

Union Calendar No. 25

106TH CONGRESS  
1ST Session

**H. R. 416**

[Report No. 106-29, Parts I and II]

**A BILL**

To provide for the rectification of certain retirement coverage errors affecting Federal employees, and for other purposes.

MARCH 5, 1999

Reported from the Committee on Ways and Means, submitted to the Committee of the Whole House on the State of the Union, and ordered to be printed

## Union Calendar No. 25

106TH CONGRESS  
1ST SESSION

# H. R. 416

**[Report No. 106–29, Parts I and II]**

To provide for the rectification of certain retirement coverage errors affecting Federal employees, and for other purposes.

---

### IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1999

Mr. SCARBOROUGH (for himself, Mr. MICA, Mr. CUMMINGS, Mrs. MORELLA, Ms. NORTON, Mr. FORD, Mr. GILMAN, Mr. LEACH, and Mr. MURTHA) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

FEBRUARY 23, 1999

Reported from the Committee on Government Reform

FEBRUARY 23, 1999

Referral to the Committee on Ways and Means extended for a period ending not later than March 5, 1999

MARCH 5, 1999

Additional sponsors: Mr. WOLF and Ms. GRANGER

MARCH 5, 1999

Reported from the Committee on Ways and Means; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# A BILL

To provide for the rectification of certain retirement coverage errors affecting Federal employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

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

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

6 (b) TABLE OF CONTENTS.—The table of contents for  
 7 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.

### TITLE IV—TAX PROVISIONS

- Sec. 401. Tax provisions.

## 1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

3 (1) CSRS.—The term “CSRS” means the Civil  
4 Service Retirement System.

5 (2) CSRDF.—The term “CSRDF” means the  
6 Civil Service Retirement and Disability Fund.

7 (3) CSRS COVERED.—The term “CSRS cov-  
8 ered”, with respect to any service, means service  
9 that is subject to the provisions of subchapter III of  
10 chapter 83 of title 5, United States Code, other than  
11 those that apply only with respect to an individual  
12 described in section 8402(b)(2) of such title.

13 (4) CSRS-OFFSET COVERED.—The term  
14 “CSRS-Offset covered”, with respect to any service,  
15 means service that is subject to the provisions of

1 subchapter III of chapter 83 of title 5, United  
2 States Code, that apply with respect to an individual  
3 described in section 8402(b)(2) of such title.

4 (5) EMPLOYEE.—The term “employee” means  
5 an employee as defined by section 8331 or 8401 of  
6 title 5, United States Code, and any other individual  
7 (not satisfying either of those definitions) serving in  
8 an appointive or elective office or position in the ex-  
9 ecutive, legislative, or judicial branch of the Govern-  
10 ment who, by virtue of that service, is permitted or  
11 required to be CSRS covered, CSRS-Offset covered,  
12 FERS covered, or Social Security-Only covered.

13 (6) EXECUTIVE DIRECTOR.—The term “Execu-  
14 tive Director of the Federal Retirement Thrift In-  
15 vestment Board” or “Executive Director” means the  
16 Executive Director appointed under section 8474 of  
17 title 5, United States Code.

18 (7) FERS.—The term “FERS” means the  
19 Federal Employees’ Retirement System.

20 (8) FERS COVERED.—The term “FERS cov-  
21 ered”, with respect to any service, means service  
22 that is subject to chapter 84 of title 5, United States  
23 Code.

1           (9) GOVERNMENT.—The term “Government”  
2       has the meaning given such term by section 8331(7)  
3       of title 5, United States Code.

4           (10) OASDI TAXES.—The term “OASDI  
5       taxes” means the OASDI employee tax and the  
6       OASDI employer tax.

7           (11) OASDI EMPLOYEE TAX.—The term  
8       “OASDI employee tax” means the tax imposed  
9       under section 3101(a) of the Internal Revenue Code  
10      of 1986 (relating to Old-Age, Survivors and Disabil-  
11      ity Insurance).

12          (12) OASDI EMPLOYER TAX.—The term  
13      “OASDI employer tax” means the tax imposed  
14      under section 3111(a) of the Internal Revenue Code  
15      of 1986 (relating to Old-Age, Survivors and Disabil-  
16      ity Insurance).

17          (13) OASDI TRUST FUNDS.—The term  
18      “OASDI trust funds” means the Federal Old-Age  
19      and Survivors Insurance Trust Fund and the Fed-  
20      eral Disability Insurance Trust Fund.

21          (14) PERIOD OF ERRONEOUS COVERAGE.—The  
22      term “period of erroneous coverage” means, in the  
23      case of a retirement coverage error, the period  
24      throughout which retirement coverage is in effect

1       pursuant to such error (or would have been in effect,  
2       but for such error).

3               (15) RETIREMENT COVERAGE DETERMINA-  
4       TION.—The term “retirement coverage determina-  
5       tion” means a determination by an employee or  
6       agent of the Government as to whether a particular  
7       type of Government service is CSRS covered, CSRS-  
8       Offset covered, FERS covered, or Social Security-  
9       Only covered.

10              (16) RETIREMENT COVERAGE ERROR.—The  
11       term “retirement coverage error” means a retire-  
12       ment coverage determination that, as a result of any  
13       error, misrepresentation, or inaction on the part of  
14       an employee or agent of the Government (including  
15       an error as described in section 163(b)(2)), causes  
16       an individual erroneously to be enrolled or not en-  
17       rolled in a retirement system, as further described in  
18       the applicable subtitle of title I.

19              (17) SOCIAL SECURITY-ONLY COVERED.—The  
20       term “Social Security-Only covered”, with respect to  
21       any service, means Government service that con-  
22       stitutes employment under section 210 of the Social  
23       Security Act (42 U.S.C. 410), and that—

24                       (A) is subject to OASDI taxes; but

1 (B) is not subject to any retirement system  
2 for Government employees (disregarding title II  
3 of the Social Security Act).

4 (18) THRIFT SAVINGS FUND.—The term  
5 “Thrift Savings Fund” means the Thrift Savings  
6 Fund established under section 8437 of title 5,  
7 United States Code.

8 **SEC. 3. APPLICABILITY.**

9 (a) IN GENERAL.—Subject to subsection (b), this Act  
10 shall apply with respect to any retirement coverage error  
11 that occurs before, on, or after the date of enactment of  
12 this Act, excluding any error corrected within 1 year after  
13 the date on which it occurs.

14 (b) LIMITATION.—Nothing in this Act shall affect  
15 any retirement coverage or treatment accorded with re-  
16 spect to any individual in connection with any period be-  
17 ginning before the first day of the first applicable pay pe-  
18 riod beginning on or after January 1, 1984.

19 **SEC. 4. RESTRICTION RELATING TO FUTURE CORREC-**  
20 **TIONS.**

21 (a) IN GENERAL.—Except as otherwise provided in  
22 this Act, any individual who, on or after the date of enact-  
23 ment of this Act, becomes or remains affected by a retire-  
24 ment coverage error may not be excluded from or made

1 subject to any retirement system for the sole purpose of  
2 correcting such error.

3 (b) COORDINATION WITH OTHER LAWS.—

4 (1) IN GENERAL.—Nothing in this Act shall be  
5 considered to preclude any voluntary retirement cov-  
6 erage election made other than under this Act.

7 (2) REGULATIONS.—The Office of Personnel  
8 Management shall prescribe any regulations which  
9 may be necessary to apply this Act in the case of  
10 any individual who changes retirement coverage pur-  
11 suant to an election described in paragraph (1).

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

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

1 **TITLE I—DESCRIPTION OF RE-**  
2 **TIREMENT COVERAGE ER-**  
3 **RORS TO WHICH THIS ACT AP-**  
4 **PLIES AND MEASURES FOR**  
5 **THEIR RECTIFICATION**

6 **Subtitle A—Employee Who Should**  
7 **Have Been FERS Covered, But**  
8 **Who Was Erroneously CSRS**  
9 **Covered or CSRS-Offset Cov-**  
10 **ered Instead**

11 **SEC. 101. ELECTIONS.**

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

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

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

20 (b) **UNCORRECTED ERROR.**—If, at the time of mak-  
21 ing an election under this section, the retirement coverage  
22 error described in paragraph (1) or (2) of subsection (a)  
23 (as applicable) has not been corrected, the employee af-  
24 fected by such error may elect—

25 (1) to be FERS covered instead; or

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

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

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

10       (d) DEFAULT RULE.—

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

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

22       (e) RETROACTIVE EFFECT.—An election under this  
23 section (including an election by default, and an election  
24 to remain covered by the retirement system by which the  
25 electing individual is covered as of the date of the election)

1 shall be effective retroactive to the effective date of the  
 2 retirement coverage error (as referred to in subsection (a))  
 3 to which such election relates.

