

This approach that we have adopted is seminal. It is a part of the picture of dealing with AIDS, not the whole picture but a very significant part and with the combination of reduction in debt burdens of the developing world stands as the most significant effort the United States Congress has ever taken for the developing world and one of the most significant efforts the United States Congress has ever taken towards disease control and prevention.

This is an extraordinary, symbolic measure, one that we are going to have to build upon but a firm and thoughtful step in the right direction. Let me thank the gentlewoman again for her help and leadership in this cause.

Mr. LAFALCE. Mr. Speaker, I want to express my thanks to Chairman LEACH and to Chairman GILMAN for the cooperation they have shown in bringing this Senate amended language to the floor on an expedited basis. I also offer my congratulations to Congresswoman BARBARA LEE for her initiative on, and consistent commitment to, this legislation. Without her, this much-needed bill would not be becoming law. Moreover, she has led the fight for appropriations for this trust fund that will help the World Bank tackle the scourges of AIDS and tuberculosis that so tragically threatens the lives of too many people in Africa. No outcome was more gratifying than the amendment to the Foreign Operations Appropriations bill that obtained funding for this legislation.

This country has a proud and longstanding tradition of providing humanitarian assistance—especially in a crisis. HIV/AIDS is an international epidemic of crisis proportions. The HIV/AIDS pandemic could come to rival, in other parts of the world, the destructive bubonic plague of the 1300s that devastated the continent of Europe.

Worldwide, HIV/AIDS has infected millions. Yet worldwide, we spend so very little to fight the disease and contain the pandemic. As we all know, although Sub-Saharan Africa has only 10 percent of the world's population, it suffers roughly 70 percent of the HIV/AIDS cases. We also know that if HIV/AIDS reaches a certain prevalence, it can explosively infect a population, and some areas in addition to Africa are threatened. No country in the world seriously threatened by this disease and unable to fight it alone should be ignored by our efforts.

Taking targeted and expeditious action to begin to fight the AIDS pandemic is both the moral and the sensible thing to do. Although there is as yet no known cure for the disease, we can make meaningful progress in containing it.

This trust fund has many unique features. None is more prominent than that the fund can receive contributions from anyone, not merely governments that are members of the World Bank. Moreover, these contributions will be deductible or expensible for the contributor. Consequently, although our government's share will be significant, the promise is great for leveraging this fund into a very large resource base to combat the worst plague to hit mankind since the Black Death in the Middle Ages.

Both the House and the Senate have appropriately provided for oversight of the monies in

the fund. Many of the nations where AIDS/HIV is prevalent are also nations where corruption is highest. Consequently, the trust fund is endowed with effective monitoring devices to detect the illicit.

However, these safeguards are not so burdensome that the trust fund will be unduly hamstrung. Indeed, another unique feature of this fund is that its uses are so flexible. AIDS is a cunning enemy. The course and form differs from area to area. In some, education is the most effective weapon. In others, drugs, such as forms of AZT, can do the most good. The trust fund is not locked into one approach but is free to use all of them as circumstances warrant.

This will not be the last bill to come to this floor on AIDS. We now know the raw statistics on how the plague is totally out of control throughout a significant portion of the world. We now also know that even here, where there has been some progress against this disease, that this progress can be reversed. Consequently, for an undetermined number of Congresses to come, this chamber will be grappling with this opponent. However, the legislation we pass today and send to the President is a substantial step in the right direction.

Ms. LEE. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

A motion to reconsider was laid on the table.

LONG-TERM CARE SECURITY ACT

Mr. SCARBOROUGH. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4040) to amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees, members of the uniformed services, and civilian and military retirees, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments, with amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments and the House amendments to the Senate amendments as follows:

Senate amendments:

Strike out all after the enacting clause and insert:

TITLE I—FEDERAL LONG-TERM CARE INSURANCE

SEC. 1001. SHORT TITLE.

This title may be cited as the "Long-Term Care Security Act".

SEC. 1002. LONG-TERM CARE INSURANCE.

(a) IN GENERAL.—Subpart G of part III of title 5, United States Code, is amended by adding at the end the following:

"CHAPTER 90—LONG-TERM CARE INSURANCE

"Sec.

"9001. Definitions.

"9002. Availability of insurance.

"9003. Contracting authority.

"9004. Financing.

"9005. Preemption.

"9006. Studies, reports, and audits.

"9007. Jurisdiction of courts.

"9008. Administrative functions.

"9009. Cost accounting standards.

"§9001. Definitions

For purposes of this chapter:

"(1) EMPLOYEE.—The term 'employee'

means—

"(A) an employee as defined by section 8901(1); and

"(B) an individual described in section 2105(e),

but does not include an individual employed by the government of the District of Columbia.

"(2) ANNUITANT.—The term 'annuitant' has the meaning such term would have under paragraph (3) of section 8901 if, for purposes of such paragraph, the term 'employee' were considered to have the meaning given to it under paragraph (1) of this subsection.

"(3) MEMBER OF THE UNIFORMED SERVICES.—The term 'member of the uniformed services' means a member of the uniformed services, other than a retired member of the uniformed services, who is—

"(A) on active duty or full-time National Guard duty for a period of more than 30 days; and

"(B) a member of the Selected Reserve.

"(4) RETIRED MEMBER OF THE UNIFORMED SERVICES.—The term 'retired member of the uniformed services' means a member or former member of the uniformed services entitled to retired or retainer pay, including a member or former member retired under chapter 1223 of title 10 who has attained the age of 60 and who satisfies such eligibility requirements as the Office of Personnel Management prescribes under section 9008.

"(5) QUALIFIED RELATIVE.—The term 'qualified relative' means each of the following:

"(A) The spouse of an individual described in paragraph (1), (2), (3), or (4).

"(B) A parent, stepparent, or parent-in-law of an individual described in paragraph (1) or (3).

"(C) A child (including an adopted child, a stepchild, or, to the extent the Office of Personnel Management by regulation provides, a foster child) of an individual described in paragraph (1), (2), (3), or (4), if such child is at least 18 years of age.

"(D) An individual having such other relationship to an individual described in paragraph (1), (2), (3), or (4) as the Office may by regulation prescribe.

"(6) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' refers to an individual described in paragraph (1), (2), (3), (4), or (5).

"(7) QUALIFIED CARRIER.—The term 'qualified carrier' means an insurance company (or consortium of insurance companies) that is licensed to issue long-term care insurance in all States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

"(8) STATE.—The term 'State' includes the District of Columbia.

"(9) QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—The term 'qualified long-term care insurance contract' has the meaning given such term by section 7702B of the Internal Revenue Code of 1986.

"(10) APPROPRIATE SECRETARY.—The term 'appropriate Secretary' means—

"(A) except as otherwise provided in this paragraph, the Secretary of Defense;

"(B) with respect to the Coast Guard when it is not operating as a service of the Navy, the Secretary of Transportation;

"(C) with respect to the commissioned corps of the National Oceanic and Atmospheric Administration, the Secretary of Commerce; and

"(D) with respect to the commissioned corps of the Public Health Service, the Secretary of Health and Human Services.

"§9002. Availability of insurance

"(a) IN GENERAL.—The Office of Personnel Management shall establish and, in consultation with the appropriate Secretaries, administer

a program through which an individual described in paragraph (1), (2), (3), (4), or (5) of section 9001 may obtain long-term care insurance coverage under this chapter for such individual.

“(b) GENERAL REQUIREMENTS.—Long-term care insurance may not be offered under this chapter unless—

“(1) the only coverage provided is under qualified long-term care insurance contracts; and

“(2) each insurance contract under which any such coverage is provided is issued by a qualified carrier.

“(c) DOCUMENTATION REQUIREMENT.—As a condition for obtaining long-term care insurance coverage under this chapter based on one’s status as a qualified relative, an applicant shall provide documentation to demonstrate the relationship, as prescribed by the Office.

