and all cars must be smog tested to standard in order to be registered. H.R. 8 will simply help to level the playing field, and target and reduce a known pollution problem. While it would initially apply only to California, other border states are given the flexibility to implement the authority of the bill as they might see fit in the future. It is important to note that H.R. 8 places no new mandates or requirements on other states.

I am pleased to be a cosponsor of this measure, and I urge all of my Colleagues to support this common-sense legislation.

Mr. WAXMAN. Mr. Speaker, I rise to speak on H.R. 8, The Border Smog Reduction Act of 1998.

I want to commend Chairman BLILEY, Chairman BILIRAKIS, Representative BILBRAY, Representative BROWN, and Representative STUPAK for working together to perfect this bill. H.R. 8 has been significantly improved from the version originally introduced.

As currently written, this legislation will make a modest improvement over current law authorizing the federal government to assist States in efforts to control air pollution from vehicles registered in foreign countries.

This legislation is not perfect and I remain concerned about an approach which statutorily restricts vehicles from entering the San Diego border more than twice in any one year. I question whether it will be possible to inspect and repair vehicles commuting daily from Mexico in only two visits. It's not difficult to imagine a host of problems when this plan is actually implemented.

Additionally, I think it's a mistake to exclude commercial traffic in San Diego from federal enforcement, when light-duty commercial traffic is responsible for the same types of air pollution problems that noncommercial traffic is. In effect, this legislation will focus on pollution from commuting workers and students, while ignoring pollution from commercial vehicles.

Notwithstanding these reservations, I commend Representative BILBRAY for resolving most of my concerns. I am especially pleased that California will have the option of changing their program from the prescriptive one mandated in this legislation.

I also want to commend Representative BROWN for a study he has sponsored that will analyze the impacts on air quality associated with the passage of the North American Free Trade Act. This will provide critical information for future efforts to control the adverse environmental effects of foreign diesel trucks entering our country.

Mr. BROWN of Ohio. Mr. Speaker, I yield back the balance of my time.

Mr. BILBRAY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. BILBRAY) that the House suspend the rules and pass the bill, H.R. 8, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1700

FEDERAL RETIREMENT COVERAGE CORRECTIONS ACT

Mr. MICA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3249) to provide for the rectification of certain retirement coverage errors affecting Federal employees, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3249

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

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

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

Sec. 101. Elections.
Sec. 102. Effect of an election to be transferred from CSRS to FERS to correct a retirement coverage error.
Sec. 103. Effect of an election to be transferred from CSRS-Offset to FERS to correct a retirement coverage error.
Sec. 104. Effect of an election to be transferred from CSRS to CSRS-Offset to correct a retirement coverage error.
Sec. 105. Effect of an election to be restored (or transferred) to CSRS-Offset after having been corrected to FERS from CSRS-Offset (or CSRS).
Sec. 106. Effect of election to remain FERS covered after having been corrected to FERS from CSRS-Offset (or CSRS).

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

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

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

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

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

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

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

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

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

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

Subtitle G—Additional Provisions Relating to Government Agencies

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

TITLE II—GENERAL PROVISIONS

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

TITLE III—OTHER PROVISIONS

Sec. 301. Provisions to permit continued conformity of other Federal retirement systems.
Sec. 302. Provisions to prevent reductions in force and any unfunded liability in the CSRDF.
Sec. 303. Individual right of action preserved for amounts not otherwise provided for under this Act.

Sec. 304. Extension of open enrollment period to employees under the Foreign Service Retirement and Disability System.

TITLE IV—TAX PROVISIONS

Sec. 401. Tax provisions.

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) CSRS.—The term ''CSRS'' means the Civil Service Retirement System.

(2) CSRDF.—The term ''CSRDF'' means the Civil Service Retirement and Disability Fund.

(3) CSRS COVERED.—The term ''CSRS covered'', with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, other than those that apply only with respect to an individual described in section 8402(b)(2) of such title.

(4) CSRS-OFFSET COVERED.—The term ''CSRS-Offset covered'', with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, that apply with respect to an individual described in section 8402(b)(2) of such title.

