

STATEMENT OF  
WILLIAM E. FLYNN, III, ASSOCIATE DIRECTOR  
FOR RETIREMENT AND INSURANCE  
OFFICE OF PERSONNEL MANAGEMENT

at a hearing of the

SUBCOMMITTEE ON INTERNATIONAL SECURITY, PROLIFERATION AND  
FEDERAL SERVICES  
COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

ON

THE RETIREMENT COVERAGE ERROR CORRECTION ACT OF 1998

MAY 13, 1998

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO APPEAR TODAY TO DISCUSS THE SUBJECT OF  
ERRONEOUS ENROLLMENTS IN THE FEDERAL RETIREMENT SYSTEMS. AT  
TODAY'S HEARING, I WOULD LIKE TO SHARE WITH THE SUBCOMMITTEE  
OUR PERSPECTIVE ON THIS PROBLEM, AS WELL AS THE OBJECTIVES WE  
BELIEVE SHOULD BE ACHIEVED BY THE REMEDY TO THIS PROBLEM.

RETIREMENT COVERAGE ERRORS ARE GENERALLY THE RESULT OF THE  
DIFFICULTIES GOVERNMENT AGENCIES HAVE EXPERIENCED IN THE  
STILL-ONGOING TRANSITION THAT BEGAN IN 1984 FROM THE CIVIL

SERVICE RETIREMENT SYSTEM (CSRS) TO THE FEDERAL EMPLOYEES RETIREMENT SYSTEM (FERS). TWO SETS OF STATUTORY TRANSITION RULES MUST BE APPLIED IN THESE CASES. FIRST, EFFECTIVE IN 1984, CAME THE EXCEPTIONS TO THE UNIVERSAL SOCIAL SECURITY COVERAGE LEGISLATION INTENDED TO COVER FEDERAL EMPLOYEES UNDER SOCIAL SECURITY. THIS SET OF RULES WAS RETROACTIVELY AMENDED IN MID-1984 TO COVER SOME EMPLOYEES PREVIOUSLY EXCLUDED FROM SOCIAL SECURITY TAXES. THE GRANDFATHERING PROVISIONS OF THE FERS ACT OF 1986 COMPRISE THE SECOND SET OF TRANSITION RULES. FERS WAS DESIGNED TO COVER ALL EMPLOYEES HIRED AFTER 1983. THE EXCEPTIONS TO THESE RULES INVOLVED EMPLOYEES WHO WERE EXCLUDED FROM SOCIAL SECURITY OR MET ONE OF TWO VERSIONS OF A 5-YEAR SERVICE TEST IN THE LAW. ANOTHER IMPORTANT ASPECT OF THIS HISTORY IS THE CREATION OF A HYBRID SYSTEM KNOWN AS CSRS OFFSET, WHICH COMBINES CSRS AND SOCIAL SECURITY BENEFITS, AND WILL CONTINUE FOR THE DURATION OF THE TRANSITION.

FEDERAL AGENCIES MUST APPLY THE CURRENT RULES TO SELECT FOR EACH EMPLOYEE THE CORRECT RETIREMENT SYSTEM COVERAGE FROM AMONG FOUR POSSIBILITIES: CSRS, CSRS OFFSET, FERS, AND SOCIAL

SECURITY ONLY. WITH FOUR POSSIBLE COVERAGES, THERE ARE 12 POSSIBLE ERRONEOUS COVERAGE SITUATIONS, ALL OF WHICH HAVE ACTUALLY OCCURRED: FERS MISCLASSIFIED AS CSRS, FERS MISCLASSIFIED AS CSRS OFFSET, FERS MISCLASSIFIED AS SOCIAL SECURITY ONLY, CSRS MISCLASSIFIED AS CSRS OFFSET, AND SO ON. WHILE THE OVERWHELMING MAJORITY OF DETERMINATIONS MADE UNDER THESE LAWS HAVE BEEN DONE CORRECTLY, WE KNOW THAT ERRORS HAVE OCCURRED OVER THE YEARS.

THE LAW REQUIRES AGENCIES THAT FIND A MISTAKE IN AN EMPLOYEE'S RETIREMENT COVERAGE TO CORRECT IT. AN EMPLOYEE ERRONEOUSLY PLACED IN FERS, AT A TIME WHEN THE EMPLOYEE'S PROPER COVERAGE WOULD HAVE PROVIDED THE STATUTORY OPPORTUNITY TO ELECT FERS, MUST BE RETROACTIVELY PLACED IN THE CORRECTED COVERAGE, UNLESS THE EMPLOYEE EXERCISES THE FERS DEEMED ELECTION OPTION. WHERE THE LAW MANDATES FERS COVERAGE, BUT THE EMPLOYEE WAS ERRONEOUSLY PLACED IN CSRS OR CSRS OFFSET, THE ERROR MUST BE CORRECTED RETROACTIVELY BECAUSE EMPLOYEES DO NOT HAVE A RIGHT TO ELECT CSRS OR CSRS OFFSET.

THE LAW REQUIRES THAT, AFTER DISCOVERY OF A COVERAGE ERROR, AN EMPLOYEE'S DEFINED BENEFIT COVERAGE, INCLUDING SOCIAL SECURITY, BE FULLY CORRECTED WITH RETROACTIVE AMENDMENTS TO RETIREMENT RECORDS AND REALLOCATION OF EMPLOYEE AND AGENCY CONTRIBUTIONS. OF THE VARIOUS COVERAGE ERROR SITUATIONS, THEREFORE, THOSE THAT NEGATIVELY AFFECT THE EMPLOYEE'S DEFINED CONTRIBUTION PLAN PARTICIPATION ARE THOSE THAT MAY DISADVANTAGE THE EMPLOYEE. AN EMPLOYEE'S PARTICIPATION IN THE THRIFT SAVINGS PLAN (TSP) IS A MATTER OF PERSONAL CHOICE, AFFECTED BY THE EMPLOYEE'S AVAILABLE INCOME AND PERSONAL RETIREMENT PLANNING, WHICH IN TURN RELIES ON A CORRECT COVERAGE DETERMINATION.