4 **SEC. 102. EFFECT OF AN ELECTION TO BE TRANSFERRED**  
 5 **FROM CSRS TO FERS TO CORRECT A RETIRE-**  
 6 **MENT COVERAGE ERROR.**

7 (a) **APPLICABILITY.**—This section shall apply in the  
 8 case of any employee affected by an error described in sec-  
 9 tion 101(a)(1) who elects the option under section  
 10 101(b)(1).

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

13 (1) **EMPLOYEE CONTRIBUTIONS.**—

14 (A) **TRANSFER TO OASDI TRUST FUNDS.**—

15 There shall be transferred from the CSRDF to  
 16 the OASDI trust funds an amount equal to the  
 17 amount of the OASDI employee tax that should  
 18 have been deducted and withheld from the Fed-  
 19 eral wages of the employee for the period of er-  
 20 roneous coverage involved.

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

23 (i) **IN GENERAL.**—Any excess amount  
 24 described in clause (ii) that is attributable

1 to an employee described in subsection (a)  
2 shall be forfeited.

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

7 (I) that portion of the employee’s  
8 lump-sum credit that is attributable  
9 to the period of erroneous coverage in-  
10 volved, exceeds (if at all)

11 (II) the total of the amount de-  
12 scribed in subparagraph (A) plus the  
13 amount that should have been de-  
14 ducted under section 8422 of title 5,  
15 United States Code, from the pay of  
16 the employee for the period of erro-  
17 neous coverage involved.

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

22 (i) IN GENERAL.—

23 (I) SHORTFALL TO BE MADE UP  
24 BY AGENCY.—If the amount described  
25 in subparagraph (B)(ii)(I) is less than

1 the total amount described in sub-  
2 paragraph (B)(ii)(II), an amount  
3 equal to the shortfall shall be made up  
4 (in such manner as the Commissioner  
5 of Social Security shall prescribe) by  
6 the agency in or under which the em-  
7 ployee is then employed, out of  
8 amounts otherwise available in the ap-  
9 propriation, fund, or account from  
10 which any OASDI employer tax or  
11 contribution to the CSRDF (as appli-  
12 cable) may be made, except as pro-  
13 vided in subclause (II) or clause  
14 (iii)(I).

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

22 (ii) DEPOSIT REQUIREMENT.—

23 (I) IN GENERAL.—To the extent  
24 that the shortfall under clause (i) is  
25 due to the any lump-sum credit re-

1 received by the employee (for which an  
2 appropriate deposit under section  
3 8334(d)(1) of title 5, United States  
4 Code, has not been made), the em-  
5 ployee shall be required to repay an  
6 amount equal to the amount of such  
7 deposit, except as provided in clause  
8 (iii)(I).

9 (II) TREATMENT AS A DEBT  
10 DUE.—If an employee fails to pay the  
11 amount required under subclause (I),  
12 that amount shall be recoverable by  
13 the CSRDF under the same authori-  
14 ties (including to waive a right of re-  
15 covery) as described in section  
16 114(b)(2). For purposes of any exer-  
17 cise of authority under the preceding  
18 sentence, the Director of the Office of  
19 Personnel Management shall be con-  
20 sidered the head of the agency con-  
21 cerned.

22 (iii) SPECIAL RULES.—

23 (I) DEPOSIT FOR FERS DEDUC-  
24 TIONS NOT MANDATORY.—Nothing in  
25 this subparagraph shall, in any situa-

1           tion described in clause (ii), be consid-  
2           ered to require any agency make-up  
3           payment (or employee repayment) of  
4           any portion of the lump-sum credit  
5           (beyond any amount necessary in  
6           order to permit the transfer described  
7           in paragraph (1)(A)) which would be  
8           assignable to amounts that should  
9           have been deducted under section  
10          8422 of title 5, United States Code,  
11          from pay of the employee involved.

12           (II) AUTHORITY TO MAKE FERS  
13          DEPOSIT.—An employee under this  
14          section who has received a lump-sum  
15          credit (described in clause (ii)(I)) may  
16          not be credited, under chapter 84 of  
17          title 5, United States Code, with any  
18          period of service to which that lump-  
19          sum credit relates unless the employee  
20          deposits into the CSRDF an amount  
21          equal to the percentage of such em-  
22          ployee's basic pay (for such period of  
23          service) that should have been de-  
24          ducted under section 8422 of title 5,  
25          United States Code.

(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

1 section 8424(a) of title 5, United  
2 States Code, shall, in any situation  
3 covered by this Act, prevent the mak-  
4 ing of any deposit (and crediting, for  
5 retirement purposes, of service for the  
6 corresponding period of time) to the  
7 extent that the deposit relates to the  
8 period of erroneous coverage involved.

9 (II) EXCEPTION.—The preceding  
10 sentence shall not apply in any situa-  
11 tion in which the employee involved  
12 was erroneously FERS covered, and  
13 remained FERS covered after the rec-  
14 tification provided for under this Act.

15 (2) GOVERNMENT CONTRIBUTIONS.—

16 (A) TRANSFER TO OASDI TRUST FUNDS.—

17 There shall be transferred from the CSRDF to  
18 the OASDI trust funds the excess of—

19 (i) the amount of the OASDI em-  
20 ployer tax that should have been paid with  
21 respect to the employee for the period of  
22 erroneous coverage involved, over

23 (ii) the amount of the OASDI em-  
24 ployer tax that may be assessed under sec-

tion 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

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

6 (iii) SOURCE OF PAYMENTS.—Any  
7 amount required to be paid by an agency  
8 under clause (i) shall be payable out of any  
9 appropriation, fund, or account available to  
10 such agency for making Government con-  
11 tributions to the CSRDF or the OASDI  
12 trust funds (as appropriate).

13 (c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAV-  
14 INGS FUND.—

15 (1) IN GENERAL.—An employee to whom this  
16 section applies is entitled to have contributed to the  
17 Thrift Savings Fund on such employee's behalf, in  
18 addition to any regular employee or Government  
19 contributions that would be permitted or required  
20 for the year in which the contributions under this  
21 subsection are made, an amount equal to the sum  
22 of—

23 (A) the amount determined under para-  
24 graph (2) with respect to such employee for the  
25 period of erroneous coverage involved;

1 (B) an amount equal to the total contribu-  
2 tions that should have been made for such em-  
3 ployee under section 8432(c)(1) of title 5,  
4 United States Code, for the period of erroneous  
5 coverage involved;

6 (C) an amount equal to the total contribu-  
7 tions that should have been made for such em-  
8 ployee under section 8432(c)(2) of title 5,  
9 United States Code, for the period of erroneous  
10 coverage involved (taking into account both the  
11 amount referred to in subparagraph (A) and  
12 any contributions to the Thrift Savings Fund  
13 actually made by such employee with respect to  
14 the period involved); and

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

19 (2) AMOUNT BASED ON AVERAGE PERCENTAGE  
20 OF PAY CONTRIBUTED BY EMPLOYEES DURING PE-  
21 RIOD OF ERRONEOUS COVERAGE.—

22 (A) IN GENERAL.—The amount deter-  
23 mined under this paragraph with respect to an  
24 employee for a period of erroneous coverage  
25 shall be equal to the amount of the contribu-

1           tions such employee would have made if, during  
2           each calendar year in such period, the employee  
3           had contributed the percentage of such employ-  
4           ee's basic pay for such year specified in sub-  
5           paragraph (B) (determined disregarding any  
6           contributions actually made by such employee  
7           with respect to the year involved).

