

Calendar No. 685106TH CONGRESS
2^D SESSION**S. 2420****[Report No. 106-344]**

To amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees, members of the uniformed services, and civilian and military retirees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 2000

Mr. GRASSLEY (for himself, Ms. MIKULSKI, Ms. COLLINS, Mr. CLELAND, Mr. SARBANES, Mr. AKAKA, Mr. GRAHAM, Mr. DURBIN, Mr. HAGEL, and Mr. ROBB) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

JULY 14, 2000

Reported by Mr. THOMPSON, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees, members of the uniformed services, and civilian and military retirees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Long-Term Care Secu-
 5 rity Act”.

6 **SEC. 2. LONG-TERM CARE INSURANCE.**

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

10 **“CHAPTER 90—LONG-TERM CARE**
 11 **INSURANCE**

“Sec.

“9001. Definitions.

“9002. Availability of insurance.

“9003. Contracting authority.

“9004. Financing.

“9005. Preemption.

“9006. Studies, reports, and audits.

“9007. Jurisdiction of courts.

“9008. Administrative functions.

“9009. Cost accounting standards.

12 **“§ 9001. Definitions**

13 For purposes of this chapter:

14 “(1) EMPLOYEE.—The term ‘employee’
 15 means—

16 “(A) an employee as defined by section
 17 8901(1); and

18 “(B) an individual described in section
 19 2105(e);

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

3 “(2) ANNUITANT.—The term ‘annuitant’ has
4 the meaning such term would have under paragraph
5 (3) of section 8901 if, for purposes of such para-
6 graph, the term ‘employee’ were considered to have
7 the meaning given to it under paragraph (1) of this
8 subsection.

9 “(3) MEMBER OF THE UNIFORMED SERV-
10 ICES.—The term ‘member of the uniformed services’
11 means a member of the uniformed services, other
12 than a retired member of the uniformed services.

13 “(4) RETIRED MEMBER OF THE UNIFORMED
14 SERVICES.—The term ‘retired member of the uni-
15 formed services’ means a member or former member
16 of the uniformed services entitled to retired or re-
17 tainer pay.

18 “(5) QUALIFIED RELATIVE.—The term ‘quali-
19 fied relative’ means each of the following:

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

22 “(B) A parent, stepparent, or parent-in-
23 law of an individual described in paragraph (1)
24 or (3).

1 “(C) A child (including an adopted child, a
2 stepchild, or, to the extent the Office of Per-
3 sonnel Management by regulation provides, a
4 foster child) of an individual described in para-
5 graph (1), (2), (3), or (4), if such child is at
6 least 18 years of age.

7 “(D) An individual having such other rela-
8 tionship to an individual described in paragraph
9 (1), (2), (3), or (4) as the Office may by regula-
10 tion prescribe.

11 “(6) ELIGIBLE INDIVIDUAL.—The term ‘eligible
12 individual’ refers to an individual described in para-
13 graph (1), (2), (3), (4), or (5).

14 “(7) QUALIFIED CARRIER.—The term ‘qualified
15 carrier’ means an insurance company (or consortium
16 of insurance companies) that is licensed to issue
17 long-term care insurance in all States, taking any
18 subsidiaries of such a company into account (and, in
19 the case of a consortium, considering the member
20 companies and any subsidiaries thereof, collectively).

21 “(8) STATE.—The term ‘State’ includes the
22 District of Columbia.

23 “(9) QUALIFIED LONG-TERM CARE INSURANCE
24 CONTRACT.—The term ‘qualified long-term care in-
25 surance contract’ has the meaning given such term

1 by section 7702B of the Internal Revenue Code of
2 1986.

3 “(10) APPROPRIATE SECRETARY.—The term
4 ‘appropriate Secretary’ means—

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

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

10 “(C) with respect to the commissioned
11 corps of the National Oceanic and Atmospheric
12 Administration, the Secretary of Commerce;
13 and

14 “(D) with respect to the commissioned
15 corps of the Public Health Service, the Sec-
16 retary of Health and Human Services.

17 **“§ 9002. Availability of insurance**

18 “(a) IN GENERAL.—The Office of Personnel Manage-
19 ment shall establish and, in consultation with the appro-
20 priate Secretaries, administer a program through which
21 an individual described in paragraph (1), (2), (3), (4), or
22 (5) of section 9001 may obtain long-term care insurance
23 coverage under this chapter for such individual.

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

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

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

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

11 “(d) UNDERWRITING STANDARDS.—

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

17 “(2) SPOUSAL PARITY.—For the purpose of un-
18 derwriting standards, a spouse of an individual de-
19 scribed in paragraph (1), (2), (3), or (4) of section
20 9001 shall, as nearly as practicable, be treated like
21 that individual.

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

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

8 “(5) HIGHER STANDARDS ALLOWABLE.—Noth-
9 ing in this chapter shall, in the case of an individual
10 applying for long-term care insurance coverage
11 under this chapter after the expiration of such indi-
12 vidual’s first opportunity to enroll, preclude the ap-
13 plication of underwriting standards more stringent
14 than those that would have applied if that oppor-
15 tunity had not yet expired.

16 “(e) GUARANTEED RENEWABILITY.—The benefits
17 and coverage made available to eligible individuals under
18 any insurance contract under this chapter shall be guaran-
19 teed renewable (as defined by section 7A(2) of the model
20 regulations described in section 7702B(g)(2) of the Inter-
21 nal Revenue Code of 1986), including the right to have
22 insurance remain in effect so long as premiums continue
23 to be timely made. However, the authority to revise pre-
24 miums under this chapter shall be available only on a class

1 basis and only to the extent otherwise allowable under sec-
 2 tion 9003(b).

3 **“§ 9003. Contracting authority**

4 “(a) IN GENERAL.—The Office of Personnel Manage-
 5 ment shall, without regard to section 5 of title 41 or any
 6 other statute requiring competitive bidding, contract with
 7 1 or more qualified carriers for a policy or policies of long-
 8 term care insurance. The Office shall ensure that each re-
 9 sulting contract (hereinafter in this chapter referred to as
 10 a ‘master contract’) is awarded on the basis of contractor
 11 qualifications, price, and reasonable competition.

12 “(b) TERMS AND CONDITIONS.—

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

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

18 “(B) the premiums charged (including any
 19 limitations or other conditions on their subse-
 20 quent adjustment);

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

23 “(D) such other terms and conditions as
 24 may be mutually agreed to by the Office and

1 the carrier involved, consistent with the require-
2 ments of this chapter.

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

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

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

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

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

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

1 “(i) to establish internal procedures
2 designed to expeditiously resolve such dis-
3 putes; and

4 “(ii) to establish, for disputes not re-
5 solved through procedures under clause (i),
6 procedures for 1 or more alternative means
7 of dispute resolution involving independent
8 third-party review under appropriate cir-
9 cumstances by entities mutually acceptable
10 to the Office and the carrier.

11 “(2) ELIGIBILITY.—A carrier’s determination
12 as to whether or not a particular individual is eligi-
13 ble to obtain long-term care insurance coverage
14 under this chapter shall be subject to review only to
15 the extent and in the manner provided in the appli-
16 cable master contract.

17 “(3) OTHER CLAIMS.—For purposes of apply-
18 ing the Contract Disputes Act of 1978 to disputes
19 arising under this chapter between a carrier and the
20 Office—

21 “(A) the agency board having jurisdiction
22 to decide an appeal relative to such a dispute
23 shall be such board of contract appeals as the
24 Director of the Office of Personnel Management
25 shall specify in writing (after appropriate ar-

1 rangements, as described in section 8(c) of such
2 Act); and

3 “(B) the district courts of the United
4 States shall have original jurisdiction, concu-
5 rent with the United States Court of Federal
6 Claims, of any action described in section
7 10(a)(1) of such Act relative to such a dispute.

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

12 “(d) DURATION.—

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

23 “(2) EXCEPTION.—

24 “(A) SHORTER DURATION.—In the case of
25 a master contract entered into before the end of

1 the period described in subparagraph (B), para-
2 graph (1) shall be applied by substituting ‘end-
3 ing on the last day of the 7-year period de-
4 scribed in paragraph (2)(B)’ for ‘of 7 years’.

