

FEDERAL RETIREMENT COVERAGE CORRECTIONS ACT

FEBRUARY 23, 1999.—Ordered to be printed

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

REPORT

[To accompany H.R. 416]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 416) to provide for the rectification of certain retirement coverage errors affecting Federal employees, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. SHORT SUMMARY OF LEGISLATION

Through no fault of their own, thousands of Federal employees have been erroneously placed in the wrong Federal retirement system. The vast majority of these errors involve misclassifications in either the Federal Employees Retirement System (FERS) or the Civil Service Retirement System (CSRS). When these errors are discovered, the Office of Personnel Management (OPM) and other

Federal agencies must correct the mistake by automatically enrolling misclassified employees in the correct system. Because corrections do not currently include make-whole relief, their effects are often devastating for the employees involved.

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

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

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

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

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

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

the Federal Circuit. The bill does not impair any right employees may have to sue for other damages under the Federal Tort Claims Act.

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

## II. BACKGROUND AND NEED FOR THE LEGISLATION

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

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

FERS employees pay full Social Security taxes (in 1999, 6.2% on the first \$72,600) plus an amount equal to the difference between 7% of basic pay and the Social Security tax rate as the employee share of the FERS defined benefit. The percentage of pay employees have contributed to the TSP has increased gradually since 1988. Currently FERS employees average about 6.4%, but may contribute up to 10% of their salary, subject to the IRS cap (currently \$10,000 per year). The employing agency automatically contributes at least 1% of basic pay to the TSP, even if the employee contributes nothing, and will match employee contributions up to 5%. The FERS benefit is also calculated based on the average of the highest 3 salaries earned. The salary replacement rate accrues at 1% per year of service, which increases to 1.1% if retirement is after age 62. After a thirty-year career, retiring FERS employees would thus receive a pension worth approximately 30 percent (33 percent at age 62 or over) of the average high 3 years of pre-retirement sala-

ries plus the same Social Security benefits payable to a similarly situated private sector retiree.

The Balanced Budget Act of 1997 raised FERS and CSRS employee contributions by 0.5% of pay according to the following schedule: 0.25% beginning in January of 1999, and additional 0.15% in January 2000, and the final 0.10% in January 2001. Absent Congressional action to extend the additional contributions it is due to expire in January of 2003.

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

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

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

#### “CORRECTION” PROCEDURES

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

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

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

CHART 1. ERRONEOUS RETIREMENT ENROLLMENTS—PROPOSED CORRECTIONS

	CSRS	CSRS-Offset	FERS	Social Security only
Should have been in:				
	Wrongly entered into:			
CSRS	(1) .....	Subtitle F, Sect. 152/153—employee elects to (1) stay in Offset or (2) switch to CSRS; make-whole provisions do not apply.	Subtitle D, Sect. 132/134—employee elects to (1) stay in FERS or (2) switch to CSRS; if switches to Offset gives up earnings, and govt match and govt 1% in TSP, but keeps own TSP contributions and earnings; make-whole provisions do not apply.	Subtitle B, Sect. 114—employee elects to (1) stay or (2) move to CSRS; make-whole provisions for TSP contributions apply.
CSRS-Offset	Subtitle E, Sect. 141—move employee into Offset system; make-whole provisions do not apply.	(1) .....	Subtitle D, Sect. 133/135—employee elects to (1) stay in FERS or (2) switch to CSRS-Offset; (if switch see above).	Subtitle B, Sect. 113—employee elects to (1) stay or (2) move to CSRS-Offset; make-whole provisions for TSP contribution apply.
FERS	Subtitle A, Sect. 102/104/106 employee elects to (1) move to CSRS-Offset or (2) switch to FERS; if switch make-whole provisions for TSP contribution apply.	Subtitle A, Sect. 103/105/106 employee elects to (1) stay in CSRS-Offset or (2) switch to FERS; if switch make-whole provisions for TSP contributions apply.	(1) .....	Subtitle B, Sect. 112—employee elects to (1) stay or (2) move to FERS; make-whole provisions for TSP contributions apply.
Social Security only	Subtitle C, Sect. 123/125—employee elects to move to CSRS-Offset or opt into Social Security only; if not vested in CSRS remove; if opt out of CSRS refund contributions in excess of OASDI with interest; permit TSP deposits to remain in TSP.	Subtitle C, Sect. 122/125—employee elects to stay in CSRS-Offset or opt into Social Security only; if not vested in Offset remove; if opt out of CSRS refund contributions in excess of OASDI with interest; permit TSP deposits to remain in TSP.	Subtitle C, Sect. 121/125—employee elects to stay in FERS or opt into Social Security only; if not vested re-move; if opt out refund contributions in excess of OASDI with interest; permit personal TSP deposits to remain in TSP; forfeit govt 1% and matching funds.	(1).

<sup>1</sup> Not applicable.

OPM requires agencies to take corrective actions immediately upon discovery of an enrollment error. Agencies have sometimes performed "stealth" corrections, where they simply alter personnel records, then let the affected employees find out about the change later. One witness at a Civil Service Subcommittee hearing on this issue, for example, saw a shift in his CSRS account balance on his payroll stub. When he called the personnel office, the personnel officer started the conversation, "I've been dreading this call for two months \* \* \*." Another victim of these adjustments, a 59-year old GS-7 grandmother employed by the Department of Housing and Urban Development, is still facing increased Social Security deductions from her pay each pay period.

The experience of two workers at the Portsmouth Naval Shipyard in Maine also demonstrates the difficulties faced by thousands of other employees. One, a 60-year old who had been planning on retiring at age 62, learned that he owed back Social Security taxes of \$10,000 and would have to contribute \$600 a month to the TSP for the rest of his working career because his agency placed him in the wrong retirement system. Because of the agency's mistake, he will also have to work until age 65. The other employee, who is in his mid-forties, owes more than \$10,000 in back Social Security taxes, and only by jeopardizing his ability to pay for his son's college education will he be able to establish an adequate TSP account.

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

#### DAMAGES TO FEDERAL EMPLOYEES FROM ENROLLMENT ERRORS

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

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

difficult dilemmas as choosing between fully financing their own retirement or providing for their children's education, all because a Federal agency made an error.

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

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

In the 105th Congress, the House passed H.R. 3249, a bill with identical rectification provisions to correct these retirement errors. However the Senate took no action on it.

### III. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

The Committee did not hold legislative hearings on this bill. Rep. Joe Scarborough introduced H.R. 416 on January 19, 1999. The bill was referred to the Committee on Government Reform and, in addition, to the Committee on Ways and Means on January 19, 1999. On February 3, 1999, the Committee on Government Reform considered the bill and ordered it reported to the House by voice vote.

### IV. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

The Committee has not held any hearings on this bill during this Congress. In the 105th Congress, however, the Subcommittee on the Civil Service held both an oversight hearing on this problem on July 31, 1997 and a legislative hearing on H.R. 3249.

Several employees who had been victimized by agency retirement coverage errors testified at the oversight hearing. They were: Alan White (Office of the Inspector General, Department of Defense), David Mangam (Army War College), Mr. John Gabrielli (Internal Revenue Service), and E. Barry Schrum (Department of Energy). Other witnesses were William E. Flynn, Associate Director, Retirement and Insurance Service, Office of Personnel Management; Sarah Hall Ingram, Associate Chief Counsel, Employee Benefits/Exempt Organizations, Internal Revenue Service; Diane Disney, Deputy Assistant Secretary (Civilian Personnel), Department of Defense; and Linda Oakey-Hemphill, Agency Retirement Counselor, Department of the Treasury.