8           (B) PERCENTAGE TO BE APPLIED.—

9           (i) IN GENERAL.—The percentage to  
10          be applied under this subparagraph in the  
11          case of any employee with respect to a par-  
12          ticular year is—

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

24               (II) if such average percentage  
25               for the year in question is unavailable,

1 the average percentage for the most  
2 recent year prior to the year in ques-  
3 tion that is available.

4 (ii) PERCENTAGE CONTRIBUTED.—

5 For purposes of clause (i)(I), the percent-  
6 age of basic pay for each employee in-  
7 cluded in the average shall be determined  
8 by dividing the total employee contribu-  
9 tions received into the Thrift Savings Plan  
10 account of that employee during such year  
11 by the annual salary rate for that employee  
12 as recorded in the central personnel data  
13 file (referred to in clause (i)(I)) as of June  
14 30 of such year.

15 (C) LIMITATIONS.—In no event may the  
16 amount determined under this paragraph for an  
17 individual with respect to a year exceed the  
18 amount that, if added to the amount of the con-  
19 tributions that were actually made by such indi-  
20 vidual to the Thrift Savings Fund with respect  
21 to such year (if any), would cause the total to  
22 exceed—

23 (i) any limitation under section 415 or  
24 any other provision of the Internal Reve-  
25 nue Code of 1986 that would have applied

1 to such employee with respect to such year;  
2 or

3 (ii) any limitation under section  
4 8432(a) or any other provision of title 5,  
5 United States Code, that would have ap-  
6 plied to such employee with respect to such  
7 year.

8 (3) LOST EARNINGS.—

9 (A) IN GENERAL.—Lost earnings on any  
10 amounts referred to in subparagraph (A), (B),  
11 or (C) of paragraph (1) shall, to the extent  
12 those amounts are attributable to contributions  
13 that should have been made with respect to a  
14 particular year, be determined in the same way  
15 as if those amounts had in fact been timely con-  
16 tributed and allocated among the TSP invest-  
17 ment funds in accordance with—

18 (i) the investment fund election that  
19 was accepted by the employing agency be-  
20 fore the date the contribution should have  
21 been made and that was still in effect as  
22 of that date; or

23 (ii) if no such election was then in ef-  
24 fect for the employee, the investment fund

1 election attributed to such employee with  
2 respect to such year.

3 (B) INVESTMENT FUND ELECTION ATTRIB-  
4 UTED.—For purposes of subparagraph (A)(ii),  
5 the investment fund election attributed to an  
6 employee with respect to a particular year is—

7 (i) the average percentage allocation  
8 of TSP contributions among the TSP in-  
9 vestment funds from all sources, with re-  
10 spect to that year, except that the invest-  
11 ment fund election attributed to contribu-  
12 tions in years prior to 1991 shall be the G  
13 Fund; or

14 (ii) if such average percentage alloca-  
15 tion for the year in question is unavailable,  
16 the average percentage allocation for the  
17 most recent year prior to the year in ques-  
18 tion that is available.

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

22 (i) the term “investment fund elec-  
23 tion” means a choice by a participant con-  
24 cerning how contributions to the Thrift

1 Savings Plan shall be allocated among the  
2 TSP investment funds;

3 (ii) the term “participant” means any  
4 person with an account in the Thrift Sav-  
5 ings Plan, or who would have an account  
6 in the Thrift Savings Plan but for an em-  
7 ploying agency error (including an error as  
8 described in section 163(b)(2));

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

14 (iv) the terms “C Fund”, “F Fund”,  
15 and “G Fund” refer to the funds described  
16 in paragraphs (1), (3), and (4), respec-  
17 tively, of section 8438(a) of title 5, United  
18 States Code.

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

21 (A) IN GENERAL.—Any amount to which  
22 an employee is entitled under this subsection  
23 shall be paid promptly by the agency in or  
24 under which the electing employee is (as of the  
25 date of the election) employed, in a lump sum,

1           upon notification to such agency under sub-  
2           paragraph (B)(ii) as to the amount due.

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

6                   (i) each employing agency shall be re-  
7                   quired to determine and notify the Federal  
8                   Retirement Thrift Investment Board, in a  
9                   timely manner, as to any amounts under  
10                  paragraph (1)(A)–(C) owed by such agen-  
11                  cy; and

12                  (ii) the Board shall, based on the in-  
13                  formation it receives from an agency under  
14                  clause (i), determine lost earnings on those  
15                  amounts and promptly notify such agency  
16                  as to the total amounts due from it under  
17                  this subsection.

18           (5) JUSTICES AND JUDGES; MAGISTRATES;  
19           ETC.—The preceding provisions of this subsection  
20           shall not apply in the case of any employee who,  
21           pursuant to the election referred to in subsection  
22           (a), becomes subject to section 8440a, 8440b,  
23           8440c, or 8440d of title 5, United States Code.

24           (6) REGULATIONS.—The Executive Director of  
25           the Federal Retirement Thrift Investment Board

1       shall prescribe any regulations necessary to carry  
2       out this subsection.

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

6       (a) APPLICABILITY.—This section shall apply in the  
7       case of any employee affected by an error described in sec-  
8       tion 101(a)(2) who elects the option under section  
9       101(b)(1).

10      (b) EFFECT OF ELECTION.—In the case of an em-  
11      ployee described in subsection (a), the following provisions  
12      shall apply:

13           (1) Section 102(b) (relating to disposition of  
14           contributions to the CSRDF), but disregarding pro-  
15           visions relating to transfers to OASDI trust funds.

16           (2) Section 102(c) (relating to makeup con-  
17           tributions to the Thrift Savings Fund).

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

21      (a) APPLICABILITY.—This section shall apply in the  
22      case of any employee affected by an error described in sec-  
23      tion 101(a)(1) who elects the option under section  
24      101(b)(2).

1 (b) SAME AS IN THE CASE OF AN ELECTION TO RAT-  
 2 IFY ERRONEOUS CSRS-OFFSET COVERAGE.—

3 (1) IN GENERAL.—The effect of an election de-  
 4 scribed in subsection (a) shall be as described in sec-  
 5 tion 101(b)(2), except that the provisions of section  
 6 102(b) shall also apply.

7 (2) APPROPRIATE PERCENTAGES TO BE USED  
 8 IN DETERMINING EMPLOYEE AND GOVERNMENT  
 9 CONTRIBUTIONS TO CSRDF.—For purposes of para-  
 10 graph (1), section 102(b) shall be applied by sub-  
 11 stituting “the relevant provisions of section  
 12 8334(k)” for “section 8422” and “section 8423”.

13 **SEC. 105. EFFECT OF AN ELECTION TO BE RESTORED (OR**  
 14 **TRANSFERRED) TO CSRS-OFFSET AFTER HAV-**  
 15 **ING BEEN CORRECTED TO FERS FROM CSRS-**  
 16 **OFFSET (OR CSRS).**

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

22 (b) DISPOSITION OF CONTRIBUTIONS TO THE  
 23 CSRDF.—

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

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

8           (A) NO DOUBLE PAYMENTS INTO OASDI.—  
9       To the extent that the appropriate OASDI em-  
10      ployee or employer tax has already been paid  
11      for the total period involved (or any portion  
12      thereof), reduce the respective amounts re-  
13      quired by paragraphs (1)(A) and (2)(A)(i) of  
14      section 102(b) accordingly.

15          (B) APPROPRIATE PERCENTAGES TO BE  
16      USED IN DETERMINING EMPLOYEE AND GOV-  
17      ERNMENT CONTRIBUTIONS TO CSRDF.—Sub-  
18      stitute “the relevant provisions of section  
19      8334(k)” for “section 8422” and “section  
20      8423”.

21          (C) APPROPRIATE LUMP-SUM CREDIT TO  
22      BE USED.—The appropriate lump-sum credit to  
23      be used under this subsection shall be deter-  
24      mined in accordance with regulations to be pre-  
25      scribed by the Office of Personnel Management.

1 (D) PROVISIONS TO BE APPLIED WITH RE-  
2 SPECT TO THE TOTAL PERIOD INVOLVED.—  
3 Substitute “total period involved (as defined by  
4 section 105)” for “period of erroneous coverage  
5 involved”.

