurrence of the Commissioner of Social Security, shall by regulation prescribe), not to exceed the amount described in paragraph (1)(A).

(B) RIGHT OF RECOVERY; WAIVER.—If the employee fails to repay the amount required under subparagraph (A), a sum equal to the amount out-

standing is recoverable by the Government from the employee (or the employee's estate, if applicable) by—

- (i) setoff against accrued pay, compensation, amount of retirement credit, or another amount due the employee from the Government; and
- (ii) such other method as is provided by law for the recovery of amounts owing to the Government.

The head of the agency concerned may waive, in whole or in part, a right of recovery under this paragraph if it is shown that recovery would be against equity and good conscience or against the public interest.

(C) TREATMENT OF AMOUNTS REPAID OR RECOVERED.—Any amount repaid by, or recovered from, an individual (or an estate) under this paragraph shall be credited to the appropriation, fund, or account from which the amount involved was originally paid.

**SEC. 153. EFFECT OF AN ELECTION TO BE RESTORED TO CSRS-OFFSET AFTER HAVING BEEN CORRECTED TO CSRS.**

(a) APPLICABILITY.—This section shall apply in the case of any employee affected by an error described in section 151(a) who elects the option available to such employee under section 151(c)(1).

(b) DISPOSITION OF CONTRIBUTIONS TO THE CSRDF.—In the case of an employee described in subsection (a), the provisions of section 102(b) shall apply, except that, in applying such provisions—

- (1) “the applicable provisions of section 8334” shall be substituted for “section 8422” in paragraph (1)(B)(ii) thereof; and
- (2) “the applicable provisions of section 8334” shall be substituted for “section 8423” in paragraph (2)(B)(ii) thereof.

## **Subtitle G—Additional Provisions Relating to Government Agencies**

**SEC. 161. REPAYMENT REQUIRED IN CERTAIN SITUATIONS.**

(a) IN GENERAL.—An individual who previously received a payment ordered by a court or provided as a settlement of claim for losses resulting from a retirement coverage error shall not be entitled to make an election under this Act unless repayment of the amount so received by such individual is waived in whole or in part by the Office of Personnel Management, and any amount not waived is repaid.

(b) REGULATIONS.—Any repayment under this section shall be made in accordance with regulations prescribed by the Office.

**SEC. 162. EQUITABLE SHARING OF AMOUNTS PAYABLE TO OR FROM THE GOVERNMENT IF MORE THAN ONE AGENCY INVOLVED.**

The Office of Personnel Management shall by regulation prescribe rules under which, in the case of an employee who has been employed in or under more than 1 agency since the date of the retirement coverage error involved (and before its rectification under this Act), any contributions or other amounts required to be paid to or from the then current employing agency (other than lost earnings under section 163(a)(2)) shall be equitably allocated between or among the appropriate agencies.

**SEC. 163. PROVISIONS RELATING TO THE ORIGINAL RESPONSIBLE AGENCY.**

(a) OBLIGATIONS OF THE ORIGINAL RESPONSIBLE AGENCY.—

(1) EXPENSES FOR SERVICES OF FINANCIAL ADVISOR.—The Office of Personnel Management shall by regulation prescribe rules under which, in the case of any employee eligible to make an election under this Act, the original responsible agency (as determined under succeeding provisions of this section) shall pay (or make reimbursement for) any reasonable expenses incurred by such employee for services received from any licensed financial or legal consultant or advisor in connection with such election.

(2) SPECIAL RULES.—Such regulations shall also include provisions to ensure that, to the extent lost earnings under the Thrift Savings Fund are involved in connection with a particular error, the original responsible agency—

(A) shall pay (or reimburse any other agency that pays) any amounts to the Thrift Savings Fund representing lost earnings with respect to such error; and

(B) shall be entitled to receive (directly from the Thrift Savings Fund or through transfer from another agency) any amounts paid out of the Thrift

Savings Fund representing a refund of lost earnings to which the Government is entitled with respect to such error.

(b) ORIGINAL RESPONSIBLE AGENCY DEFINED.—For purposes of this Act, the term “original responsible agency”, with respect to a retirement coverage error affecting an employee, means—

(1) except in the situation described in paragraph (2), the agency determined by the Office of Personnel Management to have made the initial retirement coverage error (including one made before January 1, 1984); or

(2) if the error is attributable, in whole or in part, to an erroneous regulation promulgated by the Office of Personnel Management, such Office.

(c) PROCEDURES FOR IDENTIFYING THE ORIGINAL RESPONSIBLE AGENCY.—

(1) IN GENERAL.—For purposes of this section, the original responsible agency, in any situation to which this section applies, shall be identified by the Office of Personnel Management in accordance with regulations which the Office shall prescribe.

(2) FINALITY.—A determination made by the Office under this subsection shall be final and not subject to any review.

(d) IF ORIGINAL RESPONSIBLE AGENCY NO LONGER EXISTS.—If the agency which (before the application of this subsection) is identified as the original responsible agency no longer exists (whether because of a reorganization or otherwise)—

(1) the successor agency (as determined under regulations prescribed by the Office) shall be treated as the original responsible agency; or

(2) if none, this section shall be applied by substituting the CSRDF for the original responsible agency.

(e) SOURCE OF PAYMENTS IF ERROR DUE TO ERRONEOUS OPM REGULATIONS.—In any case in which the Office of Personnel Management is the original responsible agency by reason of subsection (b)(2), any amounts payable to or from the Office under this section shall be payable to or from the CSRDF.

## TITLE II—GENERAL PROVISIONS

### SEC. 201. IDENTIFICATION AND NOTIFICATION REQUIREMENTS.

(a) IN GENERAL.—The Office of Personnel Management shall prescribe regulations under which Government agencies shall take such measures as may be necessary to ensure that all individuals who are (or have been) affected by a retirement coverage error giving rise to any election or automatic change in retirement coverage under this Act shall be promptly identified and notified in accordance with this section.

(b) MATTER TO BE INCLUDED IN NOTICE TO INDIVIDUALS.—Any notice furnished under this section shall be made in writing and shall include at least the following:

(1) DESCRIPTION OF ERROR.—A description of the error involved, including a clear and concise explanation as to why the original retirement coverage determination was erroneous, citations to (and a summary description of) the pertinent provisions of law, and how that determination should instead have been made.

(2) METHOD FOR RECTIFICATION.—How the error is to be rectified under this Act, including whether rectification will be achieved through an automatic change in retirement coverage (and, if so, the time, form, and manner in which that change will be effected) or an election.

(3) ELECTION PROCEDURES, ETC.—If an election is provided under this Act, all relevant information as to how such an election may be made, the options available, the differences between those respective options (as further specified in succeeding provisions of this subsection), and the consequences of failing to make a timely election.

(4) ACCRUED BENEFITS, ETC.—With respect to the (or each) retirement system by which the individual is then covered (disregarding the Thrift Savings Plan), and to the extent applicable:

(A) A brief summary of any benefits accrued.

(B) The amount of employee contributions made to date and the effect of any applicable disposition rules relating thereto (including provisions relating to excess amounts or shortfalls).

(C) The amount of any Government contributions made to date and the effect of any applicable disposition rules relating thereto (including provisions relating to excess amounts or shortfalls).

(5) THRIFT SAVINGS FUND.—With respect to the Thrift Savings Fund, the balance that then is (or would be) credited to the individual’s account depending

on the option chosen, with any such balance to be shown both in the aggregate and broken down by—

- (A) individual contributions,
  - (B) automatic (1 percent) Government contributions, and
  - (C) matching Government contributions,
- including lost earnings on each and the extent to which any makeup contributions or forfeitures would be involved.

(6) OASDI BENEFITS.—Such information regarding benefits under title II of the Social Security Act as the Commissioner of Social Security considers appropriate.

(7) OTHER INFORMATION.—Any other information that the Director of the Office of Personnel Management may by regulation prescribe after consultation with the Executive Director of the Federal Retirement Thrift Investment Board and such other agency heads as the Director considers appropriate, including any appeal rights available to the individual.

(c) COMPARISONS.—Any amounts required to be included under subsection (b)(4) shall, with respect to the respective retirement systems involved, be determined—

- (1) as of the date the retirement coverage error was corrected (if applicable);
- (2) as of the then most recent date for which those benefits and amounts are ascertainable, assuming no change in retirement coverage; and
- (3) as of the then most recent date for which those benefits and amounts are ascertainable, assuming the alternative option is chosen.

(d) PAST ERRORS.—All measures required under this section shall, with respect to errors preceding the date specified in section 206(e) (relating to the effective date for all regulations prescribed under this Act), be completed no later than December 31, 2001.

**SEC. 202. INDIVIDUAL APPEAL RIGHTS.**

(a) IN GENERAL.—An individual aggrieved by a final determination under this Act shall be entitled to appeal such determination to the Merit Systems Protection Board under section 7701 of title 5, United States Code.

(b) NOTIFICATION APPEALS.—The Office of Personnel Management shall by regulation establish procedures under which individuals may bring an appeal to the Office with respect to any failure to have been properly notified in accordance with section 201. A final determination under this subsection shall be appealable under subsection (a).

**SEC. 203. INFORMATION TO BE FURNISHED BY GOVERNMENT AGENCIES TO AUTHORITIES ADMINISTERING THIS ACT.**

(a) APPLICABILITY.—The authorities identified in this subsection are:

- (1) The Director of the Office of Personnel Management.
- (2) The Commissioner of Social Security.
- (3) The Executive Director of the Federal Retirement Thrift Investment Board.

(b) AUTHORITY TO OBTAIN INFORMATION.—Each authority identified in subsection (a) may secure directly from any department or agency of the United States information necessary to enable such authority to carry out its responsibilities under this Act. Upon request of the authority involved, the head of the department or agency involved shall furnish that information to the requesting authority.

(c) LIMITATION; SAFEGUARDS.—Each of the respective authorities under subsection (a)—

- (1) shall request only such information as that authority considers necessary; and
- (2) shall establish, by regulation or otherwise, appropriate safeguards to ensure that any information obtained under this section shall be used only for the purpose authorized.

**SEC. 204. SOCIAL SECURITY RECORDS.**

Notwithstanding any limitations in section 205 of the Social Security Act regarding the modification of wage records maintained by the Commissioner of Social Security for purposes of title II of such Act, the Commissioner of Social Security shall modify the wage record of each employee affected by a retirement coverage error to change, add, or delete any entry regarding service as an employee to the extent necessary to carry out the purposes of this Act or the Social Security Act.

**SEC. 205. CONFORMING AMENDMENTS RESPECTING SOCIAL SECURITY COVERAGE AND OASDI TAXES.**

(a) SOCIAL SECURITY COVERAGE.—Section 210(a)(5)(H) of the Social Security Act (42 U.S.C. 410(a)(5)(H)) is amended—

- (1) in clause (i) by striking “or” at the end;

- (2) in clause (ii) by striking the semicolon and inserting “, or”; and  
 (3) by adding at the end the following:

“(iii)(I) described in section 111(a)(3) of the Federal Retirement Coverage Corrections Act, on or after the effective date of an election (or deemed election) by such individual under section 111(b)(2) of such Act,

“(II) described in section 131(a)(1) of such Act, on or after the effective date of an election (or deemed election) by such individual under subsection (b)(2) or (c)(1) of section 131 of such Act, or

“(III) described in section 151(a) of such Act, on or after the effective date of an election (or deemed election) by such individual under subsection (b)(2) or (c)(1) of section 151 of such Act;”.

- (b) OASDI TAXES.—Section 3121(b)(5)(H) of the Internal Revenue Code of 1986 is amended—

- (1) in clause (i) by striking “or” at the end;  
 (2) in clause (ii) by striking the semicolon and inserting “, or”; and  
 (3) by adding at the end the following:

“(iii)(I) described in section 111(a)(3) of the Federal Retirement Coverage Corrections Act, on or after the effective date of an election (or deemed election) by such individual under section 111(b)(2) of such Act,

“(II) described in section 131(a)(1) of such Act, on or after the effective date of an election (or deemed election) by such individual under subsection (b)(2) or (c)(1) of section 131 of such Act, or

“(III) described in section 151(a) of such Act, on or after the effective date of an election (or deemed election) by such individual under subsection (b)(2) or (c)(1) of section 151 of such Act;”.

**SEC. 206. REGULATIONS.**

(a) IN GENERAL.—Any regulations necessary to carry out this Act shall be prescribed by the Director of the Office of Personnel Management, the Executive Director of the Federal Retirement Thrift Investment Board, the Commissioner of Social Security, the Secretary of the Treasury, and any other appropriate authority, with respect to matters within their respective areas of jurisdiction.

(b) MATTERS TO BE INCLUDED.—The regulations prescribed by the Director of the Office of Personnel Management shall include at least the following:

- (1) FORMER EMPLOYEES, ANNUITANTS, AND SURVIVOR ANNUITANTS.—

(A) IN GENERAL.—Provisions under which, to the maximum extent practicable and in appropriate circumstances, any election available to an employee under subtitle A, B, D, or F of title I shall be available to a former employee, annuitant, or survivor annuitant.

(B) SUBTITLE C SITUATIONS.—Provisions under which subtitle C of title I shall apply in the case of a former employee.

(C) SUBTITLE E SITUATIONS.—Provisions under which the purposes of this paragraph shall be carried with respect to any situation under subtitle E of title I.

(2) FORMER SPOUSES.—Provisions under which appropriate notification shall be afforded to any former spouse affected by a change in retirement coverage pursuant to this Act.

(3) PROCEDURAL REQUIREMENTS.—Provisions establishing the procedural requirements in accordance with which any determinations under this Act (not otherwise addressed in this Act) shall be made, in conformance with the requirements of this Act.

(4) AUTHORITY TO MAKE ACTUARIAL REDUCTION IN ANNUITY BY REASON OF CERTAIN UNPAID AMOUNTS.—Provisions under which any payment required to be made by an individual to the Government in order to make an election under this Act which remains unpaid may be made by a reduction in the appropriate annuity or survivor annuity. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the amount so required.