(5) EMPLOYEE.—The term ''employee'' means an employee as defined by section 8331 or 8401 of title 5, United States Code, and any other individual (not satisfying either of those definitions) serving in an appointive or elective office or position in the executive, legislative, or judicial branch of the Government who, by virtue of that service, is permitted or required to be CSRS covered, CSRS-Offset covered, FERS covered, or Social Security-Only covered.

(6) EXECUTIVE DIRECTOR.—The term ''Executive Director of the Federal Retirement Thrift Investment Board'' or ''Executive Director'' means the Executive Director appointed under section 8474 of title 5, United States Code.

(7) FERS.—The term ''FERS'' means the Federal Employees' Retirement System.

(8) FERS COVERED.—The term ''FERS covered'', with respect to any service, means service that is subject to chapter 84 of title 5, United States Code.

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

(10) OASDI TAXES.—The term ''OASDI taxes'' means the OASDI employee tax and the OASDI employer tax.

(11) OASDI EMPLOYEE TAX.—The term ''OASDI employee tax'' means the tax imposed under section 3101(a) of the Internal Revenue Code of 1986 (relating to Old-Age, Survivors and Disability Insurance).

(12) OASDI EMPLOYER TAX.—The term ''OASDI employer tax'' means the tax imposed under section 3111(a) of the Internal Revenue Code of 1986 (relating to Old-Age, Survivors and Disability Insurance).

(13) OASDI TRUST FUNDS.—The term ''OASDI trust funds'' means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

(14) PERIOD OF ERRONEOUS COVERAGE.—The term ''period of erroneous coverage'' means, in the case of a retirement coverage error, the period throughout which retirement coverage is in effect pursuant to such error (or would have been in effect, but for such error).

(15) RETIREMENT COVERAGE DETERMINATION.—The term ''retirement coverage determination'' means a determination by an employee or agent of the Government as to whether a particular type of Government service is CSRS covered, CSRS-Offset covered, FERS covered, or Social Security-Only covered.

(16) RETIREMENT COVERAGE ERROR.—The term ''retirement coverage error'' means a retirement coverage determination that, as a result of any error, misrepresentation, or inaction on the part of an employee or agent of the Government (including an error as described in section 163(b)(2)), causes an individual erroneously to be enrolled or not enrolled in a retirement system, as further described in the applicable subtitle of title I.

(17) SOCIAL SECURITY-ONLY COVERED.—The term ''Social Security-Only covered'', with respect to any service, means Government service that constitutes employment under section 210 of the Social Security Act (42 U.S.C. 410), and that—

(A) is subject to OASDI taxes; but

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

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

SEC. 3. APPLICABILITY.

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

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

SEC. 4. RESTRICTION RELATING TO FUTURE CORRECTIONS.

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

(b) COORDINATION WITH OTHER LAWS.—

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

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

SEC. 5. IRREVOCABILITY OF ELECTIONS.

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

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

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

SEC. 101. ELECTIONS.

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

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

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

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

(1) to be FERS covered instead; or

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

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

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

(2) to remain FERS covered.

(d) DEFAULT RULE.—

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

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

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

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

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

(b) DISPOSITION OF CONTRIBUTIONS TO THE CSRDF.—

(1) EMPLOYEE CONTRIBUTIONS.—

(A) TRANSFER TO OASDI TRUST FUNDS.—There shall be transferred from the CSRDF to the OASDI trust funds an amount equal to the amount of the OASDI employee tax that should have been deducted and withheld from the Federal wages of the employee for the period of erroneous coverage involved.

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

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

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

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

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

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

(i) IN GENERAL.—

(I) SHORTFALL TO BE MADE UP BY AGENCY.—If the amount described in subparagraph (B)(ii)(I) is less than the total amount described in subparagraph (B)(ii)(II), an amount equal to the shortfall shall be made up (in such manner as the Commissioner of Social Security shall prescribe) by the agency in or under which the employee is then employed, out of amounts otherwise available in the appropriation, fund, or account from which any OASDI employer tax or contribution to the CSRDF (as applicable) may be made, except as provided in subclause (II) or clause (iii)(I).

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

(ii) DEPOSIT REQUIREMENT.—

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

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

(iii) SPECIAL RULES.—

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

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

(D) DEFINITION OF LUMP-SUM CREDIT.—For purposes of this paragraph, the term ''lump-sum credit'' has the meaning given such term by section 8331 of title 5, United States Code, except as the context may otherwise indicate.