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

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

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

Mr. E. Barry Schrum is a criminal investigator with the Department of Energy's Office of Inspector General. He was hired in December of 1984 and enrolled in the CSRS under law enforcement retirement provisions. He, too, had been provided opportunity to elect FERS coverage in 1987, but chose to remain in CSRS. The Department's OIG personnel office informed him of the mistaken enrollment in April of 1996 and notified that he would be retro-



actively changed to FERS enrollment. That change was made effective in a June 25, 1996 memorandum. He testified that he was informed at that time that he would be able to make retroactive contributions to the TSP, and that he would have to remain continuously employed in the Federal service for eight years to make up the back contributions to the TSP. He recommended legislation that would require the agencies that made the mistakes to make employees whole, and submitted a letter from the Department of Energy attorney which claimed that the Department lacks the authority to compensate employees for these errors under current law.

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

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

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

Ms. Diane Disney reported that the Department of Defense had found as many as 3,100 employees of the approximately 170,000 hired between 1984 and 1986 who might have been placed into wrong retirement systems. In reviewing those records, many of the

CSRS classifications were correct because of previous Federal service, but she conceded that the Defense Finance and Accounting Service is in the process of correcting 500 employees' records. She noted the difficulties of correcting mistakes that are now more than 10 years old, and that some of the options essential to make employees whole are not authorized by current law.

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

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

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

- (1) the remedy must demonstrate that the government cares about Federal employees who have been harmed by retirement coverage errors and is committed to an equitable solution for these employees and their families;
- (2) employees should have a choice between corrected coverage and the benefit they expected to receive without disturbing Social Security coverage laws;
- (3) the options provided to the employee should be easy to understand; and
- (4) administrative aspects of the remedy should be minimized to keep the solutions simple and timely.

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

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

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

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

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

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

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

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

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

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

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

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

### *Section 1. Short Title; Table of Contents*

This act may be cited as the "Federal Retirement Coverage Corrections Act."

### *Section 2. Definitions*

This section defines the key terms used in the Act.

1. "CSRS"
2. "CSRDF"
3. "CSRS covered"
4. "CSRS-offset covered"
5. "Employee"

6. "Executive Director of the Federal Retirement Thrift Investment Board"
7. "FERS"
8. "FERS covered"
9. "Government"
10. "OASDI taxes"
11. "OASDI employee tax"
12. "OASDI employer tax"
13. "OASDI trust funds"
14. "Period of erroneous coverage"
15. "Retirement coverage determination"
16. "Retirement coverage error"
17. "Social Security-only covered"
18. "Thrift Savings Fund"

### *Section 3. Applicability*

The Act applies to all errors that have not been corrected within one year of the occurrence of the error, regardless of whether the error occurred before enactment of the Act. EXCEPTION: The Act does not apply to any retirement coverage or action affecting coverage for any pay period beginning before January 1, 1984.

### *Section 4. Restriction relating to future corrections*

After the date of enactment, all retirement coverage errors must be corrected in accordance with the Act. No employee affected by a retirement coverage error can be excluded from or made subject to any retirement system solely for the purpose of correcting the error. The Act does not affect retirement coverage elections that are unrelated to retirement coverage errors. The Office of Personnel Management (OPM) will publish regulations that apply the Act to any employee who, other than under this Act, makes a voluntary election to change retirement coverage.

### *Section 5. Irrevocability of elections*

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

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

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

#### *Section 101. Elections*

*Subsection (101)(a). Applicability.* Subtitle A applies to employees who should have been covered by the Federal Employees Retirement System (FERS), but who were erroneously enrolled in the Civil Service Retirement System (CSRS) or CSRS-Offset instead.

*Subsection (101)(b). Uncorrected Error.* If the retirement coverage error has not been corrected at the time the employee is to make an election under this section, the employee may elect to be enrolled in FERS or to remain in (or be transferred to) CSRS-Offset.

*Subsection (101)(c). Corrected Error.* If the retirement coverage error has been corrected at the time the employee is to make an election under this section, the employee may elect to be enrolled in CSRS-Offset or to remain in FERS.

*Subsection (101)(d). Default Rule.* This subsection establishes a default rule for employees who have not made an election within six months after receiving the notice required under section 201. Under this default rule, employees will be deemed to have elected to remain in the system (other than CSRS) they are in at the time that they were required to make the election. This subsection also provides that employees who should have been covered by FERS may not elect to enroll or remain in CSRS rather than CSRS-Offset.

*Subsection (101)(e). Retroactive Effect.* All elections under this section will be retroactive to the date on which the retirement coverage error was made.

*Section 102. Effect of an election to be transferred from CSRS to FERS to correct a retirement coverage error*

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

*Subsection (102)(a). Applicability.* This section applies to employees erroneously assigned to CSRS who elect to be assigned to FERS.

*Subsection (102)(b). Disposition of Contributions to the CSRDF.* Some or all of the employee and government contributions to the CSRDF will be transferred to the OASDI trust funds.

*Subsection (102)(b)(1). Employee Contributions.* Funds will be transferred from the CSRDF to the OASDI trust funds equal to the amount of OASDI employee taxes that should have been withheld from the employee's pay during the period of erroneous coverage. Any excess contributions by the employee to the CSRDF will be forfeited.

"Excess contributions" by the employee are defined as the amount by which the portion of the employee's lump-sum credit attributable to the period of erroneous coverage is greater than the sum of the amount to be transferred from the CSRDF to the OASDI trust funds (under subsection (b)(1)) plus the amount that would have been deducted from the employee's pay and deposited in the CSRDF for coverage under FERS if the employee had been enrolled in FERS during that period.

Lump-sum credit: The term "lump-sum credit" is defined in 5 U.S.C. § 8331. It consists of (CSRS) retirement deductions from the employee's basic pay, plus amounts deposited by an employee covering earlier service, plus interest on these deductions and deposits.

If the amount of the lump-sum credit is less than the total of the employee contributions that should have been made to the CSRDF

and OASDI trust funds, the amount of the shortfall is to be made up by the employing agency out of amounts from which the agency makes employer contributions to the CSRDF and OASDI trust funds. To the extent that a shortfall is the result of a lump-sum credit received by the employee (for which the employee has not made the deposit required under 5 U.S.C. § 8334(d)(1)), the employee must repay an amount equal to this deposit. Any shortfall required to be paid by the agency will be reduced (but not below zero) by the amount of any such deposit required of the employee. The CSRDF has the legal right to collect these deposits in the same manner as any other debt owed to the U.S. Government.

No agency make-up payment or employee repayment of a lump-sum credit will be required which would be attributable to amounts that should have been deducted under 5 U.S.C. § 8422 during the period of erroneous coverage, except to the extent necessary permit the transfer of funds from the CSRDF to the OASDI trust funds described in section 102(b)(1)(A).

In order to be credited with service under chapter 84 of Title 5 of the U.S. Code, an employee who has received a lump-sum credit must deposit into the CSRDF for the period to which the lump-sum credit relates an amount equal to the percentage of the employee's basic pay that should have been deducted under 5 U.S.C. § 8422.

The Director of OPM will publish regulations that permit section 102(b) to be applied in situations covered by other provisions of this Act that are not directly addressed in this paragraph.

Regardless of any restrictions set forth in 5 U.S.C. § 8424(a), employees will be permitted to make deposits to the CSRDF for a period of erroneous coverage and to receive service credit for the corresponding period of time. (This does not apply, however, in the case of an employee who was erroneously covered by FERS and remained in FERS after the rectification provided for under this Act).

*Subsection (102)(b)(2). Government Contributions.* Funds will be transferred from the CSRDF to the OASDI trust funds equal to the amount of the OASDI employer tax that should have been paid during the period of erroneous coverage minus any amount that may be assessed under Section 6501 of the Internal Revenue Code of 1986 with respect to each affected employee.

If the amount that the federal government paid to the CSRDF during the period of erroneous coverage was less than the amount that should have been paid to OASDI and CSRDF if the employee had been properly assigned to FERS, the employing agency will be required to pay the amount of the shortfall to the OASDI trust funds. The agency will pay any such shortfall from the same source of funds it normally uses to pay employer contributions to the CSRDF and OASDI trust funds.