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

10 “(3) CONGRESSIONAL NOTIFICATION.—No later
11 than 180 days after receiving the second report re-
12 quired under section 9006(e), the President (or his
13 designee) shall submit to the Committees on Govern-
14 ment Reform and on Armed Services of the House
15 of Representatives and the Committees on Govern-
16 mental Affairs and on Armed Services of the Senate,
17 a written recommendation as to whether the pro-
18 gram under this chapter should be continued with-
19 out modification, terminated, or restructured. Dur-
20 ing the 180-day period following the date on which
21 the President (or his designee) submits the rec-
22 ommendation required under the preceding sentence,
23 the Office of Personnel Management may not take
24 any steps to rebid or otherwise contract for any cov-
25 erage to be available at any time following the expi-

1 ration of the 7-year period described in paragraph
 2 (2)(B).

3 “(4) FULL PORTABILITY.—Each master con-
 4 tract under this chapter shall include such provisions
 5 as may be necessary to ensure that, once an indi-
 6 vidual becomes duly enrolled, long-term care insur-
 7 ance coverage obtained by such individual pursuant
 8 to that enrollment shall not be terminated due to
 9 any change in status (such as separation from Gov-
 10 ernment service or the uniformed services) or ceas-
 11 ing to meet the requirements for being considered a
 12 qualified relative (whether as a result of dissolution
 13 of marriage or otherwise).

14 **“§ 9004. Financing**

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

19 “(b) WITHHOLDINGS.—

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

22 “(A) in the case of an employee, be with-
 23 held from the pay of such employee;

24 “(B) in the case of an annuitant, be with-
 25 held from the annuity of such annuitant;

1 “(C) in the case of a member of the uni-
2 formed services described in section 9001(3), be
3 withheld from the basic pay of such member;
4 and

5 “(D) in the case of a retired member of
6 the uniformed services described in section
7 9001(4), be withheld from the retired pay or re-
8 tainer pay payable to such member.

9 “(2) VOLUNTARY WITHHOLDINGS FOR QUALI-
10 FIED RELATIVES.—Withholdings to pay the pre-
11 miums for enrollment of a qualified relative may,
12 upon election of the appropriate eligible individual
13 (described in section 9001(1)–(4)), be withheld
14 under paragraph (1) to the same extent and in the
15 same manner as if enrollment were for such indi-
16 vidual.

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

19 “(d) OTHER FORMS OF PAYMENT.—Any enrollee
20 who does not elect to have premiums withheld under sub-
21 section (b) or whose pay, annuity, or retired or retainer
22 pay (as referred to in subsection (b)(1)) is insufficient to
23 cover the withholding required for enrollment (or who is
24 not receiving any regular amounts from the Government,
25 as referred to in subsection (b)(1), from which any such

1 withholdings may be made, and whose premiums are not
 2 otherwise being provided for under subsection (b)(2)) shall
 3 pay an amount equal to the full amount of those charges
 4 directly to the carrier.

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

10 “(f) REIMBURSEMENTS.—

11 “(1) REASONABLE INITIAL COSTS.—

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

19 “(B) REIMBURSEMENT REQUIREMENT.—

20 Such Fund shall be reimbursed, before the end
 21 of the first year of that 7-year period, for all
 22 amounts obligated or expended under subpara-
 23 graph (A) (including lost investment income).
 24 Such reimbursement shall be made by carriers,
 25 on a pro rata basis, in accordance with appro-

1 appropriate provisions which shall be included in
2 master contracts under this chapter.

3 ~~“(2) SUBSEQUENT COSTS.—~~

4 ~~“(A) IN GENERAL.—~~There is hereby estab-
5 lished in the Employees’ Life Insurance Fund a
6 ~~Long-Term Care Administrative Account,~~ which
7 shall be available to the Office, without fiscal
8 year limitation, to defray reasonable expenses
9 incurred by the Office in administering this
10 chapter after the start of the 7-year period de-
11 scribed in section 9003(d)(2)(B).

12 ~~“(B) REIMBURSEMENT REQUIREMENT.—~~
13 Each master contract under this chapter shall
14 include appropriate provisions under which the
15 carrier involved shall, during each year, make
16 such periodic contributions to the Long-Term
17 Care Administrative Account as necessary to
18 ensure that the reasonable anticipated expenses
19 of the Office in administering this chapter dur-
20 ing such year (adjusted to reconcile for any ear-
21 lier overestimates or underestimates under this
22 subparagraph) are defrayed.

23 **“§ 9005. Preemption**

24 ~~“The terms of any contract under this chapter which~~
25 relate to the nature, provision, or extent of coverage or

1 benefits (including payments with respect to benefits)
 2 shall supersede and preempt any State or local law, or
 3 any regulation issued thereunder, which relates to long-
 4 term care insurance or contracts.

5 **“§ 9006. Studies, reports, and audits**

6 “(a) PROVISIONS RELATING TO CARRIERS.—Each
 7 master contract under this chapter shall contain provi-
 8 sions requiring the carrier—

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

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

17 “(b) PROVISIONS RELATING TO FEDERAL AGEN-
 18 CIES.—Each Federal agency shall keep such records,
 19 make such certifications, and furnish the Office, the car-
 20 rier, or both, with such information and reports as the
 21 Office may require.

22 “(c) REPORTS BY THE GENERAL ACCOUNTING OF-
 23 FICE.—The General Accounting Office shall prepare and
 24 submit to the President, the Office of Personnel Manage-
 25 ment, and each House of Congress, before the end of the

1 third and fifth years during which the program under this
 2 chapter is in effect, a written report evaluating such pro-
 3 gram. Each such report shall include an analysis of the
 4 competitiveness of the program, as compared to both
 5 group and individual coverage generally available to indi-
 6 viduals in the private insurance market. The Office shall
 7 cooperate with the General Accounting Office to provide
 8 periodic evaluations of the program.

9 **“§ 9007. Jurisdiction of courts**

10 “The district courts of the United States have origi-
 11 nal jurisdiction of a civil action or claim described in para-
 12 graph (1) or (2) of section 9003(e), after such administra-
 13 tive remedies as required under such paragraph (1) or (2)
 14 (as applicable) have been exhausted, but only to the extent
 15 judicial review is not precluded by any dispute resolution
 16 or other remedy under this chapter.

17 **“§ 9008. Administrative functions**

18 “(a) IN GENERAL.—The Office of Personnel Manage-
 19 ment shall prescribe regulations necessary to carry out
 20 this chapter.

21 “(b) ENROLLMENT PERIODS.—The Office shall pro-
 22 vide for periodic coordinated enrollment, promotion, and
 23 education efforts in consultation with the carriers.

24 “(c) CONSULTATION.—Any regulations necessary to
 25 effect the application and operation of this chapter with

1 respect to an eligible individual described in paragraph (3)
2 or (4) of section 9001, or a qualified relative thereof, shall
3 be prescribed by the Office in consultation with the appro-
4 priate Secretary.

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

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

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

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

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

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

5 “(A) the projected number or percentage
6 of individuals likely to fail to maintain their
7 coverage (determined based on lapse rates expe-
8 rienced under similar group long-term care in-
9 surance programs and, when available, this
10 chapter); and

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

14 “(ii) the premium history during the last
15 10 years for each qualified carrier offering long-
16 term care insurance under this chapter; and

17 “(iii) if cost increases are anticipated, the
18 projected premiums for a typical insured indi-
19 vidual at various ages.

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

1 **“§ 9009. Cost accounting standards**

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

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

“90. Long-Term Care Insurance 9001.”.

9 **SEC. 3. EFFECTIVE DATE.**

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

18 ***TITLE I—FEDERAL LONG-TERM***
19 ***CARE INSURANCE***

20 ***SEC. 1001. SHORT TITLE.***

21 *This title may be cited as the “Long-Term Care Secu-*
22 *rity Act”.*

1 **SEC. 1002. LONG-TERM CARE INSURANCE.**

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

5 **“CHAPTER 90—LONG-TERM CARE**
6 **INSURANCE**

“Sec.