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

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

(ii) SPECIAL RULE.—

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

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

(2) GOVERNMENT CONTRIBUTIONS.—

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

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

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

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

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

(i) IN GENERAL.—If the total Government contributions to the CSRDF that were made with respect to the employee for the period of erroneous coverage involved are less than the amount described in clause (ii), an amount equal to the shortfall shall be made up (in such manner as the Commissioner of Social Security shall prescribe) by the agency in or under which the employee is then employed.

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

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

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

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

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

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

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

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

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

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

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

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

(B) PERCENTAGE TO BE APPLIED.—

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

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

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

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

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

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

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

(3) LOST EARNINGS.—

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

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

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

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

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

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

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

(i) the term ''investment fund election'' means a choice by a participant concerning how contributions to the Thrift Savings Plan

shall be allocated among the TSP investment funds;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) DISPOSITION OF CONTRIBUTIONS TO THE CSRDF.—

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

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

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

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

(C) APPROPRIATE LUMP-SUM CREDIT TO BE USED.—The appropriate lump-sum credit to be used under this subsection shall be determined in accordance with regulations to be prescribed by the Office of Personnel Management.

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

(c) DISPOSITION OF EXCESS TSP CONTRIBUTIONS.—

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

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

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

SEC. 106. EFFECT OF ELECTION TO REMAIN FERS COVERED AFTER HAVING BEEN CORRECTED TO FERS FROM CSRS-OFFSET (OR CSRS).

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

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

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

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

SEC. 111. ELECTIONS.

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

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

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

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

(b) UNCORRECTED ERROR.—If, at the time of making an election under this section, the retirement coverage error described in paragraph (1), (2), or (3) of subsection (a) (as applicable) has not been corrected, the employee affected by such error may elect—

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

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

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

(2) to remain Social Security-Only covered.

(c) CORRECTED ERROR.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) DISPOSITION OF TSP CONTRIBUTIONS.—

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

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

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

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

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

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

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

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

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

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

(c) DISPOSITION OF CONTRIBUTIONS TO THE CSRDF.—

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

(2) IRRELEVANT PROVISIONS TO BE DISREGARDED.—For purposes of paragraph (1), section 102(b) shall be applied disregarding the provisions of paragraphs (1)(B)(ii)(II) (to the extent they relate to amounts that should have been deducted under section 8422 of title 5, United States Code) and (2)(B)(ii)(II) thereof.

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

SEC. 124. CORRECTED ERROR: SITUATIONS UNDER SECTIONS 121–123.

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

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

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

SEC. 125. VESTED EMPLOYEES EXCEPTED FROM AUTOMATIC EXCLUSION.

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

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

(c) ELECTIONS.—

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

(A) to be treated in accordance with section 121; or

(B) to remain FERS covered.

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

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

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

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

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

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

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

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

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

SEC. 131. ELECTIONS.

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

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

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

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

(1)(A) in the case of an error described in subsection (a)(1), to be CSRS covered instead; or

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

(2) to remain FERS covered.

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

(1) to be FERS covered instead; or

(2)(A) in the case of an error described in subsection (a)(1), to remain CSRS covered; or

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

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

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

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

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

(b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

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

(A) the amount by which—

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

(ii) the amount that was actually deducted and withheld from the pay of the employee for the period of erroneous coverage involved under section 8422 of such title (and not refunded), over

(B) the amount by which—

(i) the amount of the Government contributions actually made under section 8423 of such title with respect to the employee for the period of erroneous coverage involved, exceeds

(ii) the amount of the Government contributions that should have been made under section 8334 of such title with respect to the employee for the period of erroneous coverage involved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notwithstanding any other provision of this subtitle, an election under this subtitle shall not be available in the case of any individual to whom an election under section 846.204 of title 5 of the Code of Federal Regulations (as in effect as of January 1, 1997) was

made available in connection with the same error pursuant to notification provided in accordance with such section.

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

SEC. 141. AUTOMATIC TRANSFER TO CSRS-OFFSET.

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

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

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

SEC. 142. EFFECT OF TRANSFER.

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

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

SEC. 151. ELECTIONS.