“(d) UNDERWRITING STANDARDS.—

“(1) DISQUALIFYING CONDITION.—Nothing in this chapter shall be considered to require that long-term care insurance coverage be made available in the case of any individual who would be eligible for benefits immediately.

“(2) SPOUSAL PARITY.—For the purpose of underwriting standards, a spouse of an individual described in paragraph (1), (2), (3), or (4) of section 9001 shall, as nearly as practicable, be treated like that individual.

“(3) GUARANTEED ISSUE.—Nothing in this chapter shall be considered to require that long-term care insurance coverage be guaranteed to an eligible individual.

“(4) REQUIREMENT THAT CONTRACT BE FULLY INSURED.—In addition to the requirements otherwise applicable under section 9001(9), in order to be considered a qualified long-term care insurance contract for purposes of this chapter, a contract must be fully insured, whether through reinsurance with other companies or otherwise.

“(5) HIGHER STANDARDS ALLOWABLE.—Nothing in this chapter shall, in the case of an individual applying for long-term care insurance coverage under this chapter after the expiration of such individual’s first opportunity to enroll, preclude the application of underwriting standards more stringent than those that would have applied if that opportunity had not yet expired.

“(e) GUARANTEED RENEWABILITY.—The benefits and coverage made available to eligible individuals under any insurance contract under this chapter shall be guaranteed renewable (as defined by section 7A(2) of the model regulations described in section 7702B(g)(2) of the Internal Revenue Code of 1986), including the right to have insurance remain in effect so long as premiums continue to be timely made. However, the authority to revise premiums under this chapter shall be available only on a class basis and only to the extent otherwise allowable under section 9003(b).

“§9003. Contracting authority

“(a) IN GENERAL.—The Office of Personnel Management shall, without regard to section 5 of title 41 or any other statute requiring competitive bidding, contract with one or more qualified carriers for a policy or policies of long-term care insurance. The Office shall ensure that each resulting contract (hereafter in this chapter referred to as a ‘master contract’) is awarded on the basis of contractor qualifications, price, and reasonable competition.

“(b) TERMS AND CONDITIONS.—

“(1) IN GENERAL.—Each master contract under this chapter shall contain—

“(A) a detailed statement of the benefits offered (including any maximums, limitations, exclusions, and other definitions of benefits);

“(B) the premiums charged (including any limitations or other conditions on their subsequent adjustment);

“(C) the terms of the enrollment period; and

“(D) such other terms and conditions as may be mutually agreed to by the Office and the carrier involved, consistent with the requirements of this chapter.

“(2) PREMIUMS.—Premiums charged under each master contract entered into under this section shall reasonably and equitably reflect the cost of the benefits provided, as determined by the Office. The premiums shall not be adjusted during the term of the contract unless mutually agreed to by the Office and the carrier.

“(3) NONRENEWABILITY.—Master contracts under this chapter may not be made automatically renewable.

“(c) PAYMENT OF REQUIRED BENEFITS; DISPUTE RESOLUTION.—

“(1) IN GENERAL.—Each master contract under this chapter shall require the carrier to agree—

“(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

“(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

“(i) to establish internal procedures designed to expeditiously resolve such disputes; and

“(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for one or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the carrier.

“(2) ELIGIBILITY.—A carrier’s determination as to whether or not a particular individual is eligible to obtain long-term care insurance coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable master contract.

“(3) OTHER CLAIMS.—For purposes of applying the Contract Disputes Act of 1978 to disputes arising under this chapter between a carrier and the Office—

“(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing (after appropriate arrangements, as described in section 8(c) of such Act); and

“(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 10(a)(1) of such Act relative to such a dispute.

“(4) RULE OF CONSTRUCTION.—Nothing in this chapter shall be considered to grant authority for the Office or a third-party reviewer to change the terms of any contract under this chapter.

“(d) DURATION.—

“(1) IN GENERAL.—Each master contract under this chapter shall be for a term of 7 years, unless terminated earlier by the Office in accordance with the terms of such contract. However, the rights and responsibilities of the enrolled individual, the insurer, and the Office (or duly designated third-party administrator) under such contract shall continue with respect to such individual until the termination of coverage of the enrolled individual or the effective date of a successor contract thereto.

“(2) EXCEPTION.—

“(A) SHORTER DURATION.—In the case of a master contract entered into before the end of the period described in subparagraph (B), paragraph (1) shall be applied by substituting ‘ending on the last day of the 7-year period described in paragraph (2)(B)’ for ‘of 7 years’.

“(B) DEFINITION.—The period described in this subparagraph is the 7-year period beginning on the earliest date as of which any long-term care insurance coverage under this chapter becomes effective.

“(3) CONGRESSIONAL NOTIFICATION.—No later than 180 days after receiving the second report required under section 9006(c), the President (or his designee) shall submit to the Committees on Government Reform and on Armed Services of the House of Representatives and the Committees on Governmental Affairs and on Armed

Services of the Senate, a written recommendation as to whether the program under this chapter should be continued without modification, terminated, or restructured. During the 180-day period following the date on which the President (or his designee) submits the recommendation required under the preceding sentence, the Office of Personnel Management may not take any steps to rebid or otherwise contract for any coverage to be available at any time following the expiration of the 7-year period described in paragraph (2)(B).

“(4) FULL PORTABILITY.—Each master contract under this chapter shall include such provisions as may be necessary to ensure that, once an individual becomes duly enrolled, long-term care insurance coverage obtained by such individual pursuant to that enrollment shall not be terminated due to any change in status (such as separation from Government service or the uniformed services) or ceasing to meet the requirements for being considered a qualified relative (whether as a result of dissolution of marriage or otherwise).

“§9004. Financing

“(a) IN GENERAL.—Each eligible individual obtaining long-term care insurance coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

“(b) WITHHOLDINGS.—

“(1) IN GENERAL.—The amount necessary to pay the premiums for enrollment may—

“(A) in the case of an employee, be withheld from the pay of such employee;

“(B) in the case of an annuitant, be withheld from the annuity of such annuitant;

“(C) in the case of a member of the uniformed services described in section 9001(3), be withheld from the pay of such member; and

“(D) in the case of a retired member of the uniformed services described in section 9001(4), be withheld from the retired pay or retainer pay payable to such member.

“(2) VOLUNTARY WITHHOLDINGS FOR QUALIFIED RELATIVES.—Withholdings to pay the premiums for enrollment of a qualified relative may, upon election of the appropriate eligible individual (described in section 9001(1)–(4)), be withheld under paragraph (1) to the same extent and in the same manner as if enrollment were for such individual.

“(c) DIRECT PAYMENTS.—All amounts withheld under this section shall be paid directly to the carrier.

“(d) OTHER FORMS OF PAYMENT.—Any enrollee who does not elect to have premiums withheld under subsection (b) or whose pay, annuity, or retired or retainer pay (as referred to in subsection (b)(1)) is insufficient to cover the withholding required for enrollment (or who is not receiving any regular amounts from the Government, as referred to in subsection (b)(1), from which any such withholdings may be made, and whose premiums are not otherwise being provided for under subsection (b)(2)) shall pay an amount equal to the full amount of those charges directly to the carrier.

“(e) SEPARATE ACCOUNTING REQUIREMENT.—Each carrier participating under this chapter shall maintain records that permit it to account for all amounts received under this chapter (including investment earnings on those amounts) separate and apart from all other funds.

“(f) REIMBURSEMENTS.—

“(1) REASONABLE INITIAL COSTS.—

“(A) IN GENERAL.—The Employees’ Life Insurance Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office of Personnel Management in administering this chapter before the start of the 7-year period described in section 9003(d)(2)(B), including reasonable implementation costs.

“(B) REIMBURSEMENT REQUIREMENT.—Such Fund shall be reimbursed, before the end of the first year of that 7-year period, for all amounts obligated or expended under subparagraph (A) (including lost investment income). Such reimbursement shall be made by carriers, on a pro

rata basis, in accordance with appropriate provisions which shall be included in master contracts under this chapter.

“(2) SUBSEQUENT COSTS.—

“(A) IN GENERAL.—There is hereby established in the Employees’ Life Insurance Fund a Long-Term Care Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the 7-year period described in section 9003(d)(2)(B).

“(B) REIMBURSEMENT REQUIREMENT.—Each master contract under this chapter shall include appropriate provisions under which the carrier involved shall, during each year, make such periodic contributions to the Long-Term Care Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year (adjusted to reconcile for any earlier overestimates or underestimates under this subparagraph) are defrayed.

“§9005. Preemption

“The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to long-term care insurance or contracts.

“§9006. Studies, reports, and audits

“(a) PROVISIONS RELATING TO CARRIERS.—Each master contract under this chapter shall contain provisions requiring the carrier—

“(1) to furnish such reasonable reports as the Office of Personnel Management determines to be necessary to enable it to carry out its functions under this chapter; and

“(2) to permit the Office and representatives of the General Accounting Office to examine such records of the carrier as may be necessary to carry out the purposes of this chapter.

“(b) PROVISIONS RELATING TO FEDERAL AGENCIES.—Each Federal agency shall keep such records, make such certifications, and furnish the Office, the carrier, or both, with such information and reports as the Office may require.

“(c) REPORTS BY THE GENERAL ACCOUNTING OFFICE.—The General Accounting Office shall prepare and submit to the President, the Office of Personnel Management, and each House of Congress, before the end of the third and fifth years during which the program under this chapter is in effect, a written report evaluating such program. Each such report shall include an analysis of the competitiveness of the program, as compared to both group and individual coverage generally available to individuals in the private insurance market. The Office shall cooperate with the General Accounting Office to provide periodic evaluations of the program.

“§9007. Jurisdiction of courts

“The district courts of the United States have original jurisdiction of a civil action or claim described in paragraph (1) or (2) of section 9003(c), after such administrative remedies as required under such paragraph (1) or (2) (as applicable) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

“§9008. Administrative functions

“(a) IN GENERAL.—The Office of Personnel Management shall prescribe regulations necessary to carry out this chapter.

“(b) ENROLLMENT PERIODS.—The Office shall provide for periodic coordinated enrollment, promotion, and education efforts in consultation with the carriers.

“(c) CONSULTATION.—Any regulations necessary to effect the application and operation of this chapter with respect to an eligible individual described in paragraph (3) or (4) of section 9001, or a qualified relative thereof, shall be prescribed by the Office in consultation with the appropriate Secretary.

“(d) INFORMED DECISIONMAKING.—The Office shall ensure that each eligible individual applying for long-term care insurance under this chapter is furnished the information necessary to enable that individual to evaluate the advantages and disadvantages of obtaining long-term care insurance under this chapter, including the following:

“(1) The principal long-term care benefits and coverage available under this chapter, and how those benefits and coverage compare to the range of long-term care benefits and coverage otherwise generally available.

“(2) Representative examples of the cost of long-term care, and the sufficiency of the benefits available under this chapter relative to those costs. The information under this paragraph shall also include—

“(A) the projected effect of inflation on the value of those benefits; and

“(B) a comparison of the inflation-adjusted value of those benefits to the projected future costs of long-term care.

“(3) Any rights individuals under this chapter may have to cancel coverage, and to receive a total or partial refund of premiums. The information under this paragraph shall also include—

“(A) the projected number or percentage of individuals likely to fail to maintain their coverage (determined based on lapse rates experienced under similar group long-term care insurance programs and, when available, this chapter); and

“(B)(i) a summary description of how and when premiums for long-term care insurance under this chapter may be raised;

“(ii) the premium history during the last 10 years for each qualified carrier offering long-term care insurance under this chapter; and

“(iii) if cost increases are anticipated, the projected premiums for a typical insured individual at various ages.

“(4) The advantages and disadvantages of long-term care insurance generally, relative to other means of accumulating or otherwise acquiring the assets that may be needed to meet the costs of long-term care, such as through tax-qualified retirement programs or other investment vehicles.

“§9009. Cost accounting standards

“The cost accounting standards issued pursuant to section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)) shall not apply with respect to a long-term care insurance contract under this chapter.”

(b) CONFORMING AMENDMENT.—The analysis for part III of title 5, United States Code, is amended by adding at the end of subpart G the following:

“90. Long-Term Care Insurance 9001.”
SEC. 1003. EFFECTIVE DATE.

The Office of Personnel Management shall take such measures as may be necessary to ensure that long-term care insurance coverage under title 5, United States Code, as amended by this title, may be obtained in time to take effect not later than the first day of the first applicable pay period of the first fiscal year which begins after the end of the 18-month period beginning on the date of the enactment of this Act.

TITLE II—FEDERAL RETIREMENT COVERAGE ERRORS CORRECTION

SEC. 2001. SHORT TITLE; TABLE OF CONTENTS.

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

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

TITLE II—FEDERAL RETIREMENT COVERAGE ERRORS CORRECTION

Sec. 2001. Short title; table of contents.

Sec. 2002. Definitions.

Sec. 2003. Applicability.

Sec. 2004. Irrevocability of elections.

Subtitle A—Description of Retirement Coverage Errors to Which This Title Applies and Measures for Their Rectification

CHAPTER 1—EMPLOYEES AND ANNUITANTS WHO SHOULD HAVE BEEN FERS COVERED, BUT WHO WERE ERRONEOUSLY CSRS COVERED OR CSRS-OFFSET COVERED INSTEAD, AND SURVIVORS OF SUCH EMPLOYEES AND ANNUITANTS

Sec. 2101. Employees.

Sec. 2102. Annuitants and survivors.

CHAPTER 2—EMPLOYEE WHO SHOULD HAVE BEEN FERS COVERED, CSRS-OFFSET COVERED, OR CSRS COVERED, BUT WHO WAS ERRONEOUSLY SOCIAL SECURITY-ONLY COVERED INSTEAD

Sec. 2111. Applicability.

Sec. 2112. Correction mandatory.

CHAPTER 3—EMPLOYEE WHO SHOULD OR COULD HAVE BEEN SOCIAL SECURITY-ONLY COVERED BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED OR CSRS COVERED INSTEAD

Sec. 2121. Employee who should be Social Security-Only covered, but who is erroneously CSRS or CSRS-Offset covered instead.

CHAPTER 4—EMPLOYEE WHO WAS ERRONEOUSLY FERS COVERED

Sec. 2131. Employee who should be Social Security-Only covered, CSRS covered, or CSRS-Offset covered and is not FERS-Eligible, but who is erroneously FERS covered instead.

Sec. 2132. FERS-Eligible employee who should have been CSRS covered, CSRS-Offset covered, or Social Security-Only covered, but who was erroneously FERS covered instead without an election.

Sec. 2133. Retroactive effect.

CHAPTER 5—EMPLOYEE WHO SHOULD HAVE BEEN CSRS-OFFSET COVERED, BUT WHO WAS ERRONEOUSLY CSRS COVERED INSTEAD

Sec. 2141. Applicability.

Sec. 2142. Correction mandatory.

CHAPTER 6—EMPLOYEE WHO SHOULD HAVE BEEN CSRS COVERED, BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED INSTEAD

Sec. 2151. Applicability.

Sec. 2152. Correction mandatory.

Subtitle B—General Provisions

Sec. 2201. Identification and notification requirements.

Sec. 2202. Information to be furnished to and by authorities administering this title.

Sec. 2203. Service credit deposits.

Sec. 2204. Provisions related to Social Security coverage of misclassified employees.

Sec. 2205. Thrift Savings Plan treatment for certain individuals.

Sec. 2206. Certain agency amounts to be paid into or remain in the CSRDF.

Sec. 2207. CSRS coverage determinations to be approved by OPM.

Sec. 2208. Discretionary actions by Director.

Sec. 2209. Regulations.

Subtitle C—Other Provisions

Sec. 2301. Provisions to authorize continued conformity of other Federal retirement systems.

Sec. 2302. Authorization of payments.

Sec. 2303. Individual right of action preserved for amounts not otherwise provided for under this title.

Subtitle D—Effective Date

Sec. 2401. Effective date.

SEC. 2002. DEFINITIONS.

For purposes of this title:

(1) ANNUITANT.—The term “annuitant” has the meaning given such term under section 8331(9) or 8401(2) of title 5, United States Code.

(2) CSRS.—The term “CSRS” means the Civil Service Retirement System.

(3) **CSRDF.**—The term “CSRDF” means the Civil Service Retirement and Disability Fund.

(4) **CSRS COVERED.**—The term “CSRS covered”, with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, other than service subject to section 8334(k) of such title.

(5) **CSRS-OFFSET COVERED.**—The term “CSRS-Offset covered”, with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, and to section 8334(k) of such title.

(6) **EMPLOYEE.**—The term “employee” has the meaning given such term under section 8331(1) or 8401(11) of title 5, United States Code.

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

(8) **FERS.**—The term “FERS” means the Federal Employees’ Retirement System.

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

(10) **FORMER EMPLOYEE.**—The term “former employee” means an individual who was an employee, but who is not an annuitant.

(11) **OASDI TAXES.**—The term “OASDI taxes” means the OASDI employee tax and the OASDI employer tax.

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

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

(14) **OASDI TRUST FUNDS.**—The term “OASDI trust funds” means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

(15) **OFFICE.**—The term “Office” means the Office of Personnel Management.

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

(17) **RETIREMENT COVERAGE ERROR.**—The term “retirement coverage error” means an erroneous retirement coverage determination that was in effect for a minimum period of 3 years of service after December 31, 1986.

(18) **SOCIAL SECURITY-ONLY COVERED.**—The term “Social Security-Only covered”, with respect to any service, means Government service that—

(A) constitutes employment under section 210 of the Social Security Act (42 U.S.C. 410); and

(B) (i) is subject to OASDI taxes; but

(ii) is not subject to CSRS or FERS.

(19) **SURVIVOR.**—The term “survivor” has the meaning given such term under section 8331(10) or 8401(28) of title 5, United States Code.

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

SEC. 2003. APPLICABILITY.
(a) **IN GENERAL.**—This title shall apply with respect to retirement coverage errors that occur before, on, or after the date of enactment of this Act.
(b) **LIMITATION.**—Except as otherwise provided in this title, this title shall not apply to any erroneous retirement coverage determination that was in effect for a period of less than 3 years of service after December 31, 1986.

SEC. 2004. IRREVOCABILITY OF ELECTIONS.
Any election made (or deemed to have been made) by an employee or any other individual under this title shall be irrevocable.

Subtitle A—Description of Retirement Coverage Errors to Which This Title Applies and Measures for Their Rectification

CHAPTER 1—EMPLOYEES AND ANNUITANTS WHO SHOULD HAVE BEEN FERS COVERED, BUT WHO WERE ERRONEOUSLY CSRS COVERED OR CSRS-OFFSET COVERED INSTEAD, AND SURVIVORS OF SUCH EMPLOYEES AND ANNUITANTS

SEC. 2101. EMPLOYEES.

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

(b) **UNCORRECTED ERROR.**—

(1) **APPLICABILITY.**—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described under paragraph (3). As soon as practicable after discovery of the error, and subject to the right of an election under paragraph (2), if CSRS covered or CSRS-Offset covered, such individual shall be treated as CSRS-Offset covered, retroactive to the date of the retirement coverage error.

(2) **COVERAGE.**—

(A) **ELECTION.**—Upon written notice of a retirement coverage error, an individual may elect to be CSRS-Offset covered or FERS covered, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

(B) **NONELECTION.**—If the individual does not make an election by the date provided under subparagraph (A), a CSRS-Offset covered individual shall remain CSRS-Offset covered and a CSRS covered individual shall be treated as CSRS-Offset covered.

(3) **REGULATIONS.**—The Office shall prescribe regulations to carry out this subsection.

(c) **CORRECTED ERROR.**—

(1) **APPLICABILITY.**—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under subsection (b).

(2) **COVERAGE.**—

(A) **ELECTION.**—

(i) **CSRS-OFFSET COVERED.**—Not later than 180 days after the date of enactment of this Act, the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations, to be CSRS-Offset covered, effective as of the date of the retirement coverage error.

(ii) **THRIFT SAVINGS FUND CONTRIBUTIONS.**—If under this section an individual elects to be CSRS-Offset covered, all employee contributions to the Thrift Savings Fund made during the period of FERS coverage (and earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit that would otherwise be applicable.

(B) **PREVIOUS SETTLEMENT PAYMENT.**—An individual who previously received a payment ordered by a court or provided as a settlement of claim for losses resulting from a retirement coverage error shall not be entitled to make an election under this subsection unless that amount is waived in whole or in part under section 2208, and any amount not waived is repaid.

(C) **INELIGIBILITY FOR ELECTION.**—An individual who, subsequent to correction of the retirement coverage error, received a refund of retirement deductions under section 8424 of title 5, United States Code, or a distribution under section 8433 (b), (c), or (h)(1)(A) of title 5, United States Code, may not make an election under this subsection.

(3) **CORRECTIVE ACTION TO REMAIN IN EFFECT.**—If an individual is ineligible to make an election or does not make an election under paragraph (2) before the end of any time limitation under this subsection, the corrective action

taken before such time limitation shall remain in effect.

SEC. 2102. ANNUITANTS AND SURVIVORS.

(a) **IN GENERAL.**—This section shall apply in the case of an individual who is—

(1) an annuitant who should have been FERS covered but, as a result of a retirement coverage error, was CSRS covered or CSRS-Offset covered instead; or

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

(b) **COVERAGE.**—

(1) **ELECTION.**—Not later than 180 days after the date of enactment of this Act, the Office shall prescribe regulations authorizing an individual described under subsection (a) to elect CSRS-Offset coverage or FERS coverage, effective as of the date of the retirement coverage error.

(2) **TIME LIMITATION.**—An election under this subsection shall be made not later than 18 months after the effective date of the regulations prescribed under paragraph (1).

(3) **REDUCED ANNUITY.**—

(A) **AMOUNT IN ACCOUNT.**—If the individual elects CSRS-Offset coverage, the amount in the employee’s Thrift Savings Fund account under subchapter III of chapter 84 of title 5, United States Code, on the date of retirement that represents the Government’s contributions and earnings on those contributions (whether or not such amount was subsequently distributed from the Thrift Savings Fund) will form the basis for a reduction in the individual’s annuity, under regulations prescribed by the Office.

(B) **REDUCTION.**—The reduced annuity to which the individual is entitled shall be equal to an amount which, when taken together with the amount referred to in subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of an unreduced CSRS-Offset annuity that would have been provided the individual.

(4) **REDUCED BENEFIT.**—If—

(A) a surviving spouse elects CSRS-Offset benefits; and

(B) a FERS basic employee death benefit under section 8442(b) of title 5, United States Code, was previously paid;

then the survivor’s CSRS-Offset benefit shall be subject to a reduction, under regulations prescribed by the Office. The reduced annuity to which the individual is entitled shall be equal to an amount which, when taken together with the amount of the payment referred to under subparagraph (B) would result in the present value of the total being actuarially equivalent to the present value of an unreduced CSRS-Offset annuity that would have been provided the individual.

(5) **PREVIOUS SETTLEMENT PAYMENT.**—An individual who previously received a payment ordered by a court or provided as a settlement of claim for losses resulting from a retirement coverage error may not make an election under this subsection unless repayment of that amount is waived in whole or in part under section 2208, and any amount not waived is repaid.

(c) **NONELECTION.**—If the individual does not make an election under subsection (b) before any time limitation under this section, the retirement coverage shall be subject to the following rules:

(1) **CORRECTIVE ACTION PREVIOUSLY TAKEN.**—If corrective action was taken before the end of any time limitation under this section, that corrective action shall remain in effect.

(2) **CORRECTIVE ACTION NOT PREVIOUSLY TAKEN.**—If corrective action was not taken before such time limitation, the employee shall be CSRS-Offset covered, retroactive to the date of the retirement coverage error.

CHAPTER 2—EMPLOYEE WHO SHOULD HAVE BEEN FERS COVERED, CSRS-OFFSET COVERED, OR CSRS COVERED, BUT WHO WAS ERRONEOUSLY SOCIAL SECURITY-ONLY COVERED INSTEAD

SEC. 2111. APPLICABILITY.

This chapter shall apply in the case of any employee who—

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

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

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

SEC. 2112. CORRECTION MANDATORY.

(a) **UNCORRECTED ERROR.**—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

(b) **CORRECTED ERROR.**—If the retirement coverage error has been corrected, the corrective action previously taken shall remain in effect.

CHAPTER 3—EMPLOYEE WHO SHOULD OR COULD HAVE BEEN SOCIAL SECURITY-ONLY COVERED BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED OR CSRS COVERED INSTEAD

SEC. 2121. EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, BUT WHO IS ERRONEOUSLY CSRS OR CSRS-OFFSET COVERED INSTEAD.

(a) **APPLICABILITY.**—This section applies in the case of a retirement coverage error in which a Social Security-Only covered employee was erroneously CSRS covered or CSRS-Offset covered.

(b) **UNCORRECTED ERROR.**—

(1) **APPLICABILITY.**—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described in paragraph (3).

(2) **COVERAGE.**—In the case of an individual who is erroneously CSRS covered, as soon as practicable after discovery of the error, and subject to the right of an election under paragraph (3), such individual shall be CSRS-Offset covered, effective as of the date of the retirement coverage error.

(3) **ELECTION.**—

(A) **IN GENERAL.**—Upon written notice of a retirement coverage error, an individual may elect to be CSRS-Offset covered or Social Security-Only covered, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

(B) **NONELECTION.**—If the individual does not make an election before the date provided under subparagraph (A), the individual shall remain CSRS-Offset covered.

(C) **REGULATIONS.**—The Office shall prescribe regulations to carry out this paragraph.

(c) **CORRECTED ERROR.**—

(1) **APPLICABILITY.**—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under subsection (b)(3).

(2) **ELECTION.**—Not later than 180 days after the date of enactment of this Act, the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations, to be CSRS-Offset covered or Social Security-Only covered, effective as of the date of the retirement coverage error.

(3) **NONELECTION.**—If an eligible individual does not make an election under paragraph (2) before the end of any time limitation under this subsection, the corrective action taken before such time limitation shall remain in effect.

CHAPTER 4—EMPLOYEE WHO WAS ERRONEOUSLY FERS COVERED

SEC. 2131. EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, CSRS COVERED, OR CSRS-OFFSET COVERED AND IS NOT FERS-ELIGIBLE, BUT WHO IS ERRONEOUSLY FERS COVERED INSTEAD.

(a) **APPLICABILITY.**—This section applies in the case of a retirement coverage error in which a Social Security-Only covered, CSRS covered, or CSRS-Offset covered employee not eligible to elect FERS coverage under authority of section 8402(c) of title 5, United States Code, was erroneously FERS covered.

(b) **UNCORRECTED ERROR.**—

(1) **APPLICABILITY.**—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described in paragraph (2).

(2) **COVERAGE.**—

(A) **ELECTION.**—

(i) **IN GENERAL.**—Upon written notice of a retirement coverage error, an individual may elect to remain FERS covered or to be Social Security-Only covered, CSRS covered, or CSRS-Offset covered, as would have applied in the absence of the erroneous retirement coverage determination, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

(ii) **TREATMENT OF FERS ELECTION.**—An election of FERS coverage under this subsection is deemed to be an election under section 301 of the Federal Employees Retirement System Act of 1986 (5 U.S.C. 8331 note; Public Law 99-335; 100 Stat. 599).

(B) **NONELECTION.**—If the individual does not make an election before the date provided under subparagraph (A), the individual shall remain FERS covered, effective as of the date of the retirement coverage error.

(3) **EMPLOYEE CONTRIBUTIONS IN THRIFT SAVINGS FUND.**—If under this section, an individual elects to be Social Security-Only covered, CSRS covered, or CSRS-Offset covered, all employee contributions to the Thrift Savings Fund made during the period of erroneous FERS coverage (and all earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit under section 8351 or 8432 of title 5, United States Code.

(4) **REGULATIONS.**—Except as provided under paragraph (3), the Office shall prescribe regulations to carry out this subsection.

(c) **CORRECTED ERROR.**—

(1) **APPLICABILITY.**—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under paragraph (2).

(2) **ELECTION.**—Not later than 180 days after the date of enactment of this Act, the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations to remain Social Security-Only covered, CSRS covered, or CSRS-Offset covered, or to be FERS covered, effective as of the date of the retirement coverage error.

(3) **NONELECTION.**—If an eligible individual does not make an election under paragraph (2), the corrective action taken before the end of any time limitation under this subsection shall remain in effect.

(4) **TREATMENT OF FERS ELECTION.**—An election of FERS coverage under this subsection is deemed to be an election under section 301 of the Federal Employees Retirement System Act of 1986 (5 U.S.C. 8331 note; Public Law 99-335; 100 Stat. 599).

SEC. 2132. FERS-ELIGIBLE EMPLOYEE WHO SHOULD HAVE BEEN CSRS COVERED, CSRS-OFFSET COVERED, OR SOCIAL SECURITY-ONLY COVERED, BUT WHO WAS ERRONEOUSLY FERS COVERED INSTEAD WITHOUT AN ELECTION.

(a) **IN GENERAL.**—

(1) **FERS ELECTION PREVENTED.**—If an individual was prevented from electing FERS coverage because the individual was erroneously FERS covered during the period when the individual was eligible to elect FERS under title III of the Federal Employees Retirement System Act or the Federal Employees' Retirement System Open Enrollment Act of 1997 (Public Law 105-61; 111 Stat. 1318 et seq.), the individual—

(A) is deemed to have elected FERS coverage; and

(B) shall remain covered by FERS, unless the individual declines, under regulations prescribed by the Office, to be FERS covered.

(2) **DECLINING FERS COVERAGE.**—If an individual described under paragraph (1)(B) declines to be FERS covered, such individual shall be CSRS covered, CSRS-Offset covered, or Social Security-Only covered, as would apply in the absence of a FERS election, effective as of the date of the erroneous retirement coverage determination.

(b) **EMPLOYEE CONTRIBUTIONS IN THRIFT SAVINGS FUND.**—If under this section, an individual declines to be FERS covered and instead is Social Security-Only covered, CSRS covered, or CSRS-Offset covered, as would apply in the absence of a FERS election, all employee contributions to the Thrift Savings Fund made during the period of erroneous FERS coverage (and all earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit that would otherwise be applicable.

(c) **INAPPLICABILITY OF DURATION OF ERRONEOUS COVERAGE.**—This section shall apply regardless of the length of time the erroneous coverage determination remained in effect.

SEC. 2133. RETROACTIVE EFFECT.

This chapter shall be effective as of January 1, 1987, except that section 2132 shall not apply to individuals who made or were deemed to have made elections similar to those provided in this section under regulations prescribed by the Office before the effective date of this title.

CHAPTER 5—EMPLOYEE WHO SHOULD HAVE BEEN CSRS-OFFSET COVERED, BUT WHO WAS ERRONEOUSLY CSRS COVERED INSTEAD

SEC. 2141. APPLICABILITY.

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

SEC. 2142. CORRECTION MANDATORY.

(a) **UNCORRECTED ERROR.**—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

(b) **CORRECTED ERROR.**—If the retirement coverage error has been corrected before the effective date of this title, the corrective action taken before such date shall remain in effect.

CHAPTER 6—EMPLOYEE WHO SHOULD HAVE BEEN CSRS COVERED, BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED INSTEAD

SEC. 2151. APPLICABILITY.

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

SEC. 2152. CORRECTION MANDATORY.

(a) **UNCORRECTED ERROR.**—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

(b) **CORRECTED ERROR.**—If the retirement coverage error has been corrected before the effective date of this title, the corrective action taken before such date shall remain in effect.

Subtitle B—General Provisions**SEC. 2201. IDENTIFICATION AND NOTIFICATION REQUIREMENTS.**

Government agencies shall take all such measures as may be reasonable and appropriate to promptly identify and notify individuals who are (or have been) affected by a retirement coverage error of their rights under this title.

SEC. 2202. INFORMATION TO BE FURNISHED TO AND BY AUTHORITIES ADMINISTERING THIS TITLE.

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

(1) the Director of the Office of Personnel Management;

(2) the Commissioner of Social Security; and

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

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

(c) **AUTHORITY TO PROVIDE INFORMATION.**—Each authority identified in subsection (a) may provide directly to any department or agency of the United States all information such authority believes necessary to enable the department or agency to carry out its responsibilities under this title.

(d) **LIMITATION; SAFEGUARDS.**—Each of the respective authorities under subsection (a) shall—

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

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

SEC. 2203. SERVICE CREDIT DEPOSITS.

(a) **CSRS DEPOSIT.**—In the case of a retirement coverage error in which—

(1) a FERS covered employee was erroneously CSRS covered or CSRS-Offset covered;

(2) the employee made a service credit deposit under the CSRS rules; and

(3) there is a subsequent retroactive change to FERS coverage;

the excess of the amount of the CSRS civilian or military service credit deposit over the FERS civilian or military service credit deposit, together with interest computed in accordance with paragraphs (2) and (3) of section 8334(e) of title 5, United States Code, and regulations prescribed by the Office, shall be paid to the employee, the annuitant or, in the case of a deceased employee, to the individual entitled to lump-sum benefits under section 8424(d) of title 5, United States Code.

(b) **FERS DEPOSIT.**—

(1) **APPLICABILITY.**—This subsection applies in the case of an erroneous retirement coverage determination in which—

(A) the employee owed a service credit deposit under section 8411(f) of title 5, United States Code; and

(B) (i) there is a subsequent retroactive change to CSRS or CSRS-Offset coverage; or

(ii) the service becomes creditable under chapter 83 of title 5, United States Code.

(2) **REDUCED ANNUITY.**—

(A) **IN GENERAL.**—If at the time of commencement of an annuity there is remaining unpaid CSRS civilian or military service credit deposit for service described under paragraph (1), the annuity shall be reduced based upon the amount unpaid together with interest computed in accordance with section 8334(e) (2) and (3) of title 5, United States Code, and regulations prescribed by the Office.

(B) **AMOUNT.**—The reduced annuity to which the individual is entitled shall be equal to an amount that, when taken together with the amount referred to under subparagraph (A),

would result in the present value of the total being actuarially equivalent to the present value of the unreduced annuity benefit that would have been provided the individual.

(3) **SURVIVOR ANNUITY.**—

(A) **IN GENERAL.**—If at the time of commencement of a survivor annuity, there is remaining unpaid any CSRS service credit deposit described under paragraph (1), and there has been no actuarial reduction in an annuity under paragraph (2), the survivor annuity shall be reduced based upon the amount unpaid together with interest computed in accordance with section 8334(e) (2) and (3) of title 5, United States Code, and regulations prescribed by the Office.

(B) **AMOUNT.**—The reduced survivor annuity to which the individual is entitled shall be equal to an amount that, when taken together with the amount referred to under subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of an unreduced survivor annuity benefit that would have been provided the individual.

SEC. 2204. PROVISIONS RELATED TO SOCIAL SECURITY COVERAGE OF MISCLASSIFIED EMPLOYEES.

(a) **DEFINITIONS.**—In this section, the term—

(1) “covered individual” means any employee, former employee, or annuitant who—

(A) is or was employed erroneously subject to CSRS coverage as a result of a retirement coverage error; and

(B) is or was retroactively converted to CSRS-Offset coverage, FERS coverage, or Social Security-only coverage; and

(2) “excess CSRS deduction amount” means an amount equal to the difference between the CSRS deductions withheld and the CSRS-Offset or FERS deductions, if any, due with respect to a covered individual during the entire period the individual was erroneously subject to CSRS coverage as a result of a retirement coverage error.

(b) **REPORTS TO COMMISSIONER OF SOCIAL SECURITY.**—

(1) **IN GENERAL.**—In order to carry out the Commissioner of Social Security’s responsibilities under title II of the Social Security Act, the Commissioner may request the head of each agency that employs or employed a covered individual to report (in coordination with the Office of Personnel Management) in such form and within such timeframe as the Commissioner may specify, any or all of—

(A) the total wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) paid to such individual during each year of the entire period of the erroneous CSRS coverage; and

(B) such additional information as the Commissioner may require for the purpose of carrying out the Commissioner’s responsibilities under title II of the Social Security Act (42 U.S.C. 401 et seq.).

(2) **COMPLIANCE.**—The head of an agency or the Office shall comply with a request from the Commissioner under paragraph (1).

(3) **WAGES.**—For purposes of section 201 of the Social Security Act (42 U.S.C. 401), wages reported under this subsection shall be deemed to be wages reported to the Secretary of the Treasury or the Secretary’s delegates pursuant to subtitle F of the Internal Revenue Code of 1986.

(c) **PAYMENT RELATING TO OASDI EMPLOYEE TAXES.**—

(1) **IN GENERAL.**—The Office shall transfer from the Civil Service Retirement and Disability Fund to the General Fund of the Treasury an amount equal to the lesser of the excess CSRS deduction amount or the OASDI taxes due for covered individuals (as adjusted by amounts transferred relating to applicable OASDI employee taxes as a result of corrections made, including corrections made before the date of enactment of this Act). If the excess CSRS deductions exceed the OASDI taxes, any difference shall be paid to the covered individual or survivors, as appropriate.

(2) **TRANSFER.**—Amounts transferred under this subsection shall be determined notwithstanding any limitation under section 6501 of the Internal Revenue Code of 1986.

(d) **PAYMENT OF OASDI EMPLOYER TAXES.**—

(1) **IN GENERAL.**—Each employing agency shall pay an amount equal to the OASDI employer taxes owed with respect to covered individuals during the applicable period of erroneous coverage (as adjusted by amounts transferred for the payment of such taxes as a result of corrections made, including corrections made before the date of enactment of this Act).

(2) **PAYMENT.**—Amounts paid under this subsection shall be determined subject to any limitation under section 6501 of the Internal Revenue Code of 1986.

(e) **APPLICATION OF OASDI TAX PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 TO AFFECTED INDIVIDUALS AND EMPLOYING AGENCIES.**—A covered individual and the individual’s employing agency shall be deemed to have fully satisfied in a timely manner their responsibilities with respect to the taxes imposed by sections 3101(a), 3102(a), and 3111(a) of the Internal Revenue Code of 1986 on the wages paid by the employing agency to such individual during the entire period such individual was erroneously subject to CSRS coverage as a result of a retirement coverage error based on the payments and transfers made under subsections (c) and (d). No credit or refund of taxes on such wages shall be allowed as a result of this subsection.

SEC. 2205. THRIFT SAVINGS PLAN TREATMENT FOR CERTAIN INDIVIDUALS.

(a) **APPLICABILITY.**—This section applies to an individual who—

(1) is eligible to make an election of coverage under section 2101 or 2102, and only if FERS coverage is elected (or remains in effect) for the employee involved; or

(2) is described in section 2111, and makes or has made retroactive employee contributions to the Thrift Savings Fund under regulations prescribed by the Executive Director.

(b) **PAYMENT INTO THRIFT SAVINGS FUND.**—

(1) **IN GENERAL.**—

(A) **PAYMENT.**—With respect to an individual to whom this section applies, the employing agency shall pay to the Thrift Savings Fund under subchapter III of chapter 84 of title 5, United States Code, for credit to the account of the employee involved, an amount equal to the earnings which are disallowed under section 8432a(a)(2) of such title on the employee’s retroactive contributions to such Fund.

(B) **AMOUNT.**—Earnings under subparagraph (A) shall be computed in accordance with the procedures for computing lost earnings under section 8432a of title 5, United States Code. The amount paid by the employing agency shall be treated for all purposes as if that amount had actually been earned on the basis of the employee’s contributions.

(C) **EXCEPTIONS.**—If an individual made retroactive contributions before the effective date of the regulations under section 2101(c), the Director may provide for an alternative calculation of lost earnings to the extent that a calculation under subparagraph (B) is not administratively feasible. The alternative calculation shall yield an amount that is as close as practicable to the amount computed under subparagraph (B), taking into account earnings previously paid.

(2) **ADDITIONAL EMPLOYEE CONTRIBUTION.**—In cases in which the retirement coverage error was corrected before the effective date of the regulations under section 2101(c), the employee involved shall have an additional opportunity to make retroactive contributions for the period of the retirement coverage error (subject to applicable limits), and such contributions (including any contributions made after the date of the correction) shall be treated in accordance with paragraph (1).

(c) **REGULATIONS.**—

(1) **EXECUTIVE DIRECTOR.**—The Executive Director shall prescribe regulations appropriate to

carry out this section relating to retroactive employee contributions and payments made on or after the effective date of the regulations under section 2101(c).

(2) OFFICE.—The Office, in consultation with the Federal Retirement Thrift Investment Board, shall prescribe regulations appropriate to carry out this section relating to the calculation of lost earnings on retroactive employee contributions made before the effective date of the regulations under section 2101(c).

SEC. 2206. CERTAIN AGENCY AMOUNTS TO BE PAID INTO OR REMAIN IN THE CSRDF.

(a) CERTAIN EXCESS AGENCY CONTRIBUTIONS TO REMAIN IN THE CSRDF.—

(1) IN GENERAL.—Any amount described under paragraph (2) shall—

(A) remain in the CSRDF; and

(B) may not be paid or credited to an agency.

(2) AMOUNTS.—Paragraph (1) refers to any amount of contributions made by an agency under section 8423 of title 5, United States Code, on behalf of any employee, former employee, or annuitant (or survivor of such employee, former employee, or annuitant) who makes an election to correct a retirement coverage error under this title, that the Office determines to be excess as a result of such election.

(b) ADDITIONAL EMPLOYEE RETIREMENT DEDUCTIONS TO BE PAID BY AGENCY.—If a correction in a retirement coverage error results in an increase in employee deductions under section 8334 or 8422 of title 5, United States Code, that cannot be fully paid by a reallocation of otherwise available amounts previously deducted from the employee's pay as employment taxes or retirement deductions, the employing agency—

(1) shall pay the required additional amount into the CSRDF; and

(2) shall not seek repayment of that amount from the employee, former employee, annuitant, or survivor.

SEC. 2207. CSRS COVERAGE DETERMINATIONS TO BE APPROVED BY OPM.

No agency shall place an individual under CSRS coverage unless—

(1) the individual has been employed with CSRS coverage within the preceding 365 days; or

(2) the Office has agreed in writing that the agency's coverage determination is correct.

SEC. 2208. DISCRETIONARY ACTIONS BY DIRECTOR.

(a) IN GENERAL.—The Director of the Office of Personnel Management may—

(1) extend the deadlines for making elections under this title in circumstances involving an individual's inability to make a timely election due to a cause beyond the individual's control;

(2) provide for the reimbursement of necessary and reasonable expenses incurred by an individual with respect to settlement of a claim for losses resulting from a retirement coverage error, including attorney's fees, court costs, and other actual expenses;

(3) compensate an individual for monetary losses that are a direct and proximate result of a retirement coverage error, excluding claimed losses relating to forgone contributions and earnings under the Thrift Savings Plan under subchapter III of chapter 84 of title 5, United States Code, and all other investment opportunities; and

(4) waive payments required due to correction of a retirement coverage error under this title.

(b) SIMILAR ACTIONS.—In exercising the authority under this section, the Director shall, to the extent practicable, provide for similar actions in situations involving similar circumstances.

(c) JUDICIAL REVIEW.—Actions taken under this section are final and conclusive, and are not subject to administrative or judicial review.

(d) REGULATIONS.—The Office of Personnel Management shall prescribe regulations regarding the process and criteria used in exercising the authority under this section.

(e) REPORT.—The Office of Personnel Management shall, not later than 180 days after the date of enactment of this Act, and annually thereafter for each year in which the authority provided in this section is used, submit a report to each House of Congress on the operation of this section.

SEC. 2209. REGULATIONS.

(a) IN GENERAL.—In addition to the regulations specifically authorized in this title, the Office may prescribe such other regulations as are necessary for the administration of this title.

(b) FORMER SPOUSE.—The regulations prescribed under this title shall provide for protection of the rights of a former spouse with entitlement to an apportionment of benefits or to survivor benefits based on the service of the employee.

Subtitle C—Other Provisions

SEC. 2301. PROVISIONS TO AUTHORIZE CONTINUED CONFORMITY OF OTHER FEDERAL RETIREMENT SYSTEMS.

(a) FOREIGN SERVICE.—Sections 827 and 851 of the Foreign Service Act of 1980 (22 U.S.C. 4067 and 4071) shall apply with respect to this title in the same manner as if this title were part of—

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

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

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

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

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

SEC. 2302. AUTHORIZATION OF PAYMENTS.

All payments authorized or required by this title to be paid from the Civil Service Retirement and Disability Fund, together with administrative expenses incurred by the Office in administering this title, shall be deemed to have been authorized to be paid from that Fund, which is appropriated for the payment thereof.

SEC. 2303. INDIVIDUAL RIGHT OF ACTION PRESERVED FOR AMOUNTS NOT OTHERWISE PROVIDED FOR UNDER THIS TITLE.

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

Subtitle D—Effective Date

SEC. 2401. EFFECTIVE DATE.

Except as otherwise provided in this title, this title shall take effect on the date of enactment of this Act.

Amend the title so as to read: "An Act to amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees, members of the uniformed services, and civilian and military retirees, provide for the correction of retirement coverage errors under chapters 83 and 84 of such title, and for other purposes."

House amendments to Senate amendments: Page 2, line 7, strike "and".

Page 2, line 9, strike the comma and insert "; and".

Page 2, after line 9, insert the following: "(C) an individual employed by the Tennessee Valley Authority,

Page 29, line 18, insert "under title 5, United States Code," after "limit".

Page 42, line 1, insert "under title 5, United States Code," after "limit".

Page 50, strike line 3 and all that follows through "Office" in line 5, and insert the following:

(c) PAYMENT RELATING TO OASDI EMPLOYEE TAXES.—The Office

(and run-in the remaining text of paragraph (1)).

Page 50, strike lines 16 through 19.

Page 51, strike lines 7 through 19.

Mr. SCARBOROUGH (during the reading). Mr. Speaker, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

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

There was no objection.

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

Mr. CUMMINGS. Mr. Speaker, reserving the right to object, today is a cause for celebration. H.R. 4040 is a testament to how good process can lead to good results for the people we serve.

□ 1800

Commitment, bipartisanship and hard work on the part of the gentleman from Florida (Mr. SCARBOROUGH), the gentleman from California (Mr. WAXMAN), the gentlewoman from the District of Columbia (Ms. NORTON), the gentleman from Maine (Mr. ALLEN) and the gentlewoman from Maryland (Mrs. MORELLA), our congressional staff, the Office of Personnel Management, and the long-term care industry culminated in H.R. 4040, the Long-term Care Security Act.

I am pleased that the framework proposed in H.R. 110, my long-term care proposal, allowing OPM to contract with a single carrier or consortia to provide long-term care insurance to Federal employees in permitting OPM to negotiate premiums and benefits on behalf of Federal employees is adopted in H.R. 4040.

This employer group model will allow Federal employees to realize from 15 percent to 20 percent in premium savings. In addition to establishing a program to provide long-term care insurance to Federal employees and military personnel, the Senate amended H.R. 4044 with the text of S. 2420, which included the Federal Erroneous Retirement Coverage Corrections Act.

S. 2420 provides relief to those Federal employees who were placed in the wrong retirement system during transition to the Federal employment retirement system from the civil service retirement system during the 1980s. Under current law, Federal agencies are required to correct a retirement coverage error by forcing the affected employers into FERS.

The Federal Erroneous Coverage Corrections Act will permit the employees who had been victims of an enrollment error to remain in the retirement system they were erroneously placed in.

CSRS ought to be covered by the system they should have been in, in most cases FERS.

Unlike the House retirement corrections bill, if the employee chooses to be placed in FERS, he or she will be responsible for the lost contributions to his or her thrift savings account. The House bill sought to achieve accountability by holding those agencies guilty of making enrollment errors responsible for the lost contributions to the employee's TSP account.

Mr. Speaker, though we would have preferred the House bill, we worked with the Senate to reach consensus on a bill that would result in some, if not optimal relief for employees placed in the wrong retirement system. H.R. 4040 is a lesson in how the legislative process through bipartisanship and compromise can work to better the lives of the American people. I enthusiastically support this legislation and urge my colleagues to do the same.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. PEASE). Is there objection to the initial request of the gentleman from Florida?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, I do not object, but I do want to celebrate this time when we in this House accept this bill, H.R. 4040, as amended, and send it back for the clarification from the Senate. This long-term care insurance bill has taken a lot of time. It has been long term, but it has been worth it.

I introduced legislation; my colleagues introduced legislation. We all worked together on it. The legislation I introduced was H.R. 1111, and it included not only Federal employees and annuitants, but it included also the military employees and retirees, which made the pool 20 million, which will allow OPM, the Office of Personnel Management, to be able to negotiate to get the very best plan that will have consumer protections and will also have choices within it.

Mr. Speaker, a lot of groups helped out with it, my colleagues; the gentleman from Florida (Mr. SCARBOROUGH), who chaired the committee; the gentleman from Maryland (Mr. CUMMINGS), the ranking member; others on the committee worked on it also, as well as organizations, like the National Association of Retired Federal Employees, the Postal Workers, Alzheimer's, retired military, and OPM was engaged also in the process, so all of us will be able to gain from this, the United States will be able to gain from it.

We hope that the premiums would be reduced 15 percent to 20 percent, and people will be able to plan for their futures through this bill. So I urge this bill's approval as amended, H.R. 4040.

Mr. SCARBOROUGH. Mr. Speaker, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Florida.

Mr. SCARBOROUGH. Mr. Speaker, I thank the gentlewoman from Maryland

(Mrs. MORELLA) and also certainly thank the gentleman from Maryland (Mr. CUMMINGS), the ranking member of the committee, he and the gentlewoman from Maryland have both worked diligently on their own versions of this bill, both believed very much that their versions were the best versions of the bill, as did I on mine. Both of them worked around the clock.

The great thing is, I think we have got the best of all worlds from every bill. And I know there are so many people in my district that have a better long-term health care insurance plan because of what the gentleman from Maryland (Mr. CUMMINGS) did, and obviously because of what the gentlewoman from Maryland (Mrs. MORELLA) did.

I have so many Federal retirees, military retirees, in my district that are grateful for the hard work they have done, work they did before I even became chairman of this committee, the work that the gentleman from Florida (Mr. MICA) did. The gentleman from Indiana (Chairman BURTON) certainly helped; the gentleman from California (Mr. WAXMAN), the ranking member, helped a great deal; the gentleman from Virginia (Mr. DAVIS); the gentleman from Texas (Chairman ARCHER).

I would also like to thank our staffs that worked for a very, very long time on this bill, on my staff in particular, Gary Ewing and Jennifer Hemingway, but it is going to help everybody.

Long-term care security is a consensus bill. It is reflective of the hard work of Members on both sides of the aisle, and it is going to provide really assurance to Federal employees and retirees and military retirees, and so many others that they are going to be taken care of, and they are going to be able to get long-term health care insurance. It is important for all us.

The Senate language on long-term care is identical to the language that the House passed just last May. The bill also contains provisions to correct a long-standing inequity for Federal employees who, through no fault of their own, were erroneously placed in the wrong retirement system.

The amendments make several technical changes to the retirement corrections portion of this bill. And, in addition, in consultation, with Senator THOMPSON, I am pleased to include employees of the Tennessee Valley Authority, among the list of those eligible to purchase long-term care insurance. It is not only good for them, it is not only good for Federal employees that work here and throughout Washington, the country, it is good for all of America.

Mr. Speaker, I am confident that this bill is going to be landmark legislation that the private sector will be able to follow and we will be able to provide long-term health care to all Americans.

Mr. Speaker, I urge Members to support H.R. 4040, as amended.

Mrs. MORELLA. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate has passed a bill and a concurrent resolution of the following titles in which the concurrence of the House is requested:

S. 2869. An act to protect religious liberty, and for other purposes.

S. Con. Res. 132. Concurrent resolution providing for a conditional adjournment or recess of the Senate and conditional adjournment of the House of Representatives.

PERMISSION FOR COMMITTEE ON SCIENCE TO HAVE UNTIL MIDNIGHT AUGUST 31, 2000 TO FILE A REPORT ON H.R. 4271, NATIONAL SCIENCE EDUCATION ACT

Mr. SCARBOROUGH. Mr. Speaker, I ask unanimous consent that the Committee on Science may have until midnight on August 31, 2000 to file a report to accompany H.R. 4271.

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

There was no objection.

SENSE OF CONGRESS REGARDING ESTABLISHMENT OF NATIONAL HEALTH CENTER WEEK

Mr. SCARBOROUGH. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the concurrent resolution (H. Con. Res. 381) expressing the sense of the Congress that there should be established a National Health Center Week to raise awareness of health services provided by community, migrant, and homeless health centers, and ask for its immediate consideration in the House.

The Clerk read the title of the concurrent resolution.

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

Mr. DAVIS of Illinois. Mr. Speaker, reserving the right to object, actually, I stand not to object, but to end up praising those who have come forth. As the sponsor of this resolution, I want to, first of all commend and thank the gentleman from Illinois (Mr. SHIMKUS); the gentleman from Massachusetts (Mr. CAPUANO), cochair of the Health Center Caucus; the gentleman from Texas (Mr. BONILLA), cochair of the Health Center Caucus; the gentleman from Florida (Mr. BILIRAKIS), who is also a cochair of the Health Center Caucus; the gentleman from Texas (Mr. HALL); the gentleman from Alabama (Mr. CRAMER); the gentleman from Illinois (Mr. EVANS); the gentleman from