*Subsection 102(c). Makeup Contributions to the Thrift Savings Fund.* This subsection provides that the employing agency will make a lump-sum contribution to the Thrift Savings Fund to compensate affected employees for lost opportunities to invest in the Thrift Savings Plan (TSP). The lump-sum contribution will make up for employee contributions forgone because of the erroneous assignment of the employee to CSRS, lost agency automatic 1% contributions, lost agency matching contributions (which are to be based upon both the make-up contribution described in subsection



102(c)(2) and any TSP contributions the employee actually made (none of which would have been matched by the agency at the time they were made, due to the employee's erroneous assignment to CSRS)), and lost earnings on the total amount that should have been contributed to the TSP during the period of erroneous coverage, including the employer matching contributions.

*Subsection 102(c)(2). Amount Based on Average Percentage of Pay Contributed by Employees During Period of Erroneous Coverage.* This subsection establishes rules for calculating the amount of the contribution to make up for forgone employee contributions. The amount contributed for each calendar year during the period of erroneous coverage will be equal to the average percentage contributed by full-time FERS-covered employees who contributed to the Thrift Savings Plan that year. If the average contribution rate is not available for a particular year, the average for the most recent prior year will be used. The amount of the make-up contribution for a year plus any amounts actually contributed by the employee during that year may not exceed any ceiling established by Title 5 of the United States Code or the Internal Revenue Code of 1986. (Title 5 limits employee contributions to 10% of base pay and agency contributions to an amount equal to 5% of base pay. The Internal Revenue Code limits employee contributions to specific dollar amounts (\$10,000 in 1999)).

*Subsection 102(c)(3). Lost Earnings.* Under this subsection, lost earnings are to be calculated as if all contributions had been timely made in each year that the employee was erroneously enrolled in CSRS and had been allocated among each of the TSP investment funds according to the rules prescribed by this Act. For periods during which the employee actually made contributions to the TSP, the make-up contributions will be allocated in accordance with the employee's own investment fund election during that period. If the employee did not make any contributions to the TSP during a period, the make-up contributions will be allocated in accordance with the average percentage allocation of all TSP contributions among the TSP funds in effect during that year. If an average allocation for a year is not available, the allocation for the most recent prior year will be used.

*Subsection 102(c)(4). Make-Up Contribution to be made in a Lump Sum.* This subsection requires that the agency at which the employee is employed as of the date of the election will promptly pay the make-up contribution in a single lump sum. The Federal Thrift Investment Board will publish regulations under which employing agencies will notify the board as to the amounts owed by the agency in make-up contributions; the Board will calculate the earnings on those contributions; and the Board will notify each agency of the total amount of payments due from it.

*Subsection 102(c)(5). Justices and Judges; Magistrates; Etc.* This subsection provides that Justices, Judges, and other employees who become subject to 5 U.S.C. §8440(a), 8440(b), 8440(c), or 8440(d) are not entitled to a make-up contribution.

*Subsection 102(c)(6). Regulations.* Regulations necessary to carry out this subsection will be published by the Executive Director of the Federal Retirement Thrift Investment Board.

*Section 103. Effect of an election to be transferred from CSRS-Offset to FERS to correct a retirement coverage error*

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

*Section 104. Effect of an election to be transferred from CSRS to CSRS-Offset to correct a retirement coverage error*

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

*Section 105. Effect of an election to be restored (or transferred) to CSRS-Offset after having been corrected to FERS from CSRS-Offset (or CSRS)*

*Subsection 105 (a). Applicability.* This section applies when an employee who should have been enrolled in FERS but was mistakenly enrolled in CSRS or CSRS- Offset elects to be CSRS-Offset covered after having been corrected to FERS.

*Subsection 105(b). Disposition of Contributions to the CSRDF.* The disposition of contributions to the CSRDF will be governed by section 102(b) with the following exceptions: (1) the agency and employee will receive credit for contributions already paid to the OASDI trust funds; (2) the contribution rates for the CSRS-Offset plan will be used to determine amounts owed, rather than the FERS contribution rates; (3) the Office of Personnel Management will publish regulations to be used in determining the appropriate lump-sum credit for individuals affected by this subsection; and (4), calculations are to be based on the "total period involved," defined as the period beginning with the date of the retirement coverage error and ending on the day before the election under this section becomes effective.

*Subsection 105(c). Disposition of Excess TSP Contributions.* Government contributions to the TSP and earnings on those contributions will be forfeited and retained in the Thrift Savings Fund to defray expenses of administering the TSP. Employees will retain in their TSP accounts their individual TSP contributions and the earnings on those contributions even if those contributions exceed the limit applicable to employees covered by CSRS and CSRS-Offset.

*Section 106. Effect of an election to remain FERS-covered after having been corrected to FERS from CSRS-Offset or CSRS*

*Subsection 106(a). Applicability.* This section applies when an employee who should have been enrolled in FERS but was mistakenly enrolled in CSRS or CSRS-Offset elects to remain covered by FERS after having been corrected to FERS.

*Subsection 106(b). Disposition of Contributions to the CSRDF.* The same procedures will apply as in the case of an employee who elects to be transferred from CSRS to FERS to correct a retirement coverage error (described in section 102(b)) subject to the same condition that credit will be given for any sums already transferred to the OASDI trust funds for the period involved (as described in section 105(b)(2)).

*Subsection 106(c). Make-up Contributions to the Thrift Savings Fund.* The same procedures will apply as in the case of an employee who elects to be transferred from CSRS to FERS to correct a retirement coverage error (as described in section 102(c)) except that the employing agency will receive credit for any make-up payments already made as part of any retirement corrections process already carried out with respect to the affected employee.

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

*Section 111. Elections*

*Subsection 111(a). Applicability.* This section applies to an employee who should have been enrolled in one of the federal employee retirement systems—FERS, CSRS-Offset, or CSRS—but who was erroneously covered only by Social Security.

*Subsection 111(b). Uncorrected Error.* If the error has not been corrected at the time of the election, an employee who should have been covered by FERS may elect to be covered by FERS; an employee who should have been covered by CSRS-Offset may elect to be covered by CSRS-Offset; and an employee who should have been covered by CSRS may elect to be covered by CSRS. Any such employees may, if they so choose, remain covered only by Social Security.

*Subsection 111(c). Corrected Error.* No more than six months after the enactment, the Director of OPM will submit to Congress a proposal by which any employee with respect to whom any of the retirement coverage errors described in subsection 111(a) had already been corrected, but under terms that were less advantageous to the employee than those set forth in this Act, will be given a reasonable opportunity to resolve their retirement coverage error under terms comparable to the terms of this Act. OPM will consult with the Executive Director of the Federal Retirement Thrift Investment Board and the Commissioner of Social Security in developing this proposal. Any employee who does not make an election within the required time will be deemed to have elected to remain covered only by Social Security. Elections will be retroactive to the date of the retirement coverage error.

*Section 112. Effect of an election to become FERS covered to correct the retirement coverage error*

*Subsection 112(a). Applicability.* This section applies to an employee who should have been FERS covered and elects to be covered by FERS as well as Social Security.

*Subsection 112(b). Make-up Contributions to the CSRDF.* In such cases, the employing agency must pay the full amount of employee and employer contributions that would have been required under § 8422 and § 8423 if the employee had been covered by FERS during the entire period.

*Subsection 112(c). Make-up Contributions to the Thrift Savings Fund.* The procedure for paying make-up contributions to the Thrift Savings Fund will be the same as in the case of an employee who elects to be transferred from CSRS to FERS to correct a retirement coverage error (as described in section 102(c)).

*Section 113. Effect of an election to become CSRS-Offset covered to correct the retirement coverage error*

*Subsection 113(a). Applicability.* This section applies to an employee who should have been CSRS-Offset covered and elects to be covered by CSRS-Offset as well as Social Security.

*Subsection 113(b). Make-up Contributions to the CSRDF.* In such cases, the employing agency must pay the full amount of employee and agency contributions required under subchapter III of chapter 83 of title 5 of the U.S. Code that would have been paid during the period of erroneous coverage if the employee has been covered by CSRS-Offset during that time.