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

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

(1) to be CSRS covered instead; or

(2) to remain CSRS-Offset covered.

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

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

(2) to remain CSRS covered.

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

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

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

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

(b) MAKEUP CONTRIBUTIONS TO THE CSRDF.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) ''the applicable provisions of section 8334'' shall be substituted for ''section 8422'' in paragraph (1)(B)(ii)(II) thereof; and

(2) ''the applicable provisions of section 8334'' shall be substituted for ''section 8423'' in paragraph (2)(B)(ii)(II) thereof.

Subtitle G—Additional Provisions Relating to Government Agencies

SEC. 161. REPAYMENT REQUIRED IN CERTAIN SITUATIONS.

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

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

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

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

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

(a) OBLIGATIONS OF THE ORIGINAL RESPONSIBLE AGENCY.—

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

(2) SPECIAL RULE.—Such regulations shall also include provisions to ensure that, to the extent lost earnings under the Thrift Savings Fund are involved in connection with a particular error, the original responsible agency shall pay (or reimburse any other agency that pays) any amounts to the Thrift Savings Fund representing lost earnings with respect to such error.

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

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

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

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

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

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

(d) IF ORIGINAL RESPONSIBLE AGENCY NO LONGER EXISTS.—If the agency which (before the application of this subsection) is identified as the original responsible agency no

longer exists (whether because of a reorganization or otherwise)—

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

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

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

TITLE II—GENERAL PROVISIONS

SEC. 201. IDENTIFICATION AND NOTIFICATION REQUIREMENTS.

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

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

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

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

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

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

(A) A brief summary of any benefits accrued.

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

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

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

(A) individual contributions,

(B) automatic (1 percent) Government contributions, and

(C) matching Government contributions,

including lost earnings on each and the extent to which any makeup contributions or forfeitures would be involved.

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

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

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

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

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

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

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

SEC. 202. INDIVIDUAL APPEAL RIGHTS.

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

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

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

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

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

(2) The Commissioner of Social Security.

(3) The Executive Director of the Federal Retirement Thrift Investment Board.

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

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

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

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

SEC. 204. SOCIAL SECURITY RECORDS.

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

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

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

(1) in clause (i) by striking ''or'' at the end;

(2) in clause (ii) by striking the semicolon and inserting '', or''; and

(3) by adding at the end the following:

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

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

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

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

(1) in clause (i) by striking ''or'' at the end;

(2) in clause (ii) by striking the semicolon and inserting '', or''; and

(3) by adding at the end the following:

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

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

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

SEC. 206. REGULATIONS.

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

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

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

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

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

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

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

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

this Act) shall be made, in conformance with the requirements of this Act.

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

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

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

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

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

(B) has not filed claim therefor.

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

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

(2) the Clerk of the House of Representatives;

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

(4) other appropriate officers or authorities.

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

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

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

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

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

SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.

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

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

(c) ADMINISTRATIVE EXPENSES.—

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

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

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

TITLE III—OTHER PROVISIONS

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

(a) FOREIGN SERVICE.—The Secretary of State shall issue regulations to provide for the application of the provisions of this Act in a like manner with respect to participants, annuitants, or survivors under the Foreign Service Retirement and Disability System or the Foreign Service Pension System (as applicable), except that—

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

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

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

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

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

SEC. 302. PROVISIONS TO PREVENT REDUCTIONS IN FORCE AND ANY UNFUNDED LIABILITY IN THE CSRDF.

(a) PROVISIONS TO PREVENT REDUCTIONS IN FORCE.—

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

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

(b) PROVISIONS TO PREVENT UNFUNDED LIABILITY.—

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

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

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

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

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

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

TITLE IV—TAX PROVISIONS

SEC. 401. TAX PROVISIONS.

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

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

The SPEAKER pro tempore (Mr. STEARNS). Pursuant to the rule, the gentleman from Florida (Mr. MICA) and the gentleman from Maryland (Mr. CUMMINGS) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. MICA).

GENERAL LEAVE

Mr. MICA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3249, as amended, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. MICA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I come before the House this afternoon to present the Federal Retirement Coverage Corrections Act. This legislation is critically important to thousands of our Federal employees. This is a piece of legislation that has very strong bipartisan support. Both Republicans and Democrat members of our Subcommittee on Civil Service of the Committee on Government Reform and Oversight are original cosponsors of this bill.

