

**Calendar No. 685**

106TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
106-344 }

LONG-TERM CARE SECURITY ACT

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R E P O R T

OF THE  
COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 2420

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



JULY 14, 2000.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

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

### REPORT

[To accompany S. 2420]

The Committee on Governmental Affairs, to which was referred the bill (S. 2420) 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, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends by voice vote that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### **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)\*09(4)), be with-

held 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 sub-

chapter 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 99-09335; 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 99–09335; 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 105–0961; 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 ERRO-  
NEOUSLY 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.

### I. PURPOSE

The Long-Term Care Security Act would establish a long-term care insurance program for federal (including postal) employees, members of the uniformed services, both civilian and military retirees, and certain qualified relatives including spouses, parents, parents-in-law, and stepparents.

The provisions of the Federal Erroneous Retirement Coverage Corrections Act which are included in S. 2420 provide for the correction of certain retirement coverage errors affecting federal employees.

### II. BACKGROUND

#### *A. Need for long-term care legislation*

Long-term care refers to a wide range of health and support services for persons who have lost the capacity for self-care. Long-term care services include home and community-based services as well as those provided in nursing homes and other institutions.

A steady increase in longevity and in the elderly population has led to a rise in the number of Americans likely to need some form of long-term care. It is estimated that roughly 5.2 million persons age 65 or older, and 3.5 million persons ages 18 through 64, currently receive long-term care assistance either in the community or in nursing homes. The need for long-term care is expected to grow substantially in the future. By the year 2030, it is estimated that approximately 20 percent of our population will be age 65 or older.

Long-term care is expensive. The cost of nursing home care is expected to rise from an average today of \$46,000 per year to an average of \$97,000 per year by 2030. Long-term care insurance can

provide families with affordable options for dealing with the catastrophic expenses of nursing home care, home care, assisted living, and other forms of long-term care services. Without insurance, families often must exhaust all their income and assets to pay for long-term care.

Many individuals are under the false impression that their health plan, disability insurance, or Medicare will adequately cover their long-term care needs. Unfortunately, this is rarely the case. Most health insurance plans do not cover costs associated with long-term care, and Medicare covers long-term care only under limited circumstances. Medicaid provides coverage for long-term care, but eligibility is based on income and assets. Without long-term care insurance, individuals must deplete their assets, and eventually depend on Medicaid to pay the costs of long-term care.

Premiums for long-term care insurance are typically less expensive for younger purchasers. Establishing a long-term care insurance program for the federal community could encourage individuals to consider purchasing long-term care insurance during their working years, when premiums are lower.

Long-term care insurance can help federal workers plan for the future and protect themselves from the financial risks associated with the difficult challenge of providing long-term care and comfort to a loved one. By establishing a program that offers affordable, quality long-term care insurance, the federal government can serve as a model to other employers across the country whose employees face similar long-term care needs.

*B. Summary of title I of the legislation, "The Long-Term Care Security Act"*

Title I of S. 2420 requires the Office of Personnel Management (OPM) to enter into seven-year contracts with one or more qualified insurance carriers to provide long-term care insurance policies to the federal community. Contracts must be awarded on the basis of contractor qualifications, price, and reasonable competition; they are not automatically renewable.

Competition among carriers for the opportunity to offer long-term care insurance under this program should result in affordable premiums and attractive benefit packages. Therefore, the Committee encourages OPM to ensure the selection process for qualified carriers is as competitive as possible. In addition, the Committee encourages OPM to consider all insurance companies that meet program criteria and guidelines.

S. 2420 expressly authorizes insurers to form consortia for purposes of submitting proposals or bids to OPM and jointly underwriting coverage if selected by OPM. Joint underwriting of coverage may facilitate the availability and affordability of long-term care insurance for federal employees. The federal participant group would be larger than any group underwritten by a single carrier today. Joint underwriting by multiple carriers may thus be necessary in order to underwrite the risk inherent in such a large population. Additionally, a consortium could allow pooling of loss information enabling more accurate and favorable pricing for federal employees. Further, a consortium may be able to provide certain services more efficiently to the large population of enrollees, and

also permit OPM to take advantage of the companies' different areas of expertise.

Enrollees will pay the full premiums for long-term care policies offered pursuant to this Act. OPM will be granted access to the Employees' Life Insurance Fund for the initial expenses of implementation and administration, which will be subsequently reimbursed by the carriers. The master contracts must require each carrier to reimburse the Employees' Life Insurance Fund on a pro rata basis for ongoing OPM administrative expenses, including lost investment income of the Life Insurance Fund.

Each contract with a qualified carrier to provide long-term care insurance under this program must include detailed statements of benefits, premium charges, terms of enrollment, limitations, and any other terms and conditions mutually agreed to by OPM. Each contract must also specify procedures to resolve expeditiously any disputes regarding payment of claims and benefits. During the contract period, premiums can be adjusted only by mutual agreement between OPM and the carrier. Contracts must provide for portability of coverage, ensuring that policies cannot be terminated because of a change in the individual's status, such as separation from service, divorce, or otherwise.

S. 2420 establishes underwriting standards under which the provision of long-term care insurance is not guaranteed to any individual, and OPM is not required to offer long-term care insurance to those who are immediately eligible. However, OPM is not precluded from offering long-term care insurance to individuals who are immediately eligible, if OPM determines it is appropriate to do so.

S. 2420 provides OPM with the authority and flexibility to negotiate underwriting standards with carriers, just as it will negotiate other terms and conditions. The Committee recognizes the tension between the need to screen potential enrollees and the desire to qualify as many eligible individuals as possible. Without some underwriting, premiums could become too expensive for potential enrollees, and carriers would be less interested in participating in this program. The Committee encourages OPM to negotiate underwriting standards that allow the greatest number of individuals to obtain long-term care policies at reasonable rates, while still containing costs. The Committee also expects OPM to use the buying power of the large federal community to make the underwriting standards as fair and reasonable as possible.

S. 2420 requires the General Accounting Office (GAO) to compare the competitiveness of this program with group and individual coverage available in the private insurance market and submit written evaluations to OPM and Congress before the end of the third and fifth years of the program. In addition, OPM is required to ensure that each applicant has information regarding the general advantages and disadvantages of long-term care insurance and any other information necessary to make an informed decision about obtaining long-term care insurance.

The Committee understands that eligible individuals will need access to adequate information to make an informed decision regarding the purchase of long-term care insurance. Long-term care insurance can be an effective way for some individuals to plan for the future, but it is not an appropriate product for everyone. The

Committee recognizes the importance of providing an adequate amount of information to potential enrollees, without overwhelming them.

Some individuals eligible to participate in this long-term care insurance program have previously purchased long-term care insurance in the private market. Some of these individuals have expressed an interest in converting their present long-term care insurance policies into policies made available under this Act. The Committee urges OPM to investigate the feasibility of such conversions and to examine the impact any potential conversions might have on the administration of the long-term care insurance program authorized by this Act.

Numerous bills have been introduced in the 106th Congress to provide long-term care insurance for federal employees and annuitants, members of the uniformed services, and civilian and military retirees. Among these are S. 57, introduced by Senator Mikulski; S. 36, introduced by Senator Grassley; and S. 894, introduced by Senator Cleland.

In an effort to achieve consensus, discussions and negotiations regarding the creation of a federal long-term care insurance program have been held with interested staff, representatives from the Office of Personnel Management (OPM), the federal employee unions, the National Association of Insurance Commissioners, the Health Insurance Association of America, as well as representatives of several major insurance companies, among others. In the Senate, S. 2420 emerged from these negotiations as the clear, strongly supported compromise. Title I of S. 2420 is identical to its House companion measure, H.R. 4040, as it passed the House on May 9, 2000.

S. 2420 will help millions of American families plan responsibly for their retirement and gain the security that is necessary for achieving a high quality of life in their retirement years.

*C. Summary of title II of the legislation, the "Federal Erroneous Retirement Coverage Corrections Act"*

In 1984, the federal government made a transition from the Civil Service Retirement System (CSRS) to the Federal Employees Retirement System (FERS). As government agencies carried out the complex job of applying the transition rules, many errors were committed and thousands of employees were placed in the wrong retirement system.

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

This offset system is a hybrid, combining Social Security coverage with a defined benefit component with the aggregate benefit amount intended to equal the amount the employee would have received under the CSRS.)

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

On June 17, 1999, Senator Cochran, for himself and Senator Akaka, introduced S. 1232, the Federal Erroneous Retirement Coverage Corrections Act, which was referred to the Committee on Governmental Affairs. This proposal provides comprehensive and equitable relief to employees, former employees, retirees, and survivors who are affected by retirement coverage errors. It provides individuals with a choice between corrected retirement coverage and the coverage the employee expected to receive, without amending the Social Security Act. For each type of retirement coverage error, individuals are furnished the opportunity to maintain their expected level of retirement benefits without a change in their retirement savings and planning.

For example, current law requires FERS eligible employees who were incorrectly placed in the CSRS-Offset system to be automatically placed in FERS. However, S. 2420, as amended, would provide these employees with the option to be corrected to FERS or remain in the CSRS-Offset system. Many employees do not have the financial resources to make the retroactive TSP contributions necessary to maintain their expected level of retirement benefits under FERS. This legislation provides these employees with equitable relief by furnishing them the option to remain in the CSRS-Offset system and receive the retirement benefits they expected. Among other provisions, this legislation also provides certain employees who missed an opportunity to contribute to the Thrift Savings Plan due to a coverage error the opportunity to receive interest on their TSP make-up contributions.

On June 21, 1999, S. 1232 was referred to the Subcommittee on International Security, Proliferation, and Federal Services. On July 16, 1999, the Subcommittee on International Security, Proliferation, and Federal Services reported S. 1232 to the Committee on Governmental Affairs by polling letter. On August 3, 1999, the Committee held a business meeting and voted unanimously, by voice vote, to favorably report the bill. The bill was reported to the Senate on October 8, 1999 (see S. Report 106-178). S. 1232 passed the Senate by unanimous consent on November 3, 1999. On November 18, the House passed H. Res. 394, a resolution returning S. 1232 to the Senate on the grounds that it contravened the constitutional requirement that revenue measures originate in the House.

The Committee has addressed the concerns raised in H. Res. 394 by removing the specific provisions cited in H. Res. 394 as contra-

vening the constitutional requirement that revenue measures originate in the House. Specifically, Section 401 of S. 1232, which provided that transfers and payments of contributions under the bill would not result in an income tax liability for affected employees, has been deleted and is not included in S. 2420. In addition, Title V of S. 1232 has also been deleted and is not included in S. 2420. This latter language, which provided portability of service credit between the Federal Reserve Board and FERS, was incorporated as Title II of S. 335, the Deceptive Mail Prevention and Enforcement Act, which became Public Law 106–168. Except for the two changes discussed above, the provisions of the Federal Erroneous Retirement Coverage Corrections Act as contained in S. 2420, as amended, are identical to S. 1232.

The provisions of the Federal Erroneous Retirement Coverage Corrections Act, which are included in S. 2420, provide long-awaited relief to many federal employees and their families who, through no fault of their own, find themselves the victims of retirement coverage errors. The Committee believes the Federal Erroneous Retirement Coverage Corrections Act provides a comprehensive solution to the problems faced by federal employees due to retirement coverage errors, and that it does so at a reasonable cost and without creating unnecessary administrative burdens. By affording affected federal employees the opportunity to be made whole, S. 2420 strikes the appropriate balance between the needs of those affected by retirement errors and federal agencies struggling to fulfill their mandates with already tight budgets.

### III. LEGISLATIVE HISTORY

S. 2420 was introduced by Senator Grassley on April 13, 2000, and referred to the Committee on Governmental Affairs. On May 1, 2000, the bill was referred to the Subcommittee on International Security, Proliferation, and Federal Services.

The Subcommittee on International Security, Proliferation, and Federal Services held a hearing on long-term care insurance on May 16, 2000. Senators Charles Grassley and Barbara Mikulski testified, along with the Director of OPM, Ms. Janice R. Lachance, in support of S. 2420.

On May 24, 2000 the Subcommittee on International Security, Proliferation, and Federal Services, by polling letter, sought approval to report S. 2420 to the Committee on Governmental Affairs with a substitute amendment making technical changes to the bill and adding provisions of the Federal Erroneous Retirement Coverage Corrections Act. The Subcommittee voted unanimously by polling letter to approve the bill, as amended, and on May 31 it was reported to the Committee on Governmental Affairs.

On June 14, 2000, the Committee considered S. 2420, as amended by the Subcommittee on International Security, Proliferation, and Federal Services. S. 2420 was ordered to be reported by the Committee by voice vote. Committee members present were Senators Thompson, Stevens, Collins, Voinovich, Cochran, Lieberman, Akaka, Torricelli, and Cleland.

## IV. SECTION-BY-SECTION ANALYSIS

*Title I—Federal long-term care insurance*

Section 1001. Short title.—This section titles the bill the “Long-Term Care Security Act.”

Section 1002.—This section amends Subpart G of Part III of Title 5, United States Code, by adding a new Chapter 90—Long-Term Care Insurance, Sections 9001–9009 as follows:

Section 9001. Definitions.—Under this section, individuals eligible to purchase long-term care insurance include most of those employees and annuitants who would be eligible to participate in the Federal Employees Health Benefits Program (FEHBP) with the exception of District of Columbia government employees. Eligibility also extends to active duty and retired members of the uniformed services, including the Commissioned Corps of the Public Health Service and National Oceanic and Atmospheric Administration. Relatives of active employees or members of the uniformed services qualified to purchase long-term care insurance include the spouse, children at least 18 years of age, parents, stepparents, or parents-in-law. For retirees, spouses and children are qualified to participate. OPM is authorized to include other eligible relatives.

This section defines a “qualified carrier” as an insurance company or consortium of insurance companies licensed to issue long-term care insurance in all 50 States and the District of Columbia, either directly or through their subsidiaries. Through reference to Section 7702B of the Internal Revenue Code (IRC) of 1986 (the amendments made by the Health Insurance Portability and Accountability Act of 1996, which establish favorable tax treatment for certain long-term care insurance contracts), this section defines a “qualified long-term care insurance contract” as one which covers only long-term care services; does not pay or reimburse expenses covered under Medicare; is guaranteed renewable; does not provide for a cash surrender value or other money that can be paid, assigned, or pledged as collateral for a loan, or borrowed; applies all refunds of premiums and policy holder dividends or similar amounts as a reduction in future premiums or to increase future benefits; and meets certain consumer protection standards.

By reference to the definition of qualified long-term care insurance contracts and services contained in Section 7702B of the IRC, this section defines qualified long-term care services as necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services and maintenance or personal care services required by a chronically ill individual and provided according to a plan prescribed by a licensed health care practitioner. Under the IRC and this chapter, “chronically ill individuals” must have functional impairments that make them unable to perform, without substantial assistance from another individual, at least two of five specified activities of daily living (ADLs) for a period certified to last at least 90 days. It also includes any cognitively impaired persons who require substantial supervision to protect them from threats to health and safety.

Section 9002. Availability of insurance.—This section requires the OPM to establish and, in consultation with the appropriate executive branch cabinet secretaries, administer a program through which eligible individuals may obtain long-term care insurance cov-

erage. Individuals seeking coverage as relatives of eligible employees or annuitants are required to provide documentation of their relationship, as determined by OPM. (The eligible employee or annuitant need not purchase a policy for a qualified relative to purchase one.) Coverage must be provided through qualified long-term care insurance contracts (as defined by the Section 7702B of the IRC) that are fully insured or reinsured (that is, financially capable of paying all qualified claims) and issued by a qualified carrier.

This section establishes underwriting standards under which provision of long-term care insurance is not guaranteed to any individual, and it is not required to be provided to individuals who would be immediately eligible for benefits. The intent of this section is to make clear that OPM is not required to offer long-term care policies to those who are immediately eligible. The provision should not be read, however, to preclude OPM from offering long-term care insurance to individuals who are immediately benefit eligible if OPM during the contract negotiation process determines it is appropriate to do so. Individuals who do not enroll during their first period of opportunity but who elect to enroll during a subsequent opportunity may be required to meet more stringent underwriting standards than would have been applied during the first enrollment period.

For purposes of underwriting, this section specifies that spouses of eligible employees and spouses of eligible annuitants must be treated as nearly as practicable like the eligible individual. It further provides that benefits and coverage are guaranteed renewable as long as the premiums continue to be paid in a timely manner. Premiums may be revised on a class basis only.

Section 9003. Contracting authority.—This section authorizes OPM to contract with one or more qualified carriers for a policy or policies of long-term care insurance on the basis of contractor qualifications, price, and reasonable competition. Each “master contract” is required to include a detailed statement of benefits, premium charges, the terms of the enrollment period, and any limitations. Master contracts shall not be automatically renewable. Premiums must reasonably and equitably reflect the cost of benefits provided, as determined by OPM; premiums can be adjusted during a contract period only by mutual agreement between OPM and the carrier.

Under the terms of the master contract, carriers must agree to provide payments or benefits to entitled individuals. Master contracts must also specify procedures to resolve expeditiously disputes regarding payment of claims or benefits, including internal administrative procedures and independent third-party review under appropriate circumstances. The choice of third party review entities must be mutually acceptable to OPM and the carrier. Master contracts shall also include procedures for review of an individual’s eligibility for coverage. Disputes between a carrier and OPM shall be subject to de novo judicial review after exhaustion of administrative remedies.

Neither OPM nor any third-party reviewer shall have the authority to change the terms of any master contract. Each master contract is for a term of seven years, that term beginning on the earliest date as of which any long-term care insurance coverage under the Act becomes effective. Any master contract entered into later

than the effective date for coverage shall end at the close of the same seven-year period. Master contracts may be terminated earlier by OPM according to the contract terms. If a master contract is terminated, the rights and responsibilities of the enrolled individuals, of the insurers, and OPM must continue until the termination of the enrolled individuals' coverage or the effective date of a successor contract.

Within 180 days of submission of a report by the GAO before the end of the fifth year of the program, 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 this program should be continued unmodified, terminated, or restructured. For 180 days after their recommendation, OPM is prevented from rebidding or otherwise contracting for any coverage that would follow the expiration of the seven-year period.

This section requires each master contract to provide for portability of coverage, ensuring that the policies of duly enrolled individuals shall not be terminated because of a change in the individual's status, such as separating from covered employment or no longer being a qualified relative due to divorce or otherwise.

Section 9004. Financing.—This section establishes that 100 percent of the premiums for long-term care insurance coverage under this program must be paid by eligible individuals either through withholding from pay or retirement benefits or through direct payments to the carrier. Eligible employees or annuitants may pay for a qualified relative's premium through withholding from the employee's pay or annuitant's retirement benefit.

This section requires each participating carrier to maintain records that permit it to account for all amounts received under this program, including investment earnings on these amounts, separately and apart from all other funds of the carrier. It grants OPM access to the Employees' Life Insurance Fund to finance reasonable expenses associated with initial implementation and administration of this chapter, without fiscal year limitation. Subsequently, the master contracts must require each carrier to reimburse the Employees' Life Insurance Fund on a pro rata basis for initial as well as ongoing OPM administrative expenses, including lost investment income of the Life Insurance Fund.

Section 9005. Preemption.—This section states that any state or local laws and regulations relating to long-term care insurance or contracts are superseded and preempted by the terms of any contract under this chapter.

Section 9006. Studies, reports, and audits.—This section requires carriers with master contracts to furnish reasonable reports to OPM and permits OPM and GAO to examine the carrier's records as necessary to carry out this chapter. Additionally, federal agencies are required to keep records, make certifications, and furnish OPM with information and reports. GAO is required to compare the competitiveness of this program with group and individual coverage available in the private insurance market and submit written evaluations to OPM, the President and each House of Congress before the end of the third and fifth years of this program. OPM is

also required to cooperate with GAO in providing periodic evaluations of the program.

Section 9007. Jurisdiction of courts.—This section provides that, after all required administrative remedies have been exhausted, individuals disputing a decision of a carrier to deny payments or benefits may file a civil action or claim against the carrier in U.S. District Courts, provided judicial review is not precluded by the dispute resolution procedures and remedies provided under the Act.

Section 9008. Administrative functions.—Under this section, OPM is required to prescribe the regulations necessary to carry out this chapter, and shall provide for enrollment periods, promotion, and education efforts. In addition, OPM is required to consult with the appropriate Secretaries in prescribing regulations with respect to active and retired members of the uniformed services and their qualified relatives. OPM is also required to ensure that each applicant has the information necessary to make an informed decision about obtaining long-term care insurance and to compare coverage and benefits to that otherwise generally available. OPM must provide information on the cost of long-term care and sufficiency of benefits to cover those costs, including the effects of inflation; an individual's right to cancel coverage and receive a premium refund; the number or percent of individuals likely to fail to maintain their coverage; how and when premiums for long-term care insurance under this chapter may be raised; a ten-year premium history for each qualified long-term care insurer under this chapter and whether increases are anticipated; the projected premiums for a typical insured individual at various ages; and the general advantages and disadvantages of long-term care insurance relative to other means of meeting the costs of long-term care.

Section 9009. Cost Accounting standards.—This section provides that long-term care insurance contracts under this chapter are exempt from the cost accounting standards issued by the Office of Federal Procurement Policy.

Section 3. Effective date.—This section requires OPM to ensure that long-term care insurance coverage under this Act will be available so that it may take effect not later than the beginning of the first fiscal year following a period of 18 months after enactment.

#### *Title II—Federal retirement coverage errors correction*

These provisions of the Federal Erroneous Retirement Coverage Corrections Act would provide a remedy to federal employees who have been placed in the wrong retirement system.

Section 2001: Provides the short title (“Federal Erroneous Retirement Coverage Corrections Act”) and the Table of Contents.

Section 2002: Defines the terms used throughout the Act.

Section 2003: Provides coverage for all errors that have been in effect for at least three years of service after December 31, 1986.

Section 2004: Provides that elections made under this Act are irrevocable.

##### *Subtitle A: Description of retirement coverage errors and measures for rectification*

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

Chapter 1: Covers employees and annuitants who should have been FERS covered, but were erroneously covered under CSRS or CSRS Offset. These individuals have a choice between correction to FERS or be covered by CSRS Offset. Includes provisions that allow all employee contributions, and earnings thereon, to remain in the TSP account if CSRS Offset is elected.

Chapter 2: Covers employees who should have been covered by a retirement plan (CSRS, CSRS Offset, or FERS), but were erroneously covered by Social Security only. In all cases, coverage is corrected to the appropriate plan so that the employee has retirement coverage.

Chapter 3: Covers employees who should have been covered by Social Security only, but were erroneously covered by CSRS or CSRS Offset. These individuals have a choice between correction to Social Security only or be covered by CSRS Offset.

Chapter 4: Covers employees who should have been covered by CSRS, CSRS Offset, or Social Security only, but were erroneously covered by FERS. These individuals have a choice between remaining in FERS or correction to the appropriate plan. Includes provisions that allow all employee contributions, and earnings thereon, to remain in the TSP account if coverage other than FERS is elected.

Chapter 5: Covers employees who should have been covered by CSRS Offset, but were erroneously covered by CSRS. Coverage is corrected to CSRS Offset to conform with Social Security coverage law.

Chapter 6: Covers employees who should have been covered by CSRS, but were erroneously covered by CSRS Offset. Coverage is corrected to CSRS to conform with Social Security coverage law.

*Subtitle B: General provisions*

Section 2201: Requires that all government agencies make reasonable efforts to identify and notify individuals affected by retirement coverage errors.

Section 2202: Authorizes OPM, SSA, and TSP to obtain any information necessary to carry out the responsibilities of this Act.

Section 2203: Provides for payment of interest on certain deposits made by employees that, due to correction of a retirement coverage error, are returned to the employee. Allows retirement credit for certain periods of service without payment of a service credit deposit. Provides that the retirement or survivor benefit is actuarially reduced by the amount of deposit owed.

Section 2204: Provides that the employing agency pays any employer OASDI taxes due for the period of erroneous coverage, subject to the three-year statute of limitations in the Internal Revenue Code. OPM will transfer excess employee retirement deductions to the OASDI Trust Funds to fund the employee share of the OASDI taxes. In no case will an employee be required to pay additional OASDI taxes.

Section 2205: Provides that certain employees who missed an opportunity to contribute to TSP due to a coverage error may receive earnings on their own TSP make-up contributions. "Lost" earnings will be paid by the employing agency. Note: Current law already provides that certain employees who missed an opportunity to contribute to TSP due to a coverage error may receive agency match-

ing contributions on TSP make-up contributions, agency automatic one percent contributions to TSP, and earnings on both.

Section 2206: Provides that employing agencies may not remove excess agency retirement contributions from the Civil Service Retirement and Disability Fund.

Section 2207: Requires that agencies obtain written approval from OPM before placing certain employees under CSRS coverage.

Section 2208: Authorizes the Director of OPM to extend deadlines, reimburse individuals for reasonable expenses incurred by reason of the coverage error or for losses, and waive repayments required under the Act.

Section 2209: Authorizes OPM to prescribe regulations to administer the Act.

*Subtitle C: Other provisions*

Section 2301: Makes remedies provided under the Act also available to employees of the Foreign Service and the Central Intelligence Agency.

Section 2302: Authorizes payments from the Civil Service Retirement and Disability Fund for administrative expenses incurred by OPM and for other payments required under the Act.

Section 2303: States that the Act does not preclude individuals from bringing suit against the Government of the United States for amounts not provided under the Act.

*Subtitle D: Effective date*

Section 2401: Provides that the Act is effective from the date of enactment.

V. REGULATORY IMPACT STATEMENT

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate “the regulatory impact which would be incurred in carrying out this bill.” S. 2420 would preempt state and local laws that govern long-term care coverage and benefits if those laws conflict with benefit contracts for federal employees. While this preemption would be an intergovernmental mandate, state and local governments would not bear any additional costs because the preemption would limit the scope of regulation by those governments.

The bill also would change the way the government of the District of Columbia and Gallaudet University correct errors associated with the incorrect enrollment of employees in federal retirement plans. This requirement would be both an intergovernmental and private-sector mandate as defined by the Unfunded Mandates Reform Act. However, costs associated with making those corrections would be minimal because only a small number of employees have been affected by errors addressed by the bill. Consequently, the Congressional Budget Office estimates that the total cost of the mandate would be minimal and would not exceed the thresholds established in UMRA (\$55 million for intergovernmental mandates and \$109 million for private-sector mandates in 2000, adjusted for inflation).

## VI. CBO COST ESTIMATE

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 12, 2000.*

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2420, the Long-Term Care Security Act and the Federal Erroneous Retirement Coverage Corrections Act.

If you wish further details on this estimate, we will be pleased to provide them. The principal CBO staff contacts are Chuck Betley (for title I) and Eric Rollins (for title II).

Sincerely,

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

Enclosure.

*S. 2420—Long-Term Care Security Act and Federal Erroneous Retirement Coverage Corrections Act*

Summary: S. 2420 has two major components. Title I of the bill, the Long-Term Care Security Act, would require the Office of Personnel Management (OPM) to develop and administer a long-term care insurance program for federal employees, members of the uniformed services, retirees from federal or military service, and specified relatives of the primary eligible groups. Because the federal government would not contribute to the enrollees' premiums, and the insurer or insurers would be required to reimburse OPM for its expenses in setting up and administering the plan, net federal outlays would be zero over the long run. However, the government would initially incur some start-up costs, which would ultimately be reimbursed by the insurers.

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

CBO estimates that this bill would reduce discretionary spending by \$51 million over the 2001–2005 period, primarily because of lower agency contributions to the Civil Service Retirement and Disability Fund (CSRDF) and the Thrift Savings Plan (TSP). S. 2420 would also increase direct spending by \$20 million over the same period. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

The bill would preempt state laws governing long-term care contracts for federal employees, and this preemption would be an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). Also, the requirements to continue retirement coverage in some instances and to correct retirement errors in others for employees of the District of Columbia and Gallaudet University would be intergovernmental and private-sector mandates.

However, CBO estimates that the cost of those mandates would be small and would not exceed the thresholds established in UMRA (\$55 million for intergovernmental mandates and \$109 million for private-sector mandates in 2000, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2420 is shown in the following table.

	Outlays by fiscal year, in millions of dollars—				
	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION					
Title II:					
Makeup Contributions to TSP .....	( <sup>1</sup> )	15	-3	-4	-4
Makeup Payments to Social Security .....	( <sup>1</sup> )	( <sup>1</sup> )	0	0	0
Makeup Payments to the CSRDF .....	-3	2	-3	-4	-4
Agency Retirement Contributions .....	( <sup>1</sup> )	-2	-5	-6	-6
Employer TSP Contributions .....	-1	-4	-7	-7	-8
Employer Social Security Contributions .....	( <sup>1</sup> )	( <sup>1</sup> )	0	0	0
Total—Subject to Appropriation .....	-4	13	-18	-20	-22
CHANGES IN DIRECT SPENDING					
Title I:					
OPM Administrative Expenses .....	3	18	-21	0	0
Title II:					
OPM Administrative Expenses .....	1	1	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Federal Retirement Benefits .....	( <sup>1</sup> )	2	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Transfers from CSRDF to Social Security Trust Funds .....	-3	3	0	0	0
Postal Service Contributions to the CSRDF .....	1	( <sup>1</sup> )	4	5	5
Postal Service Outlays (off-budget) .....	-2	6	-4	0	0
Postal Service Contributions to Social Security Trust Funds (off-budget) ...	( <sup>1</sup> )	( <sup>1</sup> )	0	0	0
Receipt of Transfers by Social Security Trust Funds (off-budget) .....	3	-3	0	0	0
Subtotal—Title II .....	1	9	( <sup>1</sup> )	5	5
Total—On Budget Direct Spending .....	3	23	-16	5	5
Total—Off-Budget Direct Spending .....	1	3	-4	0	0

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

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

The mandatory costs of this legislation would fall within budget functions 600 (income security) and 950 (undistributed offsetting receipts). This estimate assumes that S. 2420 will be enacted by October 1, 2000.

### *Basis of estimate*

#### *Title I: Long-Term Care Security Act*

S. 2420 specifies that eligible individuals who opt to purchase long-term care insurance would be responsible for 100 percent of the cost of the premiums, so that the federal government would not incur net costs over the long term. However, because OPM would expend funds for start-up and administrative expenses before enrollees' premiums are received, the agency would incur outlays in 2001 and 2002, which would be direct spending from the Employees' Life Insurance Fund.

Upon enactment, OPM would be allowed 18 months to set up the long-term care insurance program. CBO assumes that, if the bill were enacted in fiscal year 2000, OPM would begin in 2001 to negotiate with one or more insurance carriers to establish the benefits to be provided under the plan and the premiums to be charged. The program would take effect in 2003, and premiums would begin

to be deducted from enrollees' salary or retirement payments. The federal government would not contribute to the enrollees' premiums, and the insurer or insurers would be required to reimburse OPM for the agency's expenses in setting up and administering the plan.

The expenses that OPM would incur before being able to collect premiums from enrollees and reimbursement from the insurers would be paid for the Employees' Life Insurance Fund. Based on information from OPM and the costs of administering other benefit programs, CBO estimates that start-up costs over three fiscal years would be about \$23 million. A significant portion of the costs would be for education and outreach—especially for printing and mailing brochures to inform potential participants of their eligibility and options under the plan. About 10 percent of the estimated costs represents expenses for drafting specifications for the plan, evaluating contract proposals, negotiating with contractors, and setting up systems for tracking enrollment and premium deductions.

Expenditures for education and outreach would be significant because long-term care insurance is a new benefit for many employees, unlike pensions and health insurance, which are already established and familiar. Furthermore, OPM would have to contact active and retired military personnel, whose benefits are ordinarily administered by the Department of Defense. Intensive outreach efforts can help attract a larger pool of participants, which would help to assure the plan's financial solvency by broadening the distribution of people who pay premiums and including more enrollees with a low risk of needing services.

Expenses of \$3 million in 2001 would be primarily for developing the long-term care insurance plan and negotiating with insurers, while education and outreach expenses are projected to increase outlays to \$18 million in 2002. Start-up expenses for administrative costs and processing enrollment in the first year of the plan's operation are estimated to amount to \$2 million in 2003. Once the insurance program is established, CBO expects that, beginning in 2003, OPM would incur costs of about \$1 million annually to administer it. Reimbursement of the estimated \$23 million in start-up costs incurred from 2001 through 2003, as well as for the first-year administrative expenses of \$1 million, would occur in 2003, so that receipts would exceed outlays by OPM by about \$21 million in 2003.

Those ongoing expenses are expected to remain steady unless another open season is held. The bill directs OPM to conduct open enrollment seasons periodically, during which administrative expenses would be expected to increase. However, frequent open seasons would create opportunities for risk selection, as low-risk individuals could defer joining the plan until they perceive that their risk of needing long-term care has changed. The bill would make it harder for people to elect coverage only when their risk changes by authorizing the insurance plans to apply underwriting standards for individuals who defer joining at their first opportunity. Nevertheless, CBO expects that OPM would allow open seasons infrequently. If open seasons occur at the same intervals as the length of the contract specified in the bill, or once every seven years, the next increase in outlays for a new open season would occur in 2010.

S. 2420 specifies that the government collect premiums from most enrollees by withholding a portion of their pay and, in turn, transfer these amounts to the insurance companies. These transactions would also be direct spending but would have no significant net effect on the budget.

*Title II: Federal Erroneous Retirement Coverage Corrections Act*

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, a defined benefit plan. Those hired after 1983 are generally covered by the Federal Employees' Retirement System, which features a more limited defined benefit than CSRS and the defined contribution Thrift Savings Plan with matching contributions by the government. Employees in CSRS are not covered by Social Security, while those in FERS are. 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, which features a combination of CSRS and Social Security benefits.

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

Assumptions about Retirement Coverage Errors. CBO estimated the number of retirement coverage errors that have been made based on discussions with personnel officials in a number of large government agencies, including the Postal Service and the Departments of Defense, Veterans Affairs, and Agriculture. Those agencies comprise approximately 70 percent of the federal civilian workforce. On the basis of those discussions, CBO estimates that approximately 18,000 coverage errors have occurred throughout the government, of which approximately 12,000 have already been corrected. The two most common types of coverage errors appear to involve employees who should be in FERS but were accidentally put in CSRS and employees with prior service who returned to government service and were misplaced in either FERS or CSRS Offset.

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

S. 2420 would allow most employees affected by coverage errors to choose whether they would like to be placed in the proper retirement system or make their incorrect coverage permanent. Employees who have been incorrectly covered by CSRS could elect only CSRS Offset or FERS. Employees whose coverage errors have not been corrected would have 180 days after the discovery of the error to make an election; employees whose coverage errors have already been fixed would have 18 months after the issuance of final implementing regulations to make their election. All elections would be irrevocable, and employees who did not make an election

would remain in their current coverage. Coverage errors lasting less than three years would not be covered by the bill. CBO assumed that under the bill agencies would stop correcting coverage errors for the first six months of 2001 pending the issuance of final regulations to implement the bill, and that they would finish processing the resulting backlog by the end of 2002.

Under current law, when an individual's coverage is corrected to FERS, the employing agency makes a lump-sum deposit into his or her TSP account based on the employee's prior TSP contributions. That deposit is equal to the contributions the government would have made and earnings that they would have generated under FERS rules. If the employee did not have a TSP account, only a deposit for the automatic 1-percent contributions is made. Earnings are calculated using the individual's own fund allocation decisions (if he or she 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 on the employee's makeup contributions.

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

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

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

Effect on Discretionary Spending. CPO estimates that discretionary spending would decline by \$51 million over the 2001–2005 period as the result of S. 2420.

Makeup Contributions to the TSP. S. 2420 would have two effects on the makeup contributions that agencies pay to the TSP. Agencies would not have to pay makeup contributions for employees who elect CSRS Offset coverage instead of FERS, but payments for individuals who elect FERS coverage would be higher than under current law. This latter effect would predominate in 2002, when agencies would pay for lost earnings on the makeup contributions made by employees whose coverage errors were corrected before the bill's enactment. In later years, annual agency spending on makeup contributions would decline because many employees would elect CSRS Offset coverage and not be eligible for makeup TSP contributions. CBO estimates that overall agency spending on makeup TSP contributions would increase by \$4 million over the 2001–2005 period.

Makeup Payments to Social Security. Agencies are currently responsible for paying makeup Social Security payroll taxes covering the last 3 years, 3 months, and 15 days for employees whose coverage is changed from CSRS to FERS or CSRS Offset. Since agencies would stop correcting coverage errors in the first six months of 2001 (and thus make fewer corrections than under current law), CBO estimates that makeup payments would decrease slightly in that year. However, makeup payments would be slightly higher in 2002 as agencies work through the backlog of uncorrected errors. CBO estimates that these amounts would be less than \$500,000 in each year.

Makeup Payments to the CSRDF. Under current law, adjustments to past agency contributions to the CSRDF are completely retroactive. Agencies contribute 8.51 percent of basic pay for most employees covered by CSRS or CSRS Offset and 10.7 percent of basic pay for most employees under FERS. Agencies thus make additional contributions for employees whose coverage is changed from CSRS or CSRS Offset to FERS and receive a partial refund of their retirement contributions for employees whose coverage is changed from FERS to CSRS or CSRS Offset. This bill would have similar requirements, except that agencies could no longer receive partial refunds of their contributions. Since many employees who would be switched to FERS coverage under current law would elect CSRS Offset coverage under the bill, the payments that agencies make for retroactive adjustments would decrease by \$12 million over the 2001–2005 period.

Agency Retirement Contribution. The amount that agencies contribute toward their employees' retirement would decline by \$19 million over the 2001–2005 period as more employees are covered by CSRS Offset rather than FERS compared to current law.

Employer TSP Contributions. The employees who elect CSRS Offset coverage under S. 2420 would no longer be eligible for the automatic and matching TSP contributions available under FERS, lowering agency spending on TSP contributions by \$27 million over the 2001–2005 period.

Employer Social Security Contributions. Agency payments of Social Security payroll taxes would decline by negligible amounts in

2001 and 2002, due primarily to timing differences in the number of coverage errors corrected.

Effects on Direct Spending. Direct spending would be affected in a variety of ways by the retirement correction provisions.

OPM Administrative Expenses. S. 2420 would allow OPM to pay the costs of implementing title II directly from the CSRDF. CBO anticipates that OPM would incur most of these costs in 2001 and 2002, when it would issue implementing regulations and process elections made by employees with coverage errors that were corrected prior to the bill's enactment. CBO estimates that these administrative costs would total about \$1 million in both 2001 and 2002, and about \$100,000 annually after that.

Federal Retirement Benefits. Since the employees affected by retirement coverage errors are generally still in the middle of their careers, CBO anticipates that S. 2420 would not have a significant impact on federal retirement benefits over the 2001–2005 period. However, a small number of disabled retirees and survivors would be eligible to make an election under the bill, and CBO assumes that some of them would receive higher benefits by changing their retirement coverage. (Individuals who change their retirement coverage would also receive retroactive benefits.) CBO estimates that annual spending on retirement benefits would rise by negligible amounts over the 2001–2005 period, except in 2002, when most elections would be processed and outlays, mostly for retroactive benefits, would rise by \$2 million.

Transfers from the CSRDF to Social Security. Employees who have been mistakenly covered by CSRS when they should have been in CSRS Offset or FERS have been contributing 7 percent of their basic pay to the CSRDF, instead of contributing 0.8 percent to the CSRDF and 6.2 percent to Social Security. When the coverage error is corrected under current law, the 6.2 percent in erroneous CSRS contributions (up to the Social Security taxable maximum) is generally transferred to the Social Security trust funds. S. 2420 would continue this practice, but transfers from the CSRDF to Social Security would decrease by \$3 million in 2001 and rise by \$3 million in 2002 due to timing effects.

Postal Service Contributions to the CSRDF. As noted earlier, agencies would make lower contributions to the CSRDF under S. 2420 because many affected employees would change their retirement coverage from FERS to CSRS Offset. CBO estimates that this would reduce offsetting receipts to the CSRDF by \$15 million over the 2001–2005 period. (CBO's estimate includes only the change in contributions for the Postal Service; effects on contributions from other agencies are not scored because they depend on the future level of appropriations.)

Postal Service Outlays. CBO estimates that S. 2420 would increase outlays for the Postal Service by a total of \$4 million in 2001 and 2002 and by larger amounts in subsequent years. CBO assumes that the Postal Service would offset these higher costs in 2003 by raising postage rates.

Postal Service Contributions to Social Security. Postal Service contributions to the Social Security trust funds would be slightly lower in 2001 and slightly higher in 2002 due to the effects that S. 2420 would have on when coverage errors are corrected. The amounts involved would be less than \$500,000 each year.

Receipt of Transfers by Social Security. The timing shift in payments from the CSRDF to Social Security would reduce offsetting receipts to the Social Security trust funds, which are off-budget, by \$3 million in 2001 and increase receipts by \$3 million in 2002.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-procedures, only the on-budget effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays .....	3	23	-16	5	5	6	6	7	7	8
Changes in receipts .....						not applicable				

Intergovernmental and private-sector impact: S. 2420 would preempt state and local laws that govern long-term care coverage and benefits if those laws conflict with benefit contracts for federal employees. While this preemption would be an intergovernmental mandate, state and local governments would not bear any additional costs because the preemption would limit the scope of regulation by those governments.

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

Previous CBO estimates: In March 2000, the House Committee on Government Reform ordered reported H.R. 4040, which would also establish a long-term care insurance benefit for federal employees. CBO estimated that OPM's outlays for establishing and administering the new benefit would be the same under H.R. 4040 and S. 2420. The estimates for the two bills differ in one regard. The estimate for H.R. 4040 assumed that insurers would be allowed to spread their reimbursement of administrative and start-up expenses over the duration of the seven-year contract, while S. 2420 specifies that reimbursement for incurred expenses be paid during the first year.

On August 24, 1999, CBO estimated that S. 1232, the Federal Erroneous Retirement Coverage Corrections Act, as ordered reported by the Senate Committee on Governmental Affairs on August 3, 1999, would decrease discretionary spending by \$42 million and increase direct spending by \$42 million over the 2000–2004 period. The provisions of S. 1232 are very similar to those of title II of S. 2420, and CBO prepared its estimates for the two bills using the same basic assumptions.

The difference between the direct spending effects of the two bills primarily reflects a change in CBO's scoring methodology. In its estimate of S. 1232, CBO included the bill's effect on the offsetting receipts received by the CSRDF. Since issuing that estimate, CBO has consulted with the Budget Committees and changed its scoring approach. Because agency payments to the CSRDF come mostly from appropriated funds and are purely intragovernmental, including their effect on offsetting receipts can present an inaccurate picture of a provision's impact on mandatory spending. As a result, CBO no longer scores the effects that higher (or lower) agency payments to the CSRDF have on offsetting receipts, unless those payments come from funds that have already been appropriated or are being appropriated in the same piece of legislation. The new scoring approach does not affect payments made by the Postal Service, which is largely funded outside of the appropriations process.

Estimate prepared by: Federal Cost: Chuck Betley (title I) and Eric Rollins (title II). Impact on State, Local, and Tribal Governments: Leo Lex. Impact on the Private Sector: John Harris.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

#### VII. EXECUTIVE COMMUNICATIONS

U.S. OFFICE OF PERSONNEL MANAGEMENT,  
*Washington, DC, June 29, 2000.*

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

DEAR MR. CHAIRMAN: I am writing to offer the views of the Office of Personnel Management (OPM) on the amended version of S. 2420, as ordered reported by the Committee on Governmental Affairs. That bill would provide not only 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, but also for the correction of retirement coverage errors under chapters 83 and 84 of title 5, United States Code.

As you are aware, this Administration is committed to helping all Americans to address their long-term care needs. The President's long-term care initiative would not only fund services to support family caregivers of older persons, and improve opportunities for those cared for in home and community-based settings to obtain assistance, but also encourage the purchase of long-term care insurance by Federal employees.

I am pleased to see the spirit of bipartisan cooperation which characterized the discussions of long-term care insurance for Federal employees is reflected in Title I of S. 2420. That Title, which is virtually identical to H.R. 4040, as passed by the House of Representatives, reflects an emerging consensus which may differ in some respects from the initial positions of the original proponents, including the Administration, but which has produced a program in which we may all take pride.

In addition, as I have noted previously, we appreciate the diligence of the Committee in working to craft an equitable solution to the problems created by erroneous retirement coverage deter-

minations. Recognizing that the language of S. 1232, which is incorporated as Title II of S. 2420, differs in some respects from the Administration's proposal to address retirement coverage errors, I believe that language provides comprehensive and equitable relief at a reasonable cost to the Federal Government. Accordingly, OPM has no objection to Title II of S. 2420, as ordered reported.

In summary, I have no objection to the Senate's passage of S. 2420, as reported with the amendments noted above. It will provide long-awaited relief to many Federal employees and their families who, through no fault of their own, find they are affected by retirement coverage errors, as well as offer an opportunity for Federal civilian and military individuals and their families to participate in a long-term care insurance program that will serve as a model for other employers in addressing the challenges of a new century.

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

Sincerely,

JANICE R. LACHANCE,  
*Director.*

#### VIII. CHANGES IN EXISTING LAW

There are no changes to existing law.