*Subsection 113(c). Make-up Contributions to the Thrift Savings Fund.* The procedure for paying make-up contributions to the Thrift Savings Fund will be the same as in the case of an employee who elects to be transferred from CSRS to FERS to correct a retirement coverage error (as described in section 102(c)), except that the make-up contributions will be limited to 5% of pay for each year, as specified by 5 U.S.C. § 8351(b). (Employees covered by CSRS and CSRS-Offset are not eligible for agency matching payments on their contributions to the TSP and their contributions are limited to 5% of basic pay).

*Section 114. Effect of an election to become CSRS covered to correct the retirement coverage error*

*Subsection 114(a). Applicability.* This section applies to an employee who should have been CSRS covered and elects to be covered by CSRS.

*Subsection 114(b). Make-up Contributions to the CSRDF.* The employing agency must make a lump-sum payment to the CSRDF equal to the employee and government contributions required under 5 U.S.C. § 8334 that should have been made during the period of erroneous coverage. The agency is entitled to be reimbursed by the employee for the amount of employee OASDI taxes that are refundable to the employee, up to the amount of employee contributions to the CSRDF made by the employing agency on behalf of the employee. If the employee does not reimburse the agency as required, the agency may collect the amount due by reducing accrued pay, compensation, retirement credit or any other amount due the

employee from the government by the amount owed to the government by the employee. The agency also may collect the debt by any other method provided by law for recovering amounts owed to the government. The head of the agency, however, may waive this right of recovery in whole or in part if he or she deems it to be in the public interest to do so.

*Subsection 114(c). Make-up Contributions to the Thrift Savings Fund.* The procedure for paying make-up contributions to the Thrift Savings Fund will be the same as in the case of an employee who elects to be transferred from CSRS to FERS to correct a retirement coverage error (as described in section 102(c)), except that the make-up contributions will be limited to 5% of pay for each year as specified by 5 U.S.C. § 8351(b). (Employees covered by CSRS and CSRS-Offset are not eligible for agency matching payments on their contributions to the TSP and their contributions are limited to 5% of basic pay).

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

*Section 121. Uncorrected error: Employee who should be Social Security-only covered, but who is erroneously FERS covered instead*

*Subsection 121(a). Applicability.* This section applies to an employee who should have been covered only by Social Security but who was erroneously covered by FERS as well.

*Subsection 121(b). Automatic Exclusion from FERS.* An employee who has not vested in FERS will be excluded from FERS.

*Subsection 121(c). Disposition of Employee Contributions to the CSRDF.* The employee will receive a lump-sum credit from the CSRDF (as authorized by 5 U.S.C. § 8424) to which he or she may be entitled for the period of erroneous coverage.

*Subsection 121(d). Disposition of TSP Contributions.* Government contributions to the TSP on behalf of the employee are to be forfeited. Employees may retain their own contributions to the TSP and the earnings on those contributions in their TSP account.

*Section 122. Uncorrected error: Employee who should be Social Security-only covered, but who is erroneously CSRS-Offset covered instead*

*Subsection 122(a). Applicability.* This section applies to an employee who should have been covered only by Social Security but who was erroneously covered by CSRS-Offset instead.

*Subsection 122(b). Automatic Exclusion from CSRS-Offset.* An employee who has not vested in CSRS-Offset will be excluded from CSRS-Offset.

*Subsection 122(c). Disposition of Employee Contributions to the CSRDF.* The employee will receive a lump-sum credit from the CSRDF (as authorized by 5 U.S.C. § 8342) to which he or she may be entitled for the period of erroneous coverage.

*Subsection 122(d). Disposition of Employee TSP Contributions.* Employees may retain their own contributions to the TSP and the earnings on those contributions in their TSP account.

*Section 123. Uncorrected error. Employee who should be Social Security-only covered, but who is erroneously CSRS covered instead*

*Subsection 123(a). Applicability.* This section applies to an employee who should have been covered only by Social Security but who was erroneously covered by CSRS instead.

*Subsection 123(b). Automatic Exclusion from CSRS.* An employee who has not vested in CSRS will be excluded from CSRS.

*Subsection 123(c). Disposition of Contributions to the CSRDF.* Employee and government contributions to the CSRDF will be disposed of in accordance with section 102(b), (governing the disposition of contributions in the case of an employee who elects to transfer from CSRS to FERS to correct a retirement coverage error), except that paragraphs (1)(B)(ii)(II) and (2)(B)(ii)(II), (governing the disposition of excess employee contributions and shortfalls in government contributions to the CSRDF, respectively) will be disregarded.

*Subsection 123(d). Disposition of Employee TSP Contributions.* Employees may retain their own contributions to the TSP and the earnings on those contributions in their TSP account.

*Section 124. Corrected error. Situations under sections 121 through 123*

No more than six months after enactment, the Director of OPM will submit to Congress a proposal by which any employee with respect to whom any of the retirement coverage errors described in sections 121, 122, or 123 had been corrected, under terms that were less advantageous to the employee than those set forth in this Act, will be given a reasonable opportunity to resolve their retirement coverage error under comparable terms. OPM will consult with the Executive Director of the Federal Retirement Thrift Investment Board and the Commissioner of Social Security in developing this proposal.

*Section 125. Vested employees excepted from automatic exclusion*

*Subsection 125(a).* Employees who have vested in FERS, CSRS-Offset, or CSRS as of the date on which the notice of a retirement coverage error is given will not be excluded from those systems.

*Subsection 125(b). Vesting.* An employee has vested after completing at least 5 years of civilian service creditable under 5 U.S.C. §8332 (defining creditable service under CSRS) or §8411 (defining creditable service under FERS).

*Subsection 125(c). Elections.* An employee who was erroneously covered by FERS and who has vested in that program may elect to remain covered by FERS or to be covered by Social Security only. An employee who was erroneously covered by CSRS-Offset or CSRS and who has vested in one of these programs may elect to remain (or become) CSRS-Offset covered or to be covered only by Social Security.

*Subsection 125(d). Effect of an Election To Be Transferred from CSRS to CSRS Offset.* The effect of an election to become CSRS-Offset covered after having been covered by CSRS will be the same as described in section 104, (governing the effect of an election to

be transferred from CSRS to CSRS-Offset to correct a retirement coverage error).

*Subsection 125(e). Default Rule.* If the employee does not make an election in the required six-month period, the employee will be deemed to have elected to remain FERS covered or to remain (or become) CSRS-Offset covered, as applicable.

*Subsection 125(f). Retroactive Effect.* Elections, including elections by default, will be retroactive to the date of the retirement coverage error.

*Subsection 125(g). Special Rule in Case of Disability.* If on the date that an employee is notified of a retirement coverage error, the employee is receiving disability payments under 5 U.S.C. chapter 83 or 84 or compensation for illness or injury under subchapter I of chapter 81, the employee will not be excluded from the retirement program if they are vested in that program on the date that their annuity or compensation terminates.

*Subsection 125(h). Notification.* The notices required of the Office of Personnel Management under section 201 of this Act will include additional information pertaining to the situations covered by this subtitle, especially 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

*Section 131. Elections*

*Subsection 131(a). Applicability.* This section applies to employees who should have been enrolled in either CSRS or CSRS-Offset but who were erroneously placed in FERS.

*Subsection 131(b). Uncorrected Error.* If the error has not been corrected by the date of enactment, the employee may choose to be covered by the CSRS or CSRS-Offset systems, as appropriate, or to remain in FERS.

*Subsection 131(c). Corrected Error.* If the error has already been corrected by the date of enactment, the employee may elect to become FERS covered or to remain in CSRS or CSRS-Offset.

*Subsection 131(d). Default Rule.* If the employee does not make an election within six months after notification, the employee will be deemed to have elected to remain in CSRS or CSRS-Offset, as applicable.

*Subsection 131(e). Retroactive Effect.* Elections will be retroactive to the date of the retirement coverage error.