I want to take first a moment, Mr. Speaker, to thank the distinguished ranking member of the Subcommittee on Civil Service, the gentleman from Maryland (Mr. CUMMINGS), for his leadership on this issue. He and I have worked very closely on this bill, and I appreciate the hard work that he has put forth. I also want to commend the work of both the majority and minority staff on this issue. I know the gentleman from Maryland is truly personally dedicated to bringing real relief to victims of these errors and the victims

who testified before our Subcommittee on Civil Service.

I also commend the distinguished gentlewoman from Maryland (Mrs. MORELLA). The gentlewoman has always been a forceful advocate for our Federal employees, and on this issue that is no exception. She has been a true leader and champion. The Federal civil service employees who were misclassified, and their families, have benefitted greatly from her strong determination and her leadership in trying to right these wrongs.

I also want to take this opportunity to thank the distinguished chairman and ranking member of the Committee on Government Reform and Oversight, the gentleman from Indiana (Mr. BURTON) and the gentleman from California (Mr. WAXMAN), for their support.

Likewise, I appreciate the cooperation of the chairman and ranking member of the Committee on Ways and Means, the gentleman from Texas (Mr. ARCHER) and the gentleman from New York (Mr. RANGEL). Staffs of the Committee on Ways and Means and the Joint Committee on Taxation provided invaluable guidance on tax and Social Security issues involved in crafting this legislation.

Mr. Speaker, let me take a few minutes to explain why it is so important for the House to pass this bill today. An estimated 18,000 Federal employees have been placed in the wrong retirement system because Federal agencies, quite frankly, made mistakes. Federal agencies fouled up. The vast majority of these errors involved assignments to the Civil Service Retirement System, CSRS, or the Federal Employees Retirement System, generally known as FERS. But other agency blunders wrongly excluded some employees from both retirement systems. Still others were included in retirement when they did not qualify at all.

When these errors are discovered, and I say are discovered because not all of them have been discovered, current law requires agencies to move them into the right retirement system. These corrections are especially harmful to employees who are moved from Civil Service Retirement, the old system, into FERS, the new system.

Unlike the Civil Service Retirement System, which is the stand-alone system, the new system, FERS, consists of three components: the FERS basic annuity, Social Security, and the Thrift Savings Plan, or TSP. Without adequate Thrift Savings Plan accounts, employees will not have adequate retirement income, but current corrective procedures do not make the victim's TSP account whole. As a result, unless Congress acts, many victims of these errors will receive much less when they retire than they were really entitled to.

H.R. 3249 provides a comprehensive solution to all of these errors. Although its details are complicated, it rests on a few basic, simple, straightforward principles.

This bill recognizes that most victims of these agency errors had a legal right to participate in one of the Federal retirement systems. Therefore, each of these victims should have an opportunity to elect to participate in that system. They also have a right to receive approximately the same retirement benefits they could have earned if the agency had not erred.

But the bill also recognizes that these victims have relied on the benefits promised under the system to which they were assigned. Accordingly, victims are generally given a choice to remain in the system in which they were mistakenly placed.

Mr. Speaker, every victim should have a realistic opportunity to the retirement correction that best addresses their unfortunate circumstance. Therefore, this legislation provides fair, make-whole relief.

The importance of this make-whole relief cannot be overemphasized. Without it, the choices offered by this bill would be nothing but a cruel hoax for many of our Federal employees. Lower-income employees, and those who have been in the wrong system for a lengthy period, would be especially hard hit.

Let me cite an example described by the American Foreign Service Association. For about 10 years a foreign service officer was erroneously enrolled in the wrong system. When the error was discovered, he was switched to the right system. He was also told that he would have to contribute $65,000 to $75,000 to catch up on his Thrift Savings Plan account. In addition to that retroactive contribution, he would also have to make current contributions to the TSP. Mr. Speaker, few Federal employees could afford to meet such a burden. That is why this bill's make-whole relief is absolutely imperative.

Mr. Speaker, this legislation also protects the integrity of Social Security trust funds and prevents employees from incurring unfair tax burdens because these agency errors are corrected.