IN 1989, THE COMPTROLLER GENERAL CONCLUDED THAT IN THE ABSENCE OF A STATUTORY AUTHORITY, AGENCIES WERE NOT ALLOWED TO PAY INTO EMPLOYEE TSP ACCOUNTS EARNINGS LOST DUE TO THE AGENCY'S DELAY IN MAKING TSP CONTRIBUTIONS. IN 1990, CONGRESS ADDRESSED THIS SITUATION. PUBLIC LAW 101-335 PROVIDED A REMEDY THAT, IN GENERAL TERMS, REQUIRES THE EMPLOYER TO DEPOSIT INTO THE TSP THE AMOUNTS AN EMPLOYEE WOULD HAVE RECEIVED IN THE WAY OF A GOVERNMENT

CONTRIBUTION AND EARNINGS ON THAT CONTRIBUTION, BUT FOR THE AGENCY'S ERROR. APART FROM THE 1 PERCENT GOVERNMENT CONTRIBUTION AND EARNINGS ON THAT AMOUNT WHICH MUST BE DEPOSITED FOR ALL FERS EMPLOYEES REGARDLESS OF WHETHER THE EMPLOYEE CONTRIBUTES, THE TOTAL AMOUNT OF THE AGENCY'S MAKE-UP CONTRIBUTION DEPENDS ON THE EMPLOYEE'S PAST CONTRIBUTIONS TO THE TSP AND HIS OR HER FUTURE SALARY WITHHOLDINGS TO MAKE-UP FOR THE PERIOD OF THE ERRONEOUS COVERAGE.

THIS APPROACH TO MAKING AN EMPLOYEE WHOLE FOLLOWING IDENTIFICATION OF A RETIREMENT COVERAGE ERROR HAS SIGNIFICANT GAPS. FOR EXAMPLE, BECAUSE THIS APPROACH RELIES ON FUTURE SALARY WITHHOLDINGS, AN EMPLOYEE WHOSE COVERAGE ERROR IS DISCOVERED UPON SEPARATION FROM SERVICE DOES NOT HAVE AN OPPORTUNITY TO MAKE UP LOST CONTRIBUTIONS. A SIMILAR PROBLEMS OCCURS FOR AN EMPLOYEE WHO DOES NOT HAVE INCOME AVAILABLE FOR THIS PURPOSE DURING THE PERIOD WHEN THE MAKE-UP CONTRIBUTIONS WOULD BE ALLOWED.

THE ADMINISTRATION BELIEVES THAT A COMPREHENSIVE SOLUTION IS ESSENTIAL, ONE THAT ADDRESSES SITUATIONS IN WHICH A LONG-TERM COVERAGE ERROR HAS BEEN CORRECTED IN THE PAST AS WELL AS THOSE IN WHICH THE ERROR HAS NOT YET BEEN DISCOVERED AND CORRECTED. WE STRONGLY BELIEVE THAT THE REMEDY SHOULD BE COMPLETE, AND THAT IT SHOULD EXPLICITLY DEAL WITH ALL SIGNIFICANT ISSUES, INCLUDING THE CASES OF EMPLOYEES WHO HAVE RETIRED OR DIED.

WE REALIZED FROM THE OUTSET THAT IT WOULD REQUIRE THE COOPERATION AND COORDINATION OF A NUMBER OF AGENCIES TO CRAFT A PROPOSAL THAT WOULD ACHIEVE THE DESIRED RESULT. IT WAS NECESSARY TO RESOLVE MANY COMPLEX AND DIFFICULT ISSUES. TO DO SO, WE WORKED CLOSELY WITH THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD, THE SOCIAL SECURITY ADMINISTRATION, AND THE TREASURY DEPARTMENT. THE ADMINISTRATION'S PROPOSAL REPRESENTS THE CONSENSUS POSITION THAT IS THE BEST WAY TO RESOLVE THE MYRIAD INTRICATE AND INTERTWINED ASPECTS OF THIS SITUATION.

AS NOTED IN OUR REPORT OF SEPTEMBER 9, 1997, ON RETIREMENT COVERAGE ERRORS, WE BELIEVE THAT, TO SUCCEED, THERE ARE FOUR SPECIFIC OBJECTIVES THAT ANY REMEDY MUST MEET.

- THE REMEDY SHOULD DEMONSTRATE THAT THE GOVERNMENT CARES ABOUT FEDERAL EMPLOYEES WHO HAVE BEEN DISADVANTAGED BY AN ERROR IN THEIR RETIREMENT COVERAGE, AND IS COMMITTED TO AN EQUITABLE SOLUTION FOR THESE EMPLOYEES AND THEIR FAMILIES.
  
- EMPLOYEES SHOULD HAVE A CHOICE BETWEEN CORRECTED COVERAGE AND THE BENEFIT THE EMPLOYEE EXPECTED TO RECEIVE, WITHOUT DISTURBING SOCIAL SECURITY COVERAGE LAWS.
  
- THE OPTIONS PROVIDED TO THE EMPLOYEE SHOULD BE EASY TO UNDERSTAND.
  
- FINALLY, WE WANT TO MINIMIZE ADMINISTRATIVE ASPECTS OF THE REMEDY IN ORDER TO KEEP THE SOLUTIONS SIMPLE AND TIMELY.

MR. CHAIRMAN, WE BELIEVE THE ADMINISTRATION PROPOSAL MEETS THESE OBJECTIVES. DURING OUR STUDY OF THIS MATTER, WE CONSIDERED THE OPTION OF PLACING INDIVIDUALS UNDER FERS AND MAKING A PAYMENT TO THE TSP, BUT REALIZED THERE WERE INTRACTABLE BASIC PROBLEMS THAT LIMIT THE FEASIBILITY OF THAT APPROACH. MORE IMPORTANTLY, WE CONCLUDED THAT THE APPROACH OF OFFERING CSRS OFFSET COVERAGE WOULD PROVIDE A MAKE-WHOLE SOLUTION TO AFFECTED INDIVIDUALS. UNDER THIS APPROACH, NO ONE WOULD GET LESS THAN THEY BELIEVED THEY WERE GOING TO RECEIVE.

MR. CHAIRMAN, THE BILL INTRODUCED BY YOU [SEN. COCHRAN] AND OTHERS -S. 1710-- IS LARGELY BASED ON THE ADMINISTRATION'S PROPOSAL. MOST IMPORTANTLY, BOTH IT AND THE ADMINISTRATION'S PROPOSAL WOULD PROVIDE A SOLUTION FOR ALL AFFECTED GROUPS, INCLUDING THOSE WHO HAVE ALREADY RETIRED, AND SURVIVORS OF EMPLOYEES WHO HAVE DIED. WHILE THERE ARE DIFFERENCES BETWEEN THE TWO PROPOSALS, I AM CONFIDENT THAT WE CAN WORK TOGETHER TO ACHIEVE AN ACCEPTABLE SOLUTION.

WE WORKED DILIGENTLY TO PRODUCE AN EQUITABLE REMEDY TO THIS DIFFICULT PROBLEM. HOWEVER, WE CANNOT MOVE FORWARD TO MAKE THAT REMEDY A REALITY UNTIL LEGISLATION IS ENACTED. OUR HOPE IS THAT WE CAN NOW MOVE FORWARD QUICKLY, SO WE CAN BEGIN THE REAL WORK OF ACTUALLY DELIVERING RELIEF TO ALL OF THOSE PEOPLE WHO HAVE BEEN ADVERSELY AFFECTED.

I HOPE THIS INFORMATION HAS BEEN HELPFUL AND I WILL BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

STATEMENT OF  
WILLIAM E. FLYNN, III, ASSOCIATE DIRECTOR  
FOR RETIREMENT AND INSURANCE  
OFFICE OF PERSONNEL MANAGEMENT

at a hearing of the

CIVIL SERVICE SUBCOMMITTEE  
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT  
UNITED STATES HOUSE OF REPRESENTATIVES

ON

THE FEDERAL EMPLOYEES RETIREMENT COVERAGE CORRECTION ACT OF  
1998

FEBRUARY 24, 1998

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO APPEAR TODAY TO DISCUSS THE SUBCOMMITTEE'S  
PROPOSAL TO CORRECT RETIREMENT COVERAGE ERRORS. THERE ARE  
CLEAR DIFFERENCES BETWEEN THE APPROACHES OF THE  
SUBCOMMITTEE AND THE ADMINISTRATION, AND I APPRECIATE THE  
OPPORTUNITY TO ADDRESS THEM.

THE ADMINISTRATION BELIEVES THAT A COMPREHENSIVE SOLUTION IS  
ESSENTIAL, ONE THAT ADDRESSES SITUATIONS IN WHICH A LONG-  
TERM COVERAGE ERROR HAS BEEN CORRECTED IN THE PAST AS WELL

AS THOSE IN WHICH THE ERROR HAS NOT YET BEEN DISCOVERED AND CORRECTED. WE STRONGLY BELIEVE THAT THE REMEDY SHOULD BE COMPLETE, AND THAT IT SHOULD EXPLICITLY DEAL WITH ALL SIGNIFICANT ISSUES, INCLUDING THE CASES OF EMPLOYEES WHO HAVE RETIRED OR DIED.

WE REALIZED FROM THE OUTSET THAT IT WOULD REQUIRE THE COOPERATION AND COORDINATION OF A NUMBER OF AGENCIES TO CRAFT A PROPOSAL THAT WOULD ACHIEVE THE DESIRED RESULT. IT WAS NECESSARY TO RESOLVE MANY COMPLEX AND DIFFICULT ISSUES. TO DO SO, WE WORKED CLOSELY WITH THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD, THE SOCIAL SECURITY ADMINISTRATION, AND THE TREASURY DEPARTMENT. THE ADMINISTRATION'S PROPOSAL REPRESENTS THE CONSENSUS POSITION THAT IS THE BEST WAY TO RESOLVE THE MYRIAD INTRICATE AND INTERTWINED ASPECTS OF THIS SITUATION. THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD'S VIEWS ARE DESCRIBED IN EXECUTIVE DIRECTOR ROGER MEHLE'S STATEMENT.

AS DISCUSSED IN OUR REPORT AND MY PRIOR TESTIMONY, WE BELIEVE THAT, TO SUCCEED, THERE ARE FOUR SPECIFIC OBJECTIVES THAT ANY

REMEDY MUST MEET.

- THE REMEDY SHOULD DEMONSTRATE THAT THE GOVERNMENT CARES ABOUT FEDERAL EMPLOYEES WHO HAVE BEEN DISADVANTAGED BY AN ERROR IN THEIR RETIREMENT COVERAGE, AND IS COMMITTED TO AN EQUITABLE SOLUTION FOR THESE EMPLOYEES AND THEIR FAMILIES.
- EMPLOYEES SHOULD HAVE A CHOICE BETWEEN CORRECTED COVERAGE AND THE BENEFIT THE EMPLOYEE EXPECTED TO RECEIVE, WITHOUT DISTURBING SOCIAL SECURITY COVERAGE LAWS.
- THE OPTIONS PROVIDED TO THE EMPLOYEE SHOULD BE EASY TO UNDERSTAND.
- FINALLY, WE WANT TO MINIMIZE ADMINISTRATIVE ASPECTS OF THE REMEDY IN ORDER TO KEEP THE SOLUTIONS SIMPLE AND TIMELY.

MR CHAIRMAN, WE BELIEVE THE ADMINISTRATION PROPOSAL MEETS THESE OBJECTIVES. SINCE WE HAVE JUST RECEIVED THE FINAL VERSION OF THE SUBCOMMITTEE'S PROPOSAL, WE HAVE NOT YET HAD THE OPPORTUNITY TO FULLY REVIEW ALL DETAILS OF IT. NEVERTHELESS, THERE ARE FUNDAMENTAL DIFFERENCES BETWEEN THE PROPOSALS THAT I WOULD LIKE TO DISCUSS THIS MORNING.

UNDER BOTH PROPOSALS, INDIVIDUALS WHO SHOULD HAVE BEEN

UNDER FERS, BUT WHO WERE ERRONEOUSLY PLACED IN CSRS OR CSRS OFFSET, WILL HAVE THE OPTION TO ELECT TO BE RETROACTIVELY PLACED UNDER FERS COVERAGE. HOWEVER, UNDER THE SUBCOMMITTEE PROPOSAL, INDIVIDUALS ELECTING FERS COVERAGE WILL BE ENTITLED TO A SUBSTANTIAL AGENCY-FUNDED PAYMENT TO THE THRIFT SAVINGS PLAN.

UNDER CURRENT THRIFT SAVINGS PLAN RULES, EMPLOYEES WHO ARE COVERED UNDER THE IMPROPER PLAN MAY MAKE RETROACTIVE CONTRIBUTIONS AND RECEIVE MATCHING CONTRIBUTIONS AND EARNINGS. WHILE THE THRIFT SAVINGS BOARD PREVIOUSLY LIMITED MAKE-UP TSP CONTRIBUTIONS TO THE TOTAL PERMITTED FOR THE YEAR IN WHICH THE MAKE-UP WAS MADE, THAT IS NO LONGER THE CASE IN THE EVENT OF RETIREMENT COVERAGE ERRORS. IN THAT CASE, CONTRIBUTIONS CAN BE MADE FOR EACH YEAR OF ERRONEOUS COVERAGE UP TO THE MAXIMUM PERMITTED AMOUNT FOR EACH YEAR.

OUR UNDERSTANDING IS THAT THE AGENCY PAYMENT ELEMENT OF THE SUBCOMMITTEE'S PROPOSAL IS BASED UPON THE RULES APPLICABLE IN THE PRIVATE SECTOR WHEN AN INDIVIDUAL HAS ERRONEOUSLY BEEN DENIED COVERAGE UNDER AN EMPLOYER'S RETIREMENT SYSTEM.

SUCH PAYMENTS ARE NECESSARY IN THE PRIVATE SECTOR BECAUSE, UNDER A DEFINED CONTRIBUTION RETIREMENT PROGRAM, THEY ARE THE ONLY MEANS POSSIBLE TO CORRECT THE HARM TO EMPLOYEE. HOWEVER, WITH CSRS AND FERS BOTH OPERATING, WE HAVE AN APPROACH WHICH IS GENERALLY UNAVAILABLE IN THE PRIVATE SECTOR, AND WHICH ENABLES AN INDIVIDUAL TO BE RESTORED TO THE STATUS HE OR SHE PRESUMED WAS CORRECT.

DURING OUR STUDY OF THIS MATTER, WE CONSIDERED THE OPTION OF PLACING INDIVIDUALS UNDER FERS AND MAKING A PAYMENT TO THE TSP, BUT REALIZED THERE WERE INTRACTABLE BASIC PROBLEMS INVOLVING COST, EQUITY, AND COMPLEXITY. MORE IMPORTANTLY, WE CONCLUDED THAT THE APPROACH OF OFFERING CSRS OFFSET COVERAGE PROVIDED A MAKE-WHOLE SOLUTION TO AFFECTED INDIVIDUALS. UNDER THIS APPROACH, NOT AVAILABLE IN THE PRIVATE SECTOR, INDIVIDUALS WILL ALWAYS RECEIVE AT LEAST AS MUCH AS THEY BELIEVED THEY WERE GOING TO GET.

WE BELIEVE A NUMBER OF UNINTENDED, BUT NONETHELESS, REAL INEQUITIES, COSTS, AND ADMINISTRATIVE PROBLEMS WILL RESULT UNDER THE SUBCOMMITTEE'S PROPOSAL. SOME INDIVIDUALS WILL BE

OVERCOMPENSATED WHILE OTHERS WILL RECEIVE SMALLER PAYMENTS.

FOR EXAMPLE, CONSIDER THREE INDIVIDUALS WHO WERE ERRONEOUSLY COVERED UNDER CSRS OR CSRS-OFFSET, AND WHO SHOULD HAVE BEEN FERS. DURING THE CSRS OR CSRS-OFFSET EMPLOYMENT, ONE CONTRIBUTED 1% TO TSP AND PUT IT ALL IN THE C FUND. THE SECOND CONTRIBUTED 5% TO TSP AND PUT IT ALL IN THE G FUND. THE THIRD INDIVIDUAL DID NOT PARTICIPATE IN TSP AT ALL.

UNDER THE SUBCOMMITTEE PAYMENT PROPOSAL, THE PERSON WHO CONTRIBUTED ONLY 1% TO TSP, BUT PUT ALL IT IN THE C FUND, WILL RECEIVE THE LARGEST PAYMENT BECAUSE THEIR AGENCY PAYMENT IS NOT SUBJECT TO A CAP, AND BECAUSE EARNINGS WILL BE COMPUTED SOLELY ON THE BASIS OF C FUND PERFORMANCE.

IRONICALLY, THE SECOND INDIVIDUAL, WHO CONTRIBUTED THE MOST TO HIS OR HER OWN FUTURE RETIREMENT BY MAKING THE 5% TSP CONTRIBUTIONS, WILL RECEIVE THE SMALLEST AGENCY PAYMENT. EVEN THOUGH AVERAGE FERS TSP CONTRIBUTIONS EXCEED 5%, THE AGENCY PAYMENT WILL BE LIMITED TO 5%, BECAUSE THAT AMOUNT

PLUS THE EMPLOYEES EARLIER CONTRIBUTIONS HIT THE 10% LIMIT. FURTHER, SINCE THE EMPLOYEE HAD A HISTORY UNDER THE G FUND, EARNINGS ON THE AGENCY PAYMENT WILL ALSO BE PAID AT THAT LOWER RATE.

THE THIRD INDIVIDUAL WILL RECEIVE A PAYMENT IN BETWEEN THE OTHER TWO. SINCE NO TSP CONTRIBUTIONS WERE MADE, THE PAYMENT WILL NOT BE SUBJECT TO A CAP. SINCE THERE IS NO INVESTMENT HISTORY, EARNINGS ON THE PAYMENT WILL BE COMPUTED BASED ON THE COMPOSITE, AVERAGE FUND EARNINGS, SUBSTANTIALLY HIGHER THAN THE G FUND RATE, BUT LOWER THAN THE C FUND RATE.

THERE IS ANOTHER FUNDAMENTAL DIFFERENCE BETWEEN THE TWO PROPOSALS IN THE AREA OF FUNDING. THE ADMINISTRATION'S PLAN IS SIMPLE. PRIOR EMPLOYEE RETIREMENT CONTRIBUTIONS HELD IN THE RETIREMENT FUND ARE REALLOCATED AS REQUIRED. AFTER DOING SO, IF THERE IS ANY SHORTAGE, IT IS NOT COLLECTED FROM EITHER THE EMPLOYEE OR AGENCY, BUT INSTEAD COMES FROM THE RETIREMENT FUND.

UNDER THE SUBCOMMITTEE PROPOSAL, MORE COMPLEX ACTIONS ARE REQUIRED. IN ESSENCE, OPM WOULD BE OBLIGATED TO DETERMINE AGENCY CULPABILITY, AND ASSIGN PAYMENT OBLIGATIONS IN EACH CASE TO ONE OR MORE AGENCIES BASED UPON ITS FINDINGS. IN MANY CASES, THERE WOULD STILL BE OBLIGATIONS REMAINING WHICH WOULD HAVE TO BE COMPUTED ON A YEAR-BY-YEAR BASIS. THE OBLIGATION MIGHT EXIST REGARDLESS OF THE COVERAGE ELECTION EXERCISED, AND WOULD HAVE TO BE PAID. FOR EXAMPLE, BECAUSE CSRS DEDUCTIONS APPLY ONLY TO AN EMPLOYEE'S BASIC PAY, UNDER THE SUBCOMMITTEE'S PROPOSAL, IN UNUSUAL CASES SOME INDIVIDUALS COULD OWE SUBSTANTIAL SOCIAL SECURITY TAXES, WHETHER CONVERTED TO FERS OR TO CSRS OFFSET.

THE BOTTOM LINE IS THAT UNDER EACH PROPOSAL, THE GOVERNMENT WILL SHOULDER COSTS, COVERING PERIODS SUBSTANTIALLY IN THE PAST UNDER LONG-EXPIRED AND EXPENDED APPROPRIATIONS. BY USING THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND, IN THE ADMINISTRATION'S PROPOSAL, AS THE SOURCE OF CERTAIN SPECIFIED PAYMENTS, WE BELIEVE THAT OUR EFFORTS WOULD BE BETTER DIRECTED AT CORRECTING PROBLEMS RATHER THAN ALLOCATING COST BURDENS.

THE THIRD FUNDAMENTAL DIFFERENCE IS IN FUNDING THE ADMINISTRATIVE COSTS OF CORRECTING ERRORS. THE ADMINISTRATION PROPOSAL PROVIDES FOR COSTS TO BE PAID FROM THE CIVIL SERVICE RETIREMENT FUND. IT ALSO AUTHORIZES OPM TO SPEND MONEY FROM THAT FUND TO ADMINISTER THE ACT. THE SUBCOMMITTEE PROPOSAL INCLUDES A PROVISION WHICH WOULD EXPLICITLY LIST THE COVERAGE CORRECTION PROGRAM AS ONE TOWARD WHICH OPM COULD DIVERT FUNDS FROM OTHER NEEDS UNDER ITS EXISTING APPROPRIATION.

WE DO NOT HAVE SURPLUS FUNDS AVAILABLE WHICH CAN BE DIRECTED TOWARDS THAT END WITHOUT ADVERSELY AFFECTING OUR ABILITY TO PERFORM OTHER ESSENTIAL NEEDS. SIMPLY PUT, ENACTMENT OF THE SUBCOMMITTEE PROPOSAL WILL PUT OPM IN THE UNTENABLE POSITION OF HAVING TO CHOOSE WHAT OTHER OBLIGATIONS IT WILL NOT BE ABLE TO FULFILL. TO FULFILL ALL OF OUR OBLIGATIONS, THERE MUST BE AN APPROPRIATE FUNDING MECHANISM, AS CONTAINED IN THE ADMINISTRATION'S PROPOSAL.

WE WERE CONCERNED WITH, AND DISCUSSED AT THE STAFF LEVEL, A SUBSTANTIAL NUMBER OF TECHNICAL PROVISIONS IN PRIOR VERSIONS

OF THE SUBCOMMITTEE PROPOSAL. SOME OF THESE WERE MINOR AND WOULD HAVE HAD INADVERTENT RESULTS. OTHERS WERE MAJOR, SUCH AS THE FAILURE TO MAKE EXPLICIT PROVISIONS FOR CASES WHERE INDIVIDUALS HAVE RETIRED OR DIED. HOWEVER, SINCE WE HAVE JUST RECEIVED THE FINAL VERSION OF THE BILL, WE HAVE NOT YET HAD AN OPPORTUNITY TO FULLY ANALYZE IT. THUS, I AM NOT IN A POSITION TO DISCUSS ALL DETAILS OF THE FINAL PROPOSAL AT THIS TIME.

IN SUMMARY, THE SUBCOMMITTEE PROPOSAL IS MORE EXPENSIVE THAN THE ADMINISTRATION PROPOSAL. IT IS ADMINISTRATIVELY MORE UNWIELDY. FINALLY, IT ASSUMES MANY DIFFICULT PROBLEMS CAN BE SOLVED ADMINISTRATIVELY, EVEN THOUGH SOME OF THOSE DIFFICULT PROBLEMS CLEARLY INVOLVE STATUTORY CONFLICTS OR REQUIRE LEGISLATIVE ACTION.

WE BELIEVE THE ADMINISTRATION'S PROPOSAL HAS NONE OF THOSE PROBLEMS, AND ADDRESSES ALL OF THE OBJECTIVES FOR CORRECTIVE LEGISLATION. WE WOULD URGE THE SUBCOMMITTEE TO CONSIDER THE ADMINISTRATION'S PROPOSAL AS AN APPROPRIATE VEHICLE TO ADDRESS THESE VERY REAL PROBLEMS.

I HOPE THIS INFORMATION HAS BEEN HELPFUL AND I WILL BE GLAD TO  
ANSWER ANY QUESTIONS YOU MAY HAVE.

## RETIREMENT COVERAGE ERRORS

### INTRODUCTION

In the Senate Committee Report attached to Public Law 104-52, the Treasury, Postal Service, and General Government Appropriations Act, 1996, OPM was directed to review the problem of employees who have been placed in the wrong retirement system. The Committee said it was aware that certain Internal Revenue Service employees hired in 1984 had been placed in the Civil Service Retirement System (CSRS). They were later informed that they should have been placed under the Federal Employees Retirement System (FERS), and that their retirement system coverage was to be retroactively changed. The Committee also understood that other Federal employees were in a similar situation. OPM was directed to correct problems, where possible, through administrative procedures, or to recommend legislative action to resolve the problem.

The conclusion of our review is that legislation to provide a remedy to the problem is needed. Implementation of the legislation must include a strong outreach program to maximize the number of affected employees who make timely use of the proposed legislation's options. This report is intended to explain the bases for the remedy we are proposing.

### BACKGROUND

#### Transition from CSRS to FERS Interim in 1984

The still-ongoing transition from CSRS to FERS began in 1984. The retirement coverage errors addressed in this paper are generally the result of the difficulties Government agencies experienced in applying two sets of transition rules. The first set, effective January 1, 1984, governed whether a Federal employee would be automatically subject to full Social Security taxes. The second set, addressed the grandfathering provisions of the FERS Act of 1986.

From 1920, when it was created, and up to the eve of the transition to FERS, CSRS was the sole retirement system for the majority of Federal employees.<sup>1</sup> It was a defined benefit plan

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<sup>1</sup> A number of much smaller plans were created to cover distinct groups of employees, such as the Foreign Service Retirement System. By law, an employee covered under one of these other plans is excluded from CSRS. This exclusion was

that was intended to provide adequate retirement income after a full Government career. Therefore, when the Social Security System was established in 1937, Federal employees under CSRS were excluded from Social Security.<sup>2</sup> However, Federal employees working on a temporary or intermittent basis were excluded from CSRS and subject to Social Security taxes.<sup>3</sup>

Congress passed legislation, Public Law 98-21, effective on January 1, 1984, that put all new Federal employees under Social Security. These employees, as well as those hired after a break in service of at least 1 year, would now need a staff retirement plan that was coordinated with their Social Security coverage.

In late 1983, consistent with its intent to establish this new retirement system, Congress created an interim plan--CSRS Interim--to apply in the meantime to new and rehired Federal employees who were now mandatorily covered by Social Security.

The basic design of CSRS Interim provided that covered employees' retirement deductions--normally 7% of basic pay--would be reduced by the Social Security tax, then 5.7% of wages. Benefit payments from the interim retirement plan would be reduced by the Social Security benefits attributable to taxes paid on wages earned while covered under CSRS Interim.

#### Retroactive Tax Change in 1984

The Social Security coverage rules enacted in 1983 had a defect, in that they excluded from Social Security coverage a group of Federal employees who were already covered by Social Security. Temporary and intermittent Federal employees hired before 1984 and who were converted to permanent appointments during 1984 were removed from Social Security coverage and put under the old CSRS

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extended to FERS in 1987.

<sup>2</sup> For the purposes of this paper, when we refer to Social Security coverage we mean the Old-Age, Survivors, and Disability Insurance Tax (OASDI).

<sup>3</sup> Until 1942, CSRS covered only employees in the classified civil service. From 1942 to the present, CSRS rules exclude from coverage employees on a temporary appointment (limited to 1 year or less), intermittent employees, and other employees serving under appointments that would not be expected to last at least 5 years, such as term and excepted indefinite appointments, as well as temporary appointments pending establishment of a register. This type of excluded service, and military service, could be credited under CSRS if the employee was later appointed to covered employment.

rather than CSRS Interim coverage. Also, Federal civilian employees hired in 1984 following military service (and therefore covered by Social Security) within the preceding year were put into CSRS rather than CSRS Interim.

Congress, however, had intended Federal employees hired after 1983 to be under Social Security coverage after 1983, unless they had been in Federal service excluded from Social Security under the pre-1984 rules within a year prior to entering a permanent Federal job. Therefore, in mid-1984, Congress changed the Social Security coverage rules retroactive to January 1, 1984.<sup>4</sup> Unfortunately, and despite OPM guidance to Federal agencies,<sup>5</sup> some employees affected by the retroactive change were left in CSRS; they were not retroactively placed in Social Security, with CSRS Interim coverage.

#### Transition from CSRS Interim to CSRS Offset or FERS in 1987

Effective January 1, 1987, the FERS Act of 1986 created the staff retirement plan earlier envisioned by Congress. It was designed to cover new hires, plus the employees who had been in CSRS Interim. It applied only to employees who were subject to Social Security, so that employees in CSRS were excluded unless they elected to become covered by FERS. The Act created a FERS open season from July through December 1987,<sup>6</sup> and also provided that CSRS employees could later elect to join FERS after a break in service.<sup>7</sup>

The FERS Act's grandfathering provisions enabled employees in the CSRS Interim plan who had completed at least 5 years of civilian service by the end of 1986 to continue that coverage, renaming it the CSRS Offset plan.

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<sup>4</sup> Section 2601 of Public Law 98-369, enacted on July 18, 1984.

<sup>5</sup> Agencies were notified of the change by Payroll Office Letter on August 15, 1984, and by Federal Personnel Manual Bulletin 296-56, dated September 7, 1984. Instructions on correcting records for employees hired after December 31, 1983 were included in the Bulletin.

<sup>6</sup> About 4% of employees in CSRS elected to join FERS.

<sup>7</sup> OPM regulations define "break in service" for this purpose as a break of at least 4 days.

## GENERAL OUTLINE OF THE PLANS NOW IN EFFECT

The Civil Service Retirement System. CSRS provides retirement, disability, and survivor benefits under a defined benefit plan. Entitlement to benefits is based on meeting requirements set out in the law. Agencies deduct a set percentage of employees' base pay (7% for most employees) and contribute a matching contribution to the plan. The benefit is computed on the basis of a formula set out in the law. The formula provides a percentage<sup>1</sup> of the employee's high-3 average annual base pay depending on the employee's length of service. Percentage reductions in benefits apply for survivor protection and in some cases for nondisability retirement before age 55. CSRS employees are allowed to participate in the Thrift Savings Plan, contributing up to 5% of basic pay, without a Government contribution.

The CSRS Offset Plan. CSRS Offset is the same as CSRS, except that it is coordinated with Social Security both with regard to employee deductions and benefits. The CSRS employee deduction rate is offset by the Social Security tax. The total CSRS deduction rate is generally still applicable, but split between the Social Security tax (now 6.2% of wages) and the CSRS Offset contribution (usually 0.8% of basic pay). For amounts of basic pay that exceed the Social Security wage base in a year, CSRS Offset employees pay the full CSRS deduction rate. To achieve coordination of benefits, the general concept of CSRS Offset is that Social Security is the first payer, with additional benefits paid to put the employee in the same position as if he or she had remained in the old CSRS plan. CSRS Offset employees may also participate in the Thrift Savings Plan, on the same terms as CSRS employees.

The Federal Employees Retirement System. FERS is a three-tier plan: a defined benefit, known as the FERS basic benefit; Social Security;<sup>2</sup> and the Thrift Savings Plan (TSP).

Employees pay 0.8% of basic pay for FERS basic benefits. The basic benefit provides retirement, disability, and survivor benefits, similar to CSRS, except that it generally provides 1% of the high-3 average salary per year of service.

The TSP is comparable to a private-sector tax-deferred 401(k) plan. The employee may contribute up to 10% of basic pay, subject to the IRS annual elective deferral limit. An automatic Government contribution adds 1% of basic pay to every FERS

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<sup>1</sup> The general formula is 1.5% for each of the first 5 years of service, 1.75% for years 6 through 10, and 2% for other years.

employee's TSP account, and the Government adds up to another 4% of basic pay, depending on the employee's rate of contributions.<sup>9</sup>

### Types of Coverage Errors

Human error and confusion about application of the rules have led to several kinds of errors. Until 1984, the rules were quite simple--an employee was either in Social Security or in CSRS. Particularly if compared to the old rules, the new rules were more complicated. Employing agencies now had to choose from among four alternatives: CSRS, CSRS Offset, FERS, or Social Security only.

Given the four types of coverage typically available for Federal employees, the following erroneous coverage situations can occur.

1. FERS classified as CSRS, that is, an employee who by law is subject to FERS, but whose agency has erroneously placed him or her in CSRS. The primary cause of longstanding retirement coverage errors occurred during the first half of 1984, probably due to the retroactive amendment to the Internal Revenue Code. That is, an employee whose CSRS-excluded service (subject to Social Security tax) straddled January 1, 1984, may have been correctly placed in CSRS (excluded from Social Security tax) later in 1984 when he or she obtained a CSRS-covered appointment. However, the employee was not then retroactively switched to CSRS Interim (subject to Social Security tax) after the Social Security coverage rules were retroactively changed. Then, if the employee had less than 5 years of total civilian service as of December 31, 1986, the employee should have been, but was not, classified as FERS as of January 1, 1987.

Another source of this type of error would be a failure to apply the 1-year-break-in-service rule under the Internal Revenue Code. If the employing agency treated a re-hired employee as excluded from Social Security under this rule, it would have placed the employee under CSRS, even if the employee had less than 5 years of service at the time he or she was rehired.

2. FERS classified as CSRS Offset. In this situation, the employing agency has correctly covered the employee under Social Security, but failed to place him or her in FERS on January 1, 1987, or upon rehire, if later.

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<sup>9</sup> Over and above the 1% automatic TSP contribution for FERS employees, the employing agency matches dollar-for-dollar up to 3% of basic pay contributed by the employee, and half a dollar for each dollar contributed by the employee over 3% of basic pay up to 5%.

3. FERS classified as Social Security only. The employee's agency may have failed to apply the continuity-of-coverage rule.<sup>10</sup> In these cases, the employee should have been covered by FERS, despite the temporary nature of the appointment.
4. CSRS classified as FERS. The agency automatically put an employee into FERS when the employee was eligible for CSRS. If the employee in this situation was placed in FERS erroneously after a break in service, and therefore did not exercise the option to elect FERS, OPM regulations<sup>11</sup> allow the employee, upon discovery of this error, to be deemed to have elected FERS at the time of the error, so as to validate the FERS coverage retroactively. The employee is also given the opportunity to elect CSRS Offset coverage retroactive to the date of the erroneous FERS coverage.
5. CSRS classified as CSRS Offset. The agency included the employee under Social Security when the employee was hired under a CSRS-eligible appointment.
6. CSRS classified as Social Security only. The employee's agency may have failed to apply the continuity-of-coverage

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<sup>10</sup> The FERS continuity-of-coverage rule is at 5 CFR § 842.105(b). The normal exclusion for coverage in the case of temporary or intermittent service does not apply if the employee separated from FERS-covered employee and is rehired within 3 days.

<sup>11</sup> These regulations were promulgated in response to an appeals court decision. OPM's original FERS implementation regulations allowed OPM to approve retroactive FERS elections in any case in which an employee failed to elect FERS due to the employee's not having been given the opportunity to make the election or for other good cause. The court found that these regulations were not authorized by the FERS law, and invalidated the regulations. In response, OPM can no longer allow a retroactive FERS election in a situation where the employee had the opportunity to make the election during the original open season or the 6 months following a break in service. However, where an employee was erroneously placed in FERS during the statutory opportunity to elect FERS, OPM's regulations allow the employee to be deemed to have elected FERS at the time of the erroneous placement in FERS.

rule.<sup>12</sup> In this case, the employee should have been covered by CSRS, despite the temporary nature of the appointment.

7. CSRS Offset classified as FERS. The employing agency correctly applied the Social Security coverage rules, but not the grandfathering rules (5-year test) of the FERS Act.<sup>13</sup> Under this situation, the employee should not have

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<sup>12</sup> The CSRS continuity-of-coverage rule is at 5 CFR § 831.201(b)(1). The normal regulatory exclusions from coverage in the case of temporary, intermittent, term, indefinite and other types of service does not apply if the employee separated from CSRS-covered employment and is rehired within 3 days.

<sup>13</sup> A recent decision of the United States Court of Appeals for the Federal Circuit, Conner v. OPM, invalidated a portion of OPM's regulatory interpretation of the statutory 5-year test. OPM had interpreted the 5-year test as requiring automatic FERS coverage for an employee whose prior service was never covered by CSRS or the Foreign Service Retirement System (FSRS), if the employee is being rehired after a break in service. The court ruled that, in this situation, the FERS Act did not require automatic FERS coverage if the employee completed at least 5 years of civilian service by the end of 1986. Therefore, under the Court's interpretation, an employee who has completed 5 years of civilian service before January 1, 1987, none of it subject to CSRS or FSRS, then separates and is rehired after a break in service, will not be subject to automatic FERS if rehired under a permanent or other type of appointment that is not excluded from FERS coverage.

Because OPM's interpretation was in effect since 1987, retirement coverage placement of employees affected by this decision must be retroactively changed. If an employee had completed 5 years of civilian service before January 1, 1987, but was placed automatically in FERS anytime thereafter, that placement was incorrect under the court's decision. The employee should have been placed in CSRS Offset if hired under an appointment not excluded from coverage under the regulatory CSRS exclusions (or Social Security only, if hired under a CSRS-excluded type of appointment); with an opportunity to elect FERS following the break in service.

OPM's regulations at 5 CFR § 846.204(b) will allow employees erroneously placed automatically in FERS, but who would have had an opportunity to elect FERS at the time, to elect to be deemed to have elected FERS retroactive to that time, or to have the record corrected to show the coverage required by law in the absence of an election to join FERS, that is, CSRS, CSRS Offset, or Social Security only.

been placed in FERS, unless he or she elected to join FERS within 6 months after being rehired following a break in service of at least 3 days.

8. CSRS Offset classified as CSRS. The employing agency did not correctly apply the Social Security coverage rules, but correctly applied the grandfathering rules in the FERS Act.
9. CSRS Offset classified as Social Security only. This situation is similar to #3 and #6, where the agency correctly covered the employee under Social Security, but did not correctly apply the regulatory CSRS exclusion rules or