6 (c) DISPOSITION OF EXCESS TSP CONTRIBU-  
7 TIONS.—

8 (1) GOVERNMENT CONTRIBUTIONS.—All Gov-  
9 ernment contributions made on behalf of the em-  
10 ployee to the Thrift Savings Fund that are attrib-  
11 utable to the total period involved (including any  
12 earnings thereon) shall be forfeited. For the purpose  
13 of section 8437(d) of title 5, United States Code,  
14 amounts so forfeited shall be treated as if they were  
15 amounts forfeited under section 8432(g) of such  
16 title.

17 (2) EMPLOYEE CONTRIBUTIONS.—The election  
18 referred to in subsection (a) shall not be taken into  
19 account for purposes of any determination relating  
20 to the disposition of any employee contributions to  
21 the Thrift Savings Fund, attributable to the total  
22 period involved, that were in excess of the maximum  
23 amount that would have been allowable under appli-  
24 cable provisions of subchapter III of chapter 83 of

1 title 5, United States Code (including any earnings  
2 thereon).

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

9 **SEC. 106. EFFECT OF ELECTION TO REMAIN FERS COV-**  
10 **ERED AFTER HAVING BEEN CORRECTED TO**  
11 **FERS FROM CSRS-OFFSET (OR CSRS).**

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

17 (b) DISPOSITION OF CONTRIBUTIONS TO THE  
18 CSRDF.—The provisions of section 102(b) shall apply in  
19 the case of an employee described in subsection (a), sub-  
20 ject to the same condition as set forth in section  
21 105(b)(2)(A).

22 (c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAV-  
23 INGS FUND.—Section 102(c) shall apply, except that an  
24 agency shall receive credit for any automatic or matching  
25 Government contributions and any lost earnings paid by

1 such agency as part of any corrections process previously  
 2 carried out with respect to the employee involved.

3 **Subtitle B—Employee Who Should**  
 4 **Have Been FERS Covered,**  
 5 **CSRS-Offset Covered, or CSRS**  
 6 **Covered, But Who Was Erro-**  
 7 **neously Social Security-Only**  
 8 **Covered Instead**

9 **SEC. 111. ELECTIONS.**

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

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

15 (2) should be (or should have been) CSRS-Off-  
 16 set covered but, as a result of a retirement coverage  
 17 error, is (or was) Social Security-Only covered in-  
 18 stead; or

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

22 (b) **UNCORRECTED ERROR.**—If, at the time of mak-  
 23 ing an election under this section, the retirement coverage  
 24 error described in paragraph (1), (2), or (3) of subsection

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

3 (1)(A) in the case of an error described in sub-  
 4 section (a)(1), to be FERS covered as well;

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

7 (C) in the case of an error described in sub-  
 8 section (a)(3), to be CSRS covered instead; or

9 (2) to remain Social Security-Only covered.

10 (c) CORRECTED ERROR.—

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

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

1           (3) JOINT ACTION.—This subsection shall be  
2       carried out by the Director of the Office of Person-  
3       nel Management, in consultation with the Executive  
4       Director of the Federal Retirement Thrift Invest-  
5       ment Board and the Commissioner of Social Secu-  
6       rity.

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

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

1 **SEC. 112. EFFECT OF AN ELECTION TO BECOME FERS COV-**  
2 **ERED TO CORRECT THE RETIREMENT COV-**  
3 **ERAGE ERROR.**

4 (a) **APPLICABILITY.**—This section shall apply in the  
5 case of any employee affected by an error described in sec-  
6 tion 111(a)(1) who elects the option under section  
7 111(b)(1)(A).

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

13 (1) the amount that should have been deducted  
14 and withheld from the pay of the employee for the  
15 period of erroneous coverage involved under section  
16 8422 of title 5, United States Code; and

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

21 (c) **MAKEUP CONTRIBUTIONS TO THE THRIFT SAV-**  
22 **INGS FUND.**—Section 102(c) shall apply in the case of an  
23 employee described in subsection (a).

1 **SEC. 113. EFFECT OF AN ELECTION TO BECOME CSRS-OFF-**  
 2 **SET COVERED TO CORRECT THE RETIRE-**  
 3 **MENT COVERAGE ERROR.**

4 (a) **APPLICABILITY.**—This section shall apply in the  
 5 case of any employee affected by an error described in sec-  
 6 tion 111(a)(2) who elects the option under section  
 7 111(b)(1)(B).

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

13 (1) the amount that should have been deducted  
 14 and withheld from the pay of the employee for the  
 15 period of erroneous coverage involved under section  
 16 8334 of title 5, United States Code; and

17 (2) the Government contributions that should  
 18 have been paid under section 8334 of title 5, United  
 19 States Code, for the period of erroneous coverage in-  
 20 volved.

21 (c) **MAKEUP CONTRIBUTIONS TO THE THRIFT SAV-**  
 22 **INGS FUND.**—

23 (1) **IN GENERAL.**—Makeup contributions to the  
 24 Thrift Savings Fund shall be made by the employing  
 25 agency in the same manner as described in section  
 26 102(c) (but disregarding subparagraphs (B) and (C))

1 of paragraph (1) thereof, and the other provisions of  
 2 section 102(c) to the extent that they relate to those  
 3 subparagraphs).

4 (2) APPROPRIATE PERCENTAGES, ETC. TO BE  
 5 USED.—For purposes of paragraph (1), section  
 6 102(c) shall be applied—

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

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

14 **SEC. 114. EFFECT OF AN ELECTION TO BECOME CSRS COV-**  
 15 **ERED TO CORRECT THE RETIREMENT COV-**  
 16 **ERAGE ERROR.**

17 (a) APPLICABILITY.—This section shall apply in the  
 18 case of any employee affected by an error described in sec-  
 19 tion 111(a)(3) who elects the option under section  
 20 111(b)(1)(C).

21 (b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

22 (1) IN GENERAL.—Upon notification that an  
 23 employee has made an election under this section,  
 24 the agency in or under which such employee is em-

1       employed shall promptly pay to the CSRDF, in a lump  
2       sum, an amount equal to the sum of—

3               (A) the amount that should have been de-  
4       ducted and withheld from the pay of the em-  
5       ployee for the period of erroneous coverage in-  
6       volved under section 8334 of title 5, United  
7       States Code; and

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

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

13              (A) IN GENERAL.—The employee for whom  
14      the payment under paragraph (1) is made shall  
15      repay to the agency (referred to in paragraph  
16      (1)) an amount equal to the OASDI employee  
17      taxes refunded or refundable to such employee  
18      for any portion of the period of erroneous cov-  
19      erage involved (computed in such manner as the  
20      Director of the Office of Personnel Manage-  
21      ment, with the concurrence of the Secretary of  
22      the Treasury, shall by regulation prescribe), not  
23      to exceed the amount described in paragraph  
24      (1)(A).

1 (B) RIGHT OF RECOVERY; WAIVER.—If the  
2 employee fails to repay the amount required  
3 under subparagraph (A), a sum equal to the  
4 amount outstanding is recoverable by the Gov-  
5 ernment from the employee (or the employee’s  
6 estate, if applicable) by—

7 (i) setoff against accrued pay, com-  
8 pensation, amount of retirement credit, or  
9 another amount due the employee from the  
10 Government; and

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

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

19 (C) TREATMENT OF AMOUNTS REPAID OR  
20 RECOVERED.—Any amount repaid by, or recov-  
21 ered from, an individual (or an estate) under  
22 this paragraph shall be credited to the appro-  
23 priation account from which the amount in-  
24 volved was originally paid.

1 (c) MAKEUP CONTRIBUTIONS TO THE THRIFT SAV-  
2 INGS FUND.—In the case of an employee described in sub-  
3 section (a), makeup contributions to the Thrift Savings  
4 Fund shall be made in the same manner as described in  
5 section 113(c).