*Section 132. Effect of an election to be transferred from FERS to CSRS to correct a retirement coverage error*

*Subsection 132(a). Applicability.* This section applies when an employee who should have been covered by CSRS elects to be transferred from FERS to CSRS to correct a retirement coverage error.

*Subsection 132(b). Make-up Contributions to the CSRDF.* The employing agency will make a lump-sum payment to the CSRDF equal to the amount by which the difference between the employee CSRS contributions required and the employee FERS contributions

actually made exceeds the difference between the amount of the agency's actual contributions under FERS and the amount of agency contributions that should have been made during the period of erroneous coverage.

The agency is entitled to be reimbursed by the employee for the amount of employee OASDI taxes that are refundable to the employee, up to the amount of the lump-sum payment by the agency to the CSRDF. If the employee does not reimburse the agency as required, the agency may collect the amount due by reducing accrued pay, compensation, retirement credit or any other amount due the employee from the government by the amount owed to the government by the employee. The agency also may collect the debt by any other method provided by law for recovering amounts owed to the government. The head of the agency, however, may waive this right of recovery in whole or in part if he or she deems it to be in the public interest to do so. Any amount recovered by the employing agency will be credited to the account from which it was originally paid.

*Subsection 132(c). Disposition Excess TSP Contributions.* Government contributions to the TSP and earnings on those contributions will be forfeited and retained in the Thrift Savings Fund to defray expenses of administering the TSP. Employees may retain in their TSP accounts their individual TSP contributions and the earnings on those contributions, even if those contributions exceed the limit applicable to employees covered by CSRS and CSRS-Offset.

*Section 133. Effect of an election to be transferred from FERS to CSRS-Offset to correct a retirement coverage error.*

*Subsection 133(a). Applicability.* This section applies when an employee who should have been covered by CSRS-Offset elects to be transferred from FERS to CSRS-Offset to correct a retirement coverage error.

*Subsection 133(b). Effect of Election.* The effect of this election is substantially the same as that described in section 105, (governing an election to transfer to CSRS-Offset after having been corrected to FERS from CSRS-Offset or CSRS).

*Section 134. Effect of an election to be restored to FERS after having been corrected to CSRS*

*Subsection 134(a). Applicability.* This section applies when an employee who should have been covered by CSRS, but was erroneously placed in FERS, elects to be restored to FERS after having been previously corrected to CSRS.

*Subsection 134(b). Effect of Election.* The effect of this election is substantially the same as that described in section 102, (governing an election to be transferred from CSRS to FERS to correct a retirement coverage error).

*Section 135. Effect of an election to be restored to FERS after having been corrected to CSRS-Offset*

*Subsection 135(a). Applicability.* This section applies when an employee who should have been in the CSRS-Offset system, but was erroneously placed in FERS, elects to be restored to FERS after having been previously corrected to CSRS-Offset.



*Subsection 135(b). Effect of Election.* The effect of this election is substantially the same as that described in section 103, (governing an election to be transferred from CSRS-Offset to FERS to correct a retirement coverage error).

*Section 136. Disqualification of certain individuals to whom same election was previously available*

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

SUBTITLE E—EMPLOYEE WHO SHOULD HAVE BEEN CSRS-OFFSET COVERED, BUT WHO WAS ERRONEOUSLY CSRS COVERED INSTEAD

*Section 141. Automatic transfer to CSRS-Offset*

*Subsection 141(a). Applicability.* This section applies when an employee who should have been in the CSRS-Offset was placed in CSRS instead.

*Subsection 141(b). Uncorrected Error.* If the error has not been corrected, the employee will be transferred to CSRS-Offset retroactive to the date of the retirement coverage error.

*Subsection 141(c). Corrected Error.* If the error has already been corrected, the correction will be made retroactive to the date of the retirement coverage error.

*Section 142. Effect of transfer*

The Office of Personnel Management will issue regulations such that the effect of a transfer under section 141 will be consistent with section 104, (governing the effect of an election to be transferred from CSRS to CSRS-Offset to correct a retirement coverage error).

SUBTITLE F—EMPLOYEE WHO SHOULD HAVE BEEN CSRS COVERED, BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED INSTEAD

*Section 151. Elections*

*Subsection 151(a). Applicability.* This section applies when an employee who should have been covered by CSRS was erroneously placed in CSRS-Offset instead.

*Subsection 151(b). Uncorrected Error.* If the error has not been corrected at the time of the election under this section, the employee may choose to transfer to CSRS or to remain covered by CSRS-Offset.

*Subsection 151(c). Corrected Error.* If at the time of an election under this section, the error has already been corrected, the employee may elect to transfer to CSRS-Offset or to remain covered by CSRS.

*Subsection 151(d). Default Rule.* If the employee has not made an election by the end of the six-month period following notification of the retirement coverage error, the employee will be deemed to have elected to remain in CSRS-Offset or CSRS, as applicable.

*Subsection 151(e). Retroactive Effect.* An election under this section, including an election by default, will be effective retroactively

to the date of the retirement coverage error to which the election relates.

*Section 152. Effect of an election to be transferred from CSRS-Offset to CSRS to correct a retirement coverage error*

*Section 152(a). Applicability.* This section applies when an employee who should have been covered by CSRS elects to become (or to remain) covered by CSRS.

*Subsection 152(b). Make-up Contributions to the CSRDF.* The employing agency will pay to the CSRDF a lump-sum equal to the amount by which the amount that should have been deducted from the employee's pay during the period of erroneous coverage (if the individual had been covered by CSRS) exceeds the amount that was actually deducted from the employee's pay.

The agency is entitled to be reimbursed for the amount of employee OASDI taxes refundable to the employee up to the amount of the lump-sum payment made by the agency to the CSRDF. If the employee does not reimburse the agency as required, the agency may collect the amount due by reducing accrued pay, compensation, retirement credit or any other amount due the employee from the government by the amount owed to the government by the employee. The agency also may collect the debt by any other method provided by law for recovering amounts owed to the government. The head of the agency, however, may waive this right of recovery in whole or in part if he or she deems it to be in the public interest to do so. Any amount recovered by the employing agency will be credited to the account from which it was originally paid.

When applying sections 8334(d)(1) and 8339(i), which require deposits to the CSRDF by employees who have received refunds and who wish to receive service credit for the periods to which the refunds pertain, no employee who has received a refund for a period when the employee was erroneously covered by CSRS-Offset will be required to deposit an amount in excess of the refund actually received for the period, plus interest.

*Section 153. Effect of an election to be restored to CSRS-Offset after having been corrected to CSRS*

*Section 153(a). Applicability.* This section applies in the case of an employee who should have been covered by CSRS, but who was erroneously covered by CSRS-Offset, and who elects to transfer to CSRS-Offset.

*Section 153(b). Disposition of Contributions to the CSRDF.* The effect of this election is substantially the same as that described in section 102(b), (governing an election to be transferred from CSRS to FERS to correct a retirement coverage error), except that when applying section 102(b), the provisions of 5 U.S.C. § 8334, (employee and agency contributions under CSRS-Offset) will be substituted for references to § 8422 and § 8423, which, respectively, define employee and agency contributions to FERS.

SUBTITLE G—ADDITIONAL PROVISIONS RELATING TO GOVERNMENT  
AGENCIES

*Section 161. Repayment required in certain situations*

*Subsection 161(a). In General.* In order to be eligible to make an election under this Act, an employee who has received a payment from the government as a result of a court order or settlement agreement relating to a retirement coverage error must repay any part of that amount that is not waived by OPM.

*Section 162. Equitable sharing of amounts payable from the government if more than one agency is involved*

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

*Section 163. Provisions relating to the original responsible agency*

*Subsection 163(a). Obligations of the Original Responsible Agency.* The agency originally responsible for the retirement coverage error will be required to pay (or reimburse) employees for reasonable expenses they incur for financial or legal advice in connection with an election under this Act. The agency originally responsible to the retirement coverage error will be obligated to pay (or to reimburse any other agencies that pay) any amounts to the Thrift Savings Fund that replace lost earnings resulting from the error.

The agency originally responsible for the retirement coverage error is the agency determined by OPM to have made the original retirement coverage error or, when the error is attributable to an erroneous OPM regulation, OPM itself. If the original responsible agency no longer exists, its successor, as identified by OPM, will be the original responsible agency. If there is no successor agency, payments required from or to the responsible agency are to be paid from or to the CSRDF. When OPM is the original responsible agency because the error was the result of an erroneous regulation, any amounts payable from OPM under this section are to be paid from the CSRDF.

TITLE II—GENERAL PROVISIONS

*Section 201. Identification and notification requirements*

*Section 201(a). In General.* The Office of Personnel Management will publish regulations prescribing the procedures under which individuals affected by a retirement coverage error described in this Act will be notified of their rights under this Act. The notice will include all information necessary to allow the individual to make an informed decision about the election they are permitted to make under the Act. All errors existing on the effective date of the regulations mandated by this Act are to be corrected by December 31, 2001.

*Section 202. Individual appeal rights*

*Section 202(a). In General.* An individual aggrieved by a final determination under this Act will be entitled to appeal that determination to the Merit Systems Protection Board under section 7701 of title 5 of the U.S. Code.

*Section 202(b). Notification of Appeals.* The Office of Personnel Management will publish regulations that establish procedures under which individuals can appeal to that Office with respect to failure to receive timely notice of the provisions of this Act as required by Section 201.

*Section 203. Information to be furnished by government agencies to authorities administering this Act*

Agencies are required to provide the Director of the Office of Personnel Management, the Commissioner of Social Security, and the Executive Director of the Federal Retirement Thrift Investment Board any information they need to carry out their responsibilities under this Act.

*Section 204. Social Security records*

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

*Section 205. Conforming amendments respecting social security coverage and OASDI taxes*

*Section 205(a). Social Security Coverage.* This section amends section 210(a)(5)(H) of the Social Security Act and Section 3121(b)(5)(H) of the Internal Revenue Code of 1986 to permit Social Security payments to CSRS-eligible individuals who elect coverage under FERS, CSRS-Offset, or to be covered only by Social Security. (Current law excludes federal employees eligible for CSRS from coverage under Social Security).

*Section 206. Regulations*

*Subsection 206(a). In General.* The Director of the Office of Personnel Management, the Executive Director of the Federal Retirement Thrift Investment Board, the Commissioner of Social Security, and the Secretary of the Treasury each will publish regulations necessary to implement this Act.

*Subsection 206(b). Matters to be Included.* The regulations issued by the Director of OPM will, at a minimum, include 1) procedures for applying the provisions of this Act to the extent practicable to former employees, employee annuitants, and survivor annuitants, 2) procedures by which former spouses affected by the provision of this Act will be notified of its provisions, 3) the procedures by which any determinations under this Act not otherwise addressed herein will be made in accordance with the requirements of the Act, and 4) procedures by which any amounts that must be paid by an individual to the Government in order for him or her to make an election under this Act, which have not otherwise been collected, may be recouped by the Government through an actuar-

ial reduction in the annuity or survivor annuity payable under the applicable federal retirement program.

*Section 206(c). Definitions.* An “annuitant” is a person defined in section 8331(9) or section 8401(2) of title 5 U.S.C. A former employee is any person who satisfies the service requirements for title to a deferred annuity under chapter 83 or 84 of title 5 U.S.C. but who has not reached the minimum age required to claim such annuity or who has not filed a claim.

*Section 206(d). Coordination Rule.* The Director of the Office of Personnel Management is required to consult with the Administrative Office of the United States Courts, the Clerk of the House of Representatives, the Sergeant at Arms and Doorkeeper of the Senate, and other appropriate officers and authorities when prescribing regulations to carry out this Act.

*Section 207. All elections to be approved by the Office of Personnel Management*

To ensure compliance with this Act, the Office of Personnel Management must approve in writing all elections (other than default elections) under the Act.

*Section 208. Additional transfers to the OASDI trust funds in certain cases*

The Commissioner of Social Security is required to notify the Secretary of the Treasury if the payments of OASDI taxes under this Act are not credited to the OASDI trust funds. When so notified, the Secretary of the Treasury must transfer an amount equal to the shortfall reported by the Commissioner from the general fund of the Treasury to the OASDI trust funds.

*Section 209. Technical and conforming amendments*

This section makes technical and conforming amendments to sections 8432, 8437, and 8348 of title 5 of the United States Code.

### TITLE III—OTHER PROVISIONS

*Section 301. Provisions to permit continued conformity of other Federal retirement systems*

*Section 301(a) Foreign Service.* The Secretary of State is required to publish regulations to apply this Act to participants, annuitants, and survivors covered by the Foreign Service Retirement and Disability System or the Foreign Service Pension System. Grievances will be appealed to the Foreign Service Grievance Board. The Secretary will fulfill the functions assigned to the Director of OPM in the other titles of this Act.

*Section 301(b) Central Intelligence Agency.* This section requires that elections like those described in this Act be made available to individuals covered by the retirement system of the Central Intelligence Agency.

*Section 302. Provisions to prevent reductions in force and any unfunded liability in the Civil Service Retirement and Disability Fund*

*Section 302(a). Provisions to Prevent Reductions in Force.* Agencies are prohibited from conducting reductions in force because of a shortfall of funds caused by payments required under this Act. Agencies that seek to lower personnel costs as a means of financing payments required under this Act in whole or in part are directed to achieve these savings through attrition and limitations on hiring.

*Section 302(b). Provisions to Prevent Unfunded Liability.* Any additional unfunded liability in the CSRDF created by payments required under this Act will be amortized over a 30-year period paid by transfers of funds from general revenues, as authorized by 5 U.S.C. §8348(f), (except in cases where the increase in unfunded liability is to be paid off by transfers of funds from the U.S. Postal Service or the Panama Canal Commission).

*Section 303. Individual right of action preserved for amounts not otherwise provided for under this act*

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

#### TITLE IV—TAX PROVISIONS

*Section 401. Tax provisions*

*Section 401(a). Plan Qualification.* No retirement plan of the United States or its agencies will fail to be treated as a qualified plan under the Internal Revenue Code of 1986 because of an action required by this Act. For example, the Act permits an employing agency to make up contributions on behalf of an employee who was entitled to such contributions in prior years without violating the applicable overall contribution and benefit limitations (section 415 of the I.R.C.) for the year during which the contribution is made.

*Section 401(b). Transfers.* Neither government contributions to funds or accounts nor transfers between funds made as a result of this Act will be counted as income under the Internal Revenue Code.

#### VI. COMPLIANCE WITH RULE XIII

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

#### VII. BUDGET ANALYSIS AND PROJECTIONS

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

## VIII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, February 19, 1999.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 416, the Federal Retirement Coverage Corrections Act.

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

Sincerely,

DAN L. CRIPPEN.

Enclosure.

*H.R. 416—Federal Retirement Coverage Corrections Act*

Summary: H.R. 416 would alter the procedures for correcting situations where federal employees have been mistakenly placed in the wrong retirement system. Many of these retirement coverage errors occurred between 1984, when the Civil Service Retirement System (CSRS) was closed to new entrants, and 1987, when the Federal Employees' Retirement System (FERS) was created.

CBO estimates that federal agencies would bear discretionary costs totaling \$346 million over the 2000–2004 period, primarily because the bill would increase the size of makeup contributions to the Thrift Savings Plan (TSP). The bill would also decrease direct spending by \$113 million; this drop in direct spending largely reflects makeup contributions to the Social Security trust funds, which are off-budget. The bill would not have a significant impact on federal retirement benefits during the next several years because the affected employees are generally still in the middle of their careers. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

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

Estimated cost to the federal government: The estimated budgetary impact of H.R. 416 is shown in the following table.

TABLE 1. ESTIMATED BUDGETARY EFFECTS OF H.R. 416

	By fiscal year, in millions of dollars—									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION										
Makeup contributions to TSP .....	23	68	66	73	45	31	35	39	–6	–7
Makeup payments to Social Security	(1)	1	1	1	1	1	1	1	–2	–2
Makeup payments to the CSRDF .....	6	20	17	18	13	11	11	12	–8	–9
Agency retirement contributions .....	(1)	(1)	(1)	–1	–1	–2	–2	–2	–2	–3

TABLE 1. ESTIMATED BUDGETARY EFFECTS OF H.R. 416—Continued

	By fiscal year, in millions of dollars—									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Employer TSP contributions .....	(1)	(1)	-1	-1	-2	-2	-2	-2	-2	-3
Employer Social Security contributions .....	(1)	(1)	(1)	1	1	1	1	1	1	1
<b>Total .....</b>	<b>29</b>	<b>88</b>	<b>83</b>	<b>90</b>	<b>56</b>	<b>40</b>	<b>45</b>	<b>50</b>	<b>-19</b>	<b>-23</b>
CHANGES IN DIRECT SPENDING										
On-Budget:										
Makeup payments to the CSRDF .....	-9	-30	-25	-27	-19	-16	-17	-19	12	13
Agency retirement contributions .....	(1)	(1)	1	2	2	2	2	3	3	4
Transfers from CSRDF to Social Security .....	10	31	27	28	21	18	19	21	-12	-13
<b>Subtotal .....</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>5</b>	<b>5</b>	<b>3</b>	<b>4</b>
Off-Budget:										
Makeup payments to Social Security .....	(1)	-2	-1	-1	-1	-1	-1	-1	3	3
Employer Social Security contributions .....	(1)	(1)	-1	-1	-1	-1	-2	-2	-2	-1
Transfers from CSRDF to Social Security .....	-10	-31	-27	-28	-21	-18	-19	-21	12	13
<b>Subtotal— .....</b>	<b>-10</b>	<b>-33</b>	<b>-28</b>	<b>-30</b>	<b>-23</b>	<b>-20</b>	<b>-22</b>	<b>-24</b>	<b>13</b>	<b>15</b>
<b>Total .....</b>	<b>-9</b>	<b>-31</b>	<b>-26</b>	<b>-27</b>	<b>-19</b>	<b>-16</b>	<b>-17</b>	<b>-19</b>	<b>16</b>	<b>19</b>
CHANGES IN REVENUES										
On-Budget:										
Employee retirement contributions .....	(1)	(1)	-1	-1	-1	-1	-2	-2	-2	-1
Off-Budget:										
Employee Social Security taxes .....	(1)	(1)	1	1	1	1	2	2	2	1
<b>Total .....</b>	<b>(1)</b>	<b>(1)</b>	<b>(1)</b>	<b>(1)</b>	<b>(1)</b>	<b>(1)</b>	<b>(1)</b>	<b>(1)</b>	<b>(1)</b>	<b>(1)</b>
TOTAL COST OF H.R. 416										
Direct spending and revenues .....	-9	-31	-26	-27	-19	-16	-18	-19	16	19
All spending and revenues .....	20	57	56	63	37	24	27	30	-4	-4

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

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

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

Basis of estimate: H.R. 416 lays out procedures for correcting a wide variety of retirement coverage errors. CBO estimates that the bill would impose discretionary costs on agencies totaling \$346 million over the 2000–2004 period. In addition, the bill would increase on-budget direct spending by \$12 million over the same period. Off-budget direct spending would decrease by \$124 million, for a net decrease in direct spending of \$112 million. H.R. 416 would have little impact on net revenues; on-budget revenues would decrease by \$3 million, while off-budget revenues would increase by \$3 mil-



lion. The estimate assumes that the Postal Service would increase postal rates to offset its own costs related to the bill. The estimate also assumes that the bill is enacted by October 1, 1999.

#### *Background*

There are two main retirement programs for full-time regular federal employees. Most full-time employees hired before 1984 are in Civil Service Retirement System (CSRS), a defined benefit plan that does not include Social Security. Those hired after 1983 are generally covered by the Federal Employees' Retirement System (FERS), which features Social Security, a more limited defined benefit, and the defined contribution Thrift Savings Plan (TSP) with government matching contributions. Employees who return to government service after 1987 and have five years of prior service under CSRS may be covered by a hybrid plan known as CSRS Offset that features a combination of CSRS and Social Security benefits.

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

#### *Assumptions about retirement coverage errors*

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

H.R. 416 would also affect the speed with which agencies identify and correct retirement coverage errors. CBO assumed that, under current law, agencies would correct coverage errors at a constant annual rate. H.R. 416 would direct agencies to identify any retirement coverage errors and correct them by December 31, 2001, but would not impose any penalty on agencies that miss this deadline. CBO assumed that agencies would correct their errors at a 20 percent faster annual rate than under current law, but that some errors would remain undiscovered until 2009. Agencies would also stop correcting errors for the first six months of 2000 pending the issuance of final regulations to implement H.R. 416.

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

retroactive election of FERS coverage. H.R. 416 would allow most employees affected by coverage errors to choose whether they would like to be placed in the proper retirement system or make their current incorrect coverage permanent. All elections would be irrevocable, and employees who did not make an election would retain their current coverage. Coverage errors lasting less than a year would not be covered by the bill. CBO assumed that 80 percent of the employees whose errors have not yet been corrected would choose to be placed in the proper retirement system.

Most of the employees whose coverage errors have already been corrected would also be given the option of returning to the retirement system in which they were mistakenly placed. However, employees who were mistakenly placed in CSRS and have already been placed in FERS would be able to elect only CSRS Offset coverage. CBO assumed that 80 percent of these employees would elect to remain in their current coverage.

#### *Effects on discretionary spending*

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

H.R. 416 would change the way that makeup TSP contributions are calculated, and would apply to employees mistakenly covered by CSRS or CSRS Offset whose coverage is changed to FERS. Employees whose coverage was corrected to FERS prior to the bill's enactment would also be eligible. Under the bill, agencies would make a lump-sum payment to TSP representing past employee contributions as well as the automatic 1-percent agency contributions and agency matching contributions. The amount representing employee contributions would be calculated using the average contribution rate for FERS employees who participated in TSP, and would be paid whether or not the employee already has a TSP account (subject to the 10-percent annual limit on FERS contributions and the Internal Revenue Service's annual dollar limit on contributions to tax-deferred savings plans). Agencies would also pay past earnings on all three amounts. These earnings would be calculated using the employee's own TSP fund allocation choices. If the employee did not have a TSP account, a composite rate representing the average allocation of all FERS employees contributing to TSP would be used.

Based on historical data provided by the Federal Retirement Thrift Investment Board, CBO estimates that these provisions would increase the average TSP makeup payment by \$85,000 in 2000. Employees whose coverage errors were corrected to FERS in the past would receive smaller payments of about \$35,000. These amounts would be higher in later years due to additional foregone returns and contributions. CBO estimates that the additional cost of TSP makeup contributions would be \$275 million over the 2000–2004 period.

*Makeup Payments to Social Security.*—Agencies are currently responsible for paying makeup Social Security payroll taxes covering the last 3 years, 3 months, and 15 days for employees whose coverage is changed from CSRS to FERS or CSRS Offset. CBO estimates that these makeup payments would increase by \$4 million during the 2000–2004 period. This rise primarily reflects the impact that the bill would have on speeding up the correction of coverage errors.

*Makeup Payments to the Civil Service Retirement and Disability Fund (CSRDF).*—Under H.R. 416, any necessary adjustments to past agency retirement contributions to the CSRDF would be completely retroactive, as under current law. Agencies would also have to reimburse the CSRDF for certain transfers from the CSRDF to the Social Security trust funds. As noted earlier, agencies are responsible for makeup Social Security payroll taxes covering the last 3 years, 3 months, and 15 days. If an employee was erroneously covered for a longer period of time, H.R. 416 would require the CSRDF to transfer to the Social Security trust funds an amount equal to the agency’s payroll taxes for that additional period that should have gone to Social Security but went instead to the CSRDF. The agency would then be required to reimburse the CSRDF for the makeup employer taxes transferred to Social Security. CBO estimates that agency makeup payments to the CSRDF would increase by \$74 million between 2000 and 2004 under the bill.

*Agency Retirement Contributions.*—The amount that agencies contribute towards their employees’ retirement would decrease slightly because, relative to current law, the bill would shift some employees out of FERS into CSRS Offset, which requires lower agency retirement contributions.

*Employer TSP Contributions.*—The additional employees who would shift out of FERS into CSRS Offset under H.R. 416 would no longer be eligible for the automatic and matching TSP contributions available under FERS, lowering agency spending on TSP contributions by \$4 million over the 2000–2004 period.

*Employer Social Security Contributions.*—Employer contributions to Social Security would increase by \$2 million between 2000 and 2004 due to the speeding up of retirement corrections. These contributions would not be affected by the decision of some employees to switch from FERS to CSRS Offset since both types of coverage include Social Security.

*Effects on direct spending (on-budget)*

*Makeup Payment of Retirement Contributions.*—The increase in agency makeup payments to the CSRDF would be reflected in the

budget both as additional agency outlays and as offsetting receipts to the CSRDF. As a result, receipts to the trust fund would increase by \$110 million between 2000 and 2004. The increase in receipts is larger than the increase in agency makeup payments because the receipts figure includes payments by the Postal Service.

*Agency Retirement Contributions.*—The increase in agency retirement contributions under the bill would decrease CSRDF receipts by \$5 million over the 2000–2004 period. The decrease in receipts is larger than the decrease in agency retirement contributions because the receipts figure includes payments by the Postal Service.

*Transfers from the Civil Service Trust Fund to Social Security.*—Under H.R. 416, the CSRDF would make payments to the Social Security trust funds for certain back payroll taxes. CSRDF would be required to transfer amounts equal to any employee payroll taxes and employer payroll taxes beyond the current statute of limitations of 3 years, 3 months, and 15 days that should have gone to Social Security but instead went to the CSRDF. As noted above, agencies would reimburse the CSRDF for transfers of employer payroll taxes. CBO estimates that transfers from the CSRDF to the Social Security trust funds would total \$117 million over the 2000–2004 period. Although these transfers are intragovernmental, the payments would be on-budget, and the receipt of these funds by Social Security would be off-budget.

*Effects on direct spending (off-budget)*

H.R. 416 would affect offsetting receipts to the Social Security trust funds in three ways. First, agency makeup payments would be slightly accelerated, increasing receipts by \$5 million between 2000 and 2004. Second, receipts from employer Social Security contributions would rise by \$3 million during this period. In both of these instances, the increase in receipts is larger than the increase in discretionary spending because the receipts figure includes payments by the Postal Service. Finally, transfers from the Civil Service trust fund for back taxes would increase receipts by \$117 million during the 2000–2004 period.

*Effects on revenues*

*Employee Retirement Contributions.*—Because of the speeding up of retirement corrections, employee retirement contributions would decrease by \$3 million over the 2000–2004 period. Employees would be moved more rapidly out of CSRS, which requires 7 percent employee contributions, and into CSRS Offset or FERS, which both require 0.8 percent employee contributions.

*Employee Social Security Taxes.*—By moving from CSRS to CSRS Offset or FERS, employees would also become covered by Social Security. The speeding up of retirement corrections thus would increase receipts of employee Social Security taxes by \$3 million between 1999 and 2003.

Pay-as-you-go considerations: The provisions of H.R. 416 would affect on-budget direct spending and revenues and therefore be subject to pay-as-you-go procedures. The pay-as-you-go procedures cover only the current year, budget year, and the succeeding four years. The pay-as-you-go effects of the bill are shown in Table 2.

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

	By fiscal year, in millions of dollars—									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Change in outlays .....	1	2	2	3	4	4	5	5	3	4
Change in receipts .....	0	0	-1	-1	-1	-1	-2	-2	-2	-1

Intergovernmental and private-sector impact: H.R. 416 would require the government of the District of Columbia and Gallaudet University to correct errors associated with the incorrect enrollment of employees in certain retirement plans. This requirement is both an intergovernmental and a private-sector mandate as defined by UMRA. However, costs associated with those corrections would be minimal, and only a small number of employees of the District of Columbia and Gallaudet University have been affected by the errors addressed by the bill. Consequently, CBO estimates that the total cost of the mandates would be minimal.

Comparison with other estimates: An identical version of H.R. 416 was reported by the House Committee on Ways and Means on February 11, 1999.

H.R. 416 is similar to H.R. 3249, which was approved by the House of Representatives in the 105th Congress. The only major difference between the two bills is that H.R. 3249 also included a provision authorizing an open season for federal employees covered by the Foreign Service Retirement and Disability System to switch into the newer Foreign Service Pension System.

CBO estimated that H.R. 3249 would impose discretionary costs on agencies totaling \$443 million and reduce direct spending by \$135 million over the 1999–2003 period. The main reason that the discretionary impact of H.R. 416 is lower than that for H.R. 3249 is that CBO lowered its estimate of the additional TSP makeup contributions that would be paid to employees whose coverage had already been corrected to FERS prior to the bill's enactment.

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

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

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

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

#### X. COMMITTEE RECOMMENDATION

On February 3, 1999, a quorum being present, the Committee ordered the bill, as amended, favorably reported.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT—106TH  
CONGRESS RECORD VOTE

Date: February 3, 1999.  
Final Passage of H.R. 416.  
Offered by: Hon. Joe Scarborough (FL).  
Adopted by voice vote.

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

The amendments made by H.R. 416 will apply to employees and former employees of the legislative branch who participate (or should participate) in the Federal retirement systems to the same extent as it applies to other participating employees.

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

H.R. 416, as amended, would require both the government of the District of Columbia and Gallaudet University to correct retirement coverage errors affecting employees who participate in the Federal retirement systems. This is both an intergovernmental and a private-sector mandate as defined by the Unfunded Mandates Reform Act. CBO estimates that the total cost of the mandates would be minimal.

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

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

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

In compliance with clause 3(g) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 210 OF THE SOCIAL SECURITY ACT**

DEFINITION OF EMPLOYMENT

SEC. 210. For the purposes of this title—

Employment

(a) The term “employment” means any service performed after 1936 and prior to 1951 which was employment for the purposes of this title under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(l)(6) of the Internal Reve-

nue Code of 1986 of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(l) of such Code, with respect to such affiliate, or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233; except that, in the case of service performed after 1950, such term shall not include—

(1) \* \* \*

\* \* \* \* \*

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

(A) \* \* \*

\* \* \* \* \*

(H) service performed by an individual—

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

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

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

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

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

\* \* \* \* \*

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**SECTION 3121 OF THE INTERNAL REVENUE CODE OF 1986**

**SEC. 3121. DEFINITIONS.**

(a) \* \* \*

(b) **EMPLOYMENT.**—For purposes of this chapter, the term “employment” means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii)

on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include—

(1) \* \* \*

\* \* \* \* \*

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

(A) \* \* \*

\* \* \* \* \*

(H) service performed by an individual—

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

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

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

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

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

\* \* \* \* \*

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**TITLE 5—UNITED STATES CODE**

\* \* \* \* \*



**PART III—EMPLOYEES**

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**Subpart G—Insurance and Annuities**

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**CHAPTER 83—RETIREMENT**

\* \* \* \* \*

**SUBCHAPTER III—CIVIL SERVICE RETIREMENT**

\* \* \* \* \*

**§ 8348. Civil Service Retirement and Disability Fund**

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

(1) \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

**SUBCHAPTER III—THRIFT SAVINGS PLAN**

\* \* \* \* \*

**§ 8432. Contributions**

(a) \* \* \*

\* \* \* \* \*

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

\* \* \* \* \*

**§ 8437. Thrift Savings Fund**

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

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

\* \* \* \* \*

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

\* \* \* \* \*