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

(1) the term “annuitant” means any individual who is an annuitant as defined by section 8331(9) or 8401(2) of title 5, United States Code; and

(2) the term “former employee” includes any former employee who satisfies the service requirement for title to a deferred annuity under chapter 83 or 84 of such title 5 (as applicable), but—

(A) has not attained the minimum age required for title to such an annuity; or

(B) has not filed claim therefor.

(d) **COORDINATION RULE.**—In prescribing regulations to carry out this Act, the Director of the Office of Personnel Management shall consult with—

- (1) the Administrative Office of the United States Courts;
- (2) the Clerk of the House of Representatives;
- (3) the Sergeant at Arms and Doorkeeper of the Senate; and
- (4) other appropriate officers or authorities.

(e) **EFFECTIVE DATE.**—All regulations necessary to carry out this Act shall take effect as of the first day of the first month beginning after the end of the 6-month period beginning on the date of enactment of this Act.

**SEC. 207. ALL ELECTIONS TO BE APPROVED BY OPM.**

Notwithstanding any other provision of this Act, no election under this Act (other than an election by default) may be given effect until the Office of Personnel Management has determined, in writing, that such election is in compliance with the requirements of this Act.

**SEC. 208. ADDITIONAL TRANSFERS TO OASDI TRUST FUNDS IN CERTAIN CASES.**

If the Commissioner of Social Security determines that the payment of the OASDI taxes described in this Act did not result in a credit to the OASDI trust funds of an equal amount, the Commissioner of Social Security shall notify the Secretary of the Treasury of the amount of any shortfall. Promptly upon receiving such notification, the Secretary of the Treasury shall transfer an amount equal to such shortfall from the general fund of the Treasury to the OASDI trust funds.

**SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) **AMENDMENT RELATING TO LIMITATION ON SOURCES FROM WHICH CONTRIBUTIONS TO THE THRIFT SAVINGS FUND ARE ALLOWED.**—Section 8432(h) of title 5, United States Code, is amended by striking “title.” and inserting “title or the Federal Retirement Coverage Corrections Act.”

(b) **DESCRIPTION OF AMOUNTS COMPRISING THE THRIFT SAVINGS FUND.**—Section 8437(b) of title 5, United States Code, is amended by striking “expenses)” and inserting “expenses), as well as contributions under the Federal Retirement Coverage Corrections Act (and lost earnings made up under such Act).”

(c) **ADMINISTRATIVE EXPENSES.**—

(1) **THRIFT SAVINGS PLAN.**—Section 8437(d) of title 5, United States Code, is amended by inserting “(including the provisions of the Federal Retirement Coverage Corrections Act that relate to this subchapter)” after “this subchapter”.

(2) **CSRS, CSRS-OFFSET, FERS.**—Section 8348(a)(2) of title 5, United States Code, is amended by striking “statutes;” and inserting “statutes (including the provisions of the Federal Retirement Coverage Corrections Act that relate to this subchapter);”.

(3) **MSPB.**—Section 8348(a)(3) of title 5, United States Code, is amended by striking “title.” and inserting “title and the Federal Retirement Coverage Corrections Act.”

## **TITLE III—OTHER PROVISIONS**

**SEC. 301. PROVISIONS TO PERMIT CONTINUED CONFORMITY OF OTHER FEDERAL RETIREMENT SYSTEMS.**

(a) **FOREIGN SERVICE.**—Sections 827 and 851 of the Foreign Service Act of 1980 (22 U.S.C. 4067 and 4071) shall apply with respect to this Act in the same manner as if this Act were part of—

- (1) the Civil Service Retirement System, to the extent this Act relates to the Civil Service Retirement System; and
- (2) the Federal Employees’ Retirement System, to the extent this Act relates to the Federal Employees’ Retirement System.

(b) **CENTRAL INTELLIGENCE AGENCY.**—Sections 292 and 301 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2141 and 2151) shall apply with respect to this Act in the same manner as if this Act were part of—

- (1) the Civil Service Retirement System, to the extent this Act relates to the Civil Service Retirement System; and
- (2) the Federal Employees’ Retirement System, to the extent this Act relates to the Federal Employees’ Retirement System.

**SEC. 302. CERTAIN AMOUNTS PAYABLE OUT OF THE GENERAL FUND OF THE TREASURY OR CSRDF.**

(a) **GENERAL FUND OF THE TREASURY.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this Act or any other provision of law (but subject to paragraph (2)), all amounts for which an Executive agency would otherwise be liable by virtue of an election made (or deemed to have been made) under this Act shall, to the extent the liability relates to amounts payable for any portion of a period of erroneous coverage (or of a period described in section 105(d)), instead be paid by the Secretary of the Treasury from amounts in the general fund of the Treasury of the United States not otherwise appropriated, if or to the extent that the Director of the Office of Management and Budget determines, on application of the agency involved, that the payment by such agency of those amounts would substantially impair the agency’s ability to accomplish its mission. For purposes of the preceding sentence, a substantial impairment may include a reduction in force if the Director of the Office of Management and Budget determines that such reduction in force is attributable solely to payments required under this Act.

(2) **EXCEPTION.**—This subsection shall not apply with respect to any amount for which an Executive agency would otherwise be liable by reason of any retirement coverage error as to which the notification required under section 201 is not given before January 1, 2002.

(3) **DEFINITION.**—For purposes of this subsection, the term “Executive agency” has the meaning given such term by section 105 of title 5, United States Code, but does not include the General Accounting Office.

**(b) CSRDF.**—

(1) **IN GENERAL.**—For purposes of section 8348(f) of title 5, United States Code, any unfunded liability in the CSRDF created as a result of an election made (or deemed to have been made) under this Act, as determined by the Office of Personnel Management, shall be considered a new benefit payable from the CSRDF.

(2) **COORDINATION RULE.**—Paragraph (1) shall not apply to the extent that subsection (h), (i), or (m) of section 8348 of title 5, United States Code, would otherwise apply.

**SEC. 303. INDIVIDUAL RIGHT OF ACTION PRESERVED FOR AMOUNTS NOT OTHERWISE PROVIDED FOR UNDER THIS ACT.**

Nothing in this Act shall preclude an individual from bringing a claim against the Government of the United States which such individual may have under section 1346(b) or chapter 171 of title 28, United States Code, or any other provision of law (except to the extent the claim is for any amounts otherwise provided for under this Act).

**SEC. 304. EXTENSION OF OPEN ENROLLMENT PERIOD TO EMPLOYEES UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM.**

Section 860 of the Foreign Service Act of 1980 (22 U.S.C. 4071i) is amended by inserting after the first sentence the following: “The Secretary of State shall, in addition, issue regulations providing for an election for coverage under the Foreign Service Pension System for employees covered under the Foreign Service Retirement and Disability System comparable to the election provided for by the Federal Employees’ Retirement System Open Enrollment Act of 1997.”.

## **TITLE IV—TAX PROVISIONS**

**SEC. 401. TAX PROVISIONS.**

(a) **PLAN QUALIFICATION.**—No retirement plan of the United States (or any agency thereof) shall fail to be treated as a qualified plan under the Internal Revenue Code of 1986 by reason of any action taken under this Act.

(b) **TRANSFERS.**—For purposes of the Internal Revenue Code of 1986, no amount shall be includible in the gross income of any individual by reason of any direct transfer under this Act between funds or any Government contribution under this Act to any fund or account.

(c) **DISTRIBUTION OF EXCESS CSRS CONTRIBUTIONS.**—Section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) shall not apply to the distribution of the excess described in section 102(b)(1)(B) of this Act or to any other refund paid under this Act from the Civil Service Retirement and Disability Fund.

## I. SHORT SUMMARY OF LEGISLATION

Through no fault of their own, thousands of Federal employees have been erroneously placed in the wrong Federal retirement system. The vast majority of these errors involve misclassifications in either the Federal Employees Retirement System (FERS) or the Civil Service Retirement System (CSRS). When these errors are discovered, the Office of Personnel Management (OPM) and other Federal agencies must correct the mistake by automatically enrolling misclassified employees in the correct system. Because corrections do not currently include make-whole relief, their effects are often devastating for the employees involved.

The Federal Retirement Coverage Corrections Act addresses this problem and accomplishes a number of objectives: It provides comprehensive coverage of retirement coverage errors. Employees affected by an error are provided a status quo option, and employees' Thrift Savings Plan (TSP) accounts are made whole. Agencies are held accountable for their mistakes. Unfair tax consequences of corrections are prevented. To ensure fairness and accuracy, the bill requires centralized oversight of the corrections process and provides affected employees with administrative and judicial review. The bill protects the integrity of the Social Security trust funds, and it protects all employees from reductions in force (RIFs) to pay for the required remedies.

The bill provides a consistent framework to correct all retirement coverage errors for employees with accounts in the Civil Service Retirement and Disabilities Fund (CSRDF) and also covers former employees, annuitants, and survivors. It extends the same correction options to employees in retirement systems for the Foreign Service and the Central Intelligence Agency.

With two exceptions, employees may choose between the retirement system they were mistakenly placed in or the system they should have been placed in retroactively to the date of the error. One exception prevents employees who were erroneously placed in the CSRS from electing that system; they may, however, choose to be enrolled in the CSRS-Offset system. The other exception affects employees who should have been in Social Security only, without retirement participation, but who were erroneously enrolled in one of the Federal retirement systems. These employees may not remain in a Federal retirement system unless they had already vested.

The bill adapts an Internal Revenue Service (IRS) Revenue Procedure, Rev. Proc. 94-62, that applies to similar mistakes in the private sector as a model for make-up contributions to employees' TSP accounts to make them whole. The agencies responsible for retirement coverage errors bear the cost of making up lost earnings on employees' TSP accounts. Agencies, not employees, make all necessary contributions to the Civil Service Retirement and Disability Fund (CSRDF), Social Security trust funds, as well as the TSP. They also pay the reasonable costs of financial and legal advice employees need to make informed decisions under the Act. In some cases, agencies may collect from employees an amount equal to the refund of Social Security contributions due the employees.

The bill's tax provisions prevent employees from incurring undue tax burdens as a result of an election under this Act.

OPM will be required to issue regulations to ensure uniform implementation of the bill's provisions and to ensure that employees are properly informed as to the status of their various retirement accounts in order to make an informed election. Corrections under the bill are not final until approved by OPM. Employees may appeal corrections to the Merit Systems Protection Board (MSPB), and seek judicial review by the United States Court of Appeals for the Federal Circuit. The bill does not impair any right employees may have to sue for other damages under the Federal Tort Claims Act.

The integrity of the Social Security trust funds is preserved. The bill amends the Social Security Act so CSRS-eligible employees who choose coverage under FERS or Social Security may receive Social Security benefits. Current law excludes CSRS-eligibles from the Social Security program.

Agencies will make all necessary payments from appropriated funds. However, if the Director of OMB determines that making such payments would impair an agency's mission (including RIFs), the payments may be made from the Treasury's general fund.

## II. BACKGROUND AND NEED FOR THE LEGISLATION

Most civil servants are covered by one of two distinctly different retirement systems, CSRS and FERS. The CSRS is a stand-alone defined benefit retirement plan that does not include Social Security coverage. FERS, on the other hand, is a three-tiered system consisting of Social Security coverage, a defined benefit plan, and the TSP. The TSP is a defined contribution plan, similar to 401(k) plans offered by many private employers, which is administered by the Federal Retirement Thrift Investment Board (Thrift Board). (CSRS employees who vested in CSRS before separating from the government for more than one year may be covered by a variant of the CSRS system called CSRS-Offset. A hybrid, CSRS-Offset also takes account of Social Security benefits to which the employee may be eligible.) Contributions to the TSP are an essential part of the FERS system because the FERS basic annuity is substantially lower than the CSRS annuity.

Under CSRS, 7% of employees' basic pay is withheld from their pay and deposited in the CSRDF. Social Security taxes are not withheld, and CSRS employees are not eligible to participate in Social Security. CSRS employees may contribute up to 5% of their basic pay to the TSP, but, unlike FERS, agencies make no contribution on their behalf. Their CSRS annuity is calculated based on the average of the highest 3 salaries earned. The salary replacement rate accrues at 1.5% per year for the first 5 years of service, 1.75% for the next 5 years, and 2% for each year after the first 10. After a thirty-year career, retiring CSRS employees would thus receive a pension worth approximately 56 percent of the average high 3 years of pre-retirement salaries.

FERS employees pay full Social Security taxes (in 1998, 6.2% on the first \$68,400) plus an amount equal to the difference between 7% of basic pay and the Social Security tax rate as the employee share of the FERS defined benefit. The percentage of pay employ-

ees have contributed to the TSP has increased gradually since 1988. Currently FERS employees average about 6.4%, but may contribute up to 10% of their salary, subject to the IRS cap (currently \$10,000 per year). The employing agency automatically contributes at least 1% of basic pay to the TSP, even if the employee contributes nothing, and will match employee contributions up to 5%. The FERS benefit is also calculated based on the average of the highest 3 salaries earned. The salary replacement rate accrues at 1% per year of service, which increases to 1.1% if retirement is after age 62. After a thirty-year career, retiring FERS employees would thus receive a pension worth approximately 30 percent (33 percent at age 62 or over) of the average high 3 years of pre-retirement salaries plus the same Social Security benefits payable to a similarly situated private sector retiree.

On December 31, 1983 the CSRS was closed to new enrollments. Effective January 1, 1984 new Federal employees were put into the Social Security system, and their retirement deductions held in a CSRS Interim account pending creation of a new retirement system. On January 1, 1987, FERS was established. In addition to their Social Security deductions (currently 6.2%), FERS employees also contribute an amount which is the difference between 7% of pay and the Social Security deduction.