6 **Subtitle C—Employee Who Should**  
7 **Have Been Social Security-Only**  
8 **Covered, But Who Was Erro-**  
9 **neously FERS Covered, CSRS-**  
10 **Offset Covered, or CSRS Cov-**  
11 **ered Instead**

12 **SEC. 121. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD**  
13 **BE SOCIAL SECURITY-ONLY COVERED, BUT**  
14 **WHO IS ERRONEOUSLY FERS COVERED IN-**  
15 **STEAD.**

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

20 (b) AUTOMATIC EXCLUSION FROM FERS.—An em-  
21 ployee described in subsection (a) shall not, by reason of  
22 the retirement coverage error described in subsection (a),  
23 be eligible to be treated as an individual who is FERS  
24 covered.

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

7       (d) DISPOSITION OF TSP CONTRIBUTIONS.—

8           (1) GOVERNMENT CONTRIBUTIONS.—All Gov-  
9 ernment contributions made on behalf of the em-  
10 ployee to the Thrift Savings Fund that are attrib-  
11 utable to the period of erroneous coverage involved  
12 (including any earnings thereon) shall be forfeited in  
13 the same manner as described in section 105(c).

14          (2) EMPLOYEE CONTRIBUTIONS.—Notwith-  
15 standing any other provision of this section or any  
16 other provision of law, any contributions made by  
17 the employee to the Thrift Savings Fund during the  
18 period of erroneous coverage involved (including any  
19 earnings thereon) shall be treated as if such em-  
20 ployee had then been correctly covered.

1 **SEC. 122. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD**  
2 **BE SOCIAL SECURITY-ONLY COVERED, BUT**  
3 **WHO IS ERRONEOUSLY CSRS-OFFSET COV-**  
4 **ERED INSTEAD.**

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

10 (b) AUTOMATIC EXCLUSION FROM CSRS-OFFSET.—  
11 An employee described in subsection (a) shall not, by rea-  
12 son of the retirement coverage error described in sub-  
13 section (a), be eligible to be treated as an individual who  
14 is CSRS-Offset covered.

15 (c) DISPOSITION OF EMPLOYEE CONTRIBUTIONS TO  
16 THE CSRDF.—There shall be paid to the employee, from  
17 the CSRDF, the lump-sum credit to which such employee  
18 would be entitled under section 8342 of title 5, United  
19 States Code, to the extent attributable to the period of  
20 erroneous coverage involved.

21 (d) DISPOSITION OF TSP CONTRIBUTIONS.—In the  
22 case of an employee described in subsection (a), section  
23 121(d)(2) shall apply.

1 **SEC. 123. UNCORRECTED ERROR: EMPLOYEE WHO SHOULD**  
2 **BE SOCIAL SECURITY-ONLY COVERED, BUT**  
3 **WHO IS ERRONEOUSLY CSRS COVERED IN-**  
4 **STEAD.**

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

9 (b) AUTOMATIC EXCLUSION FROM CSRS.—An em-  
10 ployee described in subsection (a) shall not, by reason of  
11 the retirement coverage error described in subsection (a),  
12 be eligible to be treated as an individual who is CSRS cov-  
13 ered.

14 (c) DISPOSITION OF CONTRIBUTIONS TO THE  
15 CSRDF.—

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

19 (2) IRRELEVANT PROVISIONS TO BE DIS-  
20 REGARDED.—For purposes of paragraph (1), section  
21 102(b) shall be applied disregarding the provisions  
22 of paragraphs (1)(B)(ii)(II) (to the extent they re-  
23 late to amounts that should have been deducted  
24 under section 8422 of title 5, United States Code)  
25 and (2)(B)(ii)(II) thereof.

1 (d) DISPOSITION OF TSP CONTRIBUTIONS.—In the  
2 case of an employee described in subsection (a), section  
3 121(d)(2) shall apply.

4 **SEC. 124. CORRECTED ERROR: SITUATIONS UNDER SEC-**  
5 **TIONS 121 THROUGH 123.**

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

11 (b) POLICY.—Under the proposal, any employee with  
12 respect to whom the applicable retirement coverage error  
13 (referred to in section 121, 122, or 123, as applicable)  
14 has already been corrected, but under terms less advan-  
15 tageous to the employee than would have been the case  
16 under this Act, shall be afforded a reasonable opportunity  
17 to obtain treatment comparable to the treatment afforded  
18 under this Act.

19 (c) JOINT ACTION.—This section shall be carried out  
20 by the Director of the Office of Personnel Management,  
21 in consultation with the Executive Director of the Federal  
22 Retirement Thrift Investment Board and the Commis-  
23 sioner of Social Security.

1 **SEC. 125. VESTED EMPLOYEES EXCEPTED FROM AUTO-**  
2 **MATIC EXCLUSION.**

3 (a) IN GENERAL.—Nothing in this subtitle shall, by  
4 reason of any retirement coverage error, result in the auto-  
5 matic exclusion of any employee from FERS, CSRS-Off-  
6 set, or CSRS if, as of the date on which notice of such  
7 error is given (in accordance with section 201), such em-  
8 ployee's rights have vested under the retirement system  
9 involved.

10 (b) VESTING.—For purposes of this section, vesting  
11 of rights shall be considered to have occurred if the em-  
12 ployee has (by the date as of which the determination is  
13 made) completed at least 5 years of civilian service, taking  
14 into account only creditable service under section 8332 or  
15 8411 of title 5, United States Code.

16 (c) ELECTIONS.—

17 (1) ERRONEOUSLY FERS COVERED.—Any em-  
18 ployee affected by an error described in section 121  
19 who is determined under this section to satisfy sub-  
20 section (b) may elect—

21 (A) to be treated in accordance with sec-  
22 tion 121; or

23 (B) to remain FERS covered.

24 (2) OTHER CASES.—Any employee affected by  
25 an error described in section 122 or 123 who is de-

1       terminated under this section to satisfy subsection (b)  
2       may elect—

3               (A) to be treated in accordance with sec-  
4               tion 122 or 123 (as applicable); or

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

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

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

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

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

11       (h) NOTIFICATION.—Any notice under section 201  
 12 shall include such additional information or other modi-  
 13 fications as the Office of Personnel Management may by  
 14 regulation prescribe in connection with the situations cov-  
 15 ered by this subtitle, particularly as they relate to the con-  
 16 sequences of being vested or not being vested.

17 **Subtitle D—Employee Who Should**  
 18 **Have Been CSRS Covered or**  
 19 **CSRS-Offset Covered, But Who**  
 20 **Was Erroneously FERS Covered**  
 21 **Instead**

22 **SEC. 131. ELECTIONS.**

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

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

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

7           (b) UNCORRECTED ERROR.—If, at the time of mak-  
8           ing an election under this section, the retirement coverage  
9           error described in paragraph (1) or (2) of subsection (a)  
10          (as applicable) has not been corrected, the employee af-  
11          fected by such error may elect—

12           (1)(A) in the case of an error described in sub-  
13           section (a)(1), to be CSRS covered instead; or

14           (B) in the case of an error described in sub-  
15           section (a)(2), to be CSRS-Offset covered instead; or

16           (2) to remain FERS covered.

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

22           (1) to be FERS covered instead; or

23           (2)(A) in the case of an error described in sub-  
24           section (a)(1), to remain CSRS covered; or

1 (B) in the case of an error described in sub-  
 2 section (a)(2), to remain CSRS-Offset covered.

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

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

17 **SEC. 132. EFFECT OF AN ELECTION TO BE TRANSFERRED**  
 18 **FROM FERS TO CSRS TO CORRECT A RETIRE-**  
 19 **MENT COVERAGE ERROR.**

20 (a) APPLICABILITY.—This section shall apply in the  
 21 case of any employee affected by an error described in sec-  
 22 tion 131(a)(1) who elects the option available to such em-  
 23 ployee under section 131(b)(1)(A).

24 (b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

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

6                   (A) the amount by which—

7                           (i) the amount that should have been  
8                           deducted and withheld from the pay of the  
9                           employee for the period of erroneous cov-  
10                          erage involved under section 8334 of title  
11                          5, United States Code, exceeds

12                          (ii) the amount that was actually de-  
13                          ducted and withheld from the pay of the  
14                          employee for the period of erroneous cov-  
15                          erage involved under section 8422 of such  
16                          title (and not refunded), over

17                   (B) the amount by which—

18                           (i) the amount of the Government  
19                           contributions actually made under section  
20                           8423 of such title with respect to the em-  
21                           ployee for the period of erroneous coverage  
22                           involved, exceeds

23                          (ii) the amount of the Government  
24                          contributions that should have been made  
25                          under section 8334 of such title with re-

1                   spect to the employee for the period of er-  
2                   roneous coverage involved.