“9001. *Definitions.*

“9002. *Availability of insurance.*

“9003. *Contracting authority.*

“9004. *Financing.*

“9005. *Preemption.*

“9006. *Studies, reports, and audits.*

“9007. *Jurisdiction of courts.*

“9008. *Administrative functions.*

“9009. *Cost accounting standards.*

7 **“§ 9001. Definitions**

8 *For purposes of this chapter:*

9 “(1) *EMPLOYEE.*—The term ‘employee’ means—

10 “(A) *an employee as defined by section*

11 8901(1); and

12 “(B) *an individual described in section*

13 2105(e),

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

16 “(2) *ANNUITANT.*—The term ‘annuitant’ has the
17 *meaning such term would have under paragraph (3)*

18 *of section 8901 if, for purposes of such paragraph, the*

19 *term ‘employee’ were considered to have the meaning*

20 *given to it under paragraph (1) of this subsection.*

1 “(3) *MEMBER OF THE UNIFORMED SERVICES.*—

2 *The term ‘member of the uniformed services’ means a*
 3 *member of the uniformed services, other than a retired*
 4 *member of the uniformed services, who is—*

5 “(A) *on active duty or full-time National*
 6 *Guard duty for a period of more than 30 days;*
 7 *and*

8 “(B) *a member of the Selected Reserve.*

9 “(4) *RETIRED MEMBER OF THE UNIFORMED*
 10 *SERVICES.*—*The term ‘retired member of the uni-*
 11 *formed services’ means a member or former member*
 12 *of the uniformed services entitled to retired or re-*
 13 *tainer pay, including a member or former member re-*
 14 *tired under chapter 1223 of title 10 who has attained*
 15 *the age of 60 and who satisfies such eligibility re-*
 16 *quirements as the Office of Personnel Management*
 17 *prescribes under section 9008.*

18 “(5) *QUALIFIED RELATIVE.*—*The term ‘qualified*
 19 *relative’ means each of the following:*

20 “(A) *The spouse of an individual described*
 21 *in paragraph (1), (2), (3), or (4).*

22 “(B) *A parent, stepparent, or parent-in-law*
 23 *of an individual described in paragraph (1) or*
 24 *(3).*

1 “(C) A child (including an adopted child, a
2 stepchild, or, to the extent the Office of Personnel
3 Management by regulation provides, a foster
4 child) of an individual described in paragraph
5 (1), (2), (3), or (4), if such child is at least 18
6 years of age.

7 “(D) An individual having such other rela-
8 tionship to an individual described in paragraph
9 (1), (2), (3), or (4) as the Office may by regula-
10 tion prescribe.

11 “(6) *ELIGIBLE INDIVIDUAL.*—The term ‘eligible
12 individual’ refers to an individual described in para-
13 graph (1), (2), (3), (4), or (5).

14 “(7) *QUALIFIED CARRIER.*—The term ‘qualified
15 carrier’ means an insurance company (or consortium
16 of insurance companies) that is licensed to issue long-
17 term care insurance in all States, taking any subsidi-
18 aries of such a company into account (and, in the
19 case of a consortium, considering the member compa-
20 nies and any subsidiaries thereof, collectively).

21 “(8) *STATE.*—The term ‘State’ includes the Dis-
22 trict of Columbia.

23 “(9) *QUALIFIED LONG-TERM CARE INSURANCE*
24 *CONTRACT.*—The term ‘qualified long-term care insur-

1 *ance contract’ has the meaning given such term by*
 2 *section 7702B of the Internal Revenue Code of 1986.*

3 *“(10) APPROPRIATE SECRETARY.—The term ‘ap-*
 4 *propriate Secretary’ means—*

5 *“(A) except as otherwise provided in this*
 6 *paragraph, the Secretary of Defense;*

7 *“(B) with respect to the Coast Guard when*
 8 *it is not operating as a service of the Navy, the*
 9 *Secretary of Transportation;*

10 *“(C) with respect to the commissioned corps*
 11 *of the National Oceanic and Atmospheric Ad-*
 12 *ministration, the Secretary of Commerce; and*

13 *“(D) with respect to the commissioned corps*
 14 *of the Public Health Service, the Secretary of*
 15 *Health and Human Services.*

16 **“§ 9002. Availability of insurance**

17 *“(a) IN GENERAL.—The Office of Personnel Manage-*
 18 *ment shall establish and, in consultation with the appro-*
 19 *priate Secretaries, administer a program through which an*
 20 *individual described in paragraph (1), (2), (3), (4), or (5)*
 21 *of section 9001 may obtain long-term care insurance cov-*
 22 *erage under this chapter for such individual.*

23 *“(b) GENERAL REQUIREMENTS.—Long-term care in-*
 24 *surance may not be offered under this chapter unless—*

1 “(1) *the only coverage provided is under quali-*
2 *fied long-term care insurance contracts; and*

3 “(2) *each insurance contract under which any*
4 *such coverage is provided is issued by a qualified car-*
5 *rier.*

6 “(c) *DOCUMENTATION REQUIREMENT.—As a condition*
7 *for obtaining long-term care insurance coverage under this*
8 *chapter based on one’s status as a qualified relative, an ap-*
9 *plicant shall provide documentation to demonstrate the re-*
10 *lationship, as prescribed by the Office.*

11 “(d) *UNDERWRITING STANDARDS.—*

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

17 “(2) *SPOUSAL PARITY.—For the purpose of un-*
18 *derwriting standards, a spouse of an individual de-*
19 *scribed in paragraph (1), (2), (3), or (4) of section*
20 *9001 shall, as nearly as practicable, be treated like*
21 *that individual.*

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

1 “(4) *REQUIREMENT THAT CONTRACT BE FULLY*
2 *INSURED.*—*In addition to the requirements otherwise*
3 *applicable under section 9001(9), in order to be con-*
4 *sidered a qualified long-term care insurance contract*
5 *for purposes of this chapter, a contract must be fully*
6 *insured, whether through reinsurance with other com-*
7 *panies or otherwise.*

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

16 “(e) *GUARANTEED RENEWABILITY.*—*The benefits and*
17 *coverage made available to eligible individuals under any*
18 *insurance contract under this chapter shall be guaranteed*
19 *renewable (as defined by section 7A(2) of the model regula-*
20 *tions described in section 7702B(g)(2) of the Internal Rev-*
21 *enue Code of 1986), including the right to have insurance*
22 *remain in effect so long as premiums continue to be timely*
23 *made. However, the authority to revise premiums under*
24 *this chapter shall be available only on a class basis and*
25 *only to the extent otherwise allowable under section 9003(b).*

1 **“§ 9003. Contracting authority**

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

10 “(b) *TERMS AND CONDITIONS.*—

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

13 “(A) *a detailed statement of the benefits of-*
 14 *fered (including any maximums, limitations, ex-*
 15 *clusions, and other definitions of benefits);*

16 “(B) *the premiums charged (including any*
 17 *limitations or other conditions on their subse-*
 18 *quent adjustment);*

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

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

24 “(2) *PREMIUMS.*—*Premiums charged under each*
 25 *master contract entered into under this section shall*
 26 *reasonably and equitably reflect the cost of the benefits*

1 *provided, as determined by the Office. The premiums*
 2 *shall not be adjusted during the term of the contract*
 3 *unless mutually agreed to by the Office and the car-*
 4 *rier.*

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

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

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

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

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

18 “(i) *to establish internal procedures de-*
 19 *signed to expeditiously resolve such dis-*
 20 *putes; and*

21 “(ii) *to establish, for disputes not re-*
 22 *solved through procedures under clause (i),*
 23 *procedures for one or more alternative*
 24 *means of dispute resolution involving inde-*
 25 *pendent third-party review under appro-*

1 *priate circumstances by entities mutually*
2 *acceptable to the Office and the carrier.*

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

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

12 “(A) *the agency board having jurisdiction*
13 *to decide an appeal relative to such a dispute*
14 *shall be such board of contract appeals as the Di-*
15 *rector of the Office of Personnel Management*
16 *shall specify in writing (after appropriate ar-*
17 *rangements, as described in section 8(c) of such*
18 *Act); and*

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

24 “(4) *RULE OF CONSTRUCTION.*—*Nothing in this*
25 *chapter shall be considered to grant authority for the*

1 Office or a third-party reviewer to change the terms
2 of any contract under this chapter.

3 “(d) *DURATION.*—

4 “(1) *IN GENERAL.*—Each master contract under
5 this chapter shall be for a term of 7 years, unless ter-
6 minated earlier by the Office in accordance with the
7 terms of such contract. However, the rights and re-
8 sponsibilities of the enrolled individual, the insurer,
9 and the Office (or duly designated third-party admin-
10 istrator) under such contract shall continue with re-
11 spect to such individual until the termination of cov-
12 erage of the enrolled individual or the effective date
13 of a successor contract thereto.

14 “(2) *EXCEPTION.*—

15 “(A) *SHORTER DURATION.*—In the case of a
16 master contract entered into before the end of the
17 period described in subparagraph (B), para-
18 graph (1) shall be applied by substituting ‘end-
19 ing on the last day of the 7-year period described
20 in paragraph (2)(B)’ for ‘of 7 years’.

21 “(B) *DEFINITION.*—The period described in
22 this subparagraph is the 7-year period beginning
23 on the earliest date as of which any long-term
24 care insurance coverage under this chapter be-
25 comes effective.

1 “(3) *CONGRESSIONAL NOTIFICATION.*—No later
2 than 180 days after receiving the second report re-
3 quired under section 9006(c), the President (or his
4 designee) shall submit to the Committees on Govern-
5 ment Reform and on Armed Services of the House of
6 Representatives and the Committees on Governmental
7 Affairs and on Armed Services of the Senate, a writ-
8 ten recommendation as to whether the program under
9 this chapter should be continued without modifica-
10 tion, terminated, or restructured. During the 180-day
11 period following the date on which the President (or
12 his designee) submits the recommendation required
13 under the preceding sentence, the Office of Personnel
14 Management may not take any steps to rebid or oth-
15 erwise contract for any coverage to be available at
16 any time following the expiration of the 7-year period
17 described in paragraph (2)(B).

18 “(4) *FULL PORTABILITY.*—Each master contract
19 under this chapter shall include such provisions as
20 may be necessary to ensure that, once an individual
21 becomes duly enrolled, long-term care insurance cov-
22 erage obtained by such individual pursuant to that
23 enrollment shall not be terminated due to any change
24 in status (such as separation from Government serv-
25 ice or the uniformed services) or ceasing to meet the

1 *requirements for being considered a qualified relative*
 2 *(whether as a result of dissolution of marriage or oth-*
 3 *erwise).*

4 **“§ 9004. Financing**

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

9 *“(b) WITHHOLDINGS.—*

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

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

14 *“(B) in the case of an annuitant, be with-*
 15 *held from the annuity of such annuitant;*

16 *“(C) in the case of a member of the uni-*
 17 *formed services described in section 9001(3), be*
 18 *withheld from the pay of such member; and*

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

23 *“(2) VOLUNTARY WITHHOLDINGS FOR QUALIFIED*
 24 *RELATIVES.—Withholdings to pay the premiums for*
 25 *enrollment of a qualified relative may, upon election*

1 of the appropriate eligible individual (described in
2 section 9001(1)–(4)), be withheld under paragraph
3 (1) to the same extent and in the same manner as if
4 enrollment were for such individual.

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

7 “(d) *OTHER FORMS OF PAYMENT.*—Any enrollee who
8 does not elect to have premiums withheld under subsection
9 (b) or whose pay, annuity, or retired or retainer pay (as
10 referred to in subsection (b)(1)) is insufficient to cover the
11 withholding required for enrollment (or who is not receiving
12 any regular amounts from the Government, as referred to
13 in subsection (b)(1), from which any such withholdings may
14 be made, and whose premiums are not otherwise being pro-
15 vided for under subsection (b)(2)) shall pay an amount
16 equal to the full amount of those charges directly to the car-
17 rier.

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

23 “(f) *REIMBURSEMENTS.*—

24 “(1) *REASONABLE INITIAL COSTS.*—

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

8 “(B) *REIMBURSEMENT REQUIREMENT.*—
9 *Such Fund shall be reimbursed, before the end of*
10 *the first year of that 7-year period, for all*
11 *amounts obligated or expended under subpara-*
12 *graph (A) (including lost investment income).*
13 *Such reimbursement shall be made by carriers,*
14 *on a pro rata basis, in accordance with appro-*
15 *priate provisions which shall be included in*
16 *master contracts under this chapter.*

17 “(2) *SUBSEQUENT COSTS.*—

18 “(A) *IN GENERAL.*—*There is hereby estab-*
19 *lished in the Employees’ Life Insurance Fund a*
20 *Long-Term Care Administrative Account, which*
21 *shall be available to the Office, without fiscal*
22 *year limitation, to defray reasonable expenses in-*
23 *curring by the Office in administering this chap-*
24 *ter after the start of the 7-year period described*
25 *in section 9003(d)(2)(B).*

1 “(B) *REIMBURSEMENT REQUIREMENT.*—
 2 *Each master contract under this chapter shall*
 3 *include appropriate provisions under which the*
 4 *carrier involved shall, during each year, make*
 5 *such periodic contributions to the Long-Term*
 6 *Care Administrative Account as necessary to en-*
 7 *sure that the reasonable anticipated expenses of*
 8 *the Office in administering this chapter during*
 9 *such year (adjusted to reconcile for any earlier*
 10 *overestimates or underestimates under this sub-*
 11 *paragraph) are defrayed.*

12 **“§ 9005. Preemption**

13 *“The terms of any contract under this chapter which*
 14 *relate to the nature, provision, or extent of coverage or bene-*
 15 *fits (including payments with respect to benefits) shall su-*
 16 *perse and preempt any State or local law, or any regula-*
 17 *tion issued thereunder, which relates to long-term care in-*
 18 *surance or contracts.*

19 **“§ 9006. Studies, reports, and audits**

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

23 “(1) *to furnish such reasonable reports as the Of-*
 24 *fice of Personnel Management determines to be nec-*

1 *essary to enable it to carry out its functions under*
2 *this chapter; and*

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

7 *“(b) PROVISIONS RELATING TO FEDERAL AGEN-*
8 *CIES.—Each Federal agency shall keep such records, make*
9 *such certifications, and furnish the Office, the carrier, or*
10 *both, with such information and reports as the Office may*
11 *require.*

12 *“(c) REPORTS BY THE GENERAL ACCOUNTING OF-*
13 *FICE.—The General Accounting Office shall prepare and*
14 *submit to the President, the Office of Personnel Manage-*
15 *ment, and each House of Congress, before the end of the*
16 *third and fifth years during which the program under this*
17 *chapter is in effect, a written report evaluating such pro-*
18 *gram. Each such report shall include an analysis of the*
19 *competitiveness of the program, as compared to both group*
20 *and individual coverage generally available to individuals*
21 *in the private insurance market. The Office shall cooperate*
22 *with the General Accounting Office to provide periodic eval-*
23 *uations of the program.*

1 **“§ 9007. Jurisdiction of courts**

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

9 **“§ 9008. Administrative functions**

10 *“(a) IN GENERAL.—The Office of Personnel Manage-*
 11 *ment shall prescribe regulations necessary to carry out this*
 12 *chapter.*

13 *“(b) ENROLLMENT PERIODS.—The Office shall provide*
 14 *for periodic coordinated enrollment, promotion, and edu-*
 15 *cation efforts in consultation with the carriers.*

16 *“(c) CONSULTATION.—Any regulations necessary to ef-*
 17 *fect the application and operation of this chapter with re-*
 18 *spect to an eligible individual described in paragraph (3)*
 19 *or (4) of section 9001, or a qualified relative thereof, shall*
 20 *be prescribed by the Office in consultation with the appro-*
 21 *priate Secretary.*

22 *“(d) INFORMED DECISIONMAKING.—The Office shall*
 23 *ensure that each eligible individual applying for long-term*
 24 *care insurance under this chapter is furnished the informa-*
 25 *tion necessary to enable that individual to evaluate the ad-*

1 *vantages and disadvantages of obtaining long-term care in-*
2 *surance under this chapter, including the following:*

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

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

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

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

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

21 “(A) *the projected number or percentage of*
22 *individuals likely to fail to maintain their cov-*
23 *erage (determined based on lapse rates experi-*
24 *enced under similar group long-term care insur-*

1 *ance programs and, when available, this chap-*
 2 *ter); and*

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

6 *“(ii) the premium history during the last*
 7 *10 years for each qualified carrier offering long-*
 8 *term care insurance under this chapter; and*

9 *“(iii) if cost increases are anticipated, the*
 10 *projected premiums for a typical insured indi-*
 11 *vidual at various ages.*

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

18 **“§ 9009. Cost accounting standards**

19 *“The cost accounting standards issued pursuant to sec-*
 20 *tion 26(f) of the Office of Federal Procurement Policy Act*
 21 *(41 U.S.C. 422(f)) shall not apply with respect to a long-*
 22 *term care insurance contract under this chapter.”.*

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

“90. Long-Term Care Insurance 9001.”.

1 **SEC. 1003. EFFECTIVE DATE.**

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

10 **TITLE II—FEDERAL RETIREMENT**
 11 **COVERAGE ERRORS CORREC-**
 12 **TION**

13 **SEC. 2001. SHORT TITLE; TABLE OF CONTENTS.**

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

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

TITLE II—FEDERAL RETIREMENT COVERAGE ERRORS CORRECTION

Sec. 2001. Short title; table of contents.

Sec. 2002. Definitions.

Sec. 2003. Applicability.

Sec. 2004. Irrevocability of elections.

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

*CHAPTER 1—EMPLOYEES AND ANNUITANTS WHO SHOULD HAVE BEEN FERS
 COVERED, BUT WHO WERE ERRONEOUSLY CSRS COVERED OR CSRS-OFF-
 SET COVERED INSTEAD, AND SURVIVORS OF SUCH EMPLOYEES AND ANNU-
 ITANTS*

Sec. 2101. Employees.

Sec. 2102. Annuitants and survivors.

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

Sec. 2111. Applicability.

Sec. 2112. Correction mandatory.

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

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

CHAPTER 4—EMPLOYEE WHO WAS ERRONEOUSLY FERS COVERED

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

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

Sec. 2133. Retroactive effect.

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

Sec. 2141. Applicability.

Sec. 2142. Correction mandatory.

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

Sec. 2151. Applicability.

Sec. 2152. Correction mandatory.

Subtitle B—General Provisions

Sec. 2201. Identification and notification requirements.

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

Sec. 2203. Service credit deposits.

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

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

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

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

Sec. 2208. Discretionary actions by Director.

Sec. 2209. Regulations.

Subtitle C—Other Provisions

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

Sec. 2302. Authorization of payments.

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

Sec. 2401. Effective date.

1 **SEC. 2002. DEFINITIONS.**

2 *For purposes of this title:*

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

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

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

10 (4) *CSRS COVERED.*—*The term “CSRS cov-*
11 *ered”, with respect to any service, means service that*
12 *is subject to the provisions of subchapter III of chap-*
13 *ter 83 of title 5, United States Code, other than serv-*
14 *ice subject to section 8334(k) of such title.*

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

20 (6) *EMPLOYEE.*—*The term “employee” has the*
21 *meaning given such term under section 8331(1) or*
22 *8401(11) of title 5, United States Code.*

23 (7) *EXECUTIVE DIRECTOR.*—*The term “Execu-*
24 *tive Director of the Federal Retirement Thrift Invest-*

1 *ment Board” or “Executive Director” means the Ex-*
2 *ecutive Director appointed under section 8474 of title*
3 *5, United States Code.*

4 (8) *FERS.*—*The term “FERS” means the Fed-*
5 *eral Employees’ Retirement System.*

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

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

12 (11) *OASDI TAXES.*—*The term “OASDI taxes”*
13 *means the OASDI employee tax and the OASDI em-*
14 *ployer tax.*

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

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

1 (14) *OASDI TRUST FUNDS.*—*The term “OASDI*
 2 *trust funds” means the Federal Old-Age and Sur-*
 3 *vivors Insurance Trust Fund and the Federal Dis-*
 4 *ability Insurance Trust Fund.*

5 (15) *OFFICE.*—*The term “Office” means the Of-*
 6 *fice of Personnel Management.*

7 (16) *RETIREMENT COVERAGE DETERMINATION.*—
 8 *The term “retirement coverage determination” means*
 9 *a determination by an employee or agent of the Gov-*
 10 *ernment as to whether a particular type of Govern-*
 11 *ment service is CSRS covered, CSRS-Offset covered,*
 12 *FERS covered, or Social Security-Only covered.*

13 (17) *RETIREMENT COVERAGE ERROR.*—*The term*
 14 *“retirement coverage error” means an erroneous re-*
 15 *tirement coverage determination that was in effect for*
 16 *a minimum period of 3 years of service after Decem-*
 17 *ber 31, 1986.*

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

21 (A) *constitutes employment under section*
 22 *210 of the Social Security Act (42 U.S.C. 410);*
 23 *and*

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

25 (ii) *is not subject to CSRS or FERS.*

1 (19) *SURVIVOR.*—*The term “survivor” has the*
2 *meaning given such term under section 8331(10) or*
3 *8401(28) of title 5, United States Code.*

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

8 **SEC. 2003. APPLICABILITY.**

9 (a) *IN GENERAL.*—*This title shall apply with respect*
10 *to retirement coverage errors that occur before, on, or after*
11 *the date of enactment of this Act.*

12 (b) *LIMITATION.*—*Except as otherwise provided in this*
13 *title, this title shall not apply to any erroneous retirement*
14 *coverage determination that was in effect for a period of*
15 *less than 3 years of service after December 31, 1986.*

16 **SEC. 2004. IRREVOCABILITY OF ELECTIONS.**

17 *Any election made (or deemed to have been made) by*
18 *an employee or any other individual under this title shall*
19 *be irrevocable.*

1 ***Subtitle A—Description of Retirement***
 2 ***Coverage Errors to Which***
 3 ***This Title Applies and Measures***
 4 ***for Their Rectification***

5 **CHAPTER 1—EMPLOYEES AND ANNU-**
 6 **ITANTS WHO SHOULD HAVE BEEN**
 7 **FERS COVERED, BUT WHO WERE ERRO-**
 8 **NEOUSLY CSRS COVERED OR CSRS-**
 9 **OFFSET COVERED INSTEAD, AND SUR-**
 10 **VIVORS OF SUCH EMPLOYEES AND AN-**
 11 **NUITANTS**

12 **SEC. 2101. EMPLOYEES.**

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

18 (b) *UNCORRECTED ERROR.*—

19 (1) *APPLICABILITY.*—*This subsection applies if*
 20 *the retirement coverage error has not been corrected*
 21 *before the effective date of the regulations described*
 22 *under paragraph (3). As soon as practicable after dis-*
 23 *covery of the error, and subject to the right of an elec-*
 24 *tion under paragraph (2), if CSRS covered or CSRS-*
 25 *Offset covered, such individual shall be treated as*

1 *CSRS-Offset covered, retroactive to the date of the re-*
2 *irement coverage error.*

3 (2) *COVERAGE.—*

4 (A) *ELECTION.—*Upon written notice of a
5 *retirement coverage error, an individual may*
6 *elect to be CSRS-Offset covered or FERS covered,*
7 *effective as of the date of the retirement coverage*
8 *error. Such election shall be made not later than*
9 *180 days after the date of receipt of such notice.*

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

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

18 (c) *CORRECTED ERROR.—*

19 (1) *APPLICABILITY.—*This subsection applies if
20 *the retirement coverage error was corrected before the*
21 *effective date of the regulations described under sub-*
22 *section (b).*

23 (2) *COVERAGE.—*

24 (A) *ELECTION.—*

1 (i) *CSRS-OFFSET COVERED.*—Not
2 later than 180 days after the date of enact-
3 ment of this Act, the Office shall prescribe
4 regulations authorizing individuals to elect,
5 during the 18-month period immediately
6 following the effective date of such regula-
7 tions, to be CSRS-Offset covered, effective as
8 of the date of the retirement coverage error.

9 (ii) *THRIFT SAVINGS FUND CONTRIBU-*
10 *TIONS.*—If under this section an individual
11 elects to be CSRS-Offset covered, all em-
12 ployee contributions to the Thrift Savings
13 Fund made during the period of *FERS* cov-
14 erage (and earnings on such contributions)
15 may remain in the Thrift Savings Fund in
16 accordance with regulations prescribed by
17 the Executive Director, notwithstanding
18 any limit that would otherwise be applica-
19 ble.

20 (B) *PREVIOUS SETTLEMENT PAYMENT.*—An
21 individual who previously received a payment
22 ordered by a court or provided as a settlement of
23 claim for losses resulting from a retirement cov-
24 erage error shall not be entitled to make an elec-
25 tion under this subsection unless that amount is

1 *waived in whole or in part under section 2208,*
 2 *and any amount not waived is repaid.*

3 (C) *INELIGIBILITY FOR ELECTION.*—*An in-*
 4 *dividual who, subsequent to correction of the re-*
 5 *irement coverage error, received a refund of re-*
 6 *irement deductions under section 8424 of title 5,*
 7 *United States Code, or a distribution under sec-*
 8 *tion 8433 (b), (c), or (h)(1)(A) of title 5, United*
 9 *States Code, may not make an election under*
 10 *this subsection.*

11 (3) *CORRECTIVE ACTION TO REMAIN IN EF-*
 12 *FECT.*—*If an individual is ineligible to make an elec-*
 13 *tion or does not make an election under paragraph*
 14 *(2) before the end of any time limitation under this*
 15 *subsection, the corrective action taken before such time*
 16 *limitation shall remain in effect.*

17 **SEC. 2102. ANNUITANTS AND SURVIVORS.**

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

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

23 (2) *a survivor of an employee who should have*
 24 *been FERS covered but, as a result of a retirement*

1 *coverage error, was CSRS covered or CSRS-Offset*
2 *covered instead.*

3 **(b) COVERAGE.—**

4 **(1) ELECTION.—***Not later than 180 days after*
5 *the date of enactment of this Act, the Office shall pre-*
6 *scribe regulations authorizing an individual described*
7 *under subsection (a) to elect CSRS-Offset coverage or*
8 *FERS coverage, effective as of the date of the retire-*
9 *ment coverage error.*

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

14 **(3) REDUCED ANNUITY.—**

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

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

9 (4) *REDUCED BENEFIT.*—*If—*

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

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

15 *then the survivor's CSRS-Offset benefit shall be sub-*
16 *ject to a reduction, under regulations prescribed by*
17 *the Office. The reduced annuity to which the indi-*
18 *vidual is entitled shall be equal to an amount which,*
19 *when taken together with the amount of the payment*
20 *referred to under subparagraph (B) would result in*
21 *the present value of the total being actuarially equiva-*
22 *lent to the present value of an unreduced CSRS-Offset*
23 *annuity that would have been provided the indi-*
24 *vidual.*

1 (5) *PREVIOUS SETTLEMENT PAYMENT.*—*An indi-*
2 *vidual who previously received a payment ordered by*
3 *a court or provided as a settlement of claim for losses*
4 *resulting from a retirement coverage error may not*
5 *make an election under this subsection unless repay-*
6 *ment of that amount is waived in whole or in part*
7 *under section 2208, and any amount not waived is*
8 *repaid.*

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

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

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

1 **CHAPTER 2—EMPLOYEE WHO SHOULD**
2 **HAVE BEEN FERS COVERED, CSRS-OFF-**
3 **SET COVERED, OR CSRS COVERED,**
4 **BUT WHO WAS ERRONEOUSLY SOCIAL**
5 **SECURITY-ONLY COVERED INSTEAD**

6 **SEC. 2111. APPLICABILITY.**

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

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

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

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

18 **SEC. 2112. CORRECTION MANDATORY.**

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

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

4 **CHAPTER 3—EMPLOYEE WHO SHOULD OR**
 5 **COULD HAVE BEEN SOCIAL SECURITY-**
 6 **ONLY COVERED BUT WHO WAS ERRO-**
 7 **NEOUSLY CSRS-OFFSET COVERED OR**
 8 **CSRS COVERED INSTEAD**

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

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

16 (b) *UNCORRECTED ERROR.*—

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

21 (2) *COVERAGE.*—In the case of an individual
 22 who is erroneously CSRS covered, as soon as prac-
 23 ticable after discovery of the error, and subject to the
 24 right of an election under paragraph (3), such indi-

1 *vidual shall be CSRS-Offset covered, effective as of the*
2 *date of the retirement coverage error.*

3 (3) *ELECTION.—*

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

11 (B) *NONELECTION.—*If the individual does
12 *not make an election before the date provided*
13 *under subparagraph (A), the individual shall re-*
14 *main CSRS-Offset covered.*

15 (C) *REGULATIONS.—*The Office shall pre-
16 *scribe regulations to carry out this paragraph.*

17 (c) *CORRECTED ERROR.—*

18 (1) *APPLICABILITY.—*This subsection applies if
19 *the retirement coverage error was corrected before the*
20 *effective date of the regulations described under sub-*
21 *section (b)(3).*

22 (2) *ELECTION.—*Not later than 180 days after
23 *the date of enactment of this Act, the Office shall pre-*
24 *scribe regulations authorizing individuals to elect,*
25 *during the 18-month period immediately following*

1 *the effective date of such regulations, to be CSRS-Off-*
 2 *set covered or Social Security-Only covered, effective*
 3 *as of the date of the retirement coverage error.*

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

9 **CHAPTER 4—EMPLOYEE WHO WAS**
 10 **ERRONEOUSLY FERS COVERED**

11 **SEC. 2131. EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-**
 12 **ONLY COVERED, CSRS COVERED, OR CSRS-**
 13 **OFFSET COVERED AND IS NOT FERS-ELIGI-**
 14 **BLE, BUT WHO IS ERRONEOUSLY FERS COV-**
 15 **ERED INSTEAD.**

16 (a) *APPLICABILITY.—This section applies in the case*
 17 *of a retirement coverage error in which a Social Security-*
 18 *Only covered, CSRS covered, or CSRS-Offset covered em-*
 19 *ployee not eligible to elect FERS coverage under authority*
 20 *of section 8402(c) of title 5, United States Code, was erro-*
 21 *neously FERS covered.*

22 (b) *UNCORRECTED ERROR.—*

23 (1) *APPLICABILITY.—This subsection applies if*
 24 *the retirement coverage error has not been corrected*

1 *before the effective date of the regulations described in*
2 *paragraph (2).*

3 (2) *COVERAGE.—*

4 (A) *ELECTION.—*

5 (i) *IN GENERAL.—Upon written notice*
6 *of a retirement coverage error, an indi-*
7 *vidual may elect to remain FERS covered*
8 *or to be Social Security-Only covered,*
9 *CSRS covered, or CSRS-Offset covered, as*
10 *would have applied in the absence of the er-*
11 *roneous retirement coverage determination,*
12 *effective as of the date of the retirement cov-*
13 *erage error. Such election shall be made not*
14 *later than 180 days after the date of receipt*
15 *of such notice.*

16 (ii) *TREATMENT OF FERS ELECTION.—*

17 *An election of FERS coverage under this*
18 *subsection is deemed to be an election under*
19 *section 301 of the Federal Employees Re-*
20 *irement System Act of 1986 (5 U.S.C. 8331*
21 *note; Public Law 99–335; 100 Stat. 599).*

22 (B) *NONELECTION.—If the individual does*
23 *not make an election before the date provided*
24 *under subparagraph (A), the individual shall re-*

1 *main FERS covered, effective as of the date of*
2 *the retirement coverage error.*

3 (3) *EMPLOYEE CONTRIBUTIONS IN THRIFT SAV-*
4 *INGS FUND.—If under this section, an individual*
5 *elects to be Social Security-Only covered, CSRS cov-*
6 *ered, or CSRS-Offset covered, all employee contribu-*
7 *tions to the Thrift Savings Fund made during the pe-*
8 *riod of erroneous FERS coverage (and all earnings on*
9 *such contributions) may remain in the Thrift Savings*
10 *Fund in accordance with regulations prescribed by*
11 *the Executive Director, notwithstanding any limit*
12 *under section 8351 or 8432 of title 5, United States*
13 *Code.*

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

17 (c) *CORRECTED ERROR.—*

18 (1) *APPLICABILITY.—This subsection applies if*
19 *the retirement coverage error was corrected before the*
20 *effective date of the regulations described under para-*
21 *graph (2).*

22 (2) *ELECTION.—Not later than 180 days after*
23 *the date of enactment of this Act, the Office shall pre-*
24 *scribe regulations authorizing individuals to elect,*
25 *during the 18-month period immediately following*

1 *the effective date of such regulations to remain Social*
 2 *Security-Only covered, CSRS covered, or CSRS-Offset*
 3 *covered, or to be FERS covered, effective as of the date*
 4 *of the retirement coverage error.*

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

9 (4) *TREATMENT OF FERS ELECTION.—An elec-*
 10 *tion of FERS coverage under this subsection is*
 11 *deemed to be an election under section 301 of the Fed-*
 12 *eral Employees Retirement System Act of 1986 (5*
 13 *U.S.C. 8331 note; Public Law 99–335; 100 Stat.*
 14 *599).*

15 **SEC. 2132. FERS-ELIGIBLE EMPLOYEE WHO SHOULD HAVE**
 16 **BEEN CSRS COVERED, CSRS-OFFSET COV-**
 17 **ERED, OR SOCIAL SECURITY-ONLY COVERED,**
 18 **BUT WHO WAS ERRONEOUSLY FERS COVERED**
 19 **INSTEAD WITHOUT AN ELECTION.**

20 (a) *IN GENERAL.—*

21 (1) *FERS ELECTION PREVENTED.—If an indi-*
 22 *vidual was prevented from electing FERS coverage*
 23 *because the individual was erroneously FERS covered*
 24 *during the period when the individual was eligible to*
 25 *elect FERS under title III of the Federal Employees*

1 *Retirement System Act or the Federal Employees' Re-*
 2 *retirement System Open Enrollment Act of 1997 (Pub-*
 3 *lic Law 105-61; 111 Stat. 1318 et seq.), the*
 4 *individual—*

5 *(A) is deemed to have elected FERS cov-*
 6 *erage; and*

7 *(B) shall remain covered by FERS, unless*
 8 *the individual declines, under regulations pre-*
 9 *scribed by the Office, to be FERS covered.*

10 *(2) DECLINING FERS COVERAGE.—If an indi-*
 11 *vidual described under paragraph (1)(B) declines to*
 12 *be FERS covered, such individual shall be CSRS cov-*
 13 *ered, CSRS-Offset covered, or Social Security-Only*
 14 *covered, as would apply in the absence of a FERS*
 15 *election, effective as of the date of the erroneous retire-*
 16 *ment coverage determination.*

17 *(b) EMPLOYEE CONTRIBUTIONS IN THRIFT SAVINGS*
 18 *FUND.—If under this section, an individual declines to be*
 19 *FERS covered and instead is Social Security-Only covered,*
 20 *CSRS covered, or CSRS-Offset covered, as would apply in*
 21 *the absence of a FERS election, all employee contributions*
 22 *to the Thrift Savings Fund made during the period of erro-*
 23 *neous FERS coverage (and all earnings on such contribu-*
 24 *tions) may remain in the Thrift Savings Fund in accord-*
 25 *ance with regulations prescribed by the Executive Director,*

1 *notwithstanding any limit that would otherwise be applica-*
 2 *ble.*

3 (c) *INAPPLICABILITY OF DURATION OF ERRONEOUS*
 4 *COVERAGE.—This section shall apply regardless of the*
 5 *length of time the erroneous coverage determination re-*
 6 *mained in effect.*

7 **SEC. 2133. RETROACTIVE EFFECT.**

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

13 **CHAPTER 5—EMPLOYEE WHO SHOULD**
 14 **HAVE BEEN CSRS-OFFSET COVERED,**
 15 **BUT WHO WAS ERRONEOUSLY CSRS**
 16 **COVERED INSTEAD**

17 **SEC. 2141. APPLICABILITY.**

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

22 **SEC. 2142. CORRECTION MANDATORY.**

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

1 *under the correct retirement coverage, effective as of the date*
 2 *of the retirement coverage error.*

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

7 **CHAPTER 6—EMPLOYEE WHO SHOULD**
 8 **HAVE BEEN CSRS COVERED, BUT WHO**
 9 **WAS ERRONEOUSLY CSRS-OFFSET**
 10 **COVERED INSTEAD**

11 **SEC. 2151. APPLICABILITY.**

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

16 **SEC. 2152. CORRECTION MANDATORY.**

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

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

1 ***Subtitle B—General Provisions***

2 ***SEC. 2201. IDENTIFICATION AND NOTIFICATION REQUIRE-***
 3 ***MENTS.***

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

8 ***SEC. 2202. INFORMATION TO BE FURNISHED TO AND BY AU-***
 9 ***THORITIES ADMINISTERING THIS TITLE.***

10 (i) *APPLICABILITY.*—*The authorities identified in this*
 11 *subsection are—*

12 (1) *the Director of the Office of Personnel Man-*
 13 *agement;*

14 (2) *the Commissioner of Social Security; and*

15 (3) *the Executive Director of the Federal Retire-*
 16 *ment Thrift Investment Board.*

17 (b) *AUTHORITY TO OBTAIN INFORMATION.*—*Each au-*
 18 *thority identified in subsection (a) may secure directly from*
 19 *any department or agency of the United States information*
 20 *necessary to enable such authority to carry out its respon-*
 21 *sibilities under this title. Upon request of the authority in-*
 22 *volved, the head of the department or agency involved shall*
 23 *furnish that information to the requesting authority.*

24 (c) *AUTHORITY TO PROVIDE INFORMATION.*—*Each*
 25 *authority identified in subsection (a) may provide directly*

1 to any department or agency of the United States all infor-
 2 mation such authority believes necessary to enable the de-
 3 partment or agency to carry out its responsibilities under
 4 this title.

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

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

9 (2) establish, by regulation or otherwise, appro-
 10 priate safeguards to ensure that any information ob-
 11 tained under this section shall be used only for the
 12 purpose authorized.

13 **SEC. 2203. SERVICE CREDIT DEPOSITS.**

14 (a) *CSRS DEPOSIT.*—In the case of a retirement cov-
 15 erage error in which—

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

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

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

22 the excess of the amount of the *CSRS* civilian or military
 23 service credit deposit over the *FERS* civilian or military
 24 service credit deposit, together with interest computed in ac-
 25 cordance with paragraphs (2) and (3) of section 8334(e)

1 of title 5, United States Code, and regulations prescribed
2 by the Office, shall be paid to the employee, the annuitant
3 or, in the case of a deceased employee, to the individual
4 entitled to lump-sum benefits under section 8424(d) of title
5 5, United States Code.

6 (b) *FERS DEPOSIT.*—

7 (1) *APPLICABILITY.*—This subsection applies in
8 the case of an erroneous retirement coverage deter-
9 mination in which—

10 (A) the employee owed a service credit de-
11 posit under section 8411(f) of title 5, United
12 States Code; and

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

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

17 (2) *REDUCED ANNUITY.*—

18 (A) *IN GENERAL.*—If at the time of com-
19 mencement of an annuity there is remaining un-
20 paid CSRS civilian or military service credit
21 deposit for service described under paragraph
22 (1), the annuity shall be reduced based upon the
23 amount unpaid together with interest computed
24 in accordance with section 8334(e) (2) and (3)

1 of title 5, United States Code, and regulations
2 prescribed by the Office.

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

11 (3) SURVIVOR ANNUITY.—

12 (A) IN GENERAL.—If at the time of com-
13 mencement of a survivor annuity, there is re-
14 maining unpaid any CSRS service credit de-
15 posit described under paragraph (1), and there
16 has been no actuarial reduction in an annuity
17 under paragraph (2), the survivor annuity shall
18 be reduced based upon the amount unpaid to-
19 gether with interest computed in accordance with
20 section 8334(e) (2) and (3) of title 5, United
21 States Code, and regulations prescribed by the
22 Office.

23 (B) AMOUNT.—The reduced survivor annu-
24 ity to which the individual is entitled shall be
25 equal to an amount that, when taken together

1 with the amount referred to under subparagraph
 2 (A), would result in the present value of the total
 3 being actuarially equivalent to the present value
 4 of an unreduced survivor annuity benefit that
 5 would have been provided the individual.

6 **SEC. 2204. PROVISIONS RELATED TO SOCIAL SECURITY**

7 **COVERAGE OF MISCLASSIFIED EMPLOYEES.**

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

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

11 (A) is or was employed erroneously subject
 12 to CSRS coverage as a result of a retirement cov-
 13 erage error; and

14 (B) is or was retroactively converted to
 15 CSRS-offset coverage, FERS coverage, or Social
 16 Security-only coverage; and

17 (2) “excess CSRS deduction amount” means an
 18 amount equal to the difference between the CSRS de-
 19 ductions withheld and the CSRS-Offset or FERS de-
 20 ductions, if any, due with respect to a covered indi-
 21 vidual during the entire period the individual was er-
 22 roneously subject to CSRS coverage as a result of a
 23 retirement coverage error.

24 (b) *REPORTS TO COMMISSIONER OF SOCIAL SECU-*
 25 *RITY.*—

1 (1) *IN GENERAL.*—*In order to carry out the*
2 *Commissioner of Social Security’s responsibilities*
3 *under title II of the Social Security Act, the Commis-*
4 *sioner may request the head of each agency that em-*
5 *ployes or employed a covered individual to report (in*
6 *coordination with the Office of Personnel Manage-*
7 *ment) in such form and within such timeframe as the*
8 *Commissioner may specify, any or all of—*

9 (A) *the total wages (as defined in section*
10 *3121(a) of the Internal Revenue Code of 1986)*
11 *paid to such individual during each year of the*
12 *entire period of the erroneous CSRS coverage;*
13 *and*

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

19 (2) *COMPLIANCE.*—*The head of an agency or the*
20 *Office shall comply with a request from the Commis-*
21 *sioner under paragraph (1).*

22 (3) *WAGES.*—*For purposes of section 201 of the*
23 *Social Security Act (42 U.S.C. 401), wages reported*
24 *under this subsection shall be deemed to be wages re-*
25 *ported to the Secretary of the Treasury or the Sec-*

1 retary's delegates pursuant to subtitle F of the Inter-
2 nal Revenue Code of 1986.

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

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

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

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

21 (1) *IN GENERAL.—*Each employing agency shall
22 pay an amount equal to the OASDI employer taxes
23 owed with respect to covered individuals during the
24 applicable period of erroneous coverage (as adjusted
25 by amounts transferred for the payment of such taxes

1 *as a result of corrections made, including corrections*
 2 *made before the date of enactment of this Act).*

3 (2) *PAYMENT.*—*Amounts paid under this sub-*
 4 *section shall be determined subject to any limitation*
 5 *under section 6501 of the Internal Revenue Code of*
 6 *1986.*

7 (e) *APPLICATION OF OASDI TAX PROVISIONS OF THE*
 8 *INTERNAL REVENUE CODE OF 1986 TO AFFECTED INDIVID-*
 9 *UALS AND EMPLOYING AGENCIES.*—*A covered individual*
 10 *and the individual's employing agency shall be deemed to*
 11 *have fully satisfied in a timely manner their responsibil-*
 12 *ities with respect to the taxes imposed by sections 3101(a),*
 13 *3102(a), and 3111(a) of the Internal Revenue Code of 1986*
 14 *on the wages paid by the employing agency to such indi-*
 15 *vidual during the entire period such individual was erro-*
 16 *neously subject to CSRS coverage as a result of a retirement*
 17 *coverage error based on the payments and transfers made*
 18 *under subsections (c) and (d). No credit or refund of taxes*
 19 *on such wages shall be allowed as a result of this subsection.*

20 **SEC. 2205. THRIFT SAVINGS PLAN TREATMENT FOR CER-**
 21 **TAIN INDIVIDUALS.**

22 (a) *APPLICABILITY.*—*This section applies to an indi-*
 23 *vidual who—*

24 (1) *is eligible to make an election of coverage*
 25 *under section 2101 or 2102, and only if FERS cov-*

1 *erage is elected (or remains in effect) for the employee*
2 *involved; or*

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

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

8 *(1) IN GENERAL.—*

9 *(A) PAYMENT.—With respect to an indi-*
10 *vidual to whom this section applies, the employ-*
11 *ing agency shall pay to the Thrift Savings Fund*
12 *under subchapter III of chapter 84 of title 5,*
13 *United States Code, for credit to the account of*
14 *the employee involved, an amount equal to the*
15 *earnings which are disallowed under section*
16 *8432a(a)(2) of such title on the employee's retro-*
17 *active contributions to such Fund.*

18 *(B) AMOUNT.—Earnings under subpara-*
19 *graph (A) shall be computed in accordance with*
20 *the procedures for computing lost earnings under*
21 *section 8432a of title 5, United States Code. The*
22 *amount paid by the employing agency shall be*
23 *treated for all purposes as if that amount had*
24 *actually been earned on the basis of the em-*
25 *ployee's contributions.*

1 (C) *EXCEPTIONS.*—*If an individual made*
2 *retroactive contributions before the effective date*
3 *of the regulations under section 2101(c), the Di-*
4 *rector may provide for an alternative calculation*
5 *of lost earnings to the extent that a calculation*
6 *under subparagraph (B) is not administratively*
7 *feasible. The alternative calculation shall yield*
8 *an amount that is as close as practicable to the*
9 *amount computed under subparagraph (B), tak-*
10 *ing into account earnings previously paid.*

11 (2) *ADDITIONAL EMPLOYEE CONTRIBUTION.*—*In*
12 *cases in which the retirement coverage error was cor-*
13 *rected before the effective date of the regulations under*
14 *section 2101(c), the employee involved shall have an*
15 *additional opportunity to make retroactive contribu-*
16 *tions for the period of the retirement coverage error*
17 *(subject to applicable limits), and such contributions*
18 *(including any contributions made after the date of*
19 *the correction) shall be treated in accordance with*
20 *paragraph (1).*

21 (c) *REGULATIONS.*—

22 (1) *EXECUTIVE DIRECTOR.*—*The Executive Di-*
23 *rector shall prescribe regulations appropriate to carry*
24 *out this section relating to retroactive employee con-*

1 *tributions and payments made on or after the effec-*
2 *tive date of the regulations under section 2101(c).*

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

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

11 (a) *CERTAIN EXCESS AGENCY CONTRIBUTIONS TO RE-*
12 *MAIN IN THE CSRDF.*—

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

15 (A) *remain in the CSRDF; and*

16 (B) *may not be paid or credited to an agen-*
17 *cy.*

18 (2) *AMOUNTS.*—*Paragraph (1) refers to any*
19 *amount of contributions made by an agency under*
20 *section 8423 of title 5, United States Code, on behalf*
21 *of any employee, former employee, or annuitant (or*
22 *survivor of such employee, former employee, or annu-*
23 *itant) who makes an election to correct a retirement*
24 *coverage error under this title, that the Office deter-*
25 *mines to be excess as a result of such election.*

1 **(b) ADDITIONAL EMPLOYEE RETIREMENT DEDUC-**
 2 **TIONS TO BE PAID BY AGENCY.**—*If a correction in a retire-*
 3 *ment coverage error results in an increase in employee de-*
 4 *ductions under section 8334 or 8422 of title 5, United*
 5 *States Code, that cannot be fully paid by a reallocation of*
 6 *otherwise available amounts previously deducted from the*
 7 *employee’s pay as employment taxes or retirement deduc-*
 8 *tions, the employing agency—*

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

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

14 **SEC. 2207. CSRS COVERAGE DETERMINATIONS TO BE AP-**
 15 **PROVED BY OPM.**

16 *No agency shall place an individual under CSRS cov-*
 17 *erage unless—*

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

20 *(2) the Office has agreed in writing that the*
 21 *agency’s coverage determination is correct.*

22 **SEC. 2208. DISCRETIONARY ACTIONS BY DIRECTOR.**

23 **(a) IN GENERAL.**—*The Director of the Office of Per-*
 24 *sonnel Management may—*

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

5 (2) *provide for the reimbursement of necessary*
6 *and reasonable expenses incurred by an individual*
7 *with respect to settlement of a claim for losses result-*
8 *ing from a retirement coverage error, including attor-*
9 *ney's fees, court costs, and other actual expenses;*

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

17 (4) *wave payments required due to correction of*
18 *a retirement coverage error under this title.*

19 (b) *SIMILAR ACTIONS.*—*In exercising the authority*
20 *under this section, the Director shall, to the extent prac-*
21 *ticable, provide for similar actions in situations involving*
22 *similar circumstances.*

23 (c) *JUDICIAL REVIEW.*—*Actions taken under this sec-*
24 *tion are final and conclusive, and are not subject to admin-*
25 *istrative or judicial review.*

1 (d) *REGULATIONS.*—*The Office of Personnel Manage-*
 2 *ment shall prescribe regulations regarding the process and*
 3 *criteria used in exercising the authority under this section.*

4 (e) *REPORT.*—*The Office of Personnel Management*
 5 *shall, not later than 180 days after the date of enactment*
 6 *of this Act, and annually thereafter for each year in which*
 7 *the authority provided in this section is used, submit a re-*
 8 *port to each House of Congress on the operation of this sec-*
 9 *tion.*

10 **SEC. 2209. REGULATIONS.**

11 (a) *IN GENERAL.*—*In addition to the regulations spe-*
 12 *cifically authorized in this title, the Office may prescribe*
 13 *such other regulations as are necessary for the administra-*
 14 *tion of this title.*

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

20 ***Subtitle C—Other Provisions***

21 **SEC. 2301. PROVISIONS TO AUTHORIZE CONTINUED CON-**
 22 **FORMITY OF OTHER FEDERAL RETIREMENT**
 23 **SYSTEMS.**

24 (a) *FOREIGN SERVICE.*—*Sections 827 and 851 of the*
 25 *Foreign Service Act of 1980 (22 U.S.C. 4067 and 4071)*

1 *shall apply with respect to this title in the same manner*
2 *as if this title were part of—*

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

6 *(2) the Federal Employees' Retirement System,*
7 *to the extent this title relates to the Federal Employ-*
8 *ees' Retirement System.*

9 *(b) CENTRAL INTELLIGENCE AGENCY.—Sections 292*
10 *and 301 of the Central Intelligence Agency Retirement Act*
11 *(50 U.S.C. 2141 and 2151) shall apply with respect to this*
12 *title in the same manner as if this title were part of—*

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

16 *(2) the Federal Employees' Retirement System,*
17 *to the extent this title relates to the Federal Employ-*
18 *ees' Retirement System.*

19 **SEC. 2302. AUTHORIZATION OF PAYMENTS.**

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

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

4 *Nothing in this title shall preclude an individual from*
5 *bringing a claim against the Government of the United*
6 *States which such individual may have under section*
7 *1346(b) or chapter 171 of title 28, United States Code, or*
8 *any other provision of law (except to the extent the claim*
9 *is for any amounts otherwise provided for under this title).*

10 ***Subtitle D—Effective Date***

11 **SEC. 2401. EFFECTIVE DATE.**

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

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

Calendar No. 685

106TH CONGRESS
2D SESSION

S. 2420

[Report No. 106-344]

A BILL

To amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees, members of the uniformed services, and civilian and military retirees, and for other purposes.

JULY 14, 2000

Reported with an amendment and an amendment to the
title