Since no new system existed from January of 1984 to January 1, 1987, new hires during this period were left in limbo. After the creation of FERS, all employees in the CSRS Interim plan were to be transferred into FERS. Unfortunately, many employees were not transferred and were left with the erroneous belief that they were correctly enrolled in the CSRS. Approximately 200,000 new Federal employees were hired during this time, and some as yet unknown fraction of them may have been affected.

Other employees have also been affected by retirement enrollment errors. These include temporary employees who converted from positions for which retirement benefits were not available, to permanent employment status under which they would qualify for FERS but not CSRS. They also include employees re-hired after a break in service and employees with creditable military service. Some of these errors occurred after the January 1987 creation of FERS, thereby extending the time period during which employees may have been affected by enrollment errors.

#### “CORRECTION” PROCEDURES

OPM has identified twelve different scenarios under which Federal employees might become enrolled in the wrong retirement system. These situations are shown on Chart 1.

HR 3249 AS AMENDED CHART 1 ERRONEOUS RETIREMENT ENROLLMENTS -- proposed corrections

		WRONGLY ENTERED INTO:			
		CSRS	CSRS-Offset	FERS	Social Security Only
SHOULD HAVE BEEN IN:	CSRS	N.A.	Subtitle F, Sect 152/153 -- employee elects to (1) stay in Offset or (2) switch to CSRS; make-whole provisions do not apply	Subtitle D, Sect 132/134 -- employee elects to (1) stay in FERS or (2) switch to CSRS; if switches to Offset gives up earnings and govt match and govt 1% in TSP, but keeps own TSP contributions and earnings; make-whole provisions do not apply	Subtitle B, Sect 114 -- employee elects to (1) stay or (2) move to CSRS; make-whole provisions for TSP contributions apply
	CSRS-Offset		N.A.	Subtitle D, Sect 133/135 -- employee elects to (1) stay in FERS or (2) switch to CSRS-Offset; (if switch see above)	Subtitle B, Sect 113 -- employee elects to (1) stay or (2) move to CSRS-Offset; make-whole provisions for TSP contributions apply
	FERS		Subtitle A, Sect 103/105 -- employee elects to (1) stay in CSRS-Offset or (2) switch to FERS; if switch make-whole provisions for TSP contributions apply	N.A.	Subtitle B, Sect 112 -- employee elects to (1) stay or (2) move to FERS; make-whole provisions for TSP contributions apply
	Social Security Only		Subtitle C, Sect 122/125 -- employee elects to move to CSRS-Offset or opt into Soc Sec only; if not vested in Offset remove; if opt out of CSRS refund contributions in excess of OASDI with interest; permit TSP deposits to remain in TSP	Subtitle C, Sect 122/125 -- employee elects to stay in CSRS-Offset or opt into Soc Sec only; if not vested in Offset remove; if opt out of CSRS refund contributions in excess of OASDI with interest; permit TSP deposits to remain in TSP	N.A.

The most challenging scenarios are those that require moving employees between CSRS or CSRS-Offset enrollment and FERS enrollment. These are the errors that hold the greatest potential for serious financial consequences to the employees.

When agencies shift people from CSRS to FERS, the employees have no choice in the conversion, no matter how long they have worked for the government. The law does not permit anyone to have become enrolled in CSRS after January 1, 1984, so OPM has held that agencies cannot leave people in CSRS if they do not belong there.

OPM requires agencies to take corrective actions, but has established no guidance on providing employees with a briefing or formal consultation before the change takes effect. Agencies have sometimes performed "stealth" corrections, where they simply alter personnel records, then let the affected employees find out about the change later. One witness at a Civil Service Subcommittee hearing on this issue, for example, saw a shift in his CSRS account balance on his payroll stub. When he called the personnel office, the personnel officer started the conversation, "I've been dreading this call for two months. \* \* \*" Another victim of these adjustments, a 59-year old GS-7 grandmother employed by the Department of Housing and Urban Development, is still facing increased Social Security deductions from her pay each pay period.

Attempts to make employees whole through administrative action have been complicated by statutory restrictions. Reconstructing Social Security accounts is hampered by the six year IRS limit on repayment of old Social Security taxes. Lump sum deposits in TSP accounts to make up lost employee contributions have only recently been permitted. Until it adopted new regulations on January 29, 1998, the Thrift Board held that make-up contributions by employees could not be attributed to past years, but had to be counted against the applicable IRS deferral limit for the year in which they were made.

#### DAMAGES TO FEDERAL EMPLOYEES FROM ENROLLMENT ERRORS

Employees who should have been in FERS, but who were wrongly enrolled in either CSRS or CSRS-Offset are exposed to the most serious harm. These employees have not been permitted to participate fully in the TSP. Nor were they encouraged by the availability of government matching contributions to participate. In addition, until they are notified of the error, these employees believe that they are in a system that will provide a much higher retirement annuity upon retirement and structure their financial planning accordingly. Consequently, when the error is uncovered, their plans are thrown into disarray and they frequently find themselves with TSP accounts that are substantially lower than they would have been had the employees known they would receive only a FERS annuity.

To compound the problem, it is simply unrealistic to expect that many of these employees would have the financial resources available to make retroactive TSP contributions. Certainly that would be impossible for many lower-paid Federal employees. But even many high-paid employees would find themselves faced with such difficult dilemmas as choosing between fully financing their own re-

tirement or providing for their children's education, all because a Federal agency made an error.

The Committee believes that the victims of these agency errors should be given a meaningful choice between enrollment in the retirement system they should have been placed in or continued enrollment in the erroneous system. But that objective cannot be achieved unless the Federal government shoulders the burden of making up past employee contributions to the TSP. That is the very same burden the IRS's Rev. Proc. 94-62 calls upon private employers to assume in similar circumstances. Private employers are required under Rev. Proc. 94-62, to make a contribution on behalf of employees equal to the average contribution percentage of the employee's group, including any matching contributions. The Revenue Procedure also requires that "the correction method should restore both current and former participants to the benefit levels they would have had if the defect had not occurred."

In order to implement these principles, the bill requires agencies to make retroactive TSP contributions for affected employees based upon the average contribution rates of appropriate TSP contributors. Agency matching contributions and lost earnings based upon the average investment allocations of TSP participants are also required.

### III. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

Rep. John L. Mica introduced H.R. 3249 on February 24, 1998 after the Committee on Government Reform and Oversight's Subcommittee on Civil Service held a legislative hearing on the Chairman's mark. The bill as introduced reflected amendments to the Chairman's mark offered at that meeting by Mr. Cummings and Mrs. Morella. Mr. Cummings' amendment provided that amounts for which agencies would otherwise be liable under the bill would be paid from the CSRDF when employees are notified of the error before January 1, 2003. Mrs. Morella's amendment preserved any rights affected employees may have to recover other damages under the Federal Tort Claims Act. The bill was referred to the Committee on Government Reform and Oversight and, in addition, to the Committee on Ways and Means on February 24, 1998. On March 5, 1998 the Committee on Government Reform and Oversight considered the bill. Rep. Mica offered an amendment in the nature of a substitute, which was adopted by the Committee. The Committee ordered H.R. 3249, as amended, reported to the House.

### IV. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

In addition to the legislative hearing referred to in section II, the Subcommittee on Civil Service also held an oversight hearing on this problem on July 31, 1997. Several employees who had been victimized by agency retirement coverage errors testified at that hearing. They were: Alan White (Office of the Inspector General, Department of Defense), David Mangam (Army War College), Mr. John Gabrielli (Internal Revenue Service), and E. Barry Schrum (Department of Energy). Other witnesses were William E. Flynn, Associate Director, Retirement and Insurance Service, Office of Personnel Management; Sarah Hall Ingram, Associate Chief Coun-

sel, Employee Benefits/Exempt Organizations, Internal Revenue Service; Diane Disney, Deputy Assistant Secretary (Civilian Personnel), Department of Defense; and Linda Oakey-Hemphill, Agency Retirement Counselor, Department of the Treasury.

Mr. Alan White reported that he was hired by the Department of the Air Force as a criminal investigator in August 1984, and had remained in CSRS through his transfer to the Inspector General's office in the Department of Defense. The mistake in his retirement enrollment was detected when he requested an estimate of the cost of buying CSRS credit for his military service. His personnel office changed his retirement enrollment to FERS on February 28, 1996, retroactive to his entry on duty in 1984. He learned about the change by mail on a Saturday, when his leave and earnings statement reported a drop in his CSRS account from \$51,000 to \$103. His personnel office did not notify him of the change until April, and both his agency and OPM proved unresponsive in providing guidance. Mr. White read a statement from Mrs. Deborah Monroe, a GS-7 program assistant in the Chicago office of the Department of Housing and Urban Development who had been in the CSRS since August of 1983 and was involuntarily converted to FERS in 1995. She reported that both her agency and OPM told her that nothing could be done to correct her situation.

Mr. David Mangam of the Army War College had completed a military career when he accepted an overseas limited appointment from the Department of Defense in 1983. In 1984, he gained a career-conditional appointment at the Army War College, and was enrolled in CSRS when hired. He indicated that he would not have accepted the position unless he was able to benefit from the coverage of the CSRS, because he was interested in converting his military service under that system. The agency changed his enrollment in November of 1996 and OPM's review fully supported the agency's action. He reported that the complete transition between the systems would require 257 pay periods—or nearly 10 years. He estimated that the mistake would cost him \$30,000 per year, assuming retirement after 35 years of service. He also reported suffering aggravation of a diabetic condition that his doctors associated with the stress of the transition.

Mr. John Gabrielli of the Internal Revenue Service's Buffalo, NY, office reported that he began service as a temporary appointee and was converted to career-conditional status in September 1984, at which time he was enrolled in CSRS. He was provided an opportunity to enroll in FERS during 1987, but rejected it. He and four other employees were notified of the enrollment error on April 13, 1993, and were adjusted to FERS coverage, effective in May of 1991. He reported that he still had not received notice of what credit he would receive for funds transferred from his CSRS account to his Social Security account, and whether he would receive a refund of any differences. He noted that the National Treasury Employees Union had assisted efforts to get appropriations language requiring OPM to address the issue, but that OPM had not provided a solution to date.

Mr. E. Barry Schrum is a criminal investigator with the Department of Energy's Office of Inspector General. He was hired in December of 1984 and enrolled in the CSRS under law enforcement

retirement provisions. He, too, had been provided opportunity to elect FERS coverage in 1987, but chose to remain in CSRS. The Department's OIG personnel office informed him of the mistaken enrollment in April of 1996 and notified that he would be retroactively changed to FERS enrollment. That change was made effective in a June 25, 1996 memorandum. He testified that he was informed at that time that he would be able to make retroactive contributions to the TSP, and that he would have to remain continuously employed in the Federal service for eight years to make up the back contributions to the TSP. He recommended legislation that would require the agencies that made the mistakes to make employees whole, and submitted a letter from the Department of Energy attorney which claimed that the Department lacks the authority to compensate employees for these errors under current law.

Under questioning, all of the employee witnesses asserted that they had little support from their agencies and virtually none from OPM. Two of the witnesses are parties to litigation, filed July 28, 1997, after completing administrative review through their agencies and having an initial claim from Mr. White denied by the Merit Systems Protection Board. They reported extensive legal fees associated with the litigation and the administrative reviews. Mr. Gabrielli reported that he lacked the means to pursue resolution of his case through an attorney, and that he was assisted by his union.

Mr. William E. Flynn of the Office of Personnel Management noted that the resolution of this problem would require actions of OPM, the Thrift Board, the Internal Revenue Service, the Social Security Administration, and the Treasury Department. He reported that these agencies are conducting discussions, but that they had not agreed on a solution to the problems associated with enrollment errors. He added that a comprehensive solution is desirable to address concerns of employees, former employees, annuitants, and survivors who have been affected by these concerns. Under questioning from Mr. Mica and Mr. Cummings, Mr. Flynn agreed to submit a proposal to resolve these problems to the Subcommittee no later than September 10, 1997. Mr. Flynn admitted that OPM had no idea of the number of individuals affected by these enrollment errors, and that he could not estimate the cost of correcting the errors throughout the Federal service.

Ms. Sarah Hall Ingram of the Internal Revenue Service admitted that the range of legal and tax policy questions associated with correcting these errors in retirement coverage were complicated and unclear. The IRS administers and collects the FICA taxes paid to the Social Security system, and private employers are normally required to deposit these in a timely manner. Federal employers are subject to nearly identical requirements for payment of these taxes. Few of these procedures, however, are intended for situations where mistakes in calculating the tax obligation require correction years after the tax should have been paid. She also noted that the Internal Revenue Code restricts the amount that an employee can contribute to a tax-deferred retirement account, and that such limits might have to be amended as part of any resolution of these issues.

Ms. Diane Disney reported that the Department of Defense had found as many as 3,100 employees of the approximately 170,000 hired between 1984 and 1986 who might have been placed into wrong retirement systems. In reviewing those records, many of the CSRS classifications were correct because of previous Federal service, but she conceded that the Defense Finance and Accounting Service is in the process of correcting 500 employees' records. She noted the difficulties of correcting mistakes that are now more than 10 years old, and that some of the options essential to make employees whole are not authorized by current law.

Ms. Linda Oakey-Hemphill of the Department of the Treasury described extensive interagency negotiations to attempt resolution of the issues, and reported that such concerns had been raised as early as 1987. She noted that the automated information available in personnel systems is not adequate to identify the enrollment errors, and does not provide adequate guidance for resolution of the cases. She reported that the Department of the Treasury had corrected as many as 600 cases since 1992, but could not estimate the number of additional errors that could remain in the system.

The subcommittee also held a legislative hearing immediately before it marked up the Chairman's draft of H.R. 3249. Witnesses at that hearing were William E. Flynn, Associate Director, Retirement and Insurance Service, Office of Personnel Management; Roger W. Mehle, Executive Director, Federal Retirement Thrift Investment Board; Thomas O'Rourke, Partner, Shaw, Bransford & O'Rourke, Washington, DC; and Daniel F. Geisler, President American Foreign Service Association.

Mr. Flynn testified that the Administration strongly preferred legislation that it had prepared to deal with the problem of misclassified employees and urged the subcommittee to use that bill rather than the Chairman's mark as the basis for legislation. He contended that the Administration's bill represented the consensus of a number of agencies to resolve the myriad intricate and intertwined aspects of the problems created by agency errors. In his view, corrective legislation must meet four discrete objectives:

- (1) the remedy must demonstrate that the government cares about Federal employees who have been harmed by retirement coverage errors and is committed to an equitable solution for these employees and their families;

- (2) employees should have a choice between corrected coverage and the benefit they expected to receive without disturbing Social Security coverage laws;

- (3) the options provided to the employee should be easy to understand; and

- (4) administrative aspects of the remedy should be minimized to keep the solutions simple and timely.

He argued that the Administration's bill satisfies these criteria. Mr. Flynn also testified that there were "fundamental differences" between the Administration's bill and the language under consideration by the subcommittee. Under both approaches, he said, employees who were erroneously placed in CSRS or CSRS-Offset will have the option of retroactive placement in FERS, but only under the subcommittee's proposal would individuals electing FERS coverage be entitled to a substantial agency-funded payment to the

TSP. He pointed out that misclassified employees may make retroactive contributions to the TSP and receive matching contributions and earnings.

Mr. Flynn acknowledged that the subcommittee's proposal is based upon rules applicable to defined contribution plans in the private sector. However, he contended that private sector rules were inappropriate because Federal employees may participate in both defined contribution and defined benefit plans. He also argued that government make-up contributions to the TSP on behalf of individuals create "intractable" problems involving cost, equity, and complexity, while the Administration's plan provides adequate "make whole" relief by offering CSRS or CSRS-Offset coverage as alternatives to FERS. According to Mr. Flynn, this approach is satisfactory because employees "will always receive at least as much as they believed they were going to get." In contrast, he contended that the subcommittee's approach would overcompensate some employees and under compensate others. Finally, Mr. Flynn also argued that the subcommittee's approach was unnecessarily complex, in part because it held agencies accountable for their errors rather than make payments from the retirement fund.

Mr. Mehle presented the views of the Thrift Board and emphasized that the Thrift Board does not take a position on the appropriateness of benefit levels available under the retirement programs or the TSP. He also noted that the Thrift Board first addressed the problem of misclassified employees in 1989 when it proposed legislation to permit agency payments of lost earnings employees suffered when agencies failed to permit timely employee contributions to the TSP. That proposal was enacted. However Congress did not then adopt the Thrift Board's suggestion that it allow misclassified employees to elect to remain in the CSRS, even though the Board recognized then that the procedures it recommended would not provide an adequate remedy in the case of a long-standing retirement coverage error. In his testimony, Mr. Mehle acknowledged that many employees may be disadvantaged by current rules that leave them responsible for making up lost employee contribution, either because they have only a relatively short period of active service before retiring or because they lack the financial resources to make themselves whole.

Both the Administration and subcommittee proposals, Mr. Mehle noted, would allow affected employees to elect coverage under CSRS or CSRS-Offset and predicted that most would choose that option. He also noted that whereas the Administration's proposal would simply apply existing correction law, the subcommittee's approach would create a new system to deal with misclassification errors. However, he contended that the subcommittee's proposal might create unintended consequences and impose significant administrative burdens on the Thrift Board. The unintended consequences largely consisted of what he considered disparate treatment of affected employees. He also argued that because the corrective mechanism under the subcommittee proposal differed so substantially from current rules, the Thrift Board would not be able to use its existing software or computers to perform calculations and, consequently, would have to contract for that service. In addition, he argued that the Thrift Board would not have ready access

to the information it would need to perform the tasks assigned to it under the subcommittee proposal.

Mr. O'Rourke testified that he is an attorney in private practice who specializes in tax, pension, and estate issues. He is currently representing a number of Federal employees who were improperly placed in the CSRS and then involuntarily switched to FERS. He estimates that he has been contacted by approximately 50 such individuals. The losses these individuals suffer, he stated, result from the fact that FERS participants will receive significantly smaller annuities than their CSRS counterparts and have been denied the opportunity to intelligently plan for a FERS retirement by building up an adequate TSP balance. He also described the "anguish and frustration" these retirement coverage errors have caused the employees who have contacted him. Two of his clients have suffered heart attacks, one has had a nervous breakdown as a result of the stress created by this problem, and a number have described marital problems. They have found agency personnel sympathetic to their plight, but impotent to provide a satisfactory remedy under existing law.

Mr. O'Rourke emphasized that legislation is necessary to resolve the problem of misclassified employees. After reviewing both the Administration's proposal and the subcommittee's, Mr. O'Rourke concluded that the subcommittee's approach was preferable. He believed that both proposals took positive steps to protect affected employees by allowing them to choose retirement coverage that provides essentially the same benefits they thought they would earn. However, he found the Administration's approach unfair to individuals who, after being notified of the retirement coverage error and removed from CSRS, have attempted to mitigate their losses. In his view, the Administration's draft would not make such individuals whole and would even punish them further by inflicting significant financial harm on them whichever option they chose. Employees who choose FERS coverage would lose forever the earnings on contributions they could have made during the period of erroneous coverage. Those who elect CSRS-Offset would be exposed to additional income taxes and penalty taxes based upon distributions from their existing TSP accounts.

In contrast, Mr. O'Rourke testified, the subcommittee's approach attempts to make individuals whole and would not expose them to additional tax burdens. He also contended that the subcommittee's proposal includes a "reasonable and objective mechanism" to provide make whole relief for those electing FERS coverage that prevents individuals from making TSP investment decisions based upon hindsight, yet relieves them of the financial burden of correcting an error they did not cause.

Nevertheless, Mr. O'Rourke criticized the subcommittee's draft for requiring employees to make retroactive Social Security contributions. In the private sector, he pointed out, such costs would be borne by employers, and he believed the Federal government should bear the same burden it imposes on other employers. He also faulted both proposals for not explicitly preserving employees' rights to relief under other statutes, such as the Federal Tort Claims Act and the Back Pay Act. This, he argued, is necessary to

permit employers to compensate employees for all of the harm they have suffered as a result of these agency errors.

Mr. Geisler testified on behalf of the American Foreign Service Association (AFSA). AFSA is a professional association for 23,000 active and retired foreign service officers and specialists, and it serves as the bargaining agent for foreign service personnel at the State Department, the Agency for International Development, the U.S. Information Service, the Commerce Department's Foreign Commercial Service, and the Department of Agriculture's Foreign Agricultural Service.

In AFSA's view, employees who are victims of these agency errors should have real options, which requires make-whole relief of the kind provided in the subcommittee proposal. He illustrated this by citing the example of a foreign service officer who was erroneously placed in the Foreign Service Retirement and Disability System, which is analogous to CSRS, on January 1, 1987. This error was not discovered until August 1997. Upon discovery, he was placed in the Foreign Service Pensions System (FSPS), which is similar to FERS. The agency credited the individual's TSP account with the automatic 1% agency contribution for the period of erroneous coverage, and will make retroactive contributions with the appropriate agency match. However, because the TSP is an integral part of the FSPS, the individual is now faced with the need to make up 10 years worth of contributions. And even if he makes such contributions, he will lose the earnings he would have realized on those TSP contributions had they been made over the years. Mr. Geisler pointed out that employees who do not have much discretionary income cannot reasonably be expected to immediately contribute years of foregone employee contributions. Consequently, they would be left with inadequate retirement coverage.

AFSA believes the make-whole relief in the subcommittee's proposal permits employees the opportunity to make real choices. Mr. Geisler believes the averaging methods proposed in the subcommittee's draft benefits those on the lower end of the pay scale more than higher-paid employees. Nevertheless, he found it a fair approach because it prevents the use of "20/20 hindsight" by making retroactive investments without risk and it helps those lower-paid employees who need it most. Under the subcommittee's approach, Mr. Geisler believes individuals will be able to choose freely the retirement system that is best suited for them rather than being forced to remain in the older system simply because they cannot afford to make prohibitively high TSP contributions.

## V. EXPLANATION OF THE BILL AS REPORTED: SECTION-BY-SECTION

### SECTION 1. SHORT TITLE; TABLE OF CONTENTS

The short title of this Act is the Federal Retirement Coverage Corrections Act.

### SECTION 2. DEFINITIONS

This section defines key terms used in the Act.

## SECTION 3. APPLICABILITY

The Act applies to all retirement coverage errors that have not been corrected within one year, whether they occurred before or after its enactment. However, the Act does not affect any retirement coverage or treatment beginning before the first pay period after January 1, 1984.

## SECTION 4. RESTRICTION RELATING TO FUTURE CORRECTIONS

This section provides that on or after the date of enactment, retirement coverage errors may be corrected only in accordance with this Act. It also provides that nothing in the Act affects the right of any individual to make an election under the Federal Employees' Retirement System Open Enrollment Act of 1997 (Public Law 105-61; 111 Stat. 1318). The Office of Personnel Management (OPM) shall prescribe regulations to apply this Act to any person who, other than under this Act, makes a voluntary election to change retirement coverage.

## SECTION 5. IRREVOCABILITY OF ELECTIONS

Elections made (or deemed to have been made) under this Act are irrevocable.

## TITLE I—DESCRIPTION OF RETIREMENT COVERAGE ERRORS TO WHICH THIS ACT APPLIES AND MEASURES FOR THEIR RECTIFICATION

## Subtitle A—Employees Who Should Have Been FERS Covered, But Who Was Erroneously CSRS Covered or CSRS-Offset Covered Instead

## SECTION 101. ELECTIONS

This section describes the employees covered by subtitle A and the options available to them under this Act.

Subsection (a). *Applicability.*—Subtitle A applies to employees who should have been covered by the Federal Employees Retirement System (FERS), but who were erroneously enrolled in either the Civil Service Retirement System (CSRS) or CSRS-Offset instead.

Subsection (b). *Uncorrected Error.*—If the retirement coverage error has not been corrected at the time the employee is to make an election under this section, the employee may elect to be enrolled in FERS or to remain (or be transferred to) CSRS-Offset.

Subsection (c). *Corrected Error.*—If the retirement coverage error has been corrected at the time the employee is to make an election under this section, the employee may elect to be enrolled in CSRS-Offset or to remain in FERS.

Subsection (d). *Default Rule.*—This subsection establishes a default rule for employees who do not make an election within 6 months after receiving the notice required under section 201. Under this default rule, employees will be deemed to have elected to remain in the system (other than CSRS) they are in at the time when they should have made the election. This subsection also pro-

vides that employees who should have been covered by FERS may not elect to enroll or remain in CSRS rather than CSRS-Offset.

Subsection (e). *Retroactive Effect.*—All elections under this section shall be retroactive to the date of the retirement coverage error.

SECTION 102. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM CSRS TO FERS TO CORRECT A RETIREMENT COVERAGE ERROR

This section describes the disposition of contributions to the Civil Service Retirement and Disability Fund (CSRDF), transfers to the Federal Old Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, referred to collectively as the OASDI trust funds, and make-up contributions to the Thrift Savings Fund if an employee elects to be transferred from CSRS to FERS under section 101(a)(1).

Subsection (b). *Disposition of Contributions to the CSRDF.*—Some or all of the employee and government contributions to the CSRDF shall be transferred to the OASDI trust funds.

Subsection (b)(1). *Employee Contributions.*—The amount of employee contributions to the CSRDF transferred shall be equal to the lesser of (1) the amount of the OASDI employee tax that should have been withheld from the employee's Federal wages during the period of erroneous coverage or (2) the amount of the employee's lump-sum credit, as defined in 5 U.S.C. §8331(8), attributable to the period of erroneous coverage. (Under this definition, the lump-sum credit is equal to the unrefunded amount of the employee's retirement contributions and deposits and interest on those contributions and deposits.)

If the appropriate portion of the employee's lump-sum credit exceeds the sum of the amount to be transferred plus the amount of FERS retirement contributions that should have been deducted under 5 U.S.C. §8422, the excess shall be refunded to the employee.

If the appropriate portion of the employee's lump-sum credit is less than the sum of the amount required to be transferred and the amount of FERS retirement contributions that should have been deducted, the employing agency shall make up the shortfall to the OASDI trust funds and the CSRDF, as required.

The Director of OPM, in concurrence with the Commissioner of Social Security, shall prescribe regulations governing agency make-up payments to the OASDI trust funds and the CSRDF.

Subsection (b)(2). *Government Contributions.*—An amount equal to the amount of OASDI employer taxes that should have been withheld during the period of erroneous coverage shall be transferred from the CSRDF to the OASDI trust funds. If the total amount of government contributions to the CSRDF for the period of erroneous coverage exceeds the sum of the amount to be transferred and the amount the government should have contributed to FERS under 5 U.S.C. §8423 during the period of erroneous coverage, the excess shall be transferred to the agency then employing the individual. If government contributions for the period of erroneous coverage are less than this sum, the agency then employing the individual shall make up the difference. The Director of OPM, in concurrence with the Commissioner of Social Security, shall pre-

scribe regulations governing agency make-up payments to the OASDI trust funds and the CSRDF.

Subsection (c). Make-up Contributions To The Thrift Savings Fund.—This subsection provides that the employing agency shall make a lump sum contribution to the Thrift Savings Fund to compensate affected employees for lost opportunities to invest in the Thrift Savings Plan (TSP). The lump sum contribution shall make up for employee contributions foregone because of an agency's mistake, lost agency automatic 1% contributions, lost agency matching contributions (based upon both the make-up contribution described in subsection (c)(2) and any TSP contributions the employee actually made), and lost earnings on the total investment.

Subsection (c)(2). Amount Based On Average Percentage Of Pay Contributed By Employees During Period Of Erroneous Coverage.—This subsection establishes rules for calculating the amount of the contribution to make up for employee contributions foregone. The amount contributed for each calendar year during the period of erroneous coverage shall equal the average percentage contributed by full-time FERS covered employees who contributed to the Thrift Savings Fund in that year. (If the average contribution rate is not available for a particular year, the average for the most recent prior year shall be used.) However, the amount of the make-up contribution for a year plus any amounts actually contributed by the employee during that year may not exceed any ceiling established by title 5 of the United States Code or the Internal Revenue Code of 1986.

Subsection (c)(3). Lost Earnings.—Under this subsection, lost earnings are to be calculated as if all employee and agency contributions made up had been timely made and allocated among the TSP investment funds in accordance with the following rules. First, for periods in which the employee actually made contributions to the TSP, the contributions made up shall be allocated in accordance with the employee's own investment fund election during that period. And second, if the employee did not make any contributions to the TSP during a period, the contributions made up shall be allocated in accordance with the average percentage allocation of all TSP contributions among the TSP funds in effect during that year. (If an average allocation for a year is not available, the allocation for the most recent prior year shall be used.)

Subsection (c)(4). Make-up Contribution To Be Made In A Lump Sum.—This subsection requires that the employing agency shall promptly pay the make-up contribution in one lump sum. Under regulations prescribed by the Thrift Board, agencies must provide the Thrift Board with the amounts on which lost earnings are to be calculated. The Thrift Board will perform the calculation and promptly notify the agency of the amount owed.

Subsection (c)(5). Justices and Judges; Magistrates; Etc.—This subsection provides that Justices, Judges, and other employees who become subject to section 8440a, 8440b, 8440c, or 8440d of title 5, United States Code, shall not be entitled to a make-up contribution.

Subsection (c)(6). Regulations.—The Executive Director of the Thrift Board shall prescribe regulations necessary to carry out this subsection.

SECTION 103. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM CSRS-OFFSET TO FERS TO CORRECT A RETIREMENT COVERAGE ERROR

This section applies when an employee who should have been enrolled in FERS but was mistakenly enrolled in CSRS-Offset elects to become FERS covered. In such a case, contributions to the CSRDF shall be disposed of in accordance with section 102(b), disregarding the provision relating to transfers to the OASDI trust funds. Make-up contributions to the Thrift Savings Fund shall be made in accordance with section 102(c).

SECTION 104. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM CSRS TO CSRS-OFFSET TO CORRECT A RETIREMENT COVERAGE ERROR

This section applies when an employee who should have been enrolled in FERS but was mistakenly enrolled in CSRS elects to become CSRS-Offset covered. The effect of such an election shall be as described in section 101(b)(2), except that section 102(b) shall also apply. In applying section 102(b), the provisions of 5 U.S.C. § 8334(k) establishing employee and agency contributions under CSRS-Offset shall be substituted for sections 8422 and 8423, which, respectively, define employee and agency contributions to FERS.

SECTION 105. EFFECT OF AN ELECTION TO BE RESTORED (OR TRANSFERRED) TO CSRS-OFFSET AFTER HAVING BEEN TRANSFERRED TO FERS FROM CSRS-OFFSET (OR CSRS)

This section applies when an employee who should have been enrolled in FERS, but was mistakenly enrolled in CSRS or CSRS-Offset, elects to become CSRS-Offset covered after having been corrected to FERS. The provisions of section 102(b) shall govern the disposition of CSRDF contributions, with the following modifications: The agency and employee shall receive a credit for OASDI employer and employee taxes already paid. In determining amounts owed, the contribution rates for CSRS-Offset shall be used rather than the FERS contribution rates, and the FERS lump-sum credit defined in section 5 U.S.C. § 8401 shall be used rather than the CSRS lump-sum credit. In addition, calculations shall be based upon the period beginning with the date of the retirement coverage error and ending on the day before the election under this section is effective.

Government contributions to the TSP and earnings on those contributions shall be forfeited and retained in the Thrift Savings Fund to defray expenses of administering the TSP. Employees will be permitted to retain their individual TSP contributions and associated earnings in their TSP account, even if those contributions exceeded the applicable limit for CSRS and CSRS-Offset employees.

Subtitle B—Employee Who Should Have Been FERS Covered, CSRS-Offset Covered, or CSRS Covered, But Who Was Erroneously Social Security-Only Covered

SECTION 111. ELECTIONS

This section applies to an employee who should have been enrolled in one of the Federal employee retirement programs but who was erroneously covered only by Social Security. If the error has not been corrected at the time of the election, an employee may elect to be covered by the retirement system the employee should have been in originally. Employees may also choose to remain covered only by Social Security. An employee who does not make an election within the required time shall be deemed to have elected to remain covered only by Social Security. Elections shall be retroactive to the date of the retirement coverage error.

Within 6 months after this Act is enacted, OPM, the Commissioner of Social Security, and the Executive Director of the Thrift Board shall submit a legislative proposal to provide employees whose retirement errors have been corrected under terms less advantageous than are provided in this Act with the opportunity to receive equivalent relief.

SECTION 112. EFFECT OF AN ELECTION TO BECOME FERS COVERED TO CORRECT THE RETIREMENT COVERAGE ERROR

This section applies to an employee who should have been FERS covered and elects to become covered by FERS as well as Social Security. In such cases, the employing agency must pay the full amount of employee and government contributions to FERS that would have been required under 5 U.S.C. §§ 8422 and 8423. Make-up contributions to the TSP shall be governed by section 102(c) of this Act.

SECTION 113. EFFECT OF AN ELECTION TO BECOME CSRS-OFFSET COVERED TO CORRECT THE RETIREMENT ERROR

This section applies to an employee who should have been CSRS-Offset covered and elects to become covered by CSRS-Offset as well as Social Security. In such cases, the employing agency must pay the full amount of employee and government contributions required under subchapter III of chapter 83 of title 5, United States Code that would have been required during the period of erroneous coverage had the employee been CSRS-Offset covered. Make-up contributions to the TSP shall, with the following exceptions, be governed by section 102(c) of this Act. The employee shall not be entitled to any contributions to make up for agency contributions or earnings thereon and make-up contributions shall be subject to the 5% ceiling established 5 U.S.C. § 8351(b).

SECTION 114. EFFECT OF AN ELECTION TO BECOME CSRS COVERED TO CORRECT THE RETIREMENT COVERAGE ERROR

This section applies when an employee who should have been CSRS covered elects to become CSRS covered to correct the retirement coverage error. The employing agency is required to make a lump sum payment to the CSRDF equal to the employee and gov-

ernment contributions that should have been made for the period of erroneous coverage under 5 U.S.C. § 8334. However, the agency is entitled to be reimbursed for the amount of employee OASDI taxes refundable to the employee (up to the amount of employee CSRDF contributions made on the employee's behalf). If the employee does not reimburse the agency as required by this section, the agency may collect the amount due by setoff against accrued pay, compensation, amount of retirement credit, or any other amount due the employee from the government. The agency may also collect the debt by any other method provided by law for recovering amounts owing to the government.

The agency shall also make retroactive contributions to the TSP in accordance with section 113.

**Subtitle C—Employee Who Should Have Been Social Security-Only Covered, But Who Was Erroneously FERS Covered, CSRS-Offset Covered, or CSRS Covered Instead**

**SECTION 121. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, BUT WHO IS ERRONEOUSLY FERS COVERED INSTEAD**

This section applies to an employee who should have been covered only by Social Security but was erroneously covered by FERS as well. An employee who has not vested in FERS shall be automatically excluded from FERS. The employee shall receive from the CSRDF the lump-sum credit to which the employee would be entitled under 5 U.S.C. § 8424 for the period of erroneous coverage. Employer contributions made under section 8423 during the period of erroneous coverage shall be paid from the CSRDF to the employing agency. Government contributions to the Thrift Savings Fund and associated earnings shall be forfeited, but employees may retain their own contributions and earnings on such contributions in their TSP account.

**SECTION 122. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, BUT WHO IS ERRONEOUSLY CSRS-OFFSET COVERED INSTEAD**

This section applies to an employee who should have been covered only by Social Security but was erroneously covered by CSRS-Offset as well. An employee who has not vested in CSRS-Offset shall be automatically excluded from CSRS-Offset. The employee shall receive from the CSRDF the lump-sum credit to which the employee would be entitled under 5 U.S.C. § 8342 for the period of erroneous coverage. Employer contributions made under section 8334 during the period of erroneous coverage shall be paid from the CSRDF to the employing agency. Employees may retain their own contributions and earnings on such contributions in their TSP account.

**SECTION 123. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, BUT WHO IS ERRONEOUSLY CSRS COVERED INSTEAD**

This section applies to an employee who should have been covered only by Social Security but was erroneously covered by CSRS

instead. An employee who has not vested in CSRS shall be automatically excluded from CSRS. Employee and government contributions to the CSRDF shall be disposed of in accordance with section 102(b), disregarding certain specified provisions of that section. Employees may retain their own contributions and earnings on such contributions in their TSP account.

SECTION 124. CORRECTED ERROR: SITUATIONS UNDER SECTIONS 121–  
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Within 6 months of the date of enactment of this Act, the Director of OPM, the Commissioner of Social Security, and the Executive Director of the Thrift Board shall submit a legislative proposal to provide relief equivalent to that available under this Act to any employee who was affected by a retirement described in sections 121 through 123 that has already been corrected.

SECTION 125. VESTED EMPLOYEES EXCEPTED FROM AUTOMATIC  
EXCLUSION

Employees who have vested in FERS, CSRS-Offset, or CSRS as of the date on which the notice of a retirement coverage error is given shall not be automatically excluded from such systems. An employee has vested when the employee has completed at least 5 years of civilian service creditable under 5 U.S.C. §§ 8332 or 8411.

An employee who was erroneously FERS covered may elect to be covered only by Social Security or to remain FERS covered. An employee who was erroneously CSRS-Offset or CSRS covered may elect to be covered only by Social Security or to remain (or become) CSRS-Offset covered. The effect of an election to become CSRS-Offset covered after having been in CSRS shall be the same as in section 104. If the employee does not make any election within the required 6-month period, the employee shall be deemed to have elected to remain FERS covered or to remain (or become) CSRS-Offset covered, as applicable. All elections under this section shall be retroactive to the date of the retirement coverage error.

Special rules apply to an employee who is receiving disability retirement under chapters 83 or 84 of title 5, United States Code or workers' compensation under subchapter I of chapter 81, of title 5, United States Code on the date of the notice of erroneous coverage. Such employees shall not be excluded from a retirement program if they have vested as of the date their annuity or compensation terminates.

Notices required under section 201 of this Act shall include such additional information or other modifications as OPM may prescribe by regulation in connection with situations under this subtitle.

Subtitle D—Employee Who Should Have Been CSRS Covered or  
CSRS-Offset Covered, But Who Was Erroneously FERS Covered  
Instead

SECTION 131. ELECTIONS

This section applies to an employee who should have been enrolled in either the CSRS or CSRS-Offset retirement system, but who was instead erroneously placed under the FERS system. If the

error has not been corrected prior to the date of enactment of this Act, the employee may choose to be covered by the CSRS or CSRS-Offset systems, as appropriate, or to remain in FERS. When the error has been corrected, the employee may elect to become FERS covered or to remain in CSRS or CSRS-Offset. If the employee does not make an election within the time required, the status quo will be maintained. Elections are retroactive to the date of the retirement coverage error.

SECTION 132. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM  
FERS TO CSRS TO CORRECT A RETIREMENT COVERAGE ERROR

This section applies when an employee who should have been in the CSRS system elects to be transferred from FERS to CSRS to correct the retirement coverage error. The employing agency shall make a lump sum payment to the CSRDF. That lump sum shall equal the amount by which the difference between the amount of the employee CSRS contributions required and employee FERS contributions actually made exceeds the difference between the amount of the agency's actual contributions under FERS and the amount of contributions that should have been made for the period of erroneous coverage.

The agency is entitled to be reimbursed for the amount of employee OASDI taxes refundable to the employee (up to the amount described in the preceding sentence). If the employee does not reimburse the agency as required by this section, the agency may collect the amount due by setoff against accrued pay, compensation, amount of retirement credit, or any other amount due the employee from the government. The agency may also collect the debt by any other method provided by law for recovering amounts owing to the government.

Excess TSP contributions shall be disposed of in accordance with section 105(c).

SECTION 133. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM  
FERS TO CSRS-OFFSET TO CORRECT A RETIREMENT COVERAGE ERROR

This section applies when an employee who should have been in the CSRS-Offset system elects to be transferred from FERS to CSRS-Offset to correct the retirement coverage error. The effect of this election is substantially similar to the effect of an election under section 105.

SECTION 134. EFFECT OF AN ELECTION TO BE RESTORED TO FERS  
AFTER HAVING BEEN CORRECTED TO CSRS

This section applies when an employee who should have been in the CSRS system, but was wrongly placed in FERS, elects to be restored to FERS after having been previously corrected to CSRS. The effect of this election is substantially the same as that described in section 102.

SECTION 135. EFFECT OF AN ELECTION TO BE RESTORED TO FERS  
AFTER HAVING BEEN CORRECTED TO CSRS-OFFSET

This section applies when an employee who should have been in the CSRS-Offset system, but was wrongly placed in FERS, elects

to be restored to FERS after having been previously corrected to CSRS-Offset. The effect of this election is substantially similar to the effect of an election under section 103.

SECTION 136. DISQUALIFICATION OF CERTAIN INDIVIDUALS TO WHOM  
SAME ELECTION WAS PREVIOUSLY AVAILABLE

An employee who previously had an opportunity to make an election under 5 C.F.R. § 846.204 (1997) shall not be permitted to make an election under this subtitle.

Subtitle E—Employee Who Should Have Been CSRS-Offset  
Covered, But Who Was Erroneously CSRS Covered Instead

SECTION 141. AUTOMATIC TRANSFER TO CSRS-OFFSET

This section applies when an employee who should have been in the CSRS-Offset was erroneously placed in CSRS instead. If the error has not been corrected, the employee shall be automatically transferred to CSRS-Offset retroactive to the date of the retirement coverage error. If the error has already been corrected, the correction shall be made retroactive to the date of the retirement coverage error.

SECTION 142. EFFECT OF TRANSFER

Under regulations prescribed by OPM, the effect of this transfer shall be consistent with section 104.

Subtitle F—Employee Who Should Have Been CSRS Covered, But  
Who Was Erroneously CSRS-Offset Covered Instead

SECTION 151. ELECTIONS

This section applies when an employee who should have been in CSRS was erroneously placed in CSRS-Offset instead. The employee will be entitled to elect to transfer to CSRS or to remain in CSRS-Offset. If the employee does not make an election under this section, the status quo shall be maintained.

SECTION 152. EFFECT OF AN ELECTION TO BE TRANSFERRED FROM  
CSRS-OFFSET TO CSRS TO CORRECT THE RETIREMENT COVERAGE  
ERROR

This section applies when an employee who should have been in CSRS elects to become (or remain) CSRS covered. The agency shall pay to the CSRDF a lump sum equal to the amount by which employee CSRS contributions that should have been withheld exceed any nonrefunded amounts actually deducted from the employee under CSRS-Offset.

The agency is entitled to be reimbursed for the amount of employee OASDI taxes refundable to the employee (up to the amount described in the preceding sentence). If the employee does not reimburse the agency as required by this section, the agency may collect the amount due by setoff against accrued pay, compensation, amount of retirement credit, or any other amount due the employee from the government. The agency may also collect the debt by any

other method provided by law for recovering amounts owing to the government.

#### Subtitle G—Additional Provisions Relating To Government Agencies

##### SECTION 161. REPAYMENT OF AMOUNTS PREVIOUSLY PAID BY THE GOVERNMENT

Employees who received a payment from the government pursuant to a court award or settlement agreement relating to a retirement coverage error must repay any part of that payment that is not waived by OPM.

##### SECTION 162. EQUITABLE SHARING OF AMOUNTS PAYABLE TO OR FROM THE GOVERNMENT IF MORE THAN ONE AGENCY INVOLVED

When an employee has been employed by more than one agency since the date of the retirement coverage error, amounts required to be paid or received by the current employing agency (other than lost earnings on TSP accounts) under this Act shall be apportioned equitably among such agencies under regulations prescribed by OPM.

##### SECTION 163. PROVISIONS RELATING TO THE ORIGINAL RESPONSIBLE AGENCY

The agency originally responsible for the retirement coverage error will be required to pay (or reimburse) employees for reasonable expenses they incur for financial and legal advice in connection with an election under this Act and to pay lost earnings on TSP accounts.

The original responsible agency is the agency determined by OPM to have made the original retirement coverage error or, when the error is attributable to an erroneous OPM regulation, OPM itself. If the original responsible agency no longer exists, its successor, as determined by OPM, will be the original responsible agency. If there is no successor agency, payments required from or to the responsible agency shall be paid to or from the CSRDF. Likewise, payments shall be made from the CSRDF when OPM is the original responsible agency because the error was based on an erroneous regulation it issued.

## TITLE II—GENERAL PROVISIONS

##### SECTION 201. IDENTIFICATION AND NOTIFICATION REQUIREMENTS

Under regulations prescribed by OPM, individuals affected by a retirement coverage error described in this Act shall be notified of their rights under this Act. The notice shall include all information required to allow the employee to make an informed decision. Errors existing on the effective date of the regulations prescribed under this Act are to be corrected by December 31, 2001.

##### SECTION 202. INDIVIDUAL APPEAL RIGHTS

An individual aggrieved by a final determination under this Act shall be entitled to appeal to the Merit Systems Protection Board

under 5 U.S.C. § 7701. Under regulations prescribed by OPM, individuals may appeal the failure to receive proper notice under section 201 to OPM.

SECTION 203. INFORMATION TO BE FURNISHED BY GOVERNMENT AGENCIES TO AUTHORITIES ADMINISTERING THIS ACT

Agencies are required to provide The Director of OPM, the Commissioner of Social Security, and the Executive Director of the Thrift Board any information they need to carry out their responsibilities under this Act.

SECTION 204. SOCIAL SECURITY RECORDS

The Commissioner of Social Security shall modify the wage records of employees affected by retirement coverage errors described in this Act to the extent necessary to carry out the purposes of this Act or the Social Security Act.

SECTION 205. CONFORMING AMENDMENTS RESPECTING SOCIAL SECURITY COVERAGE AND OASDI TAXES

This section amends section 210(a)(5)(H) of the Social Security Act and section 3121(b)(5)(H) of the Internal Revenue Code of 1986 to permit Social Security payments to CSRS-eligible individuals who elect coverage under FERS, CSRS-Offset, or to be covered only by Social Security. Current law excludes CSRS-eligibles from the Social Security program.

SECTION 206. REGULATIONS

The Director of OPM, the Executive Director of the Thrift Board, the Commissioner of Social Security, and the Secretary of the Treasury shall issue such regulations within their respective jurisdictions as are necessary to implement this Act. These regulations shall permit OPM to collect any amounts an individual must pay in order to make an election under this Act through actuarially reduced annuities. Such regulations shall take effect on the first day of the first month beginning more than 6 months after the date of enactment of this Act.

Regulations prescribed by OPM shall provide former employees, annuitants, and survivor annuitants with appropriate elections to correct retirement coverage errors affecting them.

OPM shall consult with the Administrative Office of the United States Courts, the Clerk of the House of Representatives, the Sergeant at Arms and Doorkeeper of the Senate, and other appropriate officials in prescribing regulations under this Act.

SECTION 207. ALL ELECTIONS TO BE APPROVED BY OPM

To ensure compliance with this Act, OPM must approve in writing all elections (other than default elections) under this Act.

SECTION 208. ADDITIONAL TRANSFERS TO OASDI TRUST FUNDS IN CERTAIN CASES

The Commissioner of Social Security shall notify the Secretary of the Treasury if the payments of OASDI taxes under this Act are not credited to the OASDI trust funds. Upon notification, the Sec-

retary of the Treasury shall transfer an amount equal to the taxes from the general fund of the Treasury to the OASDI trust funds.

#### SECTION 209. TECHNICAL AND CONFORMING AMENDMENTS

This section makes technical and conforming amendments to sections 8347 and 8348.

### TITLE III—OTHER PROVISIONS

#### SECTION 301. PROVISIONS TO PERMIT CONTINUED CONFORMITY OF OTHER FEDERAL RETIREMENT SYSTEMS

This section requires that elections similar to those in this Act be provided to individuals covered by retirement systems for the Foreign Service and the CIA.

#### SECTION 302. GOVERNMENT CONTRIBUTIONS PAYABLE OUT OF THE GENERAL FUND OF THE TREASURY OR CSRDF

If the Director of the Office of Management and Budget determines that an executive agency's ability to accomplish its mission would be substantially impaired by making any payment required under this Act, the payment may be made from the general fund of the Treasury. A substantial impairment may include a reduction in force caused solely by payments required under this Act. These rules will not apply to the General Accounting Office or to any payments required to correct an error of which the employee was not notified before January 1, 2002. Any additional unfunded liability in the CSRDF created by this Act will be amortized over 30 years.

#### SECTION 303. INDIVIDUAL RIGHT OF ACTION PRESERVED FOR AMOUNTS NOT OTHERWISE PROVIDED FOR UNDER THIS ACT

This section preserves any right of action an individual may have under the Federal Tort Claims Act for damages not provided in this Act.

#### SECTION 304. EXTENSION OF OPEN ENROLLMENT PERIOD TO EMPLOYEES UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

This section amends section 860 of the Foreign Service Act of 1980 (22 U.S.C. § 4071i) to provide employees covered by the Foreign Service Retirement and Disability System with an election to switch to the Foreign Service Pension System. This election is comparable to the one provided most other civil servants by the Federal Employees' Retirement System Open Enrollment Act of 1997.

### TITLE IV—TAX PROVISIONS

#### SECTION 401. TAX PROVISIONS

##### *Present law*

Under present law, most civilian employees generally participate in one of three retirement plans: CSRS, CSRS-Offset, FERS. There are also equivalent plans covering the Foreign Service and the Central Intelligence Agency. Other Federal employees, primarily temporary workers, are covered only by Social Security. Participants in

CSRS, CSRS-Offset, and FERS may participate in the TSP, which is a qualified cash or deferred arrangement under section 401(k) of the Internal Revenue Code of 1986. The retirement plan in which any person participates depends on several factors, including the individual's employment status, date of hire, and dates of Federal service. The rules governing participation in the TSP vary depending upon the Federal retirement plan (i.e., CSRS, CSRS-Offset, or FERS) under which the individual is covered. The Federal retirement plans are generally subject to the same rules applicable to tax-qualified retirement plans maintained by private-sector employers. These rules include limits on the amount of elective deferrals that may be made on behalf of an employee in a tax year under a 401(k) plan, such as the TSP, and an overall limitation on contributions and benefits that may be provided to an employee under the plan.

The limit on the amount of elective deferrals that an employee may make to a 401(k) plan for 1998 is \$10,000. The overall limit on contributions and benefits for an employee for a year is different for defined benefit plans and defined contribution plans. The limitation for an annual benefit under a defined benefit plan is the lesser of (1) \$130,000 (for 1998), or (2) 100 percent of the participant's average compensation for his high three years. The limitation for annual contributions and other additions under a defined contribution plan is the lesser of (1) \$30,000, or (2) 25 percent of the participant's compensation.

Distributions from Federal retirement plans are subject to the same distribution rules that apply to qualified retirement plans. In general, distributions from such plans are taxable to the individual (unless the amount distributed is attributable to after-tax contributions) and a 10-percent early withdrawal penalty may apply unless the distribution qualified for an exception.

#### *Tax-related provisions of the Act*

To effectuate the corrections the bill provides for: (1) make-up contributions to the plan by the employing agency (including contributions to the TSP in lieu of elective deferrals the employee would have been eligible to make had the employee been properly enrolled); (2) return of after-tax employee contributions to CSRS or CSRS-Offset (plus earnings thereon); (3) intra-fund or intra-governmental transfer of funds; and (4) certain make-up contributions by the employing agency for social security taxes. Employees who were mistakenly permitted to contribute to the TSP will be able to maintain their elective deferrals (plus earnings) in the TSP subject to the rules generally applicable to such plan. In some cases, employees may forfeit benefits accrued (e.g., matching contributions made to an individual mistakenly enrolled in FERS). The tax implications of these provisions are addressed in section 401.

Subsection (a) provides that Federal retirement plans will not fail to be treated as qualified plans under the Internal Revenue Code of 1986 by reason of any action taken pursuant to the bill. Thus, for example, the bill permits an employing agency to make up contributions on behalf of an employee who was entitled to such contributions in prior years without violating the applicable overall

contribution and benefit limitations (section 415) for the year in which the make-up contribution is made.

Subsection (b) provides that no amount is includible in income of any individual by reason of any transfer between government funds or any government contribution.

Subsection (c) provides that an individual who receives a distribution of after-tax employee contributions (plus earnings) pursuant to the bill would be required to include the earnings in income (as under present law) but would not be subject to the 10-percent early withdrawal tax on those amounts. Such amounts could not be rolled over into an individual retirement arrangement (IRA) or other tax-qualified plan.

*Effective Date*

The revenue provisions of the bill are effective on the date of enactment.

VI. COMPLIANCE WITH RULE XI

Pursuant to rule XI, clause 2(1)(3)(A) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings from Committee oversight activities are incorporated in the bill and this report.

VII. BUDGET ANALYSIS AND PROJECTIONS

The budget analysis and projections required by section 308(a) of the Congressional Budget Act of 1974 are contained in the estimate of the Congressional Budget Office.

VIII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 31, 1998.*

Hon. DAN BURTON,  
*Chairman, Committee on Government Reform and Oversight, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3249, the Federal Retirement Coverage Corrections Act.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 3249—Federal Retirement Coverage Corrections Act*

Summary: H.R. 3249 would alter the procedures for correcting situations where federal employees have been mistakenly placed in the wrong retirement system. Many of these retirement coverage errors occurred between 1984, when the Civil Service Retirement System (CSRS) was closed to new entrants, and 1987, when the Federal Employees' Retirement System (FERS) was created. The bill would also direct the Secretary of State to provide Foreign

Service employees with an open season similar to the one scheduled to take place for regular federal employees.

CBO estimates that federal agencies would bear discretionary costs totaling \$121 million over the 1998–2003 period, primarily because the bill would also increase the size of makeup contributions to the Thrift Savings Plan (TSP). The bill would also increase direct spending by \$152 million and be subject to pay-as-you-go procedures. This additional direct spending largely reflects makeup contributions to the TSP and agencies' spending of refunded contributions for misplaced employees who would be allowed to switch their retirement coverage from FERS to the CSRS Offset Plan. The bill would not have a significant impact on federal retirement benefits during the next several years because affected employees are generally still in the middle of their careers.

Because the District of Columbia and Gallaudet University would be required to correct instances where employees have been mistakenly enrolled in the wrong retirement system, H.R. 3249 contains both an intergovernmental and a private-sector mandate as defined by the Unfunded Mandates Reform Act of 1995 (UMRA). However, CBO estimates that the cost of these mandates would be minimal.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3249 is shown in the following table.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION											
Budget Authority .....	-5	2	17	22	54	31	3	-11	-16	-22	-28
Outlays .....	-5	2	17	22	54	31	3	-11	-16	-22	-28
CHANGES IN DIRECT SPENDING											
On-budget:											
Budget authority .....	3	57	166	154	54	33	16	17	22	28	34
Outlays .....	3	56	163	155	56	33	16	17	22	28	34
Off-budget:											
Budget authority .....	2	-27	-87	-86	-57	-35	-14	-7	-5	-4	-2
Outlays .....	2	-27	-87	-86	-57	-35	-14	-7	-5	-4	-2
Total:											
Budget authority .....	5	30	79	68	-3	-2	2	10	17	24	32
Outlays .....	5	29	76	69	-1	-2	2	10	17	24	32
CHANGES IN REVENUES											
On-budget .....	0	-1	-1	0	1	0	0	0	-1	-1	-1
Off-budget .....	0	1	2	5	8	9	9	8	6	4	2
Total .....	0	0	1	5	9	9	9	8	5	3	1
TOTAL COST											
Direct spending and revenues .....	5	29	75	64	-10	-11	-7	2	12	21	31
All spending and revenues .....	0	31	92	86	44	20	-4	-9	-4	-1	3

Note.—Components may not sum to totals because of funding.

The mandatory costs of this legislation fall within budget functions 600 (Income Security), 650 (Social Security), and 950 (Undistributed Offsetting Receipts). Additional costs to employing agencies are discretionary and are funded through appropriations throughout the budget.

*Basis of estimate**Title I*

H.R. 3249 lays out procedures for correcting a wide variety of retirement coverage errors. CBO estimates that the provisions of Title I would impose discretionary costs on agencies totaling \$99 million between 1998 and 2003. In addition, the bill would increase on-budget direct spending by \$476 million over the same period. Off-budget direct spending would decrease by \$285 million, for a net increase in direct spending of \$191 million. This increase in direct spending is partly offset by an increase of \$25 million in revenues. These estimates assume that the Postal Service would increase postal rates to fully offset any costs related to the bill. The estimated budgetary impact of Title I is shown in the following table.

[By fiscal year, outlays in million of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>SPENDING SUBJECT TO APPROPRIATION</b>											
Makeup contributions to TSP .....	-2	2	6	7	38	24	3	-5	-6	-7	-7
Makeup payment of Social Security contributions .....	-1	-4	-4	-4	-4	-5	-5	-5	-5	-5	-6
Makeup payment of retirement contributions .....	-2	0	10	10	6	-1	-7	-9	-10	-10	-11
Agency retirement contributions .....	0	-1	0	3	5	3	2	0	-2	-5	-7
Employer Social Security contributions .....	0	0	1	3	5	5	5	5	3	2	1
Total .....	-5	-2	13	18	49	26	-2	-15	-20	-25	-30
<b>CHANGES IN DIRECT SPENDING</b>											
<b>On-Budget:</b>											
Makeup contributions to TSP .....	0	19	56	61	11	0	0	0	0	0	0
Makeup payment of retirement contributions .....	3	-1	-14	-15	-8	2	10	13	14	16	17
Agency retirement contributions .....	0	1	0	-4	-7	-4	-3	0	3	7	11
Transfers from CSRDF to Social Security .....	0	32	91	87	55	33	13	7	7	8	9
Spending of refunds .....	0	6	32	28	7	4	0	-1	-1	-1	-1
Subtotal .....	3	58	165	157	58	35	19	19	24	29	35
<b>Off-Budget:</b>											
Makeup payment of Social Security contributions .....	2	6	6	6	7	7	7	7	8	8	8
Employer Social Security contributions .....	0	0	-1	-4	-7	-8	-8	-7	-5	-3	-1
Transfers from CSRDF to Social Security .....	0	-32	-91	-87	-55	-33	-13	-7	-7	-8	-9
Subtotal .....	2	-26	-86	-85	-56	-34	-13	-6	-4	-3	-1
Total .....	5	32	79	71	2	0	6	13	20	26	33
<b>CHANGES IN REVENUES</b>											
<b>On-Budget:</b>											
Employee Retirement contributions .....	0	0	0	1	2	1	1	1	0	0	0
<b>Off-Budget:</b>											
Employee Social Security taxes .....	0	0	1	4	7	8	8	7	5	3	1
Total .....	0	0	1	5	9	10	9	7	5	3	1
<b>TOTAL COST OF TITLE I</b>											
Direct spending and revenues .....	5	33	77	66	-7	-9	-3	6	14	23	33
All Spending and Revenues .....	0	30	90	84	42	17	-4	-9	-5	-2	2

Note.—Components may not sum to totals because of rounding.

### *Background*

There are two main retirement programs for full-time regular federal employees. Most full-time employees hired before 1984 are in the Civil Service Retirement System (CSRS), a defined benefit plan which does not include Social Security. Those hired after 1984 are generally covered by the Federal Employees' Retirement System (FERS), which features Social Security, a more limited defined benefit, and the defined contribution Thrift Savings Plan (TSP). Employees who return to government service after 1987 and have five years of prior service under CSRS may be covered by a hybrid plan known as CSRS Offset that features both CSRS and Social Security benefits.

FERS employees may contribute up to 10 percent of their pay to the TSP. They receive an automatic contribution from their employing agency equal to 1 percent of their pay and may also receive an additional 4 percent in matching contributions. CSRS and CSRS Offset employees may also participate in the TSP, but they may only contribute up to 5 percent of their pay and do not receive any government contributions.

### *Assumptions about retirement coverage errors*

CBO estimated the number of retirement coverage errors that have been made based on discussions with personnel officials in a number of large government agencies, including the Postal Service and the Departments of Defense, Veterans Affairs, and Agriculture. These agencies comprise approximately 70 percent of the federal civilian workforce. On the basis of these discussions, CBO estimates that approximately 18,000 coverage errors have occurred throughout the government, of which approximately 10,000 have already been corrected. The two most common types of coverage errors appear to involve employees who should be in FERS but were accidentally put in CSRS, and employees with prior service who returned to government service and were misplaced in either FERS or CSRS Offset.

H.R. 3249 would also affect the speed with which agencies identify and correct retirement coverage errors. CBO assumed that, under current law, agencies would correct coverage errors at a constant annual rate. H.R. 3249 would direct agencies to identify any retirement coverage errors promptly and correct them. Under the bill, agencies would have an incentive to move quickly; they could apply to the Office of Management and Budget (OMB) for assistance for expenses related to correcting coverage errors, but only for those errors identified before January 1, 2002. CBO assumed that agencies would correct most of their retirement coverage errors between 1999 and 2003. Agencies would also stop correcting errors for the remainder of 1998 pending the issuance of final regulations to implement H.R. 3249.

Under current law, coverage errors are usually corrected by converting the employee to the proper retirement system, retroactive to original date of the error. However, some employees who were accidentally placed in FERS are able to remain in FERS by making a retroactive election of FERS coverage. H.R. 3249 would allow most employees affected by coverage errors to choose whether they would like to be placed in the proper retirement system or make

their current incorrect coverage permanent. All elections would be irrevocable, and employees who did not make an election would retain their current coverage. Coverage errors lasting less than a year would not be covered by the bill. CBO assumed that 80 percent of the employees whose errors have not yet been corrected would choose to be placed in the proper retirement system.

Most of the employees whose coverage errors have already been corrected would also be given the option of returning to the retirement system in which they were incorrectly placed. However, employees who were mistakenly placed in CSRS and have already been placed in FERS would be able to elect only CSRS Offset coverage. Because employees affected by these errors often have relatively small TSP accounts, CBO assumed that 80 percent of them would elect to join CSRS Offset. CBO also assumed that 20 percent of the employees who were incorrectly put in FERS and have already been placed in CSRS or CSRS Offset will elect FERS coverage.

#### *Effects on discretionary spending*

**Makeup Contributions to TSP.** Employees who are incorrectly covered by CSRS rather than FERS are unable to participate fully in the TSP. Under current law, when an individual's coverage is corrected to FERS, the employing agency makes a lump-sum deposit into his TSP account equal to the government contributions and related earnings that would have been made to the employee's previous TSP contributions under FERS rules. If the employee did not have a TSP account, only a deposit for the automatic 1-percent contribution is made. Earnings are calculated using the individual's own fund allocation decisions (if he had a TSP account) or the G Fund rate (otherwise). Employees may provide makeup contributions to their TSP accounts out of future pay. These makeup contributions receive agency matching contributions (up to the 5-percent FERS maximum) and related earnings as if the contributions had been made at the proper time. However, back earnings are paid only on the agency's matching funds, not the employee's makeup contributions.

H.R. 3249 would change the way that makeup TSP contributions are calculated. Under the bill, agencies would make a lump-sum payment to TSP representing past employee contributions, automatic 1-percent agency contributions, and agency matching contributions. The amount representing employee contributions would be calculated using the average contribution rate for FERS employees who participated in TSP, and would be paid whether or not the employee already has a TSP account (subject to the 10-percent annual limit on FERS contributions and the Internal Revenue Service's annual dollar limit on contributions to tax-deferred savings plans). Agencies would also pay past earnings on all three amounts. These earnings would be calculated using the employee's own TSP fund allocation choices. If the employee did not have a TSP account, a composite rate representing the average allocation of all FERS employees contributing to TSP would be used. Based on historical data provided by the Federal Retirement Thrift Investment Board, CBO estimates that these provisions would increase the average TSP makeup payment by \$70,000 in 1999. This

amount would be higher in later years due to additional foregone returns and contributions.

These makeup TSP contributions could be paid either from agencies' discretionary appropriations or from a new permanent indefinite appropriation. H.R. 3249 would make agencies responsible for the TSP makeup contributions, but would allow agencies to appeal to the OMB Director if these makeup payments would "substantially impair" the agency's operations. If the OMB Director agreed with the agency, some of all of the agency's payments would be made instead from a permanent appropriation. Based on discussions with OMB, CBO has assumed that 90 percent of nonpostal makeup payments prior to the January 2002 deadline would be paid for from the permanent appropriation. CBO estimates that the total cost of TSP makeup contributions will be \$222 million, with agencies paying for \$75 million from their discretionary appropriations and the remaining \$147 million coming from the general fund as direct spending.

**Makeup Payment of Social Security Contributions.** Agencies are currently responsible for makeup payments of Social Security payroll taxes for employees whose coverage is changed from CSRS to FERS or CSRS Offset. H.R. 3249 would transfer responsibility for past Social Security taxes from agencies to the Civil Service trust fund. As a result, agency spending on makeup Social Security taxes would fall by \$22 million during the 1998–2003 period.

**Makeup Payment of Retirement Contributions.** Under H.R. 3249, any necessary adjustments to past agency contributions to the Civil Service Retirement and Disability Fund (CSRDF) would be completely retroactive, as under current law. CBO estimates that agency makeup payments to the CSRDF would increase by \$23 million between 1998 and 2003 under the bill. This increase primarily reflects the impact that the bill would have on speeding up the correction of coverage errors. After 2002, agency makeup payments would be lower than under current law.

**Agency Retirement Contributions.** The amount that agencies currently contribute towards their employees' retirement would change under H.R. 3249 for two reasons. First, the speeding up of retirement corrections would increase agency contributions in the near term. Second, the decision of many employees whose errors have already been corrected to switch from FERS to CSRS Offset would decrease agency retirement contributions, particularly in later years. These changes would increase agency spending on retirement contributions by \$10 million during the 1998–2003 period.

**Employer Social Security Contributions.** Employer contributions to Social Security would increase by \$14 million between 1998 and 2003 due to the speeding up of retirement corrections. These contributions would not be affected by the decision of some employees to switch from FERS to CSRS Offset since both types of coverage include Social Security.

*Effects on direct spending (on-budget)*

**Makeup Contributions to TSP.** H.R. 3249 would allow some agency makeup payments to TSP to be made from a new permanent appropriation. CBO estimates that the portion of makeup contribu-

tions to the TSP that would be funded from the permanent appropriation would be \$147 million during the 1998–2003 period.

**Makeup Payment of Retirement Contributions.** The increase in agency makeup payments to the CSRDF would be reflected in the budget both as additional agency outlays and as offsetting receipts to the CSRDF. As a result, receipts to the trust fund would increase by \$33 million between 1998 and 2003.

**Agency Retirement Contributions.** The increase in agency retirement contributions under the bill would increase CSRDF receipts by \$14 million during the 1998–2003 period.

**Transfers from the Civil Service Trust Fund to Social Security.** Under H.R. 3249, the CSRDF would be responsible for the payment of back Social Security payroll taxes for any future retirement corrections. Unlike current law, these corrections would be completely retroactive and would not be affected by the current limit of 3 years, 3 months, and 15 days. CBO estimates that transfers from the CSRDF to the Social Security trust fund would total \$298 million during the 1998–2003 period. Although these transfers are intragovernmental, the payments would be on-budget and the receipt of these transfers of funds by Social Security would be off-budget.

**Refunds from CSRDF to Agencies.** Agencies would receive a partial refund of their retirement contributions for employees who have already been restored to FERS but elect to be covered by CSRS Offset under H.R. 3249. Agencies currently contribute 10.7 percent of employee pay for retirement under FERS rules but only 8.51 percent under CSRS Offset. The difference of 2.2 percent would be refunded to the agency. These refunds from the CSRDF to the agencies would amount to \$77 million over the 1998–2003 period and would be available to the agencies to be spent for future CSRDF contributions.

*Effects on direct spending (off-budget)*

H.R. 3249 would affect offsetting receipts to the Social Security trust fund in three ways. First, agencies would no longer be responsible for making back payments of Social Security payroll taxes when correcting coverage errors. This change would reduce receipts by \$34 million between 1998 and 2003. Second, transfers from the Civil Service trust fund for back taxes on future corrections of coverage errors will increase receipts by \$298 million between 1998 and 2003. These transfers would include the \$34 million that agencies would be responsible for under current law. Finally, receipts from ongoing employer Social Security taxes would increase by \$20 million over the same period.

*Effects on revenues*

**Employee Retirement Contributions.** As with current agency retirement contributions, current employee retirement contributions would also be affected by the speeding up of retirement coverage errors corrections and the new retirement coverage elections under H.R. 3249. The net impact of these effects will decrease employee contributions to the CSRDF, which are considered receipts, by \$4 million during the 1998–2003 period.

Employee Social Security Taxes. Primarily due to the speeding up of retirement coverage corrections under H.R. 3249, receipts from employee Social Security taxes would increase by \$20 million between 1998 and 2003.

### *Title III*

Section 304 of H.R. 3249 would direct the Secretary of State to provide employees in the Foreign Service Retirement and Disability System (FSRDS) with an opportunity to switch into the newer Foreign Service Pension System (FSPS). This open season would be similar to that currently scheduled to take place starting in July 1998 for employees in CSRS who would like to join FERS. The estimated budgetary impact of Section 304 is shown in the table below.

[By fiscal year, outlays in millions of dollars]

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATIONS										
Agency retirement contributions .....	3	3	3	3	4	4	3	3	2	2
Agency Thrift Savings Plan contributions .....	1	1	1	1	1	1	1	1	1	1
Total .....	4	4	4	5	5	5	4	4	3	2
CHANGES IN DIRECT SPENDING										
On-budget:										
Agency retirement contributions .....	-2	-2	-2	-2	-2	-3	-2	-2	-1	-1
Off-budget:										
Employer Social Security taxes .....	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1
Total .....	-3	-3	-3	-3	-4	-4	-3	-3	-2	-2
CHANGES IN REVENUES										
On-budget:										
Employee retirement contributions .....	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1
Off-budget:										
Employee Social Security taxes .....	1	1	1	1	1	1	1	1	1	1
Total .....	0	0	0	0	0	0	0	0	0	0
TOTAL COST OF TITLE III										
Direct spending and revenues .....	-3	-3	-3	-3	-4	-4	-3	-3	-2	-2
All spending and revenues .....	1	1	1	1	1	1	1	1	1	1

Note.—Components may not sum to totals because of rounding.

FSRDS employees had a previous opportunity to switch to FSPS during a six-month open season in 1987. About 17 percent of the FSRDS employees switched to FSPS during this first open season. CBO estimates that approximately 325 people—between eight and nine percent of all FSRDS employees—would switch to FSPS during a second open season. This estimate reflects the assumptions that those employees most interested in switching to FSRDS did so during the 1987 open season, and that current FSRDS employees switch at half the rate seen in 1987.

Discretionary Spending. Employer contributions would increase for those employees who switch to FSPS. Agencies' retirement contributions for Foreign Service employees are currently 8.51 percent for FSRDS workers and 18 percent for FSPS workers, so agencies would contribute an additional 9.5 percent of pay to the Foreign Service trust fund for employees who switch. In addition, employees who switch to FSPS would become covered by Social Security, so agencies would have to contribute 6.2 percent of an employee's

pay (up to the maximum taxable salary) to the Social Security trust funds. Overall, employer retirement contributions would increase by \$16 million between 1998 and 2003.

Like FERS employees, FSPS workers may contribute up to 10 percent of their pay to TSP and receive up to 5 percent in matching government contributions. CBO assumed that employees would switch to FSPS in part to take fuller advantage of TSP and that their average TSP contribution would rise from 4 percent (the current average for employees in the similar CSRS system) to 7 percent. As a result, switching employees would receive the full 5-percent government match. These matching contributions would cost \$5 million during the 1998–2003 period.

Direct Spending. The increases in agency retirement contributions—with the exception of TSP contributions—would be reflected in the budget both as additional agency outlays and as offsetting receipts to the retirement trust funds. CBO estimates that receipts to the Foreign Service Retirement and Disability Fund would increase \$10 million over the next five years, and that receipts to the Social Security trust funds would rise by \$5 million over the same period. CBO estimated that the impact of switching employees on Foreign Service and Social Security benefit outlays would be insignificant between 1998 and 2003.

Revenues. FSRDS employees who switch to FSPS would contribute 7.5 percent of their pay towards retirement on earnings up to the Social Security maximum wage level (\$68,400 in 1998) and 1.3 percent on earnings over that level. This rate is slightly higher than the rate for FSRDS, where employees contribute 7 percent of pay. The allocation of contributions would also change since 6.2 percentage points (of the 7.5) would go to Social Security instead of the Foreign Service trust fund. This change would shift revenues from one fund to the other but would have no significant net budgetary impact.

Pay-as-you-go considerations: The provisions of H.R. 3249 would affect on-budget direct spending and revenues and therefore be subject to pay-as-you-go procedures. The pay-as-you-go procedures cover only the current year, budget year, and the succeeding four years. The pay-as-you-go effects of the bill are shown in the following table.

SUMMARY OF PAY-AS-YOU-GO EFFECTS

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Change in outlays .....	3	56	163	155	56	33	16	17	22	28	34
Change in receipts .....	0	-1	-1	0	1	0	0	0	-1	-1	-1

Intergovernmental and private-sector impact: H.R. 3249 would require the government of the District of Columbia and Gallaudet University to correct errors associated with the incorrect enrollment of employees in certain retirement plans. This requirement is both an intergovernmental and a private-sector mandate as defined by UMRA. However, costs associated with those corrections would be minimal, and only a small number of employees of the District of Columbia and Gallaudet University have been affected by the er-

rors addressed by the bill. Consequently, CBO estimates that the total cost of the mandates would be minimal.

Comparison with other estimates: In October 1997, CBO issued a pay-as-you-go estimate of the open season provision for CSRS employees contained in the Treasury and General Government Appropriations Act for 1998. CBO's estimate of the effects of the proposed open season for Foreign Service employees is based on assumptions similar to the ones used in that estimate. Specifically, CBO assumed in each instance that employees would switch retirement systems at half the rate seen in the 1987 open season and that switching employees would increase their TSP participation by similar amounts.

Estimate prepared by: Federal cost: Eric Rollins; impact on State, local, and tribal governments: Leo Lex; impact on the private sector: Matthew Eyles.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

#### IX. SPECIFIC CONSTITUTIONAL AUTHORITY FOR THIS LEGISLATION

Clauses 1 and 18 of Article 1, Sec. 8 of the Constitution grant Congress the power to enact this law.

#### X. COMMITTEE RECOMMENDATION

On March 5, 1998, a quorum being present, the Committee ordered the bill, as amended, favorably reported.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT—105TH  
CONGRESS—ROLLCALL

Date: March 5, 1998.

Amendment No. 1.

Description: Amendment in the nature of a substitute.

Offered by: Hon. John L. Mica (FL).

Adopted by voice vote.

Final Passage of H.R. 3249, as amended.

Offered by: Hon. John L. Mica (FL).

Adopted by voice vote.

#### XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1; SECTION 102(b)(3)

The amendments made by H.R. 3249 will apply to employees and former employees of the legislative branch who participate (or should participate) in the Federal retirement systems to the same extent as it applies to other participating employees.

#### XII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104-4; SECTION 423

H.R. 3249, as amended, would require both the government of the District of Columbia and Gallaudet University to correct retirement coverage errors affecting employees who participate in the Federal retirement systems. This is both an intergovernmental and a private-sector mandate as defined by the Unfunded Mandates Re-

form Act. CBO estimates that the total cost of the mandates would be minimal.

XIII. FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP.) SECTION 5(b)

The Committee finds that the legislation does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

XIV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (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):

**SECTION 210 OF THE SOCIAL SECURITY ACT**

DEFINITION OF EMPLOYMENT

SEC. 210. For the purposes of this title—

Employment

(a) The term “employment” means any service performed after 1936 and prior to 1951 which was employment for the purposes of this title under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(l)(6) of the Internal Revenue Code of 1986 of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(l) of such Code, with respect to such affiliate, or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233; except that, in the case of service performed after 1950, such term shall not include—

(1) \* \* \*

\* \* \* \* \*

(5) Service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) \* \* \*

\* \* \* \* \*

(H) service performed by an individual—

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986, section 307 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2157), or the Federal Employees' Retirement System Open Enrollment Act of 1997 to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, [or]

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980, to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act[;], or

*(iii)(I) described in section 111(a)(3) of the Federal Retirement Coverage Corrections Act, on or after the effective date of an election (or deemed election) by such individual under section 111(b)(2) of such Act,*

*(II) described in section 131(a)(1) of such Act, on or after the effective date of an election (or deemed election) by such individual under subsection (b)(2) or (c)(1) of section 131 of such Act, or*

*(III) described in section 151(a) of such Act, on or after the effective date of an election (or deemed election) by such individual under subsection (b)(2) or (c)(1) of section 151 of such Act;*

\* \* \* \* \*

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## SECTION 3121 OF THE INTERNAL REVENUE CODE OF 1986

### SEC. 3121. DEFINITIONS.

(a) \* \* \*

(b) EMPLOYMENT.—For purposes of this chapter, the term “employment” means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include—

(1) \* \* \*

\* \* \* \* \*

(5) service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) \* \* \*

\* \* \* \* \*

(H) service performed by an individual—

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986, section 307 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2157), or the Federal Employees' Retirement System Open Enrollment Act of 1997 to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, [or]

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980, to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act[;], or

*(iii)(I) described in section 111(a)(3) of the Federal Retirement Coverage Corrections Act, on or after the effective date of an election (or deemed election) by such individual under section 111(b)(2) of such Act,*

*(II) described in section 131(a)(1) of such Act, on or after the effective date of an election (or deemed election) by such individual under subsection (b)(2) or (c)(1) of section 131 of such Act, or*

*(III) described in section 151(a) of such Act, on or after the effective date of an election (or deemed election) by such individual under subsection (b)(2) or (c)(1) of section 151 of such Act;*

\* \* \* \* \*

**TITLE 5—UNITED STATES CODE**

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**Subpart G—Insurance and Annuities**

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**CHAPTER 83—RETIREMENT**

\* \* \* \* \*

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

\* \* \* \* \*

§ 8348. Civil Service Retirement and Disability Fund

(a) There is a Civil Service Retirement and Disability Fund. The Fund—

(1) \* \* \*

(2) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Office in connection with the administration of this chapter, chapter 84 of this title, and other retirement and annuity [statutes;] *statutes (including the provisions of the Federal Retirement Coverage Corrections Act that relate to this subchapter); and*

(3) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Merit Systems Protection Board in the administration of appeals authorized under sections 8347(d) and 8461(e) of this [title.] *title and the Federal Retirement Coverage Corrections Act.*

\* \* \* \* \*

CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

\* \* \* \* \*

SUBCHAPTER III—THRIFT SAVINGS PLAN

\* \* \* \* \*

§ 8432. Contributions

(a) \* \* \*

\* \* \* \* \*

(h) No transfers or contributions may be made to the Thrift Savings Fund except as provided in this chapter or section 8351 of this [title.] *title or the Federal Retirement Coverage Corrections Act.*

\* \* \* \* \*

§ 8437. Thrift Savings Fund

(a) There is established in the Treasury of the United States a Thrift Savings Fund.

(b) The Thrift Savings Fund consists of the sum of all amounts contributed under section 8432 of this title and all amounts deposited under section 8479(b) of this title, increased by the total net earnings from investments of sums in the Thrift Savings Fund or reduced by the total net losses from investments of the Thrift Savings Fund, and reduced by the total amount of payments made from the Thrift Savings Fund (including payments for administrative [expenses].) *expenses, as well as contributions under the Federal Retirement Coverage Corrections Act (and lost earnings made up under such Act).*

\* \* \* \* \*

(d) Administrative expenses incurred to carry out this subchapter (including the provisions of the Federal Retirement Coverage Corrections Act that relate to this subchapter) and subchapter VII of this chapter shall be paid first out of any sums in the Thrift Savings Fund forfeited under section 8432(g) of this title and then out of net earnings in such Fund.

\* \* \* \* \*

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**SECTION 860 OF THE FOREIGN SERVICE ACT OF 1980**

SEC. 860. TRANSITION PROVISIONS.—The Secretary of State shall issue regulations providing for the transition from the Foreign Service Retirement and Disability System to the Foreign Service Pension System in a manner comparable to the transition of employees subject to subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), to the Federal Employees' Retirement System. *The Secretary of State shall, in addition, issue regulations providing for an election for coverage under the Foreign Service Pension System for employees covered under the Foreign Service Retirement and Disability System comparable to the election provided for by the Federal Employees' Retirement System Open Enrollment Act of 1997.* For this and related purposes, references made to participation in subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), the Social Security Act, and the Internal Revenue Code of 1986 shall be deemed to refer to participation in the Foreign Service Pension System or the Foreign Service Retirement and Disability System, as appropriate.

## XV. APPENDIX

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COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC, March 6, 1998.*

Hon. DAN BURTON,  
*Chairman, Committee on Government Reform and Oversight, House  
of Representatives.*

DEAR MR. CHAIRMAN: I understand that the Committee on Government Reform and Oversight has marked up legislation, H.R. 3249, relative to the Federal Employee Retirement System.

This bill contains two items within the jurisdiction of the Committee on International Relations under Rule X of the Rules of the House of Representatives.

The first item, section 301, extends the same rights to Foreign Service employees as is extended, elsewhere in the bill, to Civil Service employees to a correction and "make-whole treatment" if they were placed in an incorrect retirement system. This provision was contained in the bill upon its introduction.

The second item, section 304, provides an "open season" to change from "old" to "new" retirement systems for Foreign Service employees that is comparable to that provided for Civil Service employees under the Federal Employees' Retirement System Open Enrollment Act of 1997. It was adopted during your Committee's consideration of the bill.

The Committee on International Relations applauds these provisions, which provide similar treatment for Foreign Service and Civil Service employees where, as here, it is appropriate. We appreciate the courtesy extended by the Committee on Government Reform and Oversight in our discussions concerning this legislation.

Although our Committee might have sought a referral of this legislation, since appropriate language has been included already, we see no reason to act, and therefore will not seek a sequential referral, without prejudice to our continuing jurisdiction over the Foreign Service Act and foreign service retirement matters, as provided in the Rules and Precedents of the House.

I respectfully request that you print a copy of this letter in the Report of the Committee on Government Reform and Oversight on this bill.

With best wishes,  
Sincerely,

BENJAMIN A. GILMAN, *Chairman.*

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