

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL  
ACT

MARCH 26, 2009.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. TOWNS, from the Committee on Oversight and Government  
Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1256]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom  
was referred the bill (H.R. 1256) to protect the public health by  
providing the Food and Drug Administration with certain authority  
to regulate tobacco products, having considered the same, report fa-  
vorably thereon with amendments and recommend that the bill as  
amended do pass.

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The amendments are as follows:  
Add at the end the following:

**SEC. 408. EXEMPTION OF CERTAIN REPAYMENTS UNDER THE CIVIL SERVICE RETIREMENT SYSTEM FROM THE REQUIREMENT THAT THEY BE MADE WITH INTEREST.**

(a) IN GENERAL.—Section 8334(d)(1) of title 5, United States Code, is amended—  
(1) by striking “(d)(1)” and inserting “(d)(1)(A)”; and  
(2) by adding at the end the following:

“(B) No interest under subparagraph (A) shall be required in the case of any deposit to the extent that it represents the amount of any refund that was made to an employee or Member during the period beginning on October 1, 1990, and ending on February 28, 1991.”

(b) APPLICABILITY.—The amendments made by subsection (a) shall be effective with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act.

Page 197, strike lines 7 through 10 and insert the following:

“(E)(i) Subject to clause (ii), sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1), 8440c(a)(1), 8440d(a)(1), and 8440e(a)(1) shall be applied in a manner consistent with the purposes of this paragraph.

“(ii) The Secretary concerned may, with respect to members of the uniformed services under the authority of such Secretary, establish such special rules as such Secretary considers necessary for the administration of this subparagraph, including rules in accordance with which such Secretary may—

“(I) provide for delayed automatic enrollment; or

“(II) preclude or suspend the application of automatic enrollment.”

Add at the end the following:

**SEC. 409. COMPUTATION OF CERTAIN ANNUITIES BASED ON PART-TIME SERVICE.**

(a) IN GENERAL.—Section 8339(p) of title 5, United States Code, is amended by adding at the end the following:

“(3) In the administration of paragraph (1)—

“(A) subparagraph (A) of such paragraph shall apply with respect to service performed before, on, or after April 7, 1986; and

“(B) subparagraph (B) of such paragraph—

“(i) shall apply with respect to that portion of any annuity which is attributable to service performed on or after April 7, 1986; and

“(ii) shall not apply with respect to that portion of any annuity which is attributable to service performed before April 7, 1986.”

(b) APPLICABILITY.—The amendment made by subsection (a) shall be effective with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act.

Add at the end the following:

**SEC. 410. TREATMENT OF MEMBERS OF THE UNIFORMED SERVICES UNDER THE THRIFT SAVINGS PLAN.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) members of the uniformed services should have a retirement system that is at least as generous as the one which is available to Federal civilian employees; and

(2) Federal civilian employees receive matching contributions from their employing agencies for their contributions to the Thrift Savings Fund, but the costs of requiring such a matching contribution from the Department of Defense could be significant.

(b) REPORTING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall report to Congress on—

(1) the cost to the Department of Defense of providing a matching payment with respect to contributions made to the Thrift Savings Fund by members of the armed forces;

(2) the effect that requiring such a matching payment would have on recruitment and retention; and

(3) any other information that the Secretary of Defense considers appropriate.

Add at the end the following:

**SEC. 411. AUTHORITY TO DEPOSIT REFUNDS UNDER FERS.**

(a) DEPOSIT AUTHORITY.—Section 8422 of title 5, United States Code, is amended by adding at the end the following:

“(i)(1) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which such employee or Member may be allowed credit under this chapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made.

“(2) Interest under this subsection shall be computed in accordance with paragraphs (2) and (3) of section 8334(e) and regulations prescribed by the Office. The option under the third sentence of section 8334(e)(2) to make a deposit in one or more installments shall apply to deposits under this subsection.

“(3) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITIONAL AMENDMENT.—Section 8401(19)(C) of title 5, United States Code, is amended by striking “8411(f);” and inserting “8411(f) or 8422(i);”.

(2) CREDITING OF DEPOSITS.—Section 8422(c) of title 5, United States Code, is amended by adding at the end the following: “Deposits made by an employee, Member, or survivor also shall be credited to the Fund.”.

(3) SECTION HEADING.—(A) The heading for section 8422 of title 5, United States Code, is amended to read as follows:

“§ 8422. Deductions from pay; contributions for other service; deposits”.

(B) The analysis for chapter 84 of title 5, United States Code, is amended by striking the item relating to section 8422 and inserting the following:

“8422. Deductions from pay; contributions for other service; deposits.”.

(4) RESTORATION OF ANNUITY RIGHTS.—The last sentence of section 8424(a) of title 5, United States Code, is amended by striking “based.” and inserting “based, until the employee or Member is reemployed in the service subject to this chapter.”.

Add at the end the following:

## **TITLE V—RETIREMENT CREDIT FOR SERVICE OF CERTAIN EMPLOYEES TRANSFERRED FROM DISTRICT OF COLUMBIA SERVICE TO FEDERAL SERVICE**

### **SEC. 501. SHORT TITLE.**

This title may be cited as the “District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2009”.

### **SEC. 502. RETIREMENT CREDIT FOR SERVICE OF CERTAIN EMPLOYEES TRANSFERRED FROM DISTRICT OF COLUMBIA SERVICE TO FEDERAL SERVICE.**

(a) IN GENERAL.—Any individual who is treated as an employee of the Federal government for purposes of chapter 83 or chapter 84 of title 5, United States Code, on or after the date of enactment of this Act who performed qualifying District of Columbia service shall be entitled to have such service included in calculating the individual’s creditable service under sections 8332 or 8411 of title 5, United States Code, but only for purposes of the following provisions of such title:

- (1) Sections 8333 and 8410 (relating to eligibility for annuity).
- (2) Sections 8336 (other than subsections (d), (h), and (p) thereof) and 8412 (relating to immediate retirement).
- (3) Sections 8338 and 8413 (relating to deferred retirement).
- (4) Sections 8336(d), 8336(h), 8336(p), and 8414 (relating to early retirement).
- (5) Section 8341 and subchapter IV of chapter 84 (relating to survivor annuities).
- (6) Section 8337 and subchapter V of chapter 84 (relating to disability benefits).

(b) TREATMENT OF DETENTION OFFICER SERVICE AS LAW ENFORCEMENT OFFICER SERVICE.—Any portion of an individual’s qualifying District of Columbia service which consisted of service as a detention officer under section 2604(2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1—626.04(2), D.C. Official Code) shall be treated as service as a law enforcement officer under sections 8331(20) or 8401(17) of title 5, United States Code, for purposes of applying subsection (a) with respect to the individual.

(c) SERVICE NOT INCLUDED IN COMPUTING AMOUNT OF ANY ANNUITY.—Qualifying District of Columbia service shall not be taken into account for purposes of com-

puting the amount of any benefit payable out of the Civil Service Retirement and Disability Fund.

**SEC. 503. QUALIFYING DISTRICT OF COLUMBIA SERVICE DEFINED.**

In this title, “qualifying District of Columbia service” means any of the following:

(1) Service performed by an individual as a nonjudicial employee of the District of Columbia courts—

(A) which was performed prior to the effective date of the amendments made by section 11246(b) of the Balanced Budget Act of 1997; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(2) Service performed by an individual as an employee of an entity of the District of Columbia government whose functions were transferred to the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee under section 11232 of the Balanced Budget Act of 1997—

(A) which was performed prior to the effective date of the individual’s coverage as an employee of the Federal Government under section 11232(f) of such Act; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(3) Service performed by an individual as an employee of the District of Columbia Public Defender Service—

(A) which was performed prior to the effective date of the amendments made by section 7(e) of the District of Columbia Courts and Justice Technical Corrections Act of 1998; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

(4) In the case of an individual who was an employee of the District of Columbia Department of Corrections who was separated from service as a result of the closing of the Lorton Correctional Complex and who was appointed to a position with the Bureau of Prisons, the District of Columbia courts, the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee, the United States Parole Commission, or the District of Columbia Public Defender Service, service performed by the individual as an employee of the District of Columbia Department of Corrections—

(A) which was performed prior to the effective date of the individual’s coverage as an employee of the Federal Government; and

(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

**SEC. 504. CERTIFICATION OF SERVICE.**

The Office of Personnel Management shall accept the certification of the appropriate personnel official of the government of the District of Columbia or other independent employing entity concerning whether an individual performed qualifying District of Columbia service and the length of the period of such service the individual performed.

Conform table of contents in section 1(b) accordingly.

**PURPOSE AND SUMMARY**

H.R. 1256, the Family Smoking Prevention and Tobacco Control Act, was introduced by Rep. Waxman on March 3, 2009. The legislation includes provisions that fall within the jurisdiction of the Committee on Oversight and Government Reform. Specifically, Title IV of H.R. 1256, the Thrift Savings Plan Enhancement Act of 2009, makes several changes to modernize and enhance the Thrift Savings Plan (TSP) and provides for other changes to federal employee retirement benefits.

**BACKGROUND AND NEED FOR LEGISLATION**

In general, TSP was designed to play an important role in employees’ retirement income and participation should be strongly en-

couraged. The bill requires the Federal Retirement Thrift Investment Board (Board) to automatically enroll newly hired federal and military employees in the Thrift Savings Plan (TSP). Currently, 14% of eligible federal civilian employees and 75% of uniformed service members are not participating in TSP and are therefore less likely than participants to be financially self-sufficient in retirement. For civilian employees in the Federal Employee Retirement System (FERS), TSP represents one part of a three part system, the other parts being Social Security and the FERS annuity.

The bill also requires the establishment of a qualified Roth contribution option for the TSP. This option, which has been in use in the private sector for a number of years, permits employees to contribute money to their TSP account after paying taxes on the contribution and to withdraw money tax-free upon retirement. This option could be attractive to federal employees at both the lower and upper ends of the wage scale.

The bill would authorize the Board to create additional self-directed investment options, including additional index funds, provided that the costs of such options are borne solely by the participants who use such options and after consultation with affected employee organizations.

The Committee believes the authority to add self-directed investment options under the Thrift Savings Plan will enable the Board to serve the best interests of participants by making available low-cost index funds that offer important diversification benefits. Since it is unlikely any fixed asset allocation or fixed set of asset classes will satisfy the requirements of every investor, the authority to add appropriate self-directed investment options may enable participants to access the full set of core asset classes optimal in their own financial circumstances.

The Committee recognizes some investors today have sophisticated or specialized investment needs. Participants may want added diversity by investing in funds comprised of real estate investment trusts, emerging markets, or inflation-protected bonds. Other participants may want to align their portfolio with their personal convictions by investing in socially responsible funds. The self-directed investment options are intended to provide a vehicle for meeting these needs of plan participants without complicating the basic structure of the Thrift Savings Plan.

Finally, the bill amends FERS by crediting retiring federal employees with unused sick leave when determining the amount of their FERS annuity, as is currently the case for participants in the CSRS. This would allow FERS employees to include unused sick leave in determining their total years of service as part of the annuity computation. Total years of service is one part of the formula used to calculate annuities under the FERS system. Unused sick leave would not be a factor in determining an employee's average pay or their eligibility for a FERS annuity. The change would reduce the incentive for employees to use excess sick leave as they approach retirement. The Office of Personnel Management (OPM) has found that FERS employees who are approaching retirement use significantly more sick leave than their CSRS counterparts. OPM estimates that this results in \$68 million in lost productivity each year. The change is intended to address the related problems of absenteeism and lost productivity in federal agencies that result

from the current “use it or lose it” approach to sick leave under the FERS system.

#### LEGISLATIVE HISTORY

On April 29, 2008, the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia held a hearing on legislative proposals by the Board to provide for automatic enrollment and another provision not included in H.R. 1256. The witnesses were Greg Long, Executive Director, Federal Retirement Thrift Investment Board and Richard Brown, Vice Chair, Employee Thrift Advisory Council.

On July 10, 2008, the Subcommittee held a hearing on, “Investing in the Future: Minority Opportunities and the Thrift Savings Plan.” The witnesses were Greg Long, Executive Director, Federal Retirement Thrift Investment Board; Michael Sobel, Managing Director & Head of U.S. Equity Trading, Barclays Global Investors; Mr. Edward Swan, Jr., President, Fiduciary Investment Solutions Group; Mr. Jarvis Hollingsworth, Partner, Bracewell & Giuliani, L.L.P.; Mr. Thurman White, Chief Executive Officer, Progress Investment Management; Ms. Mellody Hobson, President, Ariel Capital Management, Inc.; and Mr. Jessie Brown, President, Krystal Investments. This hearing examined ways to increase minority participation in the management of TSP and explored why the federal government uses passive management strategies versus active management of TSP funds.

H.R. 6500, the Thrift Savings Plan Enhancement Act of 2008, was introduced by then-Chairman Waxman, together with then-Ranking Member Tom Davis and then-Subcommittee Chairman Danny Davis, on July 15, 2008, and referred to the Committee on Oversight and Government Reform. Title IV of H.R. 1256 is similar to H.R. 6500. The Committee passed H.R. 6500 by voice vote on July 16, 2008. One amendment to the bill was offered by Rep. Danny Davis, and adopted by the Committee. The amendment, which added an additional reporting requirement, is now included in the text of Title IV of H.R. 1256.

H.R. 1108 (110th Congress), the Family Smoking Prevention and Tobacco Control Act, passed the House by a 326–102 vote on July 30, 2008. Title IV of H.R. 1256 is similar to the provisions included and passed by the House in H.R. 1108.

#### SECTION-BY-SECTION

##### TITLE IV—THRIFT SAVINGS PLAN ENHANCEMENT

###### *Section 401: Short title; table of contents*

Section 1 specifies that the bill may be cited as the “Thrift Savings Plan Enhancement Act of 2009” and provides a table of contents.

###### *Section 402: Automatic enrollments*

Subsection (a) of this section strikes paragraphs 2 through 4 of section 8432(b) of title 5, United States Code and inserts a new paragraph 2. The new subparagraph 2(A) requires the Board, by regulation, to provide for new participants to be automatically enrolled in the TSP at the default percentage of basic pay. Subpara-

graph 2(B) provides that the default percentage of basic pay shall be equal to 3%, or such other percentage not less than 2% or more than 5% as the Board may prescribe by regulation. Subparagraph 2(C) makes clear that the regulations required under 2(A) shall include provisions under which individuals who would otherwise be automatically enrolled may modify the percentage of basic pay contributed or decline enrollment in the TSP altogether. Subparagraph 2(D) defines the term “new participant” for purposes of paragraph 2 to mean any individual participating in the TSP pursuant to an appointment or election which occurs after any regulations required by subparagraph (A) first take effect. Subparagraph 2(E) provides that various sections of title 5 shall be applied in a manner consistent with the purposes of paragraph 2. Those sections apply to federal employees subject to the Civil Service Retirement System, justices and judges, bankruptcy and magistrate judges, Court of Federal Claims judges, judges of the United States Court of Appeals for Veterans Claims, and members of the uniformed services. In the case of members of the uniformed services, the Secretary concerned may issue special rules for such members, including by providing for delayed automatic enrollment or suspending or precluding the application of automatic enrollment.

*Section 403: Qualified Roth contribution program*

This section amends title 5 by inserting a new section 8432d. The new section requires the Board to include by regulation in the TSP a qualified Roth contribution program under such terms and conditions as the Board may prescribe. The term “qualified Roth contribution program” means a program described in paragraph (1) of section 402A(b) of the Internal Revenue Code of 1986. The Committee understands this to be a program under which employee contributions to the TSP would be included as taxable income and withdrawals at retirement would be not be considered taxable income.

*Section 404: Authority to establish self-directed investment window*

This section amends section 8438 of title 5 to give the Board the authority to add a self-directed investment window under the TSP, if the Board determines such an addition would be in the best interests of the participants. Such addition shall be limited to (1) low-cost, passively-managed index funds that offer diversification benefits and (2) other investment options, if the Board determines the options to be appropriate retirement investment vehicles. The Board is required to ensure that any administrative expenses related to the self-directed investment window are borne solely by the participants using such window and consult with the Employee Thrift Advisory Council before establishing any such window. The Board may also establish such terms and conditions for the self-directed investment window as it considers appropriate to protect the interests of participants.

*Section 405: Reporting requirements*

This section requires the Board to submit an annual report to Congress by March 31st of each year on the operations of the TSP during the previous calendar year. The report will include information on the number of participants, the median balance in partici-

pants' accounts, demographic information on participants, the percentage of funds allocated among investment funds or options, the status of the development and implementation of the self-directed investment window, the diversity demographics of any company, investment advisor or other entity retained to invest and manage the assets of the Thrift Savings Fund, and any other information the Board considers appropriate. A copy of the report shall be made available to the public on the internet.

The section also requires the Board to include in the periodic statements provided to participants the amount of investment management fees, administrative fees, and any other fees or expenses paid with respect to each investment fund or option under TSP.

*Section 406: Acknowledgement of risk*

This section amends section 8439(d) of title 5 to require participants to sign an acknowledgement of risk whenever they elect to invest sums in any fund or option other than the Government Securities Investment Fund. The section further amends section 8477(e) of title 5 to make clear that fiduciaries shall not be liable for providing for automatic enrollment, for enrolling participants under a default investment fund, for allowing a participant to invest through the self-directed investment window, or for establishing restrictions applicable to participants' ability to invest through the self-directed investment window.

*Section 407: Credit for unused sick leave*

This section amends section 8415 of title 5 to allow the total service of an employee who retires on an immediate annuity, or who dies leaving a survivor or survivors entitled to annuity, to include the days of unused sick leave when computing the employee's FERS annuity. Unused sick leave will not be counted in determining average pay or annuity eligibility under the FERS system. The amendments made by this section shall apply to annuities computed based on separations occurring on or after the date of enactment of the Act.

*Section 408: Exemption of certain repayments under the Civil Service retirement system*

This section amends section 8334 of title 5 to provide that no interest under subparagraph (A) of section 8334 shall be required in the case of any deposit made under such section to the extent that it represents the amount of any refund that was made to an employee or Member during the period beginning on October 1, 1990, and ending on February 28, 1991.

*Section 409: Part-time annuity calculation for some CSRS employees*

This section amends section 8339 of title 5 to make applicable the current CSRS post-1986 part-time annuity calculation to years of service performed before, on, or after April 7, 1986.



*Section 410: Treatment of members of the uniformed services under the Thrift Savings Plan*

This section states that it is the sense of the Congress that members of the uniformed services should have a retirement system that is at least as generous as the one which is available to federal civilian employees. It recognizes that federal civilian employees receive a matching TSP contribution from their agency, and acknowledges that the cost of providing a similar matching contribution for members of the uniformed services would be significant.

The section further requires the Secretary of Defense to report to Congress on the cost of providing a matching payment to members of the armed services, the effect that requiring such a matching payment would have on recruitment and retention, and any other information the Secretary considers appropriate within 180 days.

*Section 411: Authority to deposit refunds under FERS*

This section amends section 8422 of title 5 to allow employees or Members who have received a refund of retirement deductions under FERS to deposit the amount received, with interest. Credit for the years of service covered by such refund may not be allowed until the deposit is made. For the purpose of survivor annuities, deposits authorized by this section may also be made by a survivor of an employee or Member. The section makes further technical and conforming amendments to title 5.

TITLE V—RETIREMENT CREDIT FOR SERVICE OF CERTAIN EMPLOYEES  
TRANSFERRED FROM DISTRICT OF COLUMBIA SERVICE TO FEDERAL  
SERVICE

*Section 501: Short title.*

This title may be cited as the “District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2009.”

*Section 502: Retirement credit for service of certain employees transferred from District of Columbia service to federal service*

This section permits certain federal employees who performed “qualifying District of Columbia service” to be entitled to have such service included in calculating the individual’s creditable service under the FERS system. The section further provides that any portion of an individual’s qualifying District of Columbia service which consisted of service as a detention officer under section 2604(2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 shall be treated as service as a law enforcement officer under the FERS system. Qualifying District of Columbia service under this section shall not be taken into account for purposes of computing the amount of any benefit payable out of the Civil Service Retirement and Disability Fund.

*Section 503: Qualifying District of Columbia service defined*

This section defines “qualifying District of Columbia Service” to include certain service performed by an individual as a non-judicial employee of the District of Columbia courts, certain service performed by an individual as an employee of an entity of the District

of Columbia government whose functions were transferred to the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee, certain service performed by an individual as an employee of the District of Columbia Public Defender Service, and the service of certain employees of the District of Columbia Department of Corrections.

*Section 504: Certification of service*

This section requires the Office of Personnel Management to accept the certification of the appropriate personnel official of the government of the District of Columbia or other independent employing entity concerning whether an individual performed qualifying District of Columbia service and the length of the period of such service the individual performed.

EXPLANATION OF AMENDMENTS

The following amendments were adopted in Committee:

Rep. Van Hollen offered an amendment to the bill, which was considered and passed by the Committee on a voice vote. The amendment would correct an unintended consequence that followed the enactment of the Omnibus Reconciliation Act of 1990 (Public Law 101-508) on November 5, 1990, and provide relief for federal employees who were adversely affected by that enactment. The Omnibus Reconciliation Act of 1990 made retroactive changes to the rules related to separating federal employees. While the rules were made retroactive to October 1, 1990, the implementing regulations were not promulgated until February 1991. This four month period between the enactment of the law and the promulgation of the implementing regulations has adversely affected any federal employee who withdrew their retirement contributions during this period. The amendment would provide relief to the employees affected by this situation.

Rep. Issa offered an amendment to the bill, which was considered and passed by the Committee on a voice vote. The amendment modifies section 402, dealing with automatic enrollments in the TSP program, to allow the Secretaries of the military departments greater discretion in determining if automatic enrollment is appropriate and in the best interests of members of the uniformed services. Under this amendment, the Secretary concerned may provide for delayed automatic enrollment for service members, or preclude or suspend automatic enrollment in the TSP.

Rep. Lynch offered an amendment to the bill, which was considered and passed by the Committee on a voice vote. The amendment would correct an inequitable annuity reduction that currently occurs if certain federal employees work part-time at the end of their career. This inequity can create personnel problems in federal agencies and can cause individuals who are eligible to retire, or who will shortly be eligible to retire, to avoid working on a part-time basis, even if it would otherwise be in the government's interest.

The amendment would permit the use of high-three average salary computations for full-and part-time work, whether the work was performed before or after 1986. This eliminates the adverse effect of performing part-time service late in an employee's career and provides a simplified annuity computation in cases involving

part-time service. On August 31, 2007, the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia held a hearing on H.R. 2780, legislation identical to the amendment proposed by Rep. Lynch. The Committee held a business meeting on March 13, 2008, to consider H.R. 2780 and ordered the bill to be reported favorably on a voice vote. (See House Committee on Oversight and Government Reform, Clarifying the Method for Computing Certain Annuities Under the Civil Service Retirement System Based on Part-Time Service, 110th Congress (2008) (H. Rept. 110-770).

Rep. Issa offered an amendment to the bill, which was considered and passed by the Committee on a voice vote. The amendment states the sense of Congress that members of the uniformed services should have a retirement system that is at least as generous as the one which is available to Federal civilian employees. The sense of Congress further recognizes that federal civilian employees under the FERS system receive matching contributions from their employing agencies (CSRS and military personnel do not). However, the costs of requiring such a matching contribution from the Department of Defense for members of the uniformed services could be significant.

The retirement benefits offered to military and civil service personnel are not intended to be identical. Although civil service employees receive matching contributions from agencies to their TSP fund, military service members receive a significantly higher percentage of pay upon becoming eligible for a pension. However, the Committee recognizes that members of the uniformed services who do not serve long enough to be eligible for a military pension are also not provided with matching TSP contributions, and are left with only the individual contributions made to a TSP fund when they leave the service. Recognizing the complex budgetary, personnel, recruitment, and retention issues at stake, the amendment requires the Secretary of Defense to report to Congress on the cost of providing matching contributions to uniformed services personnel and how such a system would affect existing recruitment and retention programs.

Rep. Norton offered an amendment to the bill, which was considered and passed by the Committee on a voice vote. The amendment adds the "District of Columbia Court, Offender Supervision, Parole, and Public Defender Employees Equity Act of 2009" as Title V of the legislation. This amendment would correct a long-standing limitation on retirement eligibility for some non-judicial employees of the DC Courts, the Court Services and Offender Supervision Agency (CSOSA), the DC Public Defender Service (PDS), and former DC Department of Corrections employees who were appointed to positions with the Federal Bureau of Prisons or other related federal agencies.

Under the 1997 National Capital Revitalization and Self-Government Improvement Act of 1997, the federal government took over the operation of the District of Columbia Courts and related services, making the non-judicial employees of the DC Courts and the employees of CSOSA federal employees. In 1998, employees of PDS were similarly transferred as part of the District of Columbia Courts and Justice Technical Collections Act. As federal employees, these court, CSOSA, and PDS employees were brought under the

FERS retirement system. However, for the employees transferred in 1997 and 1998, the calculation of their “creditable service” for the purposes of determining when they would be eligible to retire and the amount of annuity they would be entitled to under FERS only began from the date of the transfer. That is, the 1997 and 1998 laws made no provision for treating their years of service as court and related services employees (in many cases, in identical positions) prior to passage of these laws as creditable service for determining retirement eligibility.

The amendment requires that the time served by these employees before 1997 be counted towards the employees’ overall federal retirement eligibility as “creditable service.” In addition, because the employees are still entitled to their DC retirement benefits (based upon their work status up until 1997), the amendment does not count the pre-1997 years spent as DC government employees towards the amount of federal retirement annuity an employee is eligible to receive. The amendment allows these employees to retire without penalty after they have given 20 years of service or more, as with other federal employees under the FERS system.

Rep. Connolly offered an amendment to the bill, which was considered and passed by the Committee on a voice vote. The amendment would allow individuals who left the federal government, and received a refund of their Federal Employees Retirement System (FERS) contributions, to re-enter government service without losing their accrued annuity. Instead of forfeiting credit earned during their prior service, returning employees would be able to redeposit their cashed out annuity, with interest, upon re-employment. This benefit is already available to federal employees who are registered under the older Civil Service Retirement System (CSRS). It ensures that former federal employees are not penalized if they wish to return to government service.

#### COMMITTEE CONSIDERATION

The Committee met on March 18, 2009, to consider Title IV of H.R. 1256 and ordered the bill, as amended, to be reported favorably by a voice vote.

#### ROLL CALL VOTES

There were no roll call votes held on the bill.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. The bill provides for improvements to the federal employee TSP for which legislative branch employees are eligible participants.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the

descriptive portions of this report, including the need to modernize and improve the TSP.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, and include improving the operations of the TSP.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by Titles IV and V of H.R. 1256. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

#### FEDERAL ADVISORY COMMITTEE ACT

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

#### UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement whether the provisions of the report include unfunded mandates. In compliance with this requirement, the Committee has received a letter from the Congressional Budget Office included herein.

#### EARMARK IDENTIFICATION

Titles IV and V of H.R. 1256 do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

#### COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out Titles IV and V of H.R. 1256. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

#### BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of

1974, the Committee has received the following cost estimate for H.R. 1256 from the Director of the Congressional Budget Office:

U.S. CONGRESS  
CONGRESSIONAL BUDGET OFFICE  
*Washington, DC, March 24, 2009.*

Hon. EDOLPHUS TOWNS,  
*Chairman, Committee on Oversight and Government Reform  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed estimate for H.R. 1256, the Family Smoking Prevention and Tobacco Control Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Julia Christensen and Amber Marcellino.

Sincerely,

DOUGLAS W. ELMENDORF,  
*Director.*

Enclosure.

*H.R. 1256—Family Smoking Prevention and Tobacco Control Act*

Summary: H.R. 1256 would authorize the Food and Drug Administration (FDA) to regulate tobacco products, and would require the agency to assess fees on manufacturers and importers of tobacco products to cover the cost of FDA's new regulatory activities authorized by the bill. Such fees could be collected and made available for obligation only to the extent and in the amounts provided in advance in appropriation acts. The bill also contains provisions that affect direct spending and revenues associated with the retirement benefits of federal employees.

CBO estimates that:

- Implementing the bill would increase spending subject to appropriation, on net, by about \$0.1 billion over the 2010–2014 period and by \$0.8 billion over the 2010–2019 period, assuming annual appropriation actions consistent with the bill;
- Enacting H.R. 1256 would increase direct spending by \$0.2 billion over the 2010–2014 period and by \$0.6 billion over the 2010–2019 period;
- Federal revenues would increase by \$0.3 billion over the 2010–2014 period and by \$1.3 billion over the 2010–2019 period; and
- Considering both the revenue and direct spending effects, enacting the bill would reduce budget deficits by a total of \$0.1 billion over the 2010–2014 period and by \$0.7 billion over the 2010–2019 period. (Those amounts exclude the effects that are subject to appropriation action.)

The legislation's effects on direct spending and revenues over the 2009–2013 and 2009–2018 periods are relevant for enforcing pay-as-you-go rules under the current budget resolution. CBO estimates that enacting H.R. 1256 would increase direct spending by \$0.1 billion over the 2009–2013 period and by \$0.5 billion over the 2009–2018 period. Enacting the bill also would increase revenues by \$0.2 billion over the 2009–2013 period and by \$1.0 billion over the 2009–2018 period. Together, those changes would yield net pay-as-you-go savings of \$0.1 billion over five years and \$0.5 billion over 10 years.

H.R. 1256 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt certain state laws governing tobacco products and require tribal governments that manufacture or distribute tobacco products to comply with new federal regulations. CBO estimates that the costs to state, local, and tribal governments to comply with the mandates in the bill would not exceed the threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation).

CBO also expects that the federal regulations authorized by this bill would result in lower consumption of tobacco products and thus would reduce the amount of tax revenues and settlement funds collected by state and local governments. However, those declines in revenues, estimated to total over \$1 billion during the 2010–2014 period, would not result from intergovernmental mandates.

H.R. 1256 would impose a number of mandates on private-sector entities. Among other things, the bill would assess a fee on companies that manufacture or import tobacco products, impose new restrictions on the sale, distribution and marketing of tobacco products, mandate disclosure of product information and grant FDA authority to regulate tobacco products. CBO estimates that the aggregate direct cost of complying with those mandates would exceed the threshold established by UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation) in each year, beginning with 2010.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1256 is shown in the following table. The costs of this legislation fall primarily within budget functions 550 (health) and 600 (income security).

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010-2014	2010-2019
By fiscal year, in millions of dollars—												
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>												
Food and Drug Administration (FDA) Collection of New Tobacco Fees:												
Authorization Level .....	-235	-450	-477	-505	-534	-566	-599	-635	-672	-712	-2,201	-5,385
Estimated Outlays .....	-235	-450	-477	-505	-534	-566	-599	-635	-672	-712	-2,201	-5,385
Spending of Fees by FDA to Regulate Tobacco Products:												
Authorization Level .....	235	450	477	505	534	566	599	635	672	712	2,201	5,385
Estimated Outlays .....	50	275	498	610	619	627	629	631	668	708	2,052	5,315
Net Effect on FDA Spending:												
Authorization Level .....	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays .....	-185	-175	21	105	85	61	30	-4	-4	-4	-149	-70
Thrift Savings Plan Enhancement:												
Estimated Authorization Level .....	14	49	62	76	89	102	112	121	130	139	290	894
Estimated Outlays .....	13	47	62	75	88	101	111	121	130	139	285	887
Total Changes: <sup>1</sup>												
Estimated Authorization Level .....	14	49	62	76	89	102	112	121	130	139	290	894
Estimated Outlays .....	-172	-128	83	180	173	162	141	117	126	135	136	817
<b>CHANGES IN DIRECT SPENDING</b>												
Sick Leave Retirement Credit:												
Estimated Budget Authority .....	8	17	27	37	48	60	72	86	100	114	137	569
Estimated Outlays .....	8	17	27	37	48	60	72	86	100	114	137	569
Other Retirement Provisions:												
Estimated Budget Authority .....	8	6	7	10	11	12	12	13	13	14	42	106
Estimated Outlays .....	8	6	7	10	11	12	12	13	13	14	42	106
Medicaid: Tobacco Provisions:												
Estimated Budget Authority .....	-1	-2	-4	-6	-9	-11	-13	-15	-18	-20	-22	-99
Estimated Outlays .....	-1	-2	-4	-6	-9	-11	-13	-15	-18	-20	-22	-99
Total Changes:												
Estimated Budget Authority .....	15	21	30	41	50	61	71	84	95	108	157	576
Estimated Outlays .....	15	21	30	41	50	61	71	84	95	108	157	576
<b>CHANGES IN REVENUES</b>												
Thrift Savings Plan Enhancement	50	79	98	122	155	198	255	330	426	550	504	2,263
Tobacco Excise Taxes and Fines	-13	-29	-40	-55	-73	-94	-117	-145	-177	-212	-210	-955
Total Changes in Revenues	37	50	58	67	82	107	138	185	249	338	294	1,308



Estimated Deficit Impact <sup>2</sup>	NET IMPACT ON THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES
	-22   -29   -28   -26   -32   -43   -67   -101   -154   -230   -137   -732

<sup>1</sup>In addition, H.R. 1256 would require the Government Accountability Office to conduct a study on cross-border trade in tobacco products. CBO estimates that study would cost about \$1 million, assuming the availability of appropriated funds.

<sup>2</sup>Negative numbers indicate a reduction in the deficit.

Basis of estimate: For this estimate, CBO assumes that H.R. 1256 will be enacted near the start of fiscal year 2010, that the full amounts authorized will be collected (starting in fiscal year 2010) to fund FDA's regulatory activities authorized under the bill, and that outlays will follow historical patterns for similar activities.

H.R. 1256 would authorize FDA to regulate tobacco products. Such authority would include:

- Setting national standards for tobacco products, including a ban on cigarettes that contain certain additives or flavors (other than tobacco or menthol) that are a characterizing flavor of the tobacco product or tobacco smoke;
- Implementing new restrictions on the sale, distribution, and marketing of tobacco products;
- Requiring manufacturers of certain tobacco products to submit a marketing application to FDA and requiring manufacturers of certain products that are "substantially equivalent" to ones already on the market before a particular date to notify FDA by submitting a report with specified information before entering the market;
- Directing manufacturers and importers of tobacco products to adhere to new labeling requirements and to submit specific information, including health-related research, to the FDA about their products;
- Mandating the annual registration of all establishments that manufacture, prepare, compound, or process tobacco products and specifying certain inspection, record-keeping and reporting requirement for manufacturers and importers; and
- Enforcing compliance with requirements specified in the bill.

H.R. 1256 would establish the Center for Tobacco Products within the FDA. It also would require FDA to reinstate certain regulations issued in 1996 intended to limit tobacco sales and marketing, especially to children. (The Supreme Court ruled in 2000 that the FDA did not have the authority to issue such regulations.) The bill explicitly would prohibit FDA from banning certain tobacco products or requiring the reduction of nicotine yields of tobacco products to zero. The legislation also would require FDA to issue new regulations relating to the testing and reporting of tobacco product information. (Such regulations could also include requirements for public disclosure of that information.) Among other things, H.R. 1256 would require the Secretary of Health and Human Services (HHS) to publish a list of the amounts of harmful and potentially harmful constituents of each tobacco product.

#### *Use of tobacco products in the United States*

At least partly as a result of efforts by the federal government, state governments, and the public health community, cigarette smoking has declined substantially over the past decade: in 2005, about 21 percent of adults in the United States were smokers, compared to about 25 percent in 1995. The recent increase in the federal excise tax on cigarettes as a result of the Children's Health Insurance Program Reauthorization Act (Public Law 111-3)—from \$0.39 to \$1.01 per pack—is likely to contribute to a continuing decline in smoking. CBO expects that consumption of tobacco prod-

ucts in the United States would further decline as a result of enacting H.R. 1256.

The effect of regulatory activities authorized under the bill on the use of tobacco products is uncertain because ongoing initiatives to reduce the use of tobacco products are expected to continue under current law. In particular, public health efforts by federal, state, and local governments and by private entities have contributed to a substantial reduction in underage smoking in recent years. For example, the proportion of 17-year-olds who smoke declined from 19 percent in 1995 to 10 percent in 2005. Significant efforts to reduce underage smoking (the group most directly targeted by many of the interventions envisioned under the bill) have been taken as a result of the Master Settlement Agreement (MSA) in 1998 between major tobacco manufacturers and settling states. States and localities also continue to pursue public health initiatives independent of the MSA to reduce smoking and to limit health risks to the public associated with smoking. (However, funding for such activities is subject to the fiscal constraints of state and local budgets.) Public health efforts funded by federal programs and coverage of smoking cessation therapies (including those offered under certain public programs) also aim to reduce the use of tobacco under current law.

The expected impact of the legislation on the use of tobacco products stems from a combination of regulatory and economic factors. The regulatory changes with the largest potential to reduce smoking include: restricting access to tobacco by youths, requiring an increase in the size of warning labels on certain tobacco packaging (and authorizing the Secretary of HHS to mandate further changes to enhance warning labels), limiting certain marketing and advertising activities (especially those that target youths), and requiring FDA permission before manufacturers can market tobacco products that suggest reduced health risks or exposure to particular substances.<sup>1</sup> In addition, tobacco consumption would decline because the assessment of new fees on manufacturers and importers of tobacco products would probably result in higher prices of tobacco products.

Based on information from academic and other researchers, CBO estimates that H.R. 1256 would result in a further reduction in the number of underage tobacco users of 11 percent by 2019. CBO also estimates that implementing H.R. 1256 would lead to a further decline in smoking by adults by about 2 percent after 10 years. CBO has incorporated these projected changes in U.S. tobacco consumption into its estimates of the impact of the bill on Medicaid spending and on receipts from excise taxes on tobacco products.

#### *Spending subject to appropriation*

CBO estimates that implementing H.R. 1256 would increase spending subject to appropriation, on net, by \$0.1 billion over the 2010–2014 period and by \$0.8 billion over the 2010–2019 period, assuming the appropriation action consistent with the bill. The effect on discretionary spending by federal programs reflects the authorized funding relating to the federal regulation of tobacco prod-

<sup>1</sup>For example, pursuant to a timeline specified in the bill, descriptors on a tobacco product such as “low,” “light,” or “mild” would be prohibited and certain health-related claims not allowed unless manufacturers receive FDA’s permission to market the product with that claim.

ucts and federal agency costs associated with changes to the Thrift Savings Plan (TSP) specified in the bill.

The costs for FDA to administer the new regulatory activities authorized under the legislation—\$2.1 billion over the 2010–2014 period and \$5.3 billion over the 2010–2019 period—would be covered by fees assessed on manufacturers and importers of tobacco products, resulting in a very small net impact on discretionary spending over the next 10 years (and no net impact over time). CBO estimates that automatic enrollment, under the bill, of new TSP participants would increase the cost for federal civilian agencies relating to their matching contributions for employees. The estimated TSP costs would sum to \$0.9 billion over the 2010–2019 period, assuming the appropriation of the necessary amounts.

**Collection of New Fees.** H.R. 1256 would establish a program to assess fees to fund FDA’s administrative costs for new regulatory activities relating to tobacco products authorized by the bill. The legislation would authorize the quarterly assessment of fees on manufacturers and importers of such products. It would authorize the appropriation of assessments equal to \$85 million in 2009, \$235 million in 2010, \$450 million in 2011, \$477 million in 2012, \$505 million in 2013, \$534 million in 2014, \$566 million in 2015, \$599 million in 2016, \$635 million in 2017, \$672 million in 2018, and \$712 million in 2019 and each subsequent year.

Fees authorized by the bill would be collected and made available for obligation only to the extent and in the amounts provided in advance in appropriation acts. As a result, those collections would be credited as an offset to discretionary spending.

**Spending of Fees by FDA to Regulate Tobacco Products.** Spending of the new fees assessed by FDA to regulate tobacco products also would be classified as discretionary spending because the authorized amounts would be available for obligation subject to appropriation action. Amounts collected would be available to cover FDA’s administrative costs to regulate tobacco products at any point in the future.

Given the uncertainty surrounding how the FDA would implement such a large expansion of its regulatory activities, it is difficult to estimate the resources necessary—particularly in the early years—to implement the bill. We anticipate that, over the initial five-year period after enactment, FDA would actively develop the necessary infrastructure to operate the new tobacco program and that its ability to enter into obligations and disburse funds would grow rapidly. The legislation would limit the budget for the new program to the aggregate amount of fees collected for such purpose, and there would likely be some lag (at least initially) between when fees are collected and when they are spent.

Assuming appropriation action consistent with the bill, CBO estimates that implementing the program to assess fees to cover new FDA costs associated with regulating tobacco would reduce net discretionary outlays by \$149 million over the 2010–2014 period and by \$70 million over the 2010–2019 period, because the spending of fees would lag behind their collection.

**Thrift Savings Plan.** The bill would require that newly hired federal employees who are eligible for the TSP be automatically enrolled in that program. The automatic enrollment of participants in TSP would increase the matching contributions of the civilian

agencies that employ them (which are paid from personnel budgets and are usually considered spending subject to appropriation) by creating a greater and earlier participation rate of employees in the program. According to data from a 2006 survey conducted by the Federal Thrift Retirement Investment Board, 52 percent of employees enrolled in the Federal Employees Retirement System (FERS) voluntarily contribute to the TSP in their first year of eligibility, but 86 percent contribute by their sixth year. (Although federal employees covered by the Civil Service Retirement System (CSRS) are also eligible to participate in the TSP, they would not be affected by automatic enrollment.) Using information from that survey, CBO expects that under automatic enrollment more than 90 percent of eligible new entrants would contribute to the TSP in their first year and that a similar proportion would continue to contribute by their 10th year (some would opt out in the beginning and others would likely change their status in the future).

For the uniformed services, the characteristics of potential participants differ. The current average rate for voluntary participation of new enlistees is approximately 25 percent, and unlike civilian employees, the uniformed services do not currently contribute on behalf of their members. Based on lower voluntary enrollment rates and the lack of agency contributions, CBO expects that under automatic enrollment more than 40 percent of eligible new entrants would contribute.

Assuming that the bill becomes effective in October 2009 and that civilian agencies would not begin matching contributions for an additional six months, participants would receive an increase in matching agency contributions of 3 percent of their basic pay for the third quarter of fiscal year 2010 and 3 percent per year thereafter. CBO estimates that enacting H.R. 1256 would increase agency contributions by nearly \$0.9 billion over the 2010–2019 period.

Federal Trade Commission (FTC). The bill would authorize the FTC to enforce provisions in the bill relating to advertising that would be considered unfair or deceptive trade practices under the Federal Trade Commission Act. Currently, the FTC enforces certain laws governing warnings printed on labels of cigarettes and smokeless tobacco, among other things. Based on information from the FTC, CBO expects that the FTC's new enforcement activities under H.R. 1256 would replace some of its current enforcement activities that would be transferred to FDA under the bill. CBO estimates that any additional costs to the FTC would be insignificant.

Other Provisions. H.R. 1256 would require the Government Accountability Office to conduct a study on cross-border trade in tobacco products. CBO estimates that conducting the study would cost about \$1 million, assuming the availability of the necessary funds. CBO also anticipates that any additional costs for other federal agencies that might assist FDA with implementing certain requirements relating to the regulation of tobacco specified in the bill would not be significant.

#### *Direct spending*

CBO estimates that enacting H.R. 1256 would increase direct spending, on net, by \$0.2 billion over the 2010–2014 period and by \$0.6 billion over the 2010–2019 period. That estimate primarily reflects two effects of the bill:

- Authorizing FDA regulation of tobacco products and changes relating to such products required by the bill would lower consumption of tobacco and would generate savings to the Medicaid program; and
- Changing the calculation of federal retirement benefits under the Federal Employees Retirement System to reflect accrued sick leave hours would raise average retirement benefits paid to individuals.

Impact of FDA Regulation of Tobacco on Medicaid. CBO anticipates that FDA's regulation of tobacco products will lead to a decline in smoking among pregnant women. That decline will reduce health care spending on pregnancies because women who refrain from smoking during pregnancy are less likely to give birth to children with low birth weights—such children have relatively high costs both at birth and afterwards—or experience other complications during pregnancy. Part of the savings from reduced complications is offset by costs associated with the additional live births resulting from a decline in miscarriages. CBO estimates federal spending for Medicaid would decrease by \$0.1 billion over the 2010–2019 period. (That savings is an estimated increment above savings previously estimated and credited to Public Law 111–3, which contains an increase in federal excise taxes on tobacco products.)

A decline in smoking could affect health care spending for many other medical conditions. An individual who stops smoking is less likely to suffer a heart attack or stroke over a given period of time compared to one who continues to smoke, so a potential reduction in utilization of acute care services for those or other conditions could lead to cost savings. The magnitude and timing of such savings are uncertain, however. Also, a reduction in smoking may add to costs in many cases by increasing the lifespans of persons who would incur health care costs over longer periods. In those cases, government spending for other benefits such as Social Security, Medicare, and from other retirement and mandatory spending programs would also increase. CBO continues to examine the impact of smoking related legislation on public and private payers. This cost estimate does not include potential effects on federal spending other than the estimated impact on Medicaid of reduced smoking levels on pregnancies.

Effects on Civil Service Retirement. Currently, the retirement benefit calculation for federal employees in FERS does not incorporate any accrued sick leave hours. Under H.R. 1256, eligible federal employees who retire after enactment would add 100 percent of their remaining sick leave hours to their total years of service when calculating the retirement benefit owed. CBO estimates that an average of about three months would be added to employees' length of service as a result of including sick leave hours. That addition is estimated to boost the average retirement benefit by about \$150 per year, increasing direct spending over the 2010–2019 period by \$0.6 billion.

H.R. 1256 contains several other provisions that would affect federal retirement benefits for certain employees. Such provisions include: allowing FERS employees who reenter government service after an absence to “buy back” the credit towards federal retirement benefits for their prior government service (for those employ-

ees who had received a refund of their employee contributions toward retirement when they left government service); altering the formula for calculating retirement benefits for CSRS employees with part-time service; adjusting retirement eligibility calculations for certain FERS employees with qualifying pre-1997 service in the District of Columbia; and exempting certain CSRS employees from paying interest on repaid contributions towards retirement benefits. In total, CBO estimates those provisions would increase direct spending by \$0.1 billion over the 2010–2019 period.

**Other Effects on Direct Spending.** Under H.R. 1256, FDA would have the discretion to impose criminal fines on entities convicted of violating certain new requirements established by the bill. Collections of criminal fines are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent. Such expenditures are classified as direct spending. CBO expects that relatively few cases would result in such criminal fines. Therefore, CBO estimates that enacting H.R. 1256 would not have a significant effect on revenues or direct spending from the collection of criminal fines over the 2010–2019 period.

#### *Revenues*

CBO estimates that enacting H.R. 1256 would increase federal revenues, on net, by \$0.3 billion over the 2010–2014 period and by \$1.3 billion over the 2010–2019 period. That estimate primarily reflects two effects of the bill:

- Authorizing FDA oversight of tobacco products and changes relating to such products required by the bill would lower consumption of tobacco and reduce receipts of federal excise taxes on those products, and
- Establishing a Roth contribution program would increase tax revenues because of the tax treatment of employee's contributions.

In addition, revenues may increase slightly from the collection of fines associated with violations of new requirements imposed by the bill.

**Excise Taxes.** As noted earlier, CBO expects that enacting H.R. 1256 would reduce the consumption of tobacco products in the United States, which in turn would reduce the collection of federal excise taxes. As a result, CBO estimates that the legislation would reduce federal revenues, by \$0.2 billion over the 2010–2014 period and \$1.0 billion over the 2010–2019 period, net of changes to income and payroll taxes. Over the 10-year period, the reduction in receipts would amount to less than 1 percent of receipts from excise taxes on tobacco expected under current law.

**Effects of TSP Changes on Revenues.** Enacting H.R. 1256 would increase revenues by an estimated \$2.3 billion over the 2010–2019 period. Establishing a Roth contribution program (in which contributions to the retirement accounts would be made on an aftertax basis) would result in some TSP participants electing to contribute after-tax income to their retirement plan rather than contributing pre-tax amounts, thereby boosting income tax revenues by an estimated \$3.3 billion over the 10-year period. However, because income taxes are deferred on regular TSP contributions, the anticipated increase in participants' contributions from automatic enroll-

ment would offset part of the revenue increase, reducing receipts by \$1.0 billion over the 2010–2019 period.

**Collection of Fines.** The effects on federal revenues also include relatively small effects from provisions that would allow the Secretary of HHS to levy fines against sponsors of misbranded and adulterated tobacco products, sellers of tobacco to underage individuals, and for other violations. The FTC would also be authorized to assess fines for certain violations of tobacco-related requirements enforced by the commission. We estimate that revenues associated with the collection of civil fines authorized under H.R. 1256 would be roughly \$1 million annually.

**Estimated impact on state, local, and tribal governments:** H.R. 1256 contains intergovernmental mandates as defined in UMRA. CBO estimates that the costs of those mandates to state, local, and tribal governments would be small and would not exceed the threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation).

The bill would preempt state laws governing tobacco products that are different from or in addition to the federal regulations authorized by the bill, including laws governing:

- Product standards,
- Premarket review,
- Adulteration,
- Misbranding,
- Labeling,
- Registration,
- Good manufacturing standards, or
- Modified-risk tobacco products.

That preemption would be an intergovernmental mandate as defined in UMRA. However, because the preemption would simply limit the application of state and local laws, CBO estimates that it would not impose significant costs on state or local governments.

H.R. 1256 would require tobacco manufacturers to register annually with the FDA and pay fees assessed by the agency. The bill would require both tobacco manufacturers and distributors of tobacco products to comply with federal regulations relating to the content, labeling, and marketing of tobacco products. CBO has identified two tribal governments that manufacture and distribute tobacco products. Because those governments would be required to comply with federal regulations authorized by the bill, they would face intergovernmental mandates as defined in UMRA. Based on information from tribal and federal officials, CBO estimates that the costs to tribal governments to comply with the bill would be small and would not exceed the UMRA threshold for intergovernmental mandates.

#### *Other impacts*

CBO also estimates that the amount of tax revenues and settlement funds collected by state and local governments would decline as a result of the federal regulations authorized by this bill because of lower consumption of tobacco products. However, those declines in revenues, estimated to total over \$1 billion during the 2010–2014 period, would not result from intergovernmental mandates. Rather, the decline in revenues would be an indirect effect on state and local governments resulting from the new federal regulations



imposed on companies that manufacture or import tobacco products.

In 2008, state and local governments collected about \$19 billion in revenues from excise and general sales taxes levied on tobacco products. CBO estimates that this bill would lower consumption of those products and that excise taxes collected by state and local governments would fall by about \$20 million in 2010, with that reduction growing to over \$330 million in 2014. Similarly, CBO estimates that state and local governments would see a decline in sales-tax revenues of about \$170 million over the 2010–2014 period.

Forty-six states, the District of Columbia, and five U.S. territories receive annual payments from tobacco manufacturers that are parties to the tobacco Master Settlement Agreement (MSA). In 2008, those payments totaled over \$8 billion. Under the terms of the MSA, those payments are adjusted annually to account for changes in the volume of cigarette sales in the United States of participating manufacturers. Because CBO estimates that enacting this legislation would result in lower consumption of tobacco products, CBO estimates that the annual payments to states under the MSA also would decline by over \$160 million over the 2010–2014 period.

A decline in smoking among pregnant individuals is expected to result in a reduction of low-weight births. As a result, state spending for Medicaid would decrease by an estimated \$17 million over the 2010–2014 period, with additional savings in subsequent years.

Estimated impact on the private sector: H.R. 1256 would impose a number of private-sector mandates, as defined in UMRA, on companies that manufacture or import tobacco products. CBO estimates that the total direct cost of these mandates would exceed the threshold established by UMRA (\$139 million in 2009, adjusted annually for inflation) in each year, beginning with 2010.

The bill would assess a fee on manufacturers and importers of tobacco products to cover the cost to FDA of regulating those products. The aggregate payments would sum to \$235 million in 2010, and rise to more than \$500 million a year by 2013.

The bill would impose new requirements related to the labeling and advertising of cigarette and smokeless tobacco products. New warnings on packaging and advertisements would have to be larger. The bill would also prohibit cigarettes or any of their component parts from containing certain additives or flavors (other than tobacco or menthol) that are a characterizing flavor of the tobacco product or tobacco smoke. CBO has not been able to determine whether the direct cost of these provisions would be significant.

The bill would require that FDA publish a final rule on tobacco products that would be similar to part 897 of the tobacco regulations promulgated by the Secretary of HHS in 1996 and subsequently invalidated by the Supreme Court. Certain restrictions that would be in that rule already exist under current federal and state law or are included in the 1998 Master Settlement Agreement between major tobacco manufacturers and settling states. As a result, and based on information from industry sources, CBO estimates that the incremental direct cost of these restrictions to manufacturers and importers of tobacco products would be small.

In addition, the bill would give FDA the authority to regulate the sale, distribution, advertising, promotion and use of tobacco products if such actions would be in the interest of the public health. FDA would also have the authority to set product standards that reduce quantities of nicotine and other harmful constituents allowed in tobacco products or otherwise alter the composition and testing of such products. CBO cannot estimate the potential cost of these provisions because the cost would depend on future actions by the Secretary of HHS.

Finally, the bill would require companies that manufacture or import tobacco products to disclose information about those products to the Secretary of HHS. That information, among other things, would include a listing of all ingredients and additives, a description of nicotine content, delivery, and form, and a listing of all potentially harmful constituents found in the tobacco product. At the discretion of the Secretary of HHS, those companies would also be required to disclose any or all documents regarding research on risks to health of tobacco products, methods for reducing those risks, and the effectiveness of marketing practices used by companies that manufacture or distribute tobacco products. Such information would include both research activities and the findings associated with that research. CBO estimates that the direct cost of complying with these requirements would be small.

Previous CBO estimate: On March 16, 2009, CBO transmitted a cost estimate for H.R. 1256 as ordered reported by the House Committee on Energy and Commerce on March 4, 2009. This version is nearly identical to the earlier legislation, except for the addition of provisions that affect retirement benefits for certain employees of the federal government. The version of H.R. 1256 approved by the Committee on Oversight and Government Reform reflects changes that would add \$106 million in estimated direct spending over the 2010–2019 period, as compared to the version of the bill approved by the Committee on Energy and Commerce.

Estimate prepared by: Federal Spending: Food and Drug Administration—Julia Christensen, Medicaid—Ellen Werble and Colin Baker, Federal Retirement—Amber Marcellino, Thrift Savings Plan—Jared Brewster, Federal Trade Commission—Susan Willie; Federal Revenues: Grant Driessen and Barbara Edwards; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Patrick Bernhardt.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

#### TITLE 5, UNITED STATES CODE

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**SUBPART G—INSURANCE AND ANNUITIES**

\* \* \* \* \*

**CHAPTER 83—RETIREMENT**

\* \* \* \* \*

**SUBCHAPTER III—CIVIL SERVICE RETIREMENT**

\* \* \* \* \*

**§ 8334. Deductions, contributions, and deposits**

(a) \* \* \*

\* \* \* \* \*

(d)(1)(A) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which he may be allowed credit under this subchapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made.

(B) *No interest under subparagraph (A) shall be required in the case of any deposit to the extent that it represents the amount of any refund that was made to an employee or Member during the period beginning on October 1, 1990, and ending on February 28, 1991.*

\* \* \* \* \*

**§ 8339. Computation of annuity**

(a) \* \* \*

\* \* \* \* \*

(p)(1) \* \* \*

\* \* \* \* \*

(3) *In the administration of paragraph (1)—*

*(A) subparagraph (A) of such paragraph shall apply with respect to service performed before, on, or after April 7, 1986; and*

*(B) subparagraph (B) of such paragraph—*

*(i) shall apply with respect to that portion of any annuity which is attributable to service performed on or after April 7, 1986; and*

*(ii) shall not apply with respect to that portion of any annuity which is attributable to service performed before April 7, 1986.*

\* \* \* \* \*

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

**SUBCHAPTER I—GENERAL PROVISIONS**

Sec

8401. Definitions.

\* \* \* \* \*

SUBCHAPTER II—BASIC ANNUITY

\* \* \* \* \*

【8422. Deductions from pay; contributions for other service.】

8422. *Deductions from pay; contributions for other service; deposits.*

\* \* \* \* \*

SUBCHAPTER III—THRIFT SAVINGS PLAN

\* \* \* \* \*

8432d. *Qualified Roth contribution program.*

SUBCHAPTER I—GENERAL PROVISIONS

§ 8401. Definitions

For the purpose of this chapter—

(1) \* \* \*

\* \* \* \* \*

(19) the term “lump-sum credit” means the unrefunded amount consisting of—

(A) \* \* \*

\* \* \* \* \*

(C) amounts deposited by an employee, Member, or survivor under section 【8411(f);】 8411(f) or 8422(i); and

\* \* \* \* \*

SUBCHAPTER II—BASIC ANNUITY

\* \* \* \* \*

§ 8415. Computation of basic annuity

(a) \* \* \*

\* \* \* \* \*

【(k) In computing】 (l)(1) *In computing* an annuity under this subchapter, the total service of an employee who retires from the position of a registered nurse with the Veterans Health Administration on an immediate annuity, or dies while employed in that position leaving any survivor entitled to an annuity, includes the days of unused sick leave to the credit of that employee under a formal leave system, except that such days shall not be counted in determining average pay or annuity eligibility under this subchapter.

(2) *Except as provided in paragraph (1), in computing an annuity under this subchapter, the total service of an employee who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes the days of unused sick leave to his credit under a formal leave system, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter. For purposes of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 under section 6301(2)(x)-(xiii), the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.*

[(1)] (m) In the case of any annuity computation under this section that includes, in the aggregate, at least 2 months of credit under section 8411(d) for any period while receiving benefits under subchapter I of chapter 81, the percentage otherwise applicable under this section for that period so credited shall be increased by 1 percentage point.

\* \* \* \* \*

**[§ 8422. Deductions from pay; contributions for other service]**

**§ 8422. Deductions from pay; contributions for other service; deposits**

(a) \* \* \*

\* \* \* \* \*

(c) The amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Secretary of the Treasury may prescribe. *Deposits made by an employee, Member, or survivor also shall be credited to the Fund.*

(d)(1) \* \* \*

(2) Deposit may not be required for days of unused sick leave credited under [section 8415(k)] *paragraph (1) or (2) of section 8415(l)* .

\* \* \* \* \*

(i)(1) *Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which such employee or Member may be allowed credit under this chapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made.*

(2) *Interest under this subsection shall be computed in accordance with paragraphs (2) and (3) of section 8334(e) and regulations prescribed by the Office. The option under the third sentence of section 8334(e)(2) to make a deposit in one or more installments shall apply to deposits under this subsection.*

(3) *For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.*

\* \* \* \* \*

**§ 8424. Lump-sum benefits; designation of beneficiary; order of precedence**

(a) Subject to subsection (b), an employee or Member who—

(1) \* \* \*

\* \* \* \* \*

is entitled to be paid the lump-sum credit. Except as provided in section 8420a, payment of the lump-sum credit to an employee or Member voids all annuity rights under this subchapter, and subchapters IV and V of this chapter, based on the service on which

the lump-sum credit is ~~based.~~ *based, until the employee or Member is reemployed in the service subject to this chapter.*

\* \* \* \* \*

SUBCHAPTER III—THRIFT SAVINGS PLAN

\* \* \* \* \*

**§ 8432. Contributions**

(a) \* \* \*

(b)(1)(A) \* \* \*

(B) The amount to be contributed pursuant to an election under subparagraph (A) ~~[(or any election allowable by virtue of paragraph (4))]~~ shall be the percentage of basic pay or amount designated by the employee or Member.

[(2) Under the regulations—

[(A) an employee or Member who has not previously been eligible to make an election under this subsection shall not become so eligible until the date (described in paragraph (1)) beginning after the date of commencing service as an employee or Member;

[(B) an employee or Member whose appointment or election to a position or office in the Federal Government follows a previous period of service during which that individual met the requirements of subparagraph (A) shall be eligible to make an election under this subsection notwithstanding any period of separation;

[(C) an employee or Member who elects under subparagraph (D) to terminate contributions shall not again become eligible to make an election under this subsection until the date (described in paragraph (1)) commencing after the election to terminate; and

[(D) an election to terminate may be made under this subparagraph at any time as provided under paragraph (1).

[(3) An employee or Member who elects to become subject to this chapter under section 301 of the Federal Employees' Retirement System Act of 1986 may make the first election for the purpose of subsection (a) during the period prescribed for such purpose by the Executive Director. The period prescribed by the Executive Director shall commence on the date on which the employee or Member makes the election to become subject to this chapter.

[(4) The Executive Director shall prescribe such regulations as may be necessary to carry out the following:

[(A) Notwithstanding subparagraph (A) of paragraph (2), an employee or Member described in such subparagraph shall be afforded a reasonable opportunity to first make an election under this subsection beginning on the date of commencing service or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.

[(B) An employee or Member described in subparagraph (B) of paragraph (2) shall be afforded a reasonable opportunity to first make an election under this subsection (based on the appointment or election described in such subparagraph) begin-

ning on the date of commencing service pursuant to such appointment or election or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.

[(C)(i) Notwithstanding the preceding provisions of this paragraph, contributions under paragraphs (1) and (2) of subsection (c) shall not be payable with respect to any pay period before the earliest pay period for which such contributions would otherwise be allowable under this subsection if this paragraph had not been enacted.

[(ii) Notwithstanding subparagraph (A) or (B), contributions under paragraphs (1) and (2) of subsection (c) shall not begin to be made with respect to an employee or Member described under paragraph (2)(A) or (B) until the date that such contributions would have begun to be made in accordance with this paragraph as administered on the date preceding the date of enactment of the Thrift Savings Plan Open Elections Act of 2004.

[(D) Sections 8351(a)(2), 8440a(a)(2), 8440b(a)(2), 8440c(a)(2), and 8440d(a)(2) shall be applied in a manner consistent with the purposes of subparagraphs (A) and (B), to the extent those subparagraphs can be applied with respect thereto.

[(E) Nothing in this paragraph shall affect paragraph (3).]

(2)(A) *The Board shall by regulation provide for an eligible individual to be automatically enrolled to make contributions under subsection (a) at the default percentage of basic pay.*

(B) *For purposes of this paragraph, the default percentage shall be equal to 3 percent or such other percentage, not less than 2 percent nor more than 5 percent, as the Board may by regulation prescribe.*

(C) *The regulations shall include provisions under which any individual who would otherwise be automatically enrolled in accordance with subparagraph (A) may—*

*(i) modify the percentage or amount to be contributed pursuant to automatic enrollment, effective from the start of such enrollment; or*

*(ii) decline automatic enrollment altogether.*

(D) *For purposes of this paragraph, the term “eligible individual” means any individual who, after any regulations under subparagraph (A) first take effect, is appointed, transferred, or reappointed to a position in which that individual is eligible to contribute to the Thrift Savings Fund.*

(E)(i) *Subject to clause (ii), sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1), 8440c(a)(1), 8440d(a)(1), and 8440e(a)(1) shall be applied in a manner consistent with the purposes of this paragraph.*

*(ii) The Secretary concerned may, with respect to members of the uniformed services under the authority of such Secretary, establish such special rules as such Secretary considers necessary for the administration of this subparagraph, including rules in accordance with which such Secretary may—*

*(I) provide for delayed automatic enrollment; or*

(II) preclude or suspend the application of automatic enrollment.

\* \* \* \* \*

**§ 8432d. Qualified Roth contribution program**

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

(1) the term “qualified Roth contribution program” means a program described in paragraph (1) of section 402A(b) of the Internal Revenue Code of 1986 which meets the requirements of paragraph (2) of such section; and

(2) the terms “designated Roth contribution” and “elective deferral” have the meanings given such terms in section 402A of the Internal Revenue Code of 1986.

(b) AUTHORITY TO ESTABLISH.—The Board shall by regulation provide for the inclusion in the Thrift Savings Plan of a qualified Roth contribution program, under such terms and conditions as the Board may prescribe.

(c) REQUIRED PROVISIONS.—The regulations under subsection (b) shall include—

(1) provisions under which an election to make designated Roth contributions may be made—

(A) by any individual who is eligible to make contributions under section 8351, 8432(a), 8440a, 8440b, 8440c, 8440d, or 8440e; and

(B) by any individual, not described in subparagraph (A), who is otherwise eligible to make elective deferrals under the Thrift Savings Plan;

(2) any provisions which may, as a result of enactment of this section, be necessary in order to clarify the meaning of any reference to an “account” made in section 8432(f), 8433, 8434(d), 8435, 8437, or any other provision of law; and

(3) any other provisions which may be necessary to carry out this section.

\* \* \* \* \*

**§ 8438. Investment of Thrift Savings Fund**

(a) \* \* \*

(b)(1) The Board shall establish—

(A) \* \* \*

\* \* \* \* \*

(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3); **[and]**

(E) an International Stock Index Investment Fund as provided in paragraph (4)**[.]**; and

(F) a self-directed investment window, if the Board authorizes such window under paragraph (5).

\* \* \* \* \*

(5)(A) The Board may authorize the addition of a self-directed investment window under the Thrift Savings Plan if the Board determines that such addition would be in the best interests of participants.

(B) The self-directed investment window shall be limited to—



- (i) *low-cost, passively-managed index funds that offer diversification benefits; and*
- (ii) *other investment options, if the Board determines the options to be appropriate retirement investment vehicles for participants.*

(C) *The Board shall ensure that any administrative expenses related to use of the self-directed investment window are borne solely by the participants who use such window.*

(D) *The Board may establish such other terms and conditions for the self-directed investment window as the Board considers appropriate to protect the interests of participants, including requirements relating to risk disclosure.*

(E) *The Board shall consult with the Employee Thrift Advisory Council (established under section 8473) before establishing any self-directed investment window.*

\* \* \* \* \*

**§ 8439. Accounting and information**

(a) \* \* \*

\* \* \* \* \*

**[(d)] (d)(1)** Each employee, Member, former employee, or former Member who elects to invest in **[the Common Stock Index Investment Fund, the Fixed Income Investment Fund, the International Stock Index Investment Fund, or the Small Capitalization Stock Index Investment Fund, defined in paragraphs (1), (3), (5), and (10), respectively, of section 8438(a) of this title]** *any investment fund or option under this chapter, other than the Government Securities Investment Fund*, shall sign an acknowledgement prescribed by the Executive Director which states that the employee, Member, former employee, or former Member understands that an investment in **[either such Fund]** *any such fund or option* is made at the employee's, Member's, former employee's, or former Member's risk, that the employee, Member, former employee, or former Member is not protected by the Government against any loss on such investment, and that a return on such investment is not guaranteed by the Government.

(2)(A) *In the case of an investment made under section 8438(c)(2) in any fund or option to which paragraph (1) would otherwise apply, the participant involved shall, for purposes of this subsection, be deemed—*

- (i) *to have elected to invest in such fund or option; and*
- (ii) *to have executed the acknowledgement required under paragraph (1).*

(B)(i) *The Executive Director shall prescribe regulations under which written notice shall be provided to a participant whenever an investment is made under section 8438(c)(2)(B) on behalf of such participant in the absence of an affirmative election described in section 8438(c)(1).*

(ii) *The regulations shall ensure that any such notice shall be provided to the participant within 7 calendar days after the effective date of the default election.*

(C) For purposes of this paragraph, the term “participant” has the meaning given such term by section 8471(3).

\* \* \* \* \*

SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

\* \* \* \* \*

**§ 8477. Fiduciary responsibilities; liability and penalties**

(a) \* \* \*

\* \* \* \* \*

(e)(1)(A) \* \* \*

\* \* \* \* \*

(C)(i) A fiduciary shall not be liable under subparagraph (A) with respect to a breach of fiduciary duty under subsection (b) committed before becoming a fiduciary or after ceasing to be a fiduciary.

(ii) A fiduciary shall not be liable under subparagraph (A), and no civil action may be brought against a fiduciary—

(I) for providing for the automatic enrollment of a participant in accordance with section 8432(b)(2)(A);

(II) for enrolling a participant in a default investment fund in accordance with section 8438(c)(2)(B); or

(III) for allowing a participant to invest through the self-directed investment window or for establishing restrictions applicable to participants’ ability to invest through the self-directed investment window.

\* \* \* \* \*

## ADDITIONAL VIEWS

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### ADDITIONAL VIEWS OF RANKING MEMBER DARRELL ISSA

There is a great deal of urgency in the Majority to move this bill through the Committee, since it raises money to be used on tobacco programs unrelated to federal retirement. Given the recent and dramatic decline in the stock market and the significant impact this has had on individuals' retirement accounts, our first priority should be helping people save more for retirement and not using the federal Thrift Savings Program (TSP) to pay for Members pet projects.

Instead, the Majority has set its sights on the portion of the bill before us (Title IV), as a way to fund expanded government programs, and targeted fixes for favorite constituencies. But I cannot support funding expanded government programs on revenues raised by a federal retirement program.

This Committee reported similar legislation last Congress. Since that time, the financial markets have declined and Congress is funding multiple bailouts. Although this Committee has a new Chairman, and new Ranking Member, and nine new members, we did not have the benefit of a hearing on this legislation this year.

As the Majority considers new ways to spend the millions of dollars raised by this legislation, we should take this opportunity to ensure our military personnel have the soundest retirement program available. I offered two amendments in an effort to improve this bill.

One amendment provides a sense of Congress regarding the importance of a match for military personnel. Currently, military participants contribute pre-tax dollars to the TSP but do not receive a contribution match. Federal civilian employees receive a generous government match for their contributions under the TSP. In addition, military pensions vest only after a participant serves twenty years, and those who serve less receive nothing. Civilian federal employees under Federal Employees Retirement System (FERS) vest after five years, and are guaranteed a pension once they reach age 62. For military personnel who serve fewer than twenty years, the TSP account may be the only retirement they receive, other than social security.

Congress should make a match for military personnel a priority. Instead, the Majority has elected to fund a number of special fixes for select groups in this legislation, and they are directing the bulk of the revenue raised by this bill to fund tobacco legislation from another Committee.

My second amendment modifies the automatic enrollment provision for military personnel. As originally drafted, the bill provided

for automatic enrollment of participants and required those who do not wish to participate to opt-out. Newly enlisted military personnel have to make many decisions in a short period of time. We should encourage participation but allow them to take the time to affirmatively decide if a retirement contribution makes sense. This amendment would give the service Secretaries the option of (1) not participating in automatic enrollment, (2) establishing delayed enrollment, and (3) establishing special rules for reserve personnel. It will provide some flexibility reflecting the unique nature of military service.

DARRELL ISSA.