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

5                   (A) IN GENERAL.—The employee for whom  
6                   the payment under paragraph (1) is made shall  
7                   repay to the agency (referred to in paragraph  
8                   (1)) an amount equal to the OASDI employee  
9                   taxes refunded or refundable to such employee  
10                  for any portion of the period of erroneous cov-  
11                  erage involved (computed in such manner as the  
12                  Director of the Office of Personnel Manage-  
13                  ment, with the concurrence of the Commis-  
14                  sioner of Social Security, shall by regulation  
15                  prescribe), not to exceed the amount described  
16                  in paragraph (1)(A).

17                  (B) RIGHT OF RECOVERY; WAIVER.—If the  
18                  employee fails to repay the amount required  
19                  under subparagraph (A), a sum equal to the  
20                  amount outstanding is recoverable by the Gov-  
21                  ernment from the employee (or the employee's  
22                  estate, if applicable) by—

23                         (i) setoff against accrued pay, com-  
24                         pensation, amount of retirement credit, or

1 another amount due the employee from the  
 2 Government; and

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

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

11 (C) TREATMENT OF AMOUNTS REPAID OR  
 12 RECOVERED.—Any amount repaid by, or recov-  
 13 ered from, an individual (or an estate) under  
 14 this paragraph shall be credited to the appro-  
 15 priation, fund, or account from which the  
 16 amount involved was originally paid.

17 (c) DISPOSITION OF EXCESS TSP CONTRIBU-  
 18 TIONS.—Section 105(c) shall apply in the case of an em-  
 19 ployee described in subsection (a).

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

23 (a) APPLICABILITY.—This section shall apply in the  
 24 case of any employee affected by an error described in sec-

1 tion 131(a)(2) who elects the option available to such em-  
 2 ployee under section 131(b)(1)(B).

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

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

9 (a) APPLICABILITY.—This section shall apply in the  
 10 case of any employee affected by an error described in sec-  
 11 tion 131(a)(1) who elects the option under section  
 12 131(c)(1).

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

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

19 (a) APPLICABILITY.—This section shall apply in the  
 20 case of any employee affected by an error described in sec-  
 21 tion 131(a)(2) who elects the option under section  
 22 131(c)(1).

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

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

4 Notwithstanding any other provision of this subtitle,  
5 an election under this subtitle shall not be available in the  
6 case of any individual to whom an election under section  
7 846.204 of title 5 of the Code of Federal Regulations (as  
8 in effect as of January 1, 1997) was made available in  
9 connection with the same error pursuant to notification  
10 provided in accordance with such section.

11 **Subtitle E—Employee Who Should**  
12 **Have Been CSRS-Offset Cov-**  
13 **ered, But Who Was Erroneously**  
14 **CSRS Covered Instead**

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

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

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

25 (c) **CORRECTED ERROR.**—If the error has been cor-  
26 rected, the correction shall (to the extent not already car-

ried 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-Off-  
set 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 mak-  
ing 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 (1) to be CSRS-Offset covered instead; or

2 (2) to remain CSRS covered.

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

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

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

20 (a) APPLICABILITY.—This section shall apply in the  
 21 case of any employee affected by an error described in sec-  
 22 tion 151(a) who elects the option available to such em-  
 23 ployee under section 151(b)(1).

24 (b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

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

6                   (A) the amount that should have been de-  
7                   ducted and withheld from the pay of the em-  
8                   ployee for the period of erroneous coverage in-  
9                   volved under section 8334 of title 5, United  
10                  States Code (by virtue of being CSRS covered),  
11                  exceeds

12                  (B) any amounts actually deducted and  
13                  withheld from the pay of the employee for the  
14                  period of erroneous coverage involved under  
15                  such section (pursuant to CSRS-Offset cov-  
16                  erage).

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

19                   (A) IN GENERAL.—The employee for whom  
20                   the payment under paragraph (1) is made shall  
21                   repay to the agency (referred to in paragraph  
22                   (1)) an amount equal to the OASDI employee  
23                   taxes refunded or refundable to such employee  
24                   for any portion of the period of erroneous cov-  
25                   erage involved (computed in such manner as the

1 Director of the Office of Personnel Manage-  
2 ment, with the concurrence of the Commis-  
3 sioner of Social Security, shall by regulation  
4 prescribe), not to exceed the amount described  
5 in paragraph (1)(A).

6 (B) RIGHT OF RECOVERY; WAIVER.—If the  
7 employee fails to repay the amount required  
8 under subparagraph (A), a sum equal to the  
9 amount outstanding is recoverable by the Gov-  
10 ernment from the employee (or the employee's  
11 estate, if applicable) by—

12 (i) setoff against accrued pay, com-  
13 pensation, amount of retirement credit, or  
14 another amount due the employee from the  
15 Government; and

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

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

24 (C) TREATMENT OF AMOUNTS REPAYED OR  
25 RECOVERED.—Any amount repaid by, or recov-

1           ered from, an individual (or an estate) under  
 2           this paragraph shall be credited to the appro-  
 3           priation, fund, or account from which the  
 4           amount involved was originally paid.

5           (3) DEPOSIT TO BE BASED ON AMOUNT OF RE-  
 6           FUND ACTUALLY RECEIVED.—For purposes of ap-  
 7           plying sections 8334(d)(1) and 8339(i) of title 5,  
 8           United States Code, in the case of an employee de-  
 9           scribed in subsection (a) who has received a refund  
 10          of deductions that are attributable to a period when  
 11          the employee was erroneously CSRS-Offset covered,  
 12          nothing in either of those sections shall be consid-  
 13          ered to require that, in order to receive credit for  
 14          that period as a CSRS-covered employee, a deposit  
 15          be made in excess of the refund actually received for  
 16          such period, plus interest.

17 **SEC. 153. EFFECT OF AN ELECTION TO BE RESTORED TO**  
 18 **CSRS-OFFSET AFTER HAVING BEEN COR-**  
 19 **RECTED TO CSRS.**

20          (a) APPLICABILITY.—This section shall apply in the  
 21          case of any employee affected by an error described in sec-  
 22          tion 151(a) who elects the option available to such em-  
 23          ployee under section 151(c)(1).

24          (b) DISPOSITION OF CONTRIBUTIONS TO THE  
 25          CSRDF.—In the case of an employee described in sub-

1 section (a), the provisions of section 102(b) shall apply,  
2 except that, in applying such provisions—

3 (1) “the applicable provisions of section 8334”  
4 shall be substituted for “section 8422” in paragraph  
5 (1)(B)(ii)(II) thereof; and

6 (2) “the applicable provisions of section 8334”  
7 shall be substituted for “section 8423” in paragraph  
8 (2)(B)(ii)(II) thereof.

## 9 **Subtitle G—Additional Provisions** 10 **Relating to Government Agencies**

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

12 (a) IN GENERAL.—An individual who previously re-  
13 ceived a payment ordered by a court or provided as a set-  
14 tlement of claim for losses resulting from a retirement cov-  
15 erage error shall not be entitled to make an election under  
16 this Act unless repayment of the amount so received by  
17 such individual is waived in whole or in part by the Office  
18 of Personnel Management, and any amount not waived is  
19 repaid.

20 (b) REGULATIONS.—Any repayment under this sec-  
21 tion shall be made in accordance with regulations pre-  
22 scribed by the Office.

1 **SEC. 162. EQUITABLE SHARING OF AMOUNTS PAYABLE**  
2 **FROM THE GOVERNMENT IF MORE THAN ONE**  
3 **AGENCY INVOLVED.**

4 The Office of Personnel Management shall by regula-  
5 tion prescribe rules under which, in the case of an em-  
6 ployee who has been employed in or under more than 1  
7 agency since the date of the retirement coverage error in-  
8 volved (and before its rectification under this Act), any  
9 contributions or other amounts required to be paid from  
10 the then current employing agency (other than lost earn-  
11 ings under section 163(a)(2)) shall be equitably allocated  
12 between or among the appropriate agencies.

13 **SEC. 163. PROVISIONS RELATING TO THE ORIGINAL RE-**  
14 **SPONSIBLE AGENCY.**

15 (a) OBLIGATIONS OF THE ORIGINAL RESPONSIBLE  
16 AGENCY.—

17 (1) EXPENSES FOR SERVICES OF FINANCIAL  
18 ADVISOR.—The Office of Personnel Management  
19 shall by regulation prescribe rules under which, in  
20 the case of any employee eligible to make an election  
21 under this Act, the original responsible agency (as  
22 determined under succeeding provisions of this sec-  
23 tion) shall pay (or make reimbursement for) any  
24 reasonable expenses incurred by such employee for  
25 services received from any licensed financial or legal

1 consultant or advisor in connection with such elec-  
2 tion.

3 (2) SPECIAL RULE.—Such regulations shall also  
4 include provisions to ensure that, to the extent lost  
5 earnings under the Thrift Savings Fund are involved  
6 in connection with a particular error, the original re-  
7 sponsible agency shall pay (or reimburse any other  
8 agency that pays) any amounts to the Thrift Sav-  
9 ings Fund representing lost earnings with respect to  
10 such error.

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

15 (1) except in the situation described in para-  
16 graph (2), the agency determined by the Office of  
17 Personnel Management to have made the initial re-  
18 tirement coverage error (including one made before  
19 January 1, 1984); or

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

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

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

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

9           (d) IF ORIGINAL RESPONSIBLE AGENCY NO LONGER  
10          EXISTS.—If the agency which (before the application of  
11          this subsection) is identified as the original responsible  
12          agency no longer exists (whether because of a reorganiza-  
13          tion or otherwise)—

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

17                (2) if none, this section shall be applied by sub-  
18                stituting the CSRDF for the original responsible  
19                agency.

20          (e) SOURCE OF PAYMENTS IF ERROR DUE TO ERRO-  
21          NEOUS OPM REGULATIONS.—In any case in which the  
22          Office of Personnel Management is the original respon-  
23          sible agency by reason of subsection (b)(2), any amounts  
24          payable from the Office under this section shall be payable  
25          from the CSRDF.

## 1 **TITLE II—GENERAL PROVISIONS**

### 2 **SEC. 201. IDENTIFICATION AND NOTIFICATION REQUIRE-** 3 **MENTS.**

4 (a) IN GENERAL.—The Office of Personnel Manage-  
5 ment shall prescribe regulations under which Government  
6 agencies shall take such measures as may be necessary  
7 to ensure that all individuals who are (or have been) af-  
8 fected by a retirement coverage error giving rise to any  
9 election or automatic change in retirement coverage under  
10 this Act shall be promptly identified and notified in ac-  
11 cordance with this section.

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

15 (1) DESCRIPTION OF ERROR.—A description of  
16 the error involved, including a clear and concise ex-  
17 planation as to why the original retirement coverage  
18 determination was erroneous, citations to (and a  
19 summary description of) the pertinent provisions of  
20 law, and how that determination should instead have  
21 been made.

22 (2) METHOD FOR RECTIFICATION.—How the  
23 error is to be rectified under this Act, including  
24 whether rectification will be achieved through an  
25 automatic change in retirement coverage (and, if so,

1 the time, form, and manner in which that change  
2 will be effected) or an election.

3 (3) ELECTION PROCEDURES, ETC.—If an elec-  
4 tion is provided under this Act, all relevant informa-  
5 tion as to how such an election may be made, the  
6 options available, the differences between those re-  
7 spective options (as further specified in succeeding  
8 provisions of this subsection), and the consequences  
9 of failing to make a timely election.

10 (4) ACCRUED BENEFITS, ETC.—With respect to  
11 the (or each) retirement system by which the indi-  
12 vidual is then covered (disregarding the Thrift Sav-  
13 ings Plan), and to the extent applicable:

14 (A) A brief summary of any benefits ac-  
15 crued.

16 (B) The amount of employee contributions  
17 made to date and the effect of any applicable  
18 disposition rules relating thereto (including pro-  
19 visions relating to excess amounts or shortfalls).

20 (C) The amount of any Government con-  
21 tributions made to date and the effect of any  
22 applicable disposition rules relating thereto (in-  
23 cluding provisions relating to excess amounts or  
24 shortfalls).

1           (5) THRIFT SAVINGS FUND.—With respect to  
2           the Thrift Savings Fund, the balance that then is  
3           (or would be) credited to the individual's account de-  
4           pending on the option chosen, with any such balance  
5           to be shown both in the aggregate and broken down  
6           by—

7                     (A) individual contributions;

8                     (B) automatic (1 percent) Government  
9                     contributions; and

10                    (C) matching Government contributions,  
11           including lost earnings on each and the extent to  
12           which any makeup contributions or forfeitures would  
13           be involved.

14           (6) OASDI BENEFITS.—Such information re-  
15           garding benefits under title II of the Social Security  
16           Act as the Commissioner of Social Security consid-  
17           ers appropriate.

18           (7) OTHER INFORMATION.—Any other informa-  
19           tion that the Director of the Office of Personnel  
20           Management may by regulation prescribe after con-  
21           sultation with the Executive Director of the Federal  
22           Retirement Thrift Investment Board and such other  
23           agency heads as the Director considers appropriate,  
24           including any appeal rights available to the individ-  
25           ual.

1 (c) COMPARISONS.—Any amounts required to be in-  
2 cluded under subsection (b)(4) shall, with respect to the  
3 respective retirement systems involved, be determined—

4 (1) as of the date the retirement coverage error  
5 was corrected (if applicable);

6 (2) as of the then most recent date for which  
7 those benefits and amounts are ascertainable, as-  
8 suming no change in retirement coverage; and

9 (3) as of the then most recent date for which  
10 those benefits and amounts are ascertainable, as-  
11 suming the alternative option is chosen.

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

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

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

22 (b) NOTIFICATION APPEALS.—The Office of Person-  
23 nel Management shall by regulation establish procedures  
24 under which individuals may bring an appeal to the Office  
25 with respect to any failure to have been properly notified

1 in accordance with section 201. A final determination  
2 under this subsection shall be appealable under subsection  
3 (a).

4 **SEC. 203. INFORMATION TO BE FURNISHED BY GOVERN-**  
5 **MENT AGENCIES TO AUTHORITIES ADMIN-**  
6 **ISTERING THIS ACT.**

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

9 (1) The Director of the Office of Personnel  
10 Management.

11 (2) The Commissioner of Social Security.

12 (3) The Executive Director of the Federal Re-  
13 tirement Thrift Investment Board.

14 (b) **AUTHORITY TO OBTAIN INFORMATION.**—Each  
15 authority identified in subsection (a) may secure directly  
16 from any department or agency of the United States infor-  
17 mation necessary to enable such authority to carry out its  
18 responsibilities under this Act. Upon request of the au-  
19 thority involved, the head of the department or agency in-  
20 volved shall furnish that information to the requesting au-  
21 thority.

22 (c) **LIMITATION; SAFEGUARDS.**—Each of the respec-  
23 tive authorities under subsection (a)—

24 (1) shall request only such information as that  
25 authority considers necessary; and

1           (2) shall establish, by regulation or otherwise,  
2           appropriate safeguards to ensure that any informa-  
3           tion obtained under this section shall be used only  
4           for the purpose authorized.

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

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

15 **SEC. 205. CONFORMING AMENDMENTS RESPECTING SO-**  
16 **CIAL SECURITY COVERAGE AND OASDI**  
17 **TAXES.**

18          (a) SOCIAL SECURITY COVERAGE.—Section  
19          210(a)(5)(H) of the Social Security Act (42 U.S.C.  
20          410(a)(5)(H)) is amended—

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

1 “(iii)(I) described in section 111(a)(3)  
 2 of the Federal Retirement Coverage Cor-  
 3 rections Act, on or after the effective date  
 4 of an election (or deemed election) by such  
 5 individual under section 111(b)(2) of such  
 6 Act;

7 “(II) described in section 131(a)(1) of  
 8 such Act, on or after the effective date of  
 9 an election (or deemed election) by such in-  
 10 dividual under subsection (b)(2) or (c)(1)  
 11 of section 131 of such Act; or

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

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

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

20 (2) in clause (ii) by striking the semicolon and  
 21 inserting “; or”; and

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

23 “(iii)(I) described in section 111(a)(3)  
 24 of the Federal Retirement Coverage Cor-  
 25 rections Act, on or after the effective date

1 of an election (or deemed election) by such  
2 individual under section 111(b)(2) of such  
3 Act;

4 “(II) described in section 131(a)(1) of  
5 such Act, on or after the effective date of  
6 an election (or deemed election) by such in-  
7 dividual under subsection (b)(2) or (c)(1)  
8 of section 131 of such Act; or

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

14 **SEC. 206. REGULATIONS.**

15 (a) IN GENERAL.—Any regulations necessary to  
16 carry out this Act shall be prescribed by the Director of  
17 the Office of Personnel Management, the Executive Direc-  
18 tor of the Federal Retirement Thrift Investment Board,  
19 the Commissioner of Social Security, the Secretary of the  
20 Treasury, and any other appropriate authority, with re-  
21 spect to matters within their respective areas of jurisdic-  
22 tion.

23 (b) MATTERS TO BE INCLUDED.—The regulations  
24 prescribed by the Director of the Office of Personnel Man-  
25 agement shall include at least the following:

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

3           (A) IN GENERAL.—Provisions under which,  
4 to the maximum extent practicable and in ap-  
5 propriate circumstances, any election available  
6 to an employee under subtitle A, B, D, or F of  
7 title I shall be available to a former employee,  
8 annuitant, or survivor annuitant.

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

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

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

20          (3) PROCEDURAL REQUIREMENTS.—Provisions  
21 establishing the procedural requirements in accord-  
22 ance with which any determinations under this Act  
23 (not otherwise addressed in this Act) shall be made,  
24 in conformance with the requirements of this Act.

1           (4) AUTHORITY TO MAKE ACTUARIAL REDUC-  
2           TION IN ANNUITY BY REASON OF CERTAIN UNPAID  
3           AMOUNTS.—Provisions under which any payment re-  
4           quired to be made by an individual to the Govern-  
5           ment in order to make an election under this Act  
6           which remains unpaid may be made by a reduction  
7           in the appropriate annuity or survivor annuity. The  
8           reduction shall, to the extent practicable, be de-  
9           signed so that the present value of the future reduc-  
10          tion is actuarially equivalent to the amount so re-  
11          quired.

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

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

16           (2) the term “former employee” includes any  
17           former employee who satisfies the service require-  
18           ment for title to a deferred annuity under chapter  
19           83 or 84 of such title 5 (as applicable), but—

20                   (A) has not attained the minimum age re-  
21                   quired for title to such an annuity; or

22                   (B) has not filed claim therefor.

23       (d) COORDINATION RULE.—In prescribing regula-  
24       tions to carry out this Act, the Director of the Office of  
25       Personnel Management shall consult with—

1           (1) the Administrative Office of the United  
2       States Courts;

3           (2) the Clerk of the House of Representatives;

4           (3) the Sergeant at Arms and Doorkeeper of  
5       the Senate; and

6           (4) other appropriate officers or authorities.

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

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

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

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

19       If the Commissioner of Social Security determines  
20       that the payment of the OASDI taxes described in this  
21       Act did not result in a credit to the OASDI trust funds  
22       of an equal amount, the Commissioner of Social Security  
23       shall notify the Secretary of the Treasury of the amount  
24       of any shortfall. Promptly upon receiving such notifica-  
25       tion, the Secretary of the Treasury shall transfer an

1 amount equal to such shortfall from the general fund of  
 2 the Treasury to the OASDI trust funds.

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

4 (a) AMENDMENT RELATING TO LIMITATION ON  
 5 SOURCES FROM WHICH CONTRIBUTIONS TO THE THRIFT  
 6 SAVINGS FUND ARE ALLOWED.—Section 8432(h) of title  
 7 5, United States Code, is amended by striking “title.” and  
 8 inserting “title or the Federal Retirement Coverage Cor-  
 9 rections Act.”.

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

16 (c) ADMINISTRATIVE EXPENSES.—

17 (1) THRIFT SAVINGS PLAN.—Section 8437(d)  
 18 of title 5, United States Code, is amended by insert-  
 19 ing “(including the provisions of the Federal Retire-  
 20 ment Coverage Corrections Act that relate to this  
 21 subchapter)” after “this subchapter”.

22 (2) CSRS, CSRS-OFFSET, FERS.—Section  
 23 8348(a)(2) of title 5, United States Code, is amend-  
 24 ed by striking “statutes;” and inserting “statutes  
 25 (including the provisions of the Federal Retirement

1 Coverage Corrections Act that relate to this sub-  
 2 chapter);”.

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

## 7 **TITLE III—OTHER PROVISIONS**

### 8 **SEC. 301. PROVISIONS TO PERMIT CONTINUED CONFORM-** 9 **ITY OF OTHER FEDERAL RETIREMENT SYS-** 10 **TEMS.**

11 (a) FOREIGN SERVICE.—The Secretary of State shall  
 12 issue regulations to provide for the application of the pro-  
 13 visions of this Act in a like manner with respect to partici-  
 14 pants, annuitants, or survivors under the Foreign Service  
 15 Retirement and Disability System or the Foreign Service  
 16 Pension System (as applicable), except that—

17 (1) any individual aggrieved by a final deter-  
 18 mination shall appeal such determination to the For-  
 19 eign Service Grievance Board instead of the Merit  
 20 Systems Protection Board under section 202; and

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

1 (b) CENTRAL INTELLIGENCE AGENCY.—Sections  
2 292 and 301 of the Central Intelligence Agency Retirement  
3 Act (50 U.S.C. 2141 and 2151) shall apply with re-  
4 spect to this Act in the same manner as if this Act were  
5 part of—

6 (1) the Civil Service Retirement System, to the  
7 extent this Act relates to the Civil Service Retirement  
8 System; and

9 (2) the Federal Employees' Retirement System,  
10 to the extent this Act relates to the Federal Employees'  
11 Retirement System.

12 **SEC. 302. PROVISIONS TO PREVENT REDUCTIONS IN FORCE**  
13 **AND ANY UNFUNDED LIABILITY IN THE**  
14 **CSRDF.**

15 (a) PROVISIONS TO PREVENT REDUCTIONS IN  
16 FORCE.—

17 (1) LIMITATION.—An agency required to make  
18 any payments under this Act may not conduct any  
19 reduction in force solely by reason of any current or  
20 anticipated lack of funds attributable to such pay-  
21 ments.

22 (2) ALTERNATIVE REQUIRED.—In the cir-  
23 cumstance described in paragraph (1), any cost sav-  
24 ings that (but for this subsection) would otherwise  
25 be sought through reductions in force shall instead

1 be achieved through attrition and limitations on hir-  
2 ing.

3 (b) PROVISIONS TO PREVENT UNFUNDED LIABIL-  
4 ITY.—

5 (1) IN GENERAL.—For purposes of section  
6 8348(f) of title 5, United States Code, any unfunded  
7 liability in the CSRDF created as a result of an  
8 election made (or deemed to have been made) under  
9 this Act, as determined by the Office of Personnel  
10 Management, shall be considered a new benefit pay-  
11 able from the CSRDF.

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

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

19 Nothing in this Act shall preclude an individual from  
20 bringing a claim against the Government of the United  
21 States which such individual may have under section  
22 1346(b) or chapter 171 of title 28, United States Code,  
23 or any other provision of law (except to the extent the  
24 claim is for any amounts otherwise provided for under this  
25 Act).

1       **TITLE IV—TAX PROVISIONS**

2   **SEC. 401. TAX PROVISIONS.**

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

8       (b) TRANSFERS.—For purposes of the Internal Reve-  
9 nue Code of 1986, no amount shall be includible in the  
10 gross income of any individual by reason of any direct  
11 transfer under this Act between funds or any Government  
12 contribution under this Act to any fund or account, and  
13 no amount shall be subject to tax under subtitle C of such  
14 Code by reason of any such transfer or contribution.