

FEDERAL RETIREMENT COVERAGE CORRECTIONS ACT

---

MARCH 5, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

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

REPORT

[To accompany H.R. 416]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, 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.

CONTENTS

	Page
I. Summary and Background .....	2
A. Purpose and Summary .....	2
B. Background and Need for Legislation .....	2
C. Legislative History .....	3
II. Explanation of Social Security and Tax Provisions .....	3
A. General Provisions (Title II) .....	3
B. Tax Provisions (Title IV) .....	4
III. Vote of the Committee .....	5
IV. Budget Effects of the Bill .....	6
A. Committee Estimates of Budgetary Effects .....	6
B. Budget Authority and Tax Expenditures .....	6
C. Cost Estimates Prepared by the Congressional Budget Office .....	6
V. Other Matters To Be Discussed Under the Rules of the House .....	13
A. Committee Oversight Findings and Recommendations .....	13
B. Summary of Findings and Recommendations of the Committee on Government Reform .....	14
C. Constitutional Authority Statement .....	14
D. Information Relating to Unfunded Mandates .....	15
E. Applicability of House Rule XXI5(b) .....	15
F. Complexity Analysis .....	15
VI. Changes in Existing Law Made by the Bill, as Reported .....	16

## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

H.R. 416, as amended, provides a method to correct errors in misclassification of Federal employees which resulted in thousands of Federal employees being erroneously placed in the wrong Federal retirement system. These retirement systems include: (1) the Civil Service Retirement System (“CSRS”); (2) the Federal Employees Retirement System (“FERS”); (3) the Civil Service Retirement System Social Security Offset Plan (“CSRS Offset”); or (4) Social Security only. The bill applies to all Federal employees, including former employees, annuitants and survivors. The bill extends the same correction options to employees of the foreign service and intelligence agencies.

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

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

### B. BACKGROUND AND NEED FOR LEGISLATION

The Committee believes that legislation should be enacted in a timely fashion in order to correct errors in misclassification of Federal employees into the wrong Federal retirement system. The bill provides that individuals entitled to Social Security coverage who were erroneously placed in the wrong Federal retirement system receive credit for the period of retirement coverage error. The bill also provides that no Federal retirement plan involved in the cor-

rection under the bill shall fail the retirement plan tax qualification rules by reason of such correction. Further, the bill provides that no Federal employee involved in the correction shall be subject to additional Federal tax consequences as a result of such correction.

### C. LEGISLATIVE HISTORY

The Committee on Ways and Means marked up the revenue and social security provisions of H.R. 416 (“The Federal Retirement Coverage Corrections Act”) on February 11, 1999. The bill was ordered favorably reported by a voice vote, with a quorum present.

H.R. 416 was ordered favorably reported by the House Committee on Government Reform on February 3, 1999.<sup>1</sup>

## II. EXPLANATION OF SOCIAL SECURITY AND TAX PROVISIONS

### A. GENERAL PROVISIONS (TITLE II)

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

#### *Present law*

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

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

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

#### *Reasons for change*

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

<sup>1</sup>H.R. 416, as introduced on January 19, 1999, was referred to the Committee on Government Reform and, in addition, to the Committee on Ways and Means for consideration of provisions in their respective jurisdictions. (See also letter from the Committee on Government Reform to the Committee on Ways and Means relating to the bill, dated February 4, 1999, which is included in Part V.B of this report.)

*Explanation of provisions*

The bill provides that when an individual who was incorrectly enrolled in CSRS changes to one of the retirement systems that provides for Social Security coverage, the individual will receive credit on his or her Social Security earnings record for earnings retroactive to the date of the retirement coverage error. Under the bill, the Social Security Trust Funds are made whole for any contributions that should have been made on behalf of the individual.

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

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

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

*Effective date*

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

## B. TAX PROVISIONS (TITLE IV)

(Sec. 401 of the bill)

*Present law*

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

rules governing participation in the TSP vary depending on the Federal retirement plan (i.e., CSRS, CSRS-Offset, or FERS) under which the individual is covered. The Federal retirement plans are generally subject to the same rules applicable to tax-qualified retirement plans maintained by private sector-employers. These rules include limits on the amount of elective deferrals that may be made on behalf of an employee in a tax year under a section 401(k) plan, such as the TSP, and an overall limitation on contributions and benefits that may be provided to an employee under the plan.

The limit on the amount of elective deferrals that an employee may make to a section 401(k) plan for 1999 is \$10,000. The overall limit on contributions and benefits for an employee for a year is different for defined benefit plans and defined contribution plans. The limitation for an annual benefit under a defined benefit plan is the lesser of (1) \$130,000 (for 1999), or (2) 100 percent of the participant's average compensation for his high three years. The limitation for annual contributions and other additions under a defined contribution plan is the lesser of (1) \$30,000, or (2) 25 percent of the participant's compensation.

*Reasons for change*

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

*Explanation of provisions*

The bill provides that the Federal retirement plans will not fail to be treated as qualified retirement plans under the Internal Revenue Code by reason of any action taken pursuant to the bill. Thus, for example, the bill permits an employing agency to make up contributions on behalf of an employee, or former employee, who was entitled to such contributions in prior years without violating the applicable overall contribution and benefit limitations (sec. 415) for the year in which the makeup contribution is made. However, the amount contributed may not violate section 415 for the year for which the contribution is made.

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

*Effective date*

The tax provisions are effective on the date of enactment.

**III. VOTE OF THE COMMITTEE**

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concern-

ing the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 416.

MOTION TO REPORT THE BILL

The bill, H.R. 416, was ordered favorably reported by a voice vote (with a quorum present).

**IV. BUDGET EFFECTS OF THE BILL**

**A. COMMITTEE ESTIMATES OF BUDGETARY EFFECTS**

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the estimated budget effects of H.R. 416, as reported by the Committee on Ways and Means.

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

ESTIMATED REVENUE EFFECTS OF H.R. 416, THE "FEDERAL RETIREMENT COVERAGE CORRECTIONS ACT," AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS  
[Fiscal Years 1999–2003, in millions of dollars]

Provision	Effective	1999	2000	2001	2002	2003	1999–2003
Correction of Certain Retirement Coverage Errors Affecting Federal Employees.	DOE	Negligible Revenue Effect					

Note.—Details may not add to totals due to rounding.  
Legend for "Effective" column: DOE=date of enactment.  
Source: Joint Committee on Taxation.

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

**B. BUDGET AUTHORITY AND TAX EXPENDITURES**

**BUDGET AUTHORITY**

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

**TAX EXPENDITURES**

In compliance with clause 3(c)(2) of rule XIII of the rules of the House of Representatives, the Committee states that the revenue provisions of the bill as reported may have a negligible effect on tax expenditures.

**C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE**

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the Committee advises that the Congressional Budget Office has submitted the following statement on this bill.

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

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 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, *Director.*

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 years, 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	( <sup>1</sup> )	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 .....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	–1	–1	–2	–2	–2	–2	–3
Employer TSP Contributions .....	( <sup>1</sup> )	( <sup>1</sup> )	–1	–1	–2	–2	–2	–2	–2	–3

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

	By fiscal years, in millions of dollars—									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Employer Social Security Contributions .....	(1)	(1)	(1)	1	1	1	1	1	1	1
Total .....	29	88	83	90	56	40	45	50	-19	-23
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
Subtotal .....	1	2	2	3	4	4	5	5	3	4
Off-Budget:										
Makeup Payments to Social Security .....	(1)	-2	-1	-1	-1	-1	-1	-1	3	3
Employer Social Security Contributions .....	(1)	(1)	-1	-1	-1	-1	-2	-2	-2	-1
Transfers from CSRDF to Social Security .....	-10	-31	-27	-28	-21	-18	-19	-21	12	13
Subtotal .....	-10	-33	-28	-30	-23	-20	-22	-24	13	15
Total .....	-9	-31	-26	-27	-19	-16	-17	-19	16	19
CHANGES IN REVENUES										
On-Budget:										
Employee Retirement Contributions .....	(1)	(1)	-1	-1	-1	-1	-2	-2	-2	-1
Off-Budget:										
Employee Social Security Taxes .....	(1)	(1)	1	1	1	1	2	2	2	1
Total .....	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
TOTAL COST OF 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.

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

The mandatory costs of this legislation would fall within budget functions 600 (Income Security), 650 (Social Security), and 950 (Undistributed Offsetting Receipts). 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 million. 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 the Civil Service Retirement System (CSRS), a defined benefit plan that does not include Social Security. Those hired after 1983 are generally covered by the Federal Employees' Retirement System (FERS), which features Social Security, a more limited defined benefit, and the defined contribution Thrift Savings Plan (TSP) with government matching contributions. Employees who return to government service after 1987 and have five years of prior service under CSRS may be covered by a hybrid plan known as CSRS Offset that features a combination of CSRS and Social Security benefits.

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

#### *Assumptions about retirement coverage errors*

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

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 the error. However, some employees who were accidentally placed in FERS are able to remain in FERS by making a retroactive election of FERS coverage. H.R. 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 incorrectly placed. However, employees who were mistakenly placed in CSRS and have already been placed in FERS would be able to elect only CSRS Offset coverage. CBO assumed that 80 percent of these employees would elect to remain in their current coverage.