This has been, as I said, a joint effort, a bipartisan effort, to correct a wrong that was done to our Federal employees and Federal workers. This is, indeed, an effort to correct that situation, and this corrective legislation deserves the support of every Member of the House.

Mr. Speaker, I reserve the balance of my time.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased that the gentleman from Florida (Mr. MICA), the chairman of the subcommittee, and I were able to work in a bipartisan way to bring this bill to the floor for a vote today. This legislation addresses a problem that he and I made a top priority for this session of Congress. It establishes a comprehensive framework to make whole those employees who were placed in the wrong retirement system by the Federal Government.

Few things in life are more important to a working person than having an adequate and secure retirement plan in place to provide for their future or that of their spouse. When a worker's retirement security is jeopardized by an employer's administrative error, tremendous emotional and financial pain can result unless a remedy is available that ensures its prompt and fair correction and avoids economic harm.

At the hearings on this matter last summer before the Subcommittee on Civil Service, we heard the testimony of four employees who had been the victims of enrollment errors made by their employing agencies. In each case the employee was initially placed in the Civil Service Retirement System, then years later informed that they should have been in the Federal Employees Retirement System, better known as FERS. Afforded no recourse or options, these employees were dumped into FERS and confronted with the need to make thousands of dollars of retroactive payments into a newly established Thrift Savings account.

Hundreds of other fellow employees have found themselves in the same situation over the past 10 years. Most have been forced to rearrange their lives and financial plans to rectify a problem not of their own making. Many without financial means have had to work beyond their planned retirement dates to build a full annuity. At least one had to sell his home to raise funds to make his thrift account whole.

Our committee, our subcommittee, heard them, we felt their pain, and we assured them that we would act. This situation was intolerable, and all of us felt the same way on our subcommittee. We made a very strong promise, which we have kept to those witnesses who shared their tragic stories at that hearing that day, that we would find a remedy. I believe that with the enactment of H.R. 3249, a solution will finally be at hand.

The Federal Retirement Coverage Corrections Act would essentially permit those who have been the victims of an enrollment error to remain in the retirement system they were mistakenly placed in or to be covered by the system they should have been in. It would also hold the government financially responsible for making whole an affected employee's Thrift Savings Account. Together, these provisions will end the harm now being done by the existing rules governing the correction of these errors.

In constructing this legislation, the chairman of the subcommittee sought to achieve accountability by holding those agencies guilty of making enrollment errors responsible for the cost of their corrections, and I applaud him for that. While I agree that accountability is a worthy goal, I, nevertheless, have been troubled that the resulting budgetary pressure could lead some agencies to initiate unplanned layoffs. I told the chairman I did not want our

efforts to help out one group of employees while making victims of another.

Because he was willing to work with me on this matter, we have been able to reach a compromise that achieves what each of us wanted: Simply, accountability and job security. Reductions in force to pay expenses associated with the implementation of this act would be prohibited. Agencies would be required to realize any savings necessary to avoid RIFs through attrition and limitations on hiring.

Mr. Speaker, I thank the chairman of our subcommittee for bringing this important bill before the committee. My thanks to all of my colleagues on the Subcommittee on Civil Service for their steadfast commitment to addressing the problems caused by retirement coverage errors, and for you unanimously supporting the bill at the subcommittee's markup.

Finally, my thanks to our staff and that of the Office of Legislative Counsel for their tireless work in crafting H.R. 3249. All of their efforts were essential to what we have accomplished here today.

H.R. 3249 is a lengthy and complex bill which has evolved a great deal since our drafting began last fall. The subcommittee's work in this regard has benefitted considerably from the input of the Office of Personnel Management, the Social Security Administration, and the staffs of several other congressional committees.

□ 1715

I very much appreciated all of their comments and suggestions.

Mr. Speaker, I reserve the balance of my time.

Mr. MICA. Mr. Speaker, I am pleased to yield 5 minutes to the distinguished gentlewoman from Maryland [Mrs. MORELLA], a leader in our Subcommittee on Civil Service.

Mrs. MORELLA. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in very strong support of H.R. 3249. It is very important legislation to remedy retirement enrollment errors. I want to add my very strong thanks to the chairman, the gentleman from Florida [Mr. MICA] and to his staff for the enormous work that they have done on this legislation.

I also want to thank the gentleman from Maryland [Mr. CUMMINGS], the ranking member. I want to also thank the Committee on Government Reform and Oversight chair and ranking member, and also the Committee on Ways and Means.

So my colleagues can see, this has been a very important bipartisan effort involving a number of committees but emanating from problems that Federal employees had and in the subcommittee markup.

At the Subcommittee on Civil Service hearing last year, we heard some horror stories of those who were placed in the wrong retirement system. We cannot make up for the pain caused by these errors, but we can indeed prevent more errors from occurring and provide as fair a remedy as possible, which is what this legislation before us does.

We must move forward quickly to remedy the errors of the past and to prevent future suffering, especially as more employees discover they are in the wrong system during the current retirement open season.

Many, possibly thousands, of Federal employees who have been hired since the inception of FERS have been erroneously placed in CSRS. Many of them do not even know that they are in the wrong system, and serious financial consequences that await them if no legislation is enacted are going to be tremendous.

Those who have discovered their retirement errors have been deprived of critically important retirement and tax benefits and they have been subjected to severe strain and they have incurred tremendous legal expenses.

So, Mr. Speaker, the legislation before us truly makes whole those Federal employees who have already been corrected, many harmed really, such as one of my constituents, Barry Schrum. Under this bill, employees may choose to remain in the retirement system in which they were mistakenly placed or to be covered by the system in which they should have been placed. If an employee chooses FERS, this legislation makes them whole by making up lost earnings in their thrift savings plans in those accounts. I am pleased that this legislation will ensure that agencies are not unduly burdened by this legislation in making employees whole again.

So again, I want to congratulate all involved, particularly the leadership that came from the chairman and the ranking member of the subcommittee and the staffs that have made it all possible. Very important legislation. I urge my colleagues to join me in supporting this legislation.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I also want to thank the gentlewoman from the District of Columbia [Ms. NORTON] of our subcommittee and the gentleman from Tennessee [Mr. FORWARD] who worked very hard to make sure that this legislation was as good as it is.

I also would like to reiterate the fact that we did work in a bipartisan way and it shows. This effort and the effort of our Subcommittee on Civil Service shows what good things can happen when we join hands and work together to lift up the lives of Americans and all people of the world.

Mr. Speaker, I yield back the balance of my time.

Mr. MICA. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, first I want to take a moment to also thank again the gentlewoman from Maryland (Mrs. MORELLA) for her leadership on this issue and several members of our subcommittee who are not with us this afternoon who also provided leadership, the gentleman from New Jersey (Mr. PAPPAS) and the gentleman from Texas (Mr. SESSIONS), who also supported and help craft this legislation.

Mr. Speaker, as we conclude our debate here this afternoon and presentation, H.R. 3249 will bring long overdue relief to the thousands of victims who have been misclassified because of Federal agency errors. Many of these errors have festered for more than 10 years and the procedures for correction available under current law do more harm than good.

These errors in current procedures have really had devastating effects on individuals in our Federal employ, both financially and emotionally. It is imperative that Congress act now. As time goes by, the cost of making employees' thrift savings accounts whole actually increases and the burden for the Federal Government increases. So does the human toll taken by these agency errors.

H.R. 3249 is a fair bill. It provides each affected employee with a real choice. Employees may elect to change their retirement enrollment or employees may ratify the agency errors by choosing to remain in the system in which they are mistakenly enrolled.

The make-whole relief that guarantees freedom of choice, even for those with low incomes, is adapted from an IRS review procedure. Surely, our Federal employees and retirees deserve no less than what the IRS has prescribed as a remedy for employees who are so aggrieved or abused in the private sector.

Mr. Speaker, H.R. 3249 is supported by many organizations. It is supported by the Senior Executive Association, the National Federation of Federal Employees, the American Foreign Service Association, the National Association of Letter Carriers, the National Association of Postmasters of the United States, and the Federal Managers Association.

All Members should join with the hundreds of thousands of employees of these organizations with our Federal employees and retirees and support this long overdue reform. I urge their support this afternoon for H.R. 3249.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MILLER of Florida). The question is on the motion offered by the gentleman from Florida (Mr. MICA) that the House suspend the rules and pass the bill, H.R. 3249, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was agreed to.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, the Chair will