

**Calendar No. 309**

106TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
106-178

FEDERAL ERRONEOUS RETIREMENT  
COVERAGE CORRECTIONS ACT

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R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 1232

TO PROVIDE FOR THE CORRECTION OF RETIREMENT COVERAGE  
ERRORS UNDER CHAPTERS 83 AND 84 OF TITLE 5, UNITED  
STATES CODE



OCTOBER 8, 1999.—Ordered to be printed

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**FEDERAL ERRONEOUS RETIREMENT COVERAGE  
CORRECTIONS ACT**

OCTOBER 8, 1999.—Ordered to be printed

Mr. THOMPSON, from the Committee on Governmental Affairs,  
submitted the following

**REPORT**

[To accompany S. 1232]

The Committee on Governmental Affairs, to which was referred the bill (S. 1232) to provide for the correction of retirement coverage errors under chapters 83 and 84 of Title 5, United States Code, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends by voice vote that the bill as amended do pass.

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**I. PURPOSE**

The purpose of S. 1232, the Federal Erroneous Retirement Coverage Corrections Act, is to provide for the correction of certain retirement coverage errors affecting federal employees, and certain service credit and Thrift Savings Plan portability problems affecting Federal Reserve Board employees.

## II. BACKGROUND

In 1984, the Federal government made a transition from the Civil Service Retirement System (CSRS) to the Federal Employees Retirement System (FERS). As government agencies carried out the complex job of applying two sets of transition rules, errors occurred, and thousands of employees were placed in the wrong retirement system—many learning that their pensions would be less than expected.

The CSRS and the FERS are two distinct retirement systems. The CSRS is a stand-alone defined benefit pension plan that does not include Social Security coverage. Benefits are based on a formula involving length of service, high-three average salary and an accrual rate. The FERS is a three-tiered retirement system combining Social Security, a defined benefit component and a defined contribution component known as the Thrift Savings Plan (TSP). The TSP is similar to 401(k) plans as found in the private sector. In order for employees covered by the FERS to have similar income replacement rates in retirement to those covered by the CSRS, participation in the Thrift Savings Plan, with its government match for employee contributions, is necessary. (A third system, the “CSRS-Offset” system, covers employees who vested in the CSRS before separating from government service for more than one year. This offset system is a hybrid, combining Social Security coverage with a defined benefit component with the aggregate benefit amount intended to equal the amount the employee would have received under the CSRS.)

Under current statute, federal agencies have no choice but to correct a retirement coverage error when it is discovered, effectively forcing employees into a new retirement plan. Since most of the retirement coverage errors involve employees wrongfully placed in the CSRS or the CSRS-Offset system, employees whose coverage is corrected often have not participated in the TSP. Thus, the automatic correction of a retirement coverage error can have a harmful impact on an employee’s financial ability to plan for retirement.

In the 105th Congress, Senator Cochran introduced S. 1710, the Retirement Coverage Error Correction Act of 1998. S. 1710 was introduced on March 4, 1998, to provide for the correction of retirement coverage errors affecting federal employees. On March 20, 1998, the bill was referred to the Subcommittee on International Security, Proliferation, and Federal Services.

On May 13, 1998, the Subcommittee on International Security, Proliferation, and Federal Services held a hearing to examine S. 1710 and erroneous retirement coverage issues. The following witnesses presented testimony at the hearing: William E. Flynn, Associate Director for Retirement and Insurance at the Office of Personnel Management; Roger W. Mehle, Executive Director of the Federal Retirement Thrift Investment Board; Dallas Salisbury, President of the Employee Benefit Research Institute; and Daniel F. Geisler, President of the American Foreign Service Association. Subsequently, the Subcommittee on International Security, Proliferation and Federal Services unanimously reported S. 1710 to the full Committee on Governmental Affairs by polling letter on June 8, 1998. However, preliminary cost estimates prepared by the

Congressional Budget Office raised questions regarding the potential costs of the proposed legislation and additional information and discussions were required to address these issues. The bill was held in abeyance pending the outcome of these discussions with the Office of Personnel Management, the Congressional Budget Office and other interested stakeholders.

In the 106th Congress, Senator Cochran, along with Senator Akaka, introduced S. 1232, the Federal Erroneous Retirement Coverage Corrections Act. The Committee's work in the previous Congress served as the foundation for this proposal, which is designed to provide long-awaited relief to many federal employees, retirees, survivors, and their families who, through no fault of their own, find themselves the victims of retirement coverage errors.

S. 1232 provides thorough and equitable relief to employees, former employees, retirees, and survivors who are affected by retirement coverage errors. It presents most affected individuals with a choice between corrected retirement coverage and the coverage the employee expected to receive, without disturbing Social Security coverage law.

For each type of retirement coverage error, individuals are furnished the opportunity to maintain their expected level of retirement benefits without a change in their retirement savings and planning. For example, current law requires FERS eligible employees who were incorrectly placed in the CSRS-Offset system to be automatically placed in FERS. However, S. 1232 would provide these employees with the option to be corrected to FERS or remain in the CSRS-Offset system. Many employees do not have the financial resources to make the retroactive TSP contributions necessary to maintain their expected level of retirement benefits under FERS. This legislation provides these employees with equitable relief by furnishing them the option to remain in the CSRS-Offset system and receive the retirement benefits they expected. Among other provisions, this legislation also provides certain employees who missed an opportunity to contribute to the Thrift Savings Plan due to a coverage error the opportunity to receive interest on their TSP make-up contributions.

The Committee believes the Federal Erroneous Retirement Coverage Corrections Act provides a comprehensive solution to the problems faced by federal employees due to retirement coverage errors, and that it does so at a reasonable cost and without creating unnecessary administrative burdens. By affording affected federal employees the opportunity to be made whole, S. 1232 strikes the appropriate balance between the needs of those affected by retirement errors and federal agencies struggling to fulfill their mandates with already tight budgets.

S. 1232 also addresses certain issues affecting only employees of the Federal Reserve Board of Governors. First, the bill authorizes Federal Reserve Board employees to receive credit under the Federal Employees Retirement System (FERS) for post-1988 Board employment should they leave the Federal Reserve Board to take a position with another federal agency. Current law prevents the transfer of credit for Federal Reserve Board service after 1988. Thus, Federal Reserve Board employees are potentially subject to reduced retirement benefits should they begin working for another

federal agency. S. 1232 corrects this problem by providing retirement portability for Federal Reserve Board employees.

Second, the bill permits employees who have transferred or will transfer to the Federal Reserve Board to move the funds in their Thrift Savings Plan (TSP) accounts to the Board's Thrift Plan. Under current law federal employees participating in the Thrift Savings Plan who transfer to the Federal Reserve Board are not permitted to withdraw funds from their TSP accounts. S. 1232 corrects this situation by authorizing TSP withdrawals under certain circumstances.

S. 1232 has been endorsed by the Administration and the two largest federal employee unions, the American Federation of Government Employees and the National Treasury Employees Union.

### III. LEGISLATIVE HISTORY

S. 1232 was introduced on June 17, 1999, by Senator Cochran, for himself and Senator Akaka, and referred to the Committee on Governmental Affairs. On June 21, 1999, the bill was referred to the Subcommittee on International Security, Proliferation, and Federal Services.

On July 16, 1999, the Subcommittee on International Security, Proliferation, and Federal Services reported S. 1232 to the Committee on Governmental Affairs by polling letter. On August 3, 1999, the Committee held a business meeting and voted unanimously, by voice vote, to favorably report S. 1232 without amendment.

S. 1232 has been cosponsored by Senators Thompson, Lieberman, Warner, Sarbanes, Leahy, Robb, Jeffords and Snowe.

### IV. SECTION-BY-SECTION ANALYSIS

Section 1: Provides the short title ("Federal Erroneous Retirement Coverage Corrections Act") and the table of contents.

Section 2: Defines the terms used throughout the Act.

Section 3: Provides coverage under the Act for all errors that have been in effect for at least three years of service after December 31, 1986.

Section 4: Provides that elections made under this Act are irrevocable.

#### TITLE I: DESCRIPTION OF RETIREMENT COVERAGE ERRORS AND MEASURES FOR RECTIFICATION

This title details the specific types of retirement coverage errors and the remedies provided by the Act.

Subtitle A: Covers employees and annuitants who should have been FERS covered, but were erroneously covered under CSRS or CSRS Offset. These individuals are provided a choice between correction to FERS or coverage under CSRS Offset. Includes provisions that allow all employee contributions, and earnings thereon, to remain in the TSP account if CSRS Offset is elected by certain employees who were previously corrected.

Subtitle B: Covers employees who should have been covered by a retirement plan (CSRS, CSRS Offset, or FERS), but were erroneously covered by Social Security only. In all cases, coverage is

corrected to the appropriate plan so that the employee has retirement coverage.

Subtitle C: Covers employees who should have been covered by Social Security only, but were erroneously covered by CSRS or CSRS Offset. These individuals are provided a choice between correction to Social Security only or coverage under CSRS Offset.

Subtitle D: Covers employees who should have been covered by CSRS, CSRS Offset, or Social Security only, but were erroneously covered by FERS. These individuals are provided a choice between correction to the appropriate plan or coverage under FERS. Includes provisions that allow all employee contributions, and earnings thereon, to remain in the TSP account if coverage other than FERS is elected.

Subtitle E: Covers employees who should have been covered by CSRS Offset, but were erroneously covered by CSRS. Coverage is corrected to CSRS Offset to conform with Social Security coverage law.

Subtitle F: Covers employees who should have been covered by CSRS, but were erroneously covered by CSRS Offset. Coverage is corrected to CSRS to conform with Social Security coverage law.

#### TITLE II: GENERAL PROVISIONS

Section 201: Requires that all government agencies make reasonable efforts to identify and notify individuals affected by retirement coverage errors.

Section 202: Authorizes OPM, SSA, and TSP to obtain any information necessary to carry out the responsibilities of this Act.

Section 203: Provides for payment of interest on certain deposits made by employees that, due to correction of a retirement coverage error, are returned to the employee. Allows retirement credit for certain periods of service without payment of a service credit deposit. Provides that the retirement or survivor benefit is actuarially reduced by the amount of deposit owed.

Section 204: Provides that the employing agency pays any employer OASDI taxes due for the period of erroneous coverage, subject to the three-year statute of limitations in the Internal Revenue Code. OPM will transfer excess employee retirement deductions to the OASDI Trust Funds to fund the employee share of the OASDI taxes. In no case will an employee be required to pay additional OASDI taxes.

Section 205: Provides that certain employees who missed an opportunity to contribute to TSP due to a coverage error may receive interest on their own TSP make-up contributions. "Lost" interest will be paid by the employing agency. Note: Current law already provides that certain employees who missed an opportunity to contribute to TSP due to a coverage error may receive agency matching contributions on TSP make-up contributions, agency automatic one percent contributions to TSP, and interest on both.

Section 206: Provides that employing agencies may not remove excess agency retirement contributions from the Civil Service Retirement and Disability Fund.

Section 207: Requires that agencies obtain written approval from OPM before placing certain employees under CSRS coverage.

Section 208: Authorizes the Director of OPM to extend deadlines, reimburse individuals for reasonable expenses incurred by reason of the coverage error or for losses, and waive repayments required under the Act.

Section 209: Authorizes OPM to prescribe regulations to administer the Act.

#### TITLE III: OTHER PROVISIONS

Section 301: Makes remedies provided under the Act also available to employees of the Foreign Service and the Central Intelligence Agency.

Section 302: Authorizes payments from the Civil Service Retirement and Disability Fund for administrative expenses incurred by OPM and for other payments required under the Act.

Section 303: Allows individuals to bring suit against the United States Government for matters not covered under this Act.

Section 304: Provides that the Act is effective from the date of enactment.

#### TITLE IV: TAX PROVISIONS

Section 401: Provides that transfers and payments of contributions under this Act will not result in an income tax liability for affected employees.

#### TITLE V: MISCELLANEOUS RETIREMENT PROVISIONS

Section 501: Allows portability of service credit between Federal Reserve service and FERS.

Section 502: Provides technical amendments to chapter 84 of title 5, United States Code, that allow certain transfers to other federal retirement systems to be treated as separations from federal service for TSP purposes.

### V. REGULATORY IMPACT STATEMENT

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate “the regulatory impact which would be incurred in carrying out this bill.”

S. 1232 would change the way the government of the District of Columbia corrects errors associated with the incorrect enrollment of employees in federal retirement plans. This requirement would constitute an intergovernmental mandate as defined by the Unfunded Mandates Reform Act (UMRA). However, costs associated with making those corrections would be minimal, as only a small number of District of Columbia employees have been affected by errors addressed by the bill. Consequently, the Congressional Budget Office (CBO) estimates that the total cost of the mandate would be minimal and would not exceed the thresholds established in UMRA.

S. 1232 would also create a new private-sector mandate by requiring Gallaudet University to rectify errors where employees were improperly covered under CSRS or FERS. Because only a small number of Gallaudet University employees have been af-



ected by such errors and the cost per correction would be low, CBO estimates that the cost of the mandate would be small.

#### VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, August 24, 1999.*

Hon. FRED THOMPSON,  
*Chairman, Committee on Governmental Affairs,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1232, the Federal Erroneous Retirement Coverage Corrections Act.

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

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

#### *S. 1232—Federal Erroneous Retirement Coverage Corrections Act*

##### *Summary*

S. 1232 would alter the procedures for correcting situations where federal employees have been mistakenly placed in the wrong retirement system. Many of these retirement coverage errors occurred between 1984, when the Civil Service Retirement System (CSRS) was closed to new entrants, and 1987, when the Federal Employees' Retirement System (FERS) was created.

CBO estimates that this bill would decrease discretionary spending by \$42 million over the 2000–2004 period, primarily because of lower agency contributions to the Civil Service Retirement and Disability Fund (CSRDF). The resulting drop in receipts by the CSRDF would also increase direct spending by \$42 million over the same period. The bill would have only a minor impact on federal retirement benefits during the next several years because the affected employees are generally still in the middle of their careers. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

Because the District of Columbia would be required to continue retirement coverage for some employees who have been mistakenly enrolled in the wrong retirement system, S. 1232 contains an inter-governmental mandate as defined by the Unfunded Mandates Reform Act (UMRA). S. 1232 would also create a new private-sector mandate by requiring Gallaudet University to rectify errors where employees were improperly covered under CSRS or FERS. CBO estimates that the cost of these mandates would be small and would not exceed the threshold established in UMRA.

##### *Estimated cost to the Federal Government*

The estimated budgetary impact of S. 1232 is shown in the following table.

TABLE 1. ESTIMATED BUDGETARY EFFECTS OF S. 1232

	By fiscal year, in millions of dollars—									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION										
Makeup Contributions to TSP .....	-1	16	3	-3	-4	-5	-5	-6	-7	-8
Makeup Payments to Social Security .....	( <sup>1</sup> )	( <sup>1</sup> )	0	0	0	0	0	0	0	0
Makeup Payments to the CSRDF ..	-3	2	-4	-4	-4	-4	-5	-5	-5	-6
Agency Retirement Contributions ..	( <sup>1</sup> )	-2	-3	-5	-6	-6	-7	-7	-8	-8
Employer TSP Contributions .....	-1	-3	-6	-7	-7	-8	-8	-9	-10	-10
Employer Social Security Contributions .....	( <sup>1</sup> )	( <sup>1</sup> )	0	0	0	0	0	0	0	0
Total .....	-5	13	-10	-19	-21	-23	-25	-28	-30	-32
CHANGES IN DIRECT SPENDING										
On-Budget:										
Makeup Payments to the CSRDF .....	5	-2	5	6	6	7	7	8	8	9
Agency Retirement Contributions .....	( <sup>1</sup> )	2	4	8	9	9	10	11	12	13
Transfers from CSRDF to Social Security .....	-3	3	0	0	0	0	0	0	0	0
Subtotal .....	2	3	9	13	15	16	17	19	20	22
Off-Budget:										
Makeup Payments to Social Security .....	1	-1	0	0	0	0	0	0	0	0
Employer Social Security Contributions .....	( <sup>1</sup> )	( <sup>1</sup> )	0	0	0	0	0	0	0	0
Transfers from CSRDF to Social Security .....	3	-3	0	0	0	0	0	0	0	0
Subtotal .....	4	-4	0	0	0	0	0	0	0	0
Total .....	6	-1	9	13	15	16	17	19	20	22
CHANGES IN REVENUES										
On-Budget:										
Employee Retirement Contributions .....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Off-Budget:										
Employer Social Security Taxes .....	( <sup>1</sup> )	( <sup>1</sup> )	0	0	0	0	0	0	0	0
Total .....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
TOTAL COST OF S. 1232										
Direct Spending and Revenues .....	6	-1	9	13	15	16	17	19	20	21
All Spending and Revenues .....	1	12	-1	-5	-6	-7	-8	-9	-10	-11

<sup>1</sup> Less than \$500,000.

Notes: Components may not sum to totals because of rounding.

The mandatory costs of this legislation would fall within budget functions 600 (Income Security), 650 (Social Security), and 950 (Undistributed Offsetting Receipts). This estimate assumes that S. 1232 is enacted by October 1, 1999.

### *Basis of estimate*

#### Background

There are two main retirement programs for full-time regular federal employees. Most full-time employees hired before 1984 are

in the Civil Service Retirement System (CSRS), a defined benefit plan that does not include Social Security. Those hired after 1983 are generally covered by the Federal Employees' Retirement System (FERS), which features Social Security, a more limited defined benefit, and the defined contribution Thrift Savings Plan (TSP) with government matching contributions. Employees who return to government service after 1987 and have five years of prior service under CSRS may be covered by a hybrid plan known as CSRS Offset that features a combination of CSRS and Social Security benefits.

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

#### Assumptions about retirement coverage errors

CBO estimated the number of retirement coverage errors that have been made based on discussions with personnel officials in a number of large government agencies, including the Postal Service and the Departments of Defense, Veterans Affairs, and Agriculture. These agencies comprise approximately 70 percent of the federal civilian workforce. On the basis of these discussions, CBO estimates that approximately 18,000 coverage errors have occurred throughout the government, of which approximately 11,000 have already been corrected. The two most common types of coverage errors appear to involve employees who should be in FERS but were accidentally put in CSRS and employees with prior service who returned to government service and were misplaced in either FERS or CSRS Offset.

Under current law, coverage errors are usually corrected by converting the employee to the proper retirement system, retroactive to the original date of the error. However, some employees who were accidentally placed in FERS are able to remain in FERS by making a retroactive election of FERS coverage.

S. 1232 would allow most employees affected by coverage errors to choose whether they would like to be placed in the proper retirement system or make their incorrect coverage permanent. Employees who have been incorrectly covered by CSRS could elect only CSRS Offset or FERS. Employees whose coverage errors have not been corrected would have 180 days after the discovery of the error to make an election; employees whose coverage errors have already been fixed would have 18 months after the issuance of final implementing regulations to make their election. All elections would be irrevocable, and employees who did not make an election would remain in their current coverage. Coverage errors lasting less than three years would not be covered by the bill. CBO assumed that under the bill agencies would stop correcting coverage errors for the first six months of 2000 pending the issuance of final regulations to implement the bill, and that they would finish processing the resulting backlog by the end of 2001.

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

The bill would require agencies to pay lost earnings on employee makeup contributions to the TSP for employees who elect FERS coverage. (Employees whose coverage had been corrected to FERS before the bill's enactment would receive makeup earnings on any makeup contributions made prior to enactment.)

CBO assumed that these employees' choice of retirement coverage would be strongly influenced by whether or not they had made significant contributions to the TSP while they were incorrectly covered by CSRS or CSRS Offset. Most employees with little or no prior TSP contributions would need to make retroactive contributions for a substantial amount of time—as much as eight or nine years—in order to make up the contributions they would have made under FERS. For these employees, CSRS Offset coverage would be relatively attractive. In contrast, employees with significant prior TSP contributions might need only two to three years to catch up. As a result, many of these employees would still choose to have their coverage corrected to FERS.

Most employees covered by CSRS have not made regular contributions to the TSP. According to the Federal Retirement Thrift Investment Board, only 22 percent of CSRS employees made contributions to the TSP in 1989 (the earliest year of data available). This percentage has since risen but did not exceed 50 percent until 1996. CBO estimates that only a third of employees erroneously placed in CSRS or CSRS Offset have made significant contributions to the TSP, and assumed that 80 percent of these employees would elect FERS coverage. Two-thirds of employees incorrectly placed in CSRS or CSRS Offset have little or no TSP contributions, and CBO assumed that 80 percent of these employees would elect CSRS Offset coverage. Overall, 60 percent of these employees would elect CSRS Offset coverage and 40 percent would elect FERS.

#### Effects on discretionary spending

Makeup Contributions to the TSP. S. 1232 would have two effects on the makeup contributions that agencies pay to the TSP. Agencies would not have to pay makeup contributions for employees who elect CSRS Offset coverage instead of FERS, but payments for individuals who elect FERS coverage would be higher than under current law. This latter effect would predominate in 2001

and 2002, when agencies would pay additional lost earnings on the makeup contributions made by employees whose coverage errors were corrected before the bill's enactment. In later years, annual agency spending on makeup contributions would decline because many employees would elect CSRS Offset coverage and not be eligible for makeup TSP contributions. CBO estimates that overall agency spending on makeup TSP contributions would increase by \$11 million over the 2000–2004 period.

**Makeup Payments to Social Security.** Agencies are currently responsible for paying makeup Social Security payroll taxes covering the last 3 years, 3 months, and 15 days for employees whose coverage is changed from CSRS to FERS or CSRS Offset. Since agencies would stop correcting coverage errors in the first six months of 2000 (and thus make fewer corrections than under current law), CBO estimates that makeup payments would decrease slightly in that year. However, makeup payments would be slightly higher in 2001 as agencies work through the backlog of uncorrected errors.

**Makeup Payments to the CSRDF.** Under current law, adjustments to past agency contributions to the CSRDF are completely retroactive. Agencies contribute 8.51 percent of basic pay for employees covered by CSRS or CSRS Offset and 10.7 percent of basic pay for most employees under FERS. Agencies thus make additional contributions for employees whose coverage is changed from CSRS or CSRS Offset to FERS and receive a partial refund of their retirement contributions for employees whose coverage is changed from FERS to CSRS or CSRS Offset. This bill would have similar requirements, except that agencies could no longer receive partial refunds of their contributions. Since many employees who would be switched to FERS coverage under current law would elect CSRS Offset coverage under the bill, the payments that agencies make for retroactive adjustments would decrease by \$13 million over the 2000–2004 period.

**Agency Retirement Contributions.** The amount that agencies contribute toward their employees' retirement would decline by \$16 million over the 2000–2004 period as more employees are covered by CSRS Offset rather than FERS compared to current law.

**Employer TSP Contributions.** The employees who elect CSRS Offset coverage under S. 1232 would no longer be eligible for the automatic and matching TSP contributions available under FERS, lowering agency spending on TSP contributions by \$24 million over the 2000–2004 period.

**Employer Social Security Contributions.** Agency payments of Social Security payroll taxes would decline by negligible amounts in 2000 and 2001, due primarily to timing differences in the number of coverage errors corrected.

#### Effects on direct spending (on-budget)

**Makeup Payments to the CSRDF.** The decrease in agency makeup payments to the CSRDF would lower both agency outlays and offsetting receipts to the CSRDF. As a result, receipts to the trust fund would decrease by \$20 million over the 2000–2004 period. The decrease in receipts is larger than the decrease in agency makeup payments because the receipts figure includes payments by the

Postal Service. (The estimate assumes that changes in costs to the Postal Service would be offset by changes in postal rates.)

Agency Retirement Contributions. The decrease in agency retirement contributions under the bill would decrease CSRDF receipts by \$23 million over the 2000–2004 period. The decrease in receipts is larger than the decrease in agency retirement contributions because the receipts figure includes payments by the Postal Service.

Transfers from the CSRDF to Social Security. Employees who have been mistakenly covered by CSRS when they should have been in CSRS Offset or FERS have been contributing 7 percent of their basic pay to the CSRDF, instead of contributing 0.8 percent to the CSRDF and 6.2 percent to Social Security. When the coverage error is corrected under current law, the 6.2 percent in erroneous CSRS contributions (up to the Social Security taxable maximum) is generally transferred to the Social Security trust funds. S. 1232 would continue this practice, but transfers from the CSRDF to Social Security would decrease by \$3 million in 2000 and rise by \$3 million in 2001 due to timing effects.

#### Effects on direct spending (off-budget)

CBO estimates that S. 1232 would reduce offsetting receipts to the Social Security trust funds by \$4 million in 2000 and increase receipts by \$4 million 2001. These effects reflect the fact that agencies would correct fewer coverage errors in 2000 under S. 1232 but would catch up to their current-law pace by the end of 2001.

#### Effects on revenues

Employee retirement contributions, which are on-budget, would be slightly higher under the bill because it would allow a small number of employees who would ordinarily be covered only by Social Security to participate in FERS or CSRS Offset as well. The amount of the increase would be less than \$200,000 annually. Employee Social Security taxes, which are off-budget, would be slightly lower in 2000 and 2001 due to the bill's impact on slowing down the correction of coverage errors in those years.

#### Other provisions

Title V of the bill contains a number of provisions that would better integrate CSRS and FERS with the retirement plans of the Board of Governors of the Federal Reserve System. The bill would allow federal employees who have prior service with the Federal Reserve Board to receive full credit for that service under FERS. The Bill would also allow individuals who switch jobs from other federal agencies to the Federal Reserve Board to withdraw their balances in the TSP. Finally, S. 1232 would exempt from FERS coverage certain employees who return to federal employment after a break in service and have five or more years of service under the Federal Reserve Board's counterpart to CSRS. CBO estimates that these provisions would affect only a handful of employees and would not have a significant effect on the federal budget.

#### *Pay-as-you-go considerations*

The provisions of S. 1232 would affect on-budget direct spending and revenues and therefore be subject to pay-as-you-go procedures.

The pay-as-you-go procedures cover only the current year, budget year, and the succeeding four years. The pay-as-you-go effects of the bill are shown in table 2.

TABLE 2. SUMMARY OF PAY-AS-YOU-GO EFFECTS

	By fiscal year, in millions of dollars—									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Change in outlays .....	2	3	9	13	15	16	17	19	20	22
Change in receipts .....	0	0	0	0	0	0	0	0	0	0

*Intergovernmental and private-sector impact*

S. 1232 would change the way the government of the District of Columbia corrects errors associated with the incorrect enrollment of employees in federal retirement plans. This requirement would constitute an intergovernmental mandate as defined by UMRA. However, costs associated with making those corrections would be minimal, and only a small number of District of Columbia employees have been affected by errors addressed by the bill. Consequently, CBO estimates that the total cost of the mandate would be minimal and would not exceed the thresholds established in UMRA.

S. 1232 would also create a new private-sector mandate by requiring Gallaudet University to rectify errors where employees were improperly covered under CSRS or FERS. Because only a small number of Gallaudet University employees have been affected by such errors and the cost per correction would be low, CBO estimates that the cost of the mandate would be small.

*Comparison with other estimates*

In March 1999, the house of Representatives approved H.R. 416, which would also alter the procedures for correcting retirement coverage errors. CBO estimated that H.R. 416 would increase discretionary spending by \$346 million and reduce direct spending by \$113 million over the 2000–2004 period. The drop in direct spending largely reflects additional receipts by the Social Security trust funds, which are off-budget.

CBO's estimate for H.R. 416 differs from that for S. 1232 for two main reasons. First H.R. 416 has different provisions regarding the makeup TSP payments that agencies would make for employees who were incorrectly covered by CSRS or CSRS Offset when they should have been in FERS. Under the House bill, agencies would make lump-sum payments that include imputed employee contributions for the period of erroneous coverage plus lost earnings. These payments would be significantly larger than those required under the Senate bill. Second, H.R. 416 would require agencies to make additional retroactive contributions to the Social Security trust funds. Together, these two factors increase discretionary spending and reduce off-budget direct spending relative to the provisions in S. 1232.

Estimate prepared by: Federal cost: Eric Rollins; impact on state, local, and tribal governments: Leo Lex; impact on the private sector: John Harris.

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

## VII. EXECUTIVE COMMUNICATIONS

OFFICE OF PERSONNEL MANAGEMENT,  
Washington, DC.

Hon. FRED THOMPSON,  
*Chairman, Committee on Governmental Affairs,  
Senate, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to offer the views of the Office of Personnel Management (OPM) on S. 1232, the "Federal Erroneous Retirement Coverage Corrections Act," as introduced in the Senate on June 17, 1999. We deeply appreciate the attentive and sincere effort on the part of the Committee on Governmental Affairs to craft an equitable solution to the problems created by erroneous retirement coverage determinations. I believe that S. 1232 provides comprehensive and equitable relief at a reasonable cost to the Federal Government.

Under current law, Federal agencies have no choice but to correct a retirement coverage error when it is discovered, effectively "forcing" the employee into a new retirement plan. For many employees, the correction of a retirement coverage error can have devastating consequences on an employee's financial circumstances. I have heard heartbreaking accounts from Federal employees and their families who find they are affected by a retirement coverage error.

While the format of the bill has changed to mirror the House of Representatives' coverage correction bill (H.R. 416), S. 1232 is in fact closely based on the Administration's proposal for an appropriate and comprehensive solution to the problem of erroneous retirement coverage. S. 1232 and the Administration's proposal both provide employees affected by a retirement coverage error with a choice between corrected retirement coverage and the benefit the employee expected to receive. S. 1232 further parallels the Administration's proposal by keeping the administrative burden and cost of the remedy to a minimum. While S. 1232 differs from the Administration's proposal in some areas, OPM has no objection to the changes concerning the ability of employees to elect their coverage. S. 1232 provides a remedy that deals with all significant issues concerning the classification of employees. Employees, former employees, retirees, and survivors alike are covered by this proposal.

Following is a discussion of the differences between the Administration's proposal and S. 1232.

### *Thrift Savings Plan*

S. 1232 provides that an employee who, due to a retirement coverage error, makes retroactive contributions to the Thrift Savings Plan (TSP) will receive lost earnings on the make-up contributions. The lost earnings will be based on the employee's TSP investment history, or the G Fund rate, if there is no employee history. S. 1232 requires that the lost earnings be paid by the employing agency.

S. 1232 also contains provisions that permit excess employee contributions to remain in the employee's TSP account after correction



of a retirement coverage error. Currently, certain retirement coverage error corrections require that any employee TSP contributions that exceed 5 percent of salary be returned to the employee. Although this return is not considered an early withdrawal from a qualified retirement plan, the excess employee TSP contributions are refunded in one lump-sum and could significantly increase an employee's tax burden for that calendar year. S. 1232 simply provides that the excess employee TSP contributions may remain in the employee's TSP account, thereby maintaining the tax-deferred status of those contributions until the employee chooses to withdraw from the account.

The Administration's proposal would not amend current law with regard to the TSP.

*Payment of retirement contributions*

S. 1232 stipulates that any excess employer retirement contributions created by an employee election will remain in the Civil Service Retirement and Disability Fund (CSRDF). It also provides that if, due to a retirement coverage error, an agency has failed to withhold sufficient employee retirement contributions from salary, the agency, rather than the employee, must pay the additional employee retirement contributions due to the CSRDF.

The Administration's proposal would not amend current law with regard to payment of retirement contributions.

*Social Security*

S. 1232 provides that all excess employee retirement contributions would be transferred from the CSRDF to the Social Security Trust Funds and that employees would not be liable for any back Old Age, Survivors, and Disability Insurance (OASDI) taxes. Employing agencies will be required to pay into the Social Security Trust Funds the employer share of the Social Security taxes, subject to the current statute of limitations found in the Internal Revenue Code. These provisions, in concert with other provisions in the bill concerning the reporting of wages to Social Security and existing provisions of the Social Security Act, will, in most cases, provide the Social Security Trust Funds with more than the amount of taxes required under current law. I support the general approach taken in the bill regarding Social Security taxes and transfers to the Social Security Trusts Funds, but recognize that there are some technical issues to resolve. I'm happy to work with the Committee to assist in drafting the necessary technical amendments.

The Administration's proposal would amend current law by requiring transfers to the Social Security Trust Funds from the CSRDF and correspondingly reducing the general fund transfers to the Social Security Trust Funds that would otherwise occur. The Administration's proposal would clearly provide that neither the employee nor the employing agency would owe any back OASDI taxes or, unlike S. 1232, any amounts equivalent thereto.

*Technical amendments*

S. 1232 also contains a number of technical amendments that are improvements over the Administration's proposal. It extends the

remedy provisions to a small class of individuals erroneously covered by the Federal Employees Retirement System that were inadvertently excluded from the Administration's proposal. The bill applies the service credit deposit provisions found in the Administration's proposal to other similarly situated employees. These technical enhancements further address the inequities created by errors in retirement coverage determinations.

*Summary*

In summary, I have no objection to the Senate's passage of S. 1232 with the amendments as noted above. It will provide long-awaited relief to many federal employees and their families who, through no fault of their own, find they are affected by a retirement coverage error.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JANICE R. LACHANCE, *Director.*

VIII. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 5, UNITED STATES CODE**

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**Subpart G—Insurance and Annuities**

\* \* \* \* \*

**CHAPTER 83—RETIREMENT**

\* \* \* \* \*

**Subchapter III—Civil Service Retirement**

\* \* \* \* \*

**§ 8351. Participation in the Thrift Savings Plan**

(a) \* \* \*

(b)(1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to employees and Members making contribu-

tions to the Thrift Savings Fund under subsection (a) of this section.

\* \* \* \* \*  
**[(11)] (8)** In applying section 8432b to an employee contributing to the Thrift Savings Fund after being restored to or reemployed in a position subject to this subchapter, pursuant to chapter 43 of title 38—

(A) reference in such section to contributions under section 8432(a) shall be considered a reference to employee contributions under this section;

(B) the contribution rate under section 8432b(b)(2)(A) shall be the maximum percentage allowable under subsection (b)(2) of this section; and

(C) subsections (c) and (d) of section 8432b shall be disregarded.

(9) *For the purpose of this section, separation from Government employment includes a transfer described in section 8431.*

\* \* \* \* \*

**CHAPTER 84—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM**

Subchapter I—General Provisions

Sec.  
8401. Definitions.

\* \* \* \* \*

Subchapter III—Thrift Savings Plan

8431. *Certain transfers to be treated as a separation.*

\* \* \* \* \*

**Subchapter I—General Provisions**

\* \* \* \* \*

**§ 8402. Federal Employees’ Retirement System; exclusions**

(a) The provisions of this chapter comprise the Federal Employees’ Retirement System.

(b) The provisions of this chapter shall not apply with respect to—

(1) \* \* \*

**[(2)(A)]** any employee or Member who has separated from the service after—

**[(i)]** having been subject to subchapter III of chapter 83 of this title, or subchapter I of chapter 8 of the Foreign Service Act of 1980; and

**[(ii)]** having completed at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title, or at least 5 years of civilian service creditable under subchapter I of the Foreign Service Act of 1980 (determined without regard to any such deposit or redeposit requirement under either such subchapter, or any requirement

that the individual become subject to either such subchapter after performing the service involved); or **】**  
 (2)(A) any employee or Member who has separated from the service after—

- (i) having been subject to—
  - (I) subchapter III of chapter 83 of this title;
  - (II) subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or
  - (III) the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act; and

- (ii) having completed—
  - (I) at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title;
  - (II) at least 5 years of civilian service creditable under subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or
  - (III) at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act,

determined without regard to any deposit or redeposit requirement under either such subchapter or under such benefit structure, or any requirement that the individual become subject to either such subchapter or to such benefit structure after performing the service involved; or

\* \* \* \* \*

**【(d) Paragraph (2) of subsection (b) shall not apply to an individual who becomes subject to subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election and who subsequently enters a position in which, but for such paragraph (2), he would be subject to this chapter.】**

*(d) Paragraph (2) of subsection (b) shall not apply to an individual who—*

- (1) becomes subject to—
  - (A) subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election; or
  - (B) the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing

*by the Board of Governors of the Federal Reserve System for purposes of this chapter); and*  
 (2) *subsequently enters a position in which, but for paragraph (2) of subsection (b), such individual would be subject to this chapter.*

\* \* \* \* \*

**Subchapter II—Basic Annuity**

\* \* \* \* \*

**§ 8411. Creditable service**

(a) \* \* \*

(b) For the purpose of this chapter, creditable service of an employee or Member includes—

(1) \* \* \*

\* \* \* \* \*

(3) except as provided in subsection (f) or (h), any civilian service (performed before January 1, 1989, other than any service under paragraph (1) or (2)) which, but for the amendments made by subsections (a)(4) and (b) of section 202 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom the individual is paid of such individual's desire to become subject to such subchapter); [and]

(4) a period of service (other than any service under any [of the proceeding provisions] *other paragraph* of this subsection and other than military service) that was creditable under the Foreign Service Pension System described in subchapter II of chapter 8 of the Foreign Service Act of 1980, if the employee or Member waives credit for such service under the Foreign Service Pension System and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334 (e) [.]]; and

(5) *a period of service (other than any service under any other paragraph of this subsection, any military service, and any service performed in the employ of a Federal Reserve Bank) that was creditable under the Bank Plan (as defined in subsection (i)), if the employee waives credit for such service under the Bank Plan and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422 (a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334 (e)).*

*Paragraph (5) shall not apply in the case of any employee as to whom subsection (g) (or, to the extent subchapter III of chapter 83 is involved, section 8332 (n)) otherwise applies.*

\* \* \* \* \*

*(i) For purposes of subsection (b)(5), the term “Bank Plan” means the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter).*

\* \* \* \* \*

**Subchapter III—Thrift Savings Plan**

**§8431. Certain transfers to be treated as a separation**

*(a) For purposes of this subchapter, separation from Government employment includes a transfer from a position that is subject to one of the retirement systems described in subsection (b) to a position that is not subject to any of them.*

*(b) The retirement systems described in this subsection are—*

- (1) the retirement system under this chapter;*
  - (2) the retirement system under subchapter III of chapter 83;*
- and*

*(3) any other retirement system under which individuals may contribute to the Thrift Savings Fund through withholdings from pay.*

\* \* \* \* \*