*Effects on discretionary spending*

**Makeup Contributions to TSP.** Employees who are incorrectly covered by CSRS rather than FERS are unable to participate fully in the TSP. Under current law, when an individual's coverage is corrected to FERS, the employing agency makes a lump-sum 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 long 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 Government Reform on February 3, 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; and impact on the private sector: John Harris.

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

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

### A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was the result of the Committee’s oversight activities with respect to the misclassification of Federal employees into the wrong Federal retirement system that the Committee concluded that it is appropriate and timely to enact the provisions contained in the bill as reported.

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

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee on Ways and Means advises that the Committee on Government Reform ordered H.R. 416 favorably reported on February 3, 1999. The Committee on Government Reform submitted the following letter regarding H.R. 416.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON GOVERNMENT REFORM,  
*Washington, DC, February 4, 1999.*

Hon. BILL ARCHER,  
*Chairman, Committee on Ways and Means, Longworth House Office  
Building, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing with regard to the Federal Retirement Coverage Corrections Act, H.R. 416, which has been referred to the Committee on Ways and Means in addition to the Committee on Government Reform. The Committee on Government Reform ordered this bill reported by a unanimous voice vote on February 3, 1999, and it has strong bipartisan support on this Committee. The bill has been tentatively scheduled for House consideration during the week of February 22, 1999.

Title IV of H.R. 416 includes tax provisions that were drafted in close consultation with the Ways and Means tax staff and experts from the Joint Committee on Taxation. This bill is essentially the same as H.R. 3249, the bill the House passed last year after it was marked up by both this Committee and Ways and Means.

This measure is extremely important to the estimated 18,000 thousand active and retired federal employees who have been placed in the wrong retirement system. Under current law, these errors are "corrected" by transferring the affected employees from the wrong retirement system to the correct one. Because current law does not include make whole relief, such corrections inflict great financial and emotional damage on the innocent victims of these agency errors. Please advise me whether the Committee on Ways and Means would be willing to refrain from asserting its jurisdiction over this measure so it may be taken to the floor expeditiously.

Thank you for your prompt consideration of this important matter. I appreciate your support and very valuable assistance in crafting a satisfactory remedy, and I look forward to working with you on this and many other important matters during this Congress.

Sincerely,

DAN BURTON, *Chairman.*

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives (relating to Constitutional authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 7 ("All bills for raising revenue shall originate in the House of Representatives") and Section 8 ("The Congress shall have the power to lay and col-

lect taxes, duties, imposts and excises, to pay the debts . . . of the United States”), and from the 16th Amendment to the Constitution.

#### D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4). The Committee has determined that the revenue provisions of H.R. 416, contain no private sector mandates or intergovernmental mandates within the meaning of the Unfunded Mandates Act of 1995.

#### E. APPLICABILITY OF HOUSE RULE XXI5(b)

Rules XXI5(b) of the Rules of the House of Representatives provides that a “bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present. In this paragraph the term “Federal income tax rate increase” means any amendment to subsection (a), (b), (c) (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and thereby increases the amount of tax imposed by any such section.” The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill as reported do not involve any Federal income tax rate increase within the meaning of the rule.

#### F. COMPLEXITY ANALYSIS

Clause (h)(1) XIII of the Rules of the House of Representatives provides that, “it shall not be in order to consider a bill or joint resolution reported by the Committee on Ways and Means that proposes to amend the Internal Revenue Code of 1986 unless—(A) the report includes a tax complexity analysis prepared by the Joint Committee on Internal Revenue Taxation in accordance with section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998; or (B) the chairman of the Committee on Ways and Means causes such a tax complexity analysis to be printed in the Congressional Record before consideration of the bill or joint resolution.”

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”), requires the Joint Committee on Taxation (“Joint Committee”) (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the “Code”) and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal

Revenue Code and that have widespread applicability to individuals or small businesses.

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

(1) \* \* \*

\* \* \* \* \*

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

(A) \* \* \*

\* \* \* \* \*

(H) service performed by an individual—

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees’ Retirement System Act of 1986, section 307 of the Central Intelligence Agency Retirement Act (50



U.S.C. 2157), or the Federal Employees' Retirement System Open Enrollment Act of 1997 to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, [or]

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980, to become subject to the Foreign Service Pension System 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;

\* \* \* \* \*

**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;*

\* \* \* \* \*

**TITLE 5—UNITED STATES CODE**

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**Subpart G—Insurance and Annuities**

\* \* \* \* \*

**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.

\* \* \* \* \*

○