

FEDERAL RETIREMENT COVERAGE CORRECTIONS ACT

JULY 20, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 3249]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, 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).
- Sec. 106. Effect of election to remain FERS covered 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 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. Provisions to prevent reductions in force and any unfunded liability in the 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 an employee as defined by section 8331 or 8401 of title 5, United States Code, and any other individual (not satisfying either of those definitions) 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) under this Act by an employee or any other individual 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 retroactive 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 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.

(B) RULE IF THERE ARE EXCESS CSRDF CONTRIBUTIONS.—

(i) IN GENERAL.—Any excess amount described in clause (ii) that is attributable to an employee described in subsection (a) shall be forfeited.

(ii) EXCESS AMOUNT DEFINED.—The excess amount described in this clause is, in the case of an employee, the amount by which—

(I) that portion of the employee's lump-sum credit that is attributable to the period of erroneous coverage involved, exceeds (if at all)

(II) the total of the amount described in subparagraph (A) plus the amount that should have been deducted under section 8422 of title 5, United States Code, from the pay of the employee for the period of erroneous coverage involved.

(C) RULE IF LUMP-SUM CREDIT IS LESS THAN TOTAL EMPLOYEE CONTRIBUTIONS TO OASDI AND CSRDF THAT SHOULD HAVE BEEN MADE.—

(i) IN GENERAL.—

(I) SHORTFALL TO BE MADE UP BY AGENCY.—If the amount described in subparagraph (B)(ii)(I) is less than the total amount described in subparagraph (B)(ii)(II), an amount equal to the shortfall shall be made up (in such manner as the Commissioner of Social Security shall 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, except as provided in subclause (II) or clause (iii)(I).

(II) REDUCTION FOR DEPOSIT DUE.—In any case in which a deposit is required under clause (ii), the amount required to be made up under subclause (I) shall be reduced by the amount of the deposit so required (but not below zero).

(ii) DEPOSIT REQUIREMENT.—

(I) IN GENERAL.—To the extent that the shortfall under clause (i) is due to the any lump-sum credit received by the employee (for which an appropriate deposit under section 8334(d)(1) of title 5, United States Code, has not been made), the employee shall be required to repay an amount equal to the amount of such deposit, except as provided in clause (iii)(I).

(II) TREATMENT AS A DEBT DUE.—If an employee fails to pay the amount required under subclause (I), that amount shall be recoverable by the CSRDF under the same authorities (including to waive a right of recovery) as described in section 114(b)(2). For purposes of any exercise of authority under the preceding sentence, the Director of the Office of Personnel Management shall be considered the head of the agency concerned.

(iii) SPECIAL RULES.—

(I) DEPOSIT FOR FERS DEDUCTIONS NOT MANDATORY.—Nothing in this subparagraph shall, in any situation described in clause (ii), be considered to require any agency make-up payment (or employee repayment) of any portion of the lump-sum credit (beyond any amount necessary in order to permit the transfer described in paragraph (1)(A)) which would be assignable to amounts that should have been deducted under section 8422 of title 5, United States Code, from pay of the employee involved.

(II) AUTHORITY TO MAKE FERS DEPOSIT.—An employee under this section who has received a lump-sum credit (described in clause (ii)(I)) may not be credited, under chapter 84 of title 5, United States Code, with any period of service to which that lump-sum credit relates unless the employee deposits into the CSRDF an amount equal to the percentage of such employee's basic pay (for such period of service) that should have been deducted under section 8422 of such title 5.

(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, except as the context may otherwise indicate.

(E) PROVISIONS RELATING TO THE APPLICATION OF THIS PARAGRAPH IN OTHER SITUATIONS.—

(i) GENERAL AUTHORITY.—To the extent necessary to permit the operation of this paragraph in any situation covered by any other provisions of this Act (which incorporate this paragraph by reference), any necessary technical and conforming amendments to this paragraph not otherwise specifically provided for (such as citations to appropriate provisions of law corresponding to provisions cited in this paragraph) shall be made under regulations which the Office of Personnel Management shall prescribe.

(ii) SPECIAL RULE.—

(I) DEPOSITS NOT PRECLUDED BY FERS RESTRICTION.—Nothing in section 8424(a) of title 5, United States Code, shall, in any situation covered by this Act, prevent the making of any deposit (and crediting, for retirement purposes, of service for the corresponding period of time) to the extent that the deposit relates to the period of erroneous coverage involved.

(II) EXCEPTION.—The preceding sentence shall not apply in any situation in which the employee involved was erroneously FERS covered, and remained FERS covered after the rectification provided for under this Act.

(2) GOVERNMENT CONTRIBUTIONS.—

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

(i) the amount of the OASDI employer tax that should have been paid with respect to the employee for the period of erroneous coverage involved, over

(ii) the amount of the OASDI employer tax that may be assessed under section 6501 of the Internal Revenue Code of 1986 in connection with such employee,

determined in such manner as the Secretary of the Treasury shall by regulation prescribe.

(B) RULE IF CSRDF CONTRIBUTIONS ACTUALLY MADE ARE LESS THAN TOTAL GOVERNMENT CONTRIBUTIONS TO OASDI AND CSRDF THAT SHOULD HAVE BEEN MADE.—

(i) IN GENERAL.—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 amount described in clause (ii), an amount equal to the shortfall shall be made up (in such manner as the Commissioner of Social Security shall prescribe) by the agency in or under which the employee is then employed.

(ii) DESCRIPTION OF AMOUNT.—The amount described in this clause is the total 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.

(iii) SOURCE OF PAYMENTS.—Any amount required to be paid by an agency under clause (i) shall be payable out of any appropriation, fund, or account available to such agency for making Government contributions to the CSRDF or the OASDI trust funds (as appropriate).

(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) and (2)(A)(i) 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.**—The appropriate lump-sum credit to be used under this subsection shall be determined in accordance with regulations to be prescribed by the Office of Personnel Management.

(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.

SEC. 106. EFFECT OF ELECTION TO REMAIN FERS COVERED 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)(2).

(b) **DISPOSITION OF CONTRIBUTIONS TO THE CSRDF.**—The provisions of section 102(b) shall apply in the case of an employee described in subsection (a), subject to the same condition as set forth in section 105(b)(2)(A).

(c) **MAKEUP CONTRIBUTIONS TO THE THRIFT SAVINGS FUND.**—Section 102(c) shall apply, except that an agency shall receive credit for any automatic or matching Government contributions and any lost earnings paid by such agency as part of any corrections process previously carried out with respect to the employee involved.

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 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 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 EMPLOYEE CONTRIBUTIONS TO THE CSRDF.—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.

(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 EMPLOYEE CONTRIBUTIONS TO THE CSRDF.—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.

(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 the provisions of paragraphs (1)(B)(ii)(II) (to the extent they relate to amounts that should have been deducted under section 8422 of title 5, United States Code) and (2)(B)(ii)(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 the employee has (by the date as of which the determination is made) 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 being 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 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.

(3) DEPOSIT TO BE BASED ON AMOUNT OF REFUND ACTUALLY RECEIVED.—For purposes of applying sections 8334(d)(1) and 8339(i) of title 5, United States Code, in the case of an employee described in subsection (a) who has received a refund of deductions that are attributable to a period when the employee was erroneously CSRS-Offset covered, nothing in either of those sections shall be considered to require that, in order to receive credit for that period as a CSRS-covered employee, a deposit be made in excess of the refund actually received for such period, plus interest.

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)(II) thereof; and
- (2) “the applicable provisions of section 8334” shall be substituted for “section 8423” in paragraph (2)(B)(ii)(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 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 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 RULE.—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 shall pay (or reimburse any other agency that pays) any amounts to the Thrift Savings Fund representing lost earnings 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 from the Office under this section shall be payable 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.**—The Secretary of State shall issue regulations to provide for the application of the provisions of this Act in a like manner with respect to participants, annuitants, or survivors under the Foreign Service Retirement and Disability System or the Foreign Service Pension System (as applicable), except that—

(1) any individual aggrieved by a final determination shall appeal such determination to the Foreign Service Grievance Board instead of the Merit Systems Protection Board under section 202; and

(2) the Secretary of State shall perform the functions and exercise the authority vested in the Office of Personnel Management or the Director of the Office of Personnel Management under this Act.

(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. PROVISIONS TO PREVENT REDUCTIONS IN FORCE AND ANY UNFUNDED LIABILITY IN THE CSRDF.

(a) **PROVISIONS TO PREVENT REDUCTIONS IN FORCE.—**

(1) **LIMITATION.**—An agency required to make any payments under this Act may not conduct any reduction in force solely by reason of any current or anticipated lack of funds attributable to such payments.

(2) **ALTERNATIVE REQUIRED.**—In the circumstance described in paragraph (1), any cost savings that (but for this subsection) would otherwise be sought through reductions in force shall instead be achieved through attrition and limitations on hiring.

(b) **PROVISIONS TO PREVENT UNFUNDED LIABILITY.—**

(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, and no amount shall be subject to tax under subtitle C of such Code by reason of any such transfer or contribution.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 3249, as amended, provides a method to correct errors in misclassification of Federal employees which resulted in thousands of Federal employees being erroneously placed in the wrong Federal retirement system. These retirement systems include: (1) the Civil Service Retirement System (“CSRS”); (2) the Federal Employees Retirement System (“FERS”); (3) the Civil Service Retirement System Social Security Offset Plan (“CSRS Offset”); or (4) Social

Security only. The bill applies to all Federal employees, including former employees, annuitants and survivors. The bill extends the same correction options to employees of the foreign service and intelligence agencies.

The bill provides a comprehensive solution to these retirement coverage errors. In general, employees may choose between the retirement system they were mistakenly placed in or the system they should have been placed in retroactive to the date of the error. Two exceptions apply to this general rule. The first exception does not permit an employee who was erroneously placed in CSRS to elect to remain in it; the employee may elect instead to be enrolled in the CSRS Offset system. The second exception applies to employees who should have been enrolled in Social Security only. Unless such employees are vested in the system in which they were mistakenly placed, they may not elect to remain in such system.

The bill requires the employing agencies to take certain steps to make the employee whole with respect to retirement plan benefits under the correct plan. Depending on the precise circumstances of the individual, these steps may include: (1) make-up contributions to the plan by the employing agency (including contributions to the Thrift Savings Plan ("TSP") in lieu of elective deferrals the employee would have been eligible to make had the employee been properly enrolled); (2) intra-fund or intra-Governmental transfers of funds; and (3) certain make-up contributions by the employing agency for social security taxes. The employing agencies will make all necessary payments from appropriated funds. Employees who were mistakenly permitted to contribute to the TSP would 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 could forfeit benefits previously accrued (e.g., matching contributions made to an individual mistakenly enrolled in FERS). The bill amends the Social Security Act so CSRS-eligible employees who choose FERS or Social Security coverage may receive Social Security benefits.

B. BACKGROUND AND NEED FOR LEGISLATION

The Committee believes that legislation should be enacted in a timely fashion in order to correct errors in misclassification of Federal employees into the wrong Federal retirement system. The bill provides that individuals entitled to Social Security coverage who were erroneously placed in the wrong Federal retirement system receive credit for the period of retirement coverage error. The bill also provides that no Federal retirement plan involved in the correction under the bill shall fail the retirement plan tax qualification rules by reason of such correction. Further, the bill provides that no Federal employee involved in the correction shall be subject to additional Federal tax consequences as a result of such correction.

C. LEGISLATIVE HISTORY

The Committee on Ways and Means marked up the revenue and social security provisions of H.R. 3249 ("The Federal Retirement Coverage Corrections Act") on June 25, 1998. The Committee

adopted the Chairman's amendment in the nature of a substitute by a voice vote. The bill, as amended, was ordered favorably reported by a voice vote, with a quorum present.

H.R. 3249 was ordered favorably reported by the House Committee on Government Reform and Oversight on March 5, 1998, and was reported by that committee on July 14, 1998 (H. Rept. 105-625, Part 1).¹

II. EXPLANATION OF SOCIAL SECURITY AND TAX PROVISIONS

A. GENERAL PROVISIONS (TITLE II)

(Secs. 203, 204, 205, and 208 of the bill)

Present law

Under present law, Federal employees participate in one of four retirement systems: CSRS, CSRS Offset, Social Security only, and FERS. Individuals who are eligible for CSRS Offset, Social Security only, or FERS receive Social Security coverage. Individuals who are eligible for CSRS do not receive Social Security coverage. Under the CSRS, CSRS Offset, and FERS retirement systems, both the employee and the employing agency make contributions to the Civil Service Retirement and Disability Fund ("CSRDF").

For those employees enrolled in one of the retirement systems with Social Security coverage, Social Security taxes are paid into the general fund of the Treasury and transferred to the Social Security Trust Funds. If Social Security taxes should have been, but were not paid with respect to an individual's employment, the taxes may be assessed subject to the statute of limitations of three years. Similarly, improperly paid Social Security taxes may be refunded for the period within the statute of limitations.

Previously unrecorded earnings may be added to an individual's Social Security earnings record at any time. Improperly recorded earnings may only be removed from an individual's earnings record for the period within the statute of limitations.

Reasons for change

The Committee believes it is appropriate to ensure that individuals entitled to Social Security coverage who were erroneously placed in the wrong Federal retirement system receive credit for the period of retirement coverage error.

Explanation of provisions

The bill provides that when an individual who was incorrectly enrolled in CSRS changes to one of the retirement systems that provides for Social Security coverage, the individual will receive credit on his or her Social Security earnings record for earnings retroactive to the date of the retirement coverage error. Under the

¹H.R. 3249, as introduced on February 24, 1998, was referred to the Committee on Government Reform and Oversight and, in addition, to the Committee on Ways and Means for consideration of provisions in their respective jurisdictions. (See also letter from the Committee on Government Reform and Oversight to the Committee on Ways and Means relating to the bill, dated June 23, 1998, which is included in Part V.B. of this report.)

bill, the Social Security Trust Funds are made whole for any contributions that should have been made on behalf of the individual.

The bill provides that all of the amounts that should have been paid into the Social Security Trust Funds from the time of the incorrect enrollment shall be transferred to the Trust Funds. The amounts will be transferred to the Trust Funds from the individual's account in CSRDF and, if that amount is not sufficient, from the appropriated accounts of the agency. The bill provides conforming changes to the coverage provisions of the Social Security Act and the Internal Revenue Code if an individual elects to remain in the retirement system to which such individual was incorrectly enrolled.

If an individual who was incorrectly enrolled in a retirement system that has Social Security coverage elects to become enrolled in CSRS, then, as under present law, Social Security taxes paid on behalf of the individual for the period subject to the statute of limitation (i.e., within the last 3 years) would be refunded to the agency and to the employee. The bill provides that the agency shall deposit in the CSRDF an amount equal to the shortfall in CSRS contributions that should have been made on behalf of the individual and that the individual shall reimburse the agency for such deposits up to the amount of Social Security taxes refundable to the individual. As under present law, earnings on the individual's Social Security earnings record for the period subject to the statute of limitations would be deleted, but earnings for prior periods would not.

The bill also provides authority for the Commissioner of Social Security to obtain necessary information from agencies to notify the Secretary of the Treasury to transfer into the Social Security Trust Funds those Social Security taxes paid as a result of elections under the bill, and to correct earnings records.

Effective date

The Social Security provisions are effective on the date of enactment.

B. TAX PROVISIONS (TITLE IV)

(Sec. 401 of the bill)

Present law

Under present law, Federal employees generally participate in one of four retirement plans: CSRS, FERS, CSRS Offset, or Social Security only. Participants in CSRS, CSRS Offset, and FERS may participate in the Federal Thrift Savings Plan ("TSP"), which is similar to a qualified cash or deferred arrangement under section 401(k) of the Internal Revenue Code. The Federal retirement plan in which any person participates depends on a number of factors, including the individual's employment status and date of hire. The rules governing participation in the TSP vary depending on 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 section 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 section 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.

Reasons for change

The Committee believes it is appropriate to correct errors in the misclassification of Federal employees resulting in such employees being erroneously placed in the wrong retirement system. The Committee believes that no Federal retirement plan involved in the correction should fail the retirement plan tax qualification rules by reason of such correction. The Committee also believes that no Federal employee involved in the correction should be subject to additional tax consequences as a result of such correction.

Explanation of provisions

The bill provides that the Federal retirement plans will not fail to be treated as qualified retirement plans under the Internal Revenue Code 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, or former employee, who was entitled to such contributions in prior years without violating the applicable overall contribution and benefit limitations (sec. 415) for the year in which the make-up contribution is made. However, the amount contributed may not violate section 415 for the year for which the contribution is made.

The bill provides that no amount is includible in the income of any individual for Federal tax purposes by reason of fund transfers or government contributions made pursuant to the bill. In addition, the bill provides that no amount shall be subject to employment taxes under Subtitle C of the Internal Revenue Code by reason of such transfers or contributions.

Effective date

The tax provisions are effective on the date of enactment.

III. VOTE OF THE COMMITTEE

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 3249.

Motion to report the bill

The bill, H.R. 3249, as amended, was ordered favorably reported by a voice vote (with a quorum present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the estimated budget effects of H.R. 3249 as reported by the Committee on Ways and Means.

The bill, as reported, is estimated to have the following revenue effect:

ESTIMATED REVENUE EFFECTS OF AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3249, THE "FEDERAL RETIREMENT COVERAGE CORRECTIONS ACT," AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS

[Fiscal years 1998–2002, in millions of dollars]

Provision	Effective	1998	1999	2000	2001	2002	1998–2002
Correction of Certain Retirement Coverage Errors Affecting Federal Employees.	DOE						Negligible Revenue Effect

Note.—Details may not add to totals due to rounding.

Legend for "Effective" Column: DOE=date of enactment.

Source: Joint Committee on Taxation.

The Committee agrees with the Congressional Budget Office estimate of the spending effects of the bill, as amended. (See Part IV.C., below.)

B. BUDGET AUTHORITY AND TAX EXPENDITURES

Budget authority

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill as reported involve changes in budget authority. (See statement of the Congressional Budget Office in Part IV.C., below.)

Tax expenditures

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the revenue provisions of the bill as reported may have a negligible effect on tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with subdivision (C) of clause 2(l)(3) of rule XI of the Rules of the House of Representative, requiring a cost estimate prepared by the Congressional Budget Office, the Committee advises that the Congressional Budget Office has submitted the following statement on this bill.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 20, 1998.

Hon. BILL ARCHER,
*Chairman, Committee on Ways and Means,
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, as ordered reported by the Committee on Ways and Means on June 25.

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

Sincerely,

JAMES L. BLUM
(For 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 now taking place for regular federal employees.

CBO estimates that federal agencies would bear discretionary costs totaling \$443 million over the 1999–2003 period, primarily because the bill would increase the size of makeup contributions to the Thrift Savings Plan (TSP). The bill would also decrease direct spending by \$135 million; this drop in direct spending largely reflects makeup contributions to the Social Security trust funds, which are off-budget. 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 bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

The bill would require the District of Columbia and Gallaudet University to correct instances where employees have been mistakenly enrolled in the wrong retirement system. This requirement represents 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.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 3249

	By fiscal year, in millions of dollars—									
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION										
Total	42	155	129	56	61	50	53	57	—14	—17
CHANGES IN DIRECT SPENDING										
On-Budget	—1	(¹)	(¹)	1	1	2	2	3	1	2
Off-Budget	—12	—46	—36	—21	—23	—22	—23	—25	13	16
Total	—12	—46	—36	—20	—21	—20	—21	—22	14	18
CHANGES IN REVENUES										
On-Budget	—?	—2	—2	—2	—3	—3	—3	—3	—2	—1
Off-Budget	—?	2	2	2	3	3	3	3	3	1
Total	—1	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)
TOTAL COST										
Direct Spending and Revenues	—12	—46	—36	—20	—21	—20	—21	—22	14	18
All Spending and Revenues	30	108	93	36	39	29	32	35	(¹)	1

¹ Less than \$500,000.

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

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 \$422 million over the 1999–2003 period. In addition, Title I would increase on-budget direct spending by \$12 million over the same period. Off-budget direct spending would decrease by \$132 million, for a net decrease in direct spending of \$120 million. Title I would have little impact on net revenues; on-budget revenues would decrease by \$3 million, while off-budget revenues would increase by \$3 million. These estimates assume that the Postal Service would increase postal rates to fully offset its own costs related to the bill. The estimated budgetary impact of Title I is shown in Table 2.

TABLE 2.—ESTIMATED BUDGETARY EFFECTS OF TITLE I

	By fiscal year, in millions of dollars—									
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION										
Makeup Contribution to TSP	32	122	103	40	44	34	37	41	—6	—6
Makeup Payments to Social Security	0	1	1	1	1	1	1	1	—2	—2
Makeup Payments to the CSRDF	7	27	21	11	11	10	11	12	—8	—9
Agency Retirement Contributions	(¹)	(¹)	(¹)	—1	—1	—1	—1	—2	—2	—2
Employer Social Security Contributions	(¹)	(¹)	(¹)	1	1	1	1	1	1	1
Total	39	150	125	52	56	45	49	54	—17	—19

TABLE 2.—ESTIMATED BUDGETARY EFFECTS OF TITLE I—Continued

	By fiscal year, in millions of dollars—									
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
CHANGES IN DIRECT SPENDING										
On-Budget:										
Makeup Payments to the CSRDF	-10	-41	-32	-16	-17	-16	-17	-18	13	14
Agency Retirement Contributions	(¹)	(¹)	1	1	2	2	2	2	3	4
Transfers from CSRDF to Social Security	11	43	33	18	19	18	19	21	-13	-14
Subtotal	1	2	2	3	4	4	4	5	3	4
Off-Budget:										
Makeup Payments to Social Security	(¹)	-2	-1	-1	-1	-1	-1	-1	3	3
Employer Social Security Contributions	(¹)	(¹)	-1	-1	-1	-1	-2	-2	-2	-1
Transfers from CSRDF to Social Security	-11	-43	-33	-18	-19	-18	-19	-21	13	14
Subtotal	-11	-45	-35	-20	-21	-20	-22	-24	14	16
Total	-10	-43	-33	-17	-17	-16	-18	-19	17	19
CHANGES IN REVENUES										
On-Budget:										
Employee Retirement Contributions	(¹)	(¹)	-1	-1	-1	-1	-2	-2	-2	-1
Off-Budget:										
Employee Social Security Taxes	(¹)	(¹)	1	1	1	1	2	2	2	1
Total	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)
TOTAL COST OF TITLE										
Direct Spending and Revenues	-10	-43	-33	-17	-18	-16	-18	-20	16	19
All Spending and Revenues	29	107	92	35	38	28	31	34	(¹)	(¹)

¹ Less than \$500,000

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) with government matching contributions. 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 and correct them by December 31, 2001, but would not impose any penalty on agencies that miss this deadline. CBO assumed that agencies would correct their errors at a 20 percent faster annual rate than under current law, but that some errors would remain undiscovered until 2008. Agencies would also stop correcting errors for the first few months of 1999 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 to 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. CBO assumed that 80 percent of these employees would elect to remain in their current 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 de-

posit into his TSP account equal to the government contributions an 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, and would apply to employees mistakenly covered by CSRS or CSRS Offset whose coverage is changed to FERS. Employees whose coverage was corrected to FERS prior to the bill's enactment would also be eligible. 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 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. CBO estimates that the additional cost of TSP makeup contributions would be \$341 million over the 1999–2003 period.

Makeup Payments to Social Security. Agencies are currently responsible for paying makeup Social Security payroll taxes covering the last 3 years, 3 months, and 15 days for employees whose coverage is changed from CSRS to FERS or CSRS Offset. CBO estimates that these makeup payments would increase by \$4 million during the 1999–2003 period. This rise primarily reflects the impact that the bill would have on speeding up the correction of coverage errors.

Makeup Payments to the Civil Service Retirement and Disability Fund (CSRDF). Under H.R. 3249, any necessary adjustments to past agency retirement contributions to the CSRDF would be completely retroactive, as under current law. Agencies would also have to reimburse the CSRDF for certain transfers from the CSRDF to the Social Security trust funds. As noted earlier, agencies are responsible for makeup Social Security payroll taxes covering the last 3 years, 3 months, and 15 days. If an employee was erroneously

covered for a longer period of time, H.R. 3249 would require the CSRDF to transfer to the Social Security trust funds an amount equal to the agency's payroll taxes for that additional period that should have gone to Social Security but went instead to the CSRDF. The agency would then be required to reimburse the CSRDF for the makeup employer taxes transferred to Social Security. CBO estimates that agency makeup payments to the CSRDF would increase by \$77 million between 1999 and 2003 under the bill.

Agency Retirement Contributions. The amount that agencies contribute towards their employee's retirement would decrease slightly because the bill would speed up retirement corrections and shift some employees out of FERS into CFRS Offset, which requires lower agency retirement contributions.

Employer Social Security Contributions. Employer contributions to Social Security would increase by \$2 million between 1999 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 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 \$116 million between 1999 and 2003. The increase in receipts is larger than the increase in agency makeup payments because the receipts figure includes payments by the Postal Service.

Agency Retirement Contributions. The increase in agency retirement contributions under the bill would decrease CSRDF receipts by \$4 million over the 1999–2003 period. The decrease in receipts is larger than the decrease in agency retirement contributions because the receipts figure includes payments by the Postal Service.

Transfers from the Civil Service Trust Fund to Social Security. Under H.R. 3249, the CSRDF would make payments to the Social Security trust funds for certain back payroll taxes. CSRDF would be required to transfer amounts equal to any employees payroll taxes and employer payroll taxes beyond the current statute of limitations of 3 years, 3 months, and 15 days that should have gone to Social Security but instead went to the CSRDF. As noted above, agencies would reimburse the CSRDF for transfers of employer payroll taxes. CBO estimates that transfers from the CSRDF to the Social Security trust funds would total \$124 million over the 1999–2003 period. Although these transfers are intragovernmental, the payments would be on-budget, and the receipt of these funds by Social Security would be off-budget.

Effects on direct spending (off-budget)

H.R. 3249 would affect offsetting receipt to the Social Security trust funds in three ways. First, agency makeup payments would be slightly accelerated, increasing receipts by \$5 million between 1999 and 2003. Second, receipts from employer Social Security contributions would rise by \$3 million during this period. In both of

these instances, the increase in receipts is larger than the increase in discretionary spending because the receipts figure includes payments by the Postal Service. Finally, transfers from the Civil Service trust fund for back taxes would increase receipts by \$124 million during the 1999–2003 period.

Effects on revenues

Employee Retirement Contributions. Because of the speeding up of retirement corrections, employee retirement contributions would decrease by \$3 million over the 1999–2003 period. Employees would be moved more rapidly out of CSRS, which requires 7 percent employee contributions, and into CSRS Offset or FERS, which both require 0.8 percent employee contributions.

Employee Social Security Taxes. By moving from CSRS to CSRS Offset or FERS, employees would also become covered by Social Security. The speeding up of retirement corrections thus would increase receipts of employee Social Security taxes by \$3 million between 1999 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 the one now taking place for employees in CSRS who would like to join FERS. The estimated budgetary impact of Section 304 is shown in Table 3.

FSRDS employees have 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 would 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 9.6 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 \$15 million between 1999 and 2003.

TABLE 3.—ESTIMATED BUDGETARY EFFECTS OF TITLE III

[By fiscal year, in millions of dollars]

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION										
Agency Retirement Contributions	2	3	3	3	4	4	3	3	2	2

TABLE 3.—ESTIMATED BUDGETARY EFFECTS OF TITLE III—Continued

[By fiscal year, in millions of dollars]

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Agency Thrift Savings Plan Contributions	1	1	1	1	1	1	1	1	1	1
Total	3	4	4	5	5	5	4	4	3	2
CHANGES IN DIRECT SPENDING										
On-Budget:										
Agency Retirement Contributions	-1	-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	-2	-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	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)	(¹)
TOTAL COST OF TITLE III										
Direct Spending and Revenues	-2	-3	-3	-3	-4	-4	-3	-3	-2	-2
All Spending and Revenues	1	1	1	1	1	1	1	1	1	1

¹ Less than \$500,000.

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

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 a 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 1999–2003 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 by \$9 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 estimates that the impact of switching employees on Foreign Service and Social Security benefit outlays would be insignificant between 1999 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 Table 4.

TABLE 4.—SUMMARY OF PAY-AS-YOU-GO EFFECTS

[By fiscal year, in millions of dollars]

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Change in outlays	0	0	0	1	1	2	2	3	1	2
Change in receipts	-1	-2	-2	-2	-3	-3	-3	-3	-2	-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 errors addressed by the bill. Consequently, CBO estimates that the total cost of the mandates would be minimal.

Comparison with other estimates: On March 31, 1998, CBO issued an estimate for H.R. 3249 as reported by the House Committee on Government Reform and Oversight. CBO estimated that that version of H.R. 3249 would impose discretionary costs on agencies totaling \$121 million and increase direct spending by \$152 million over the 1998–2003 period. The bill reported by the Committee on Government Reform differs from this bill in several respects. First, it would allow some or all of an agency's costs associated with the bill to be paid from a permanent appropriation, subject to the approval of the Office of Management and Budget. Second, employees who were incorrectly covered by CSRS or CSRS Offset and whose coverage had been corrected to FERS prior to the bill's enactment would not be eligible for the more generous TSP makeup contributions. Third, 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. These refunds would be available to the agency for spending on future CSRDF contributions. Each of these provisions involves lower discretionary costs and/or higher direct spending relative to the Ways and Means version of H.R. 3249.

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.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to subdivision (A) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was the result of the Committee's oversight activities with respect to the misclassification of Federal employees into the wrong Federal retirement system that the Committee concluded that it is appropriate and timely to enact the provisions contained in the bill as reported.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

With respect to subdivision (D) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee on Ways and Means advises that the Committee on Government Reform and Oversight ordered H.R. 3249 favorably reported on March 5, 1998, and that committee filed a report on the bill on July 14, 1998 (H. Rept. 105-625, Part 1). The Committee on Government Reform and Oversight submitted the following letter regarding H.R. 3249.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC, June 23, 1998.

Hon. BILL ARCHER,
*Chairman, Committee on Ways and Means,
House of Representatives, Longworth HOB, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for agreeing to mark up the provisions of H.R. 3249, the Federal Retirement Coverage Correction Act, within your jurisdiction on Thursday, June 25, 1998. It will bring long overdue relief to the thousands of federal employees who, through no fault of their own, have been enrolled in the wrong retirement system.

We appreciate your offer to introduce the June 4, 1998 draft prepared by the Subcommittee on Civil Service as an amendment in the nature of a substitute. It is also our understanding that this draft will be further amended to revise sections 102(b)(1)(C), 102(b)(2)(A)(ii), and 102(b)(2)(B) to incorporate recommendations provided by the Social Security Administration in its June 22, 1998 memorandum to the staff director of the Subcommittee on Social Security. We have no objection to these actions.

Again, thank you for your assistance and the hard work the staffs of the Ways and Means Committee, the Subcommittee on Social Security, and the Joint Committee on Taxation have put in on this bill. They have provided invaluable technical assistance and guidance in the drafting of this legislation.

Sincerely,

DAN BURTON,
Chairman.
HENRY A. WAXMAN,
Ranking Member.
JOHN L. MICA,
*Chairman, Subcommittee on
Civil Service.*
ELIJAH E. CUMMINGS,
*Ranking Member, Sub-
committee on Civil Service.*

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives (relating to Constitutional authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 7 ("All bills for raising revenue shall originate in the House of Representatives") and Section 8 ("The Congress shall have the power to lay and collect taxes, duties, imposts and excises, to pay the debts . . . of the United States"), and from the 16th Amendment to the Constitution.

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104-4). The Committee has determined that the revenue provisions of H.R. 3249, as amended, contain no private sector mandates or intergovernmental mandates within the meaning of the Unfunded Mandates Act of 1995.

E. APPLICABILITY OF HOUSE RULE XXI5(C)

Rules XXI5(c) of the Rules of the House of Representatives provides, in part, that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill as reported do not involve any Federal income tax rate increase within the meaning of the rule.

VI. 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 pro-

vided 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;.*

* * * * *

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 or section 307 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2157), 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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TITLE 5—UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart G—Insurance and Annuities

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CHAPTER 83—RETIREMENT

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

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§ 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 ap-

peals authorized under sections 8347(d) and 8461(e) of this [title.] *title and the Federal Retirement Coverage Corrections Act.*

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CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

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SUBCHAPTER III—THRIFT SAVINGS PLAN

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§ 8432. Contributions

(a) * * *

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(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.

* * * * *

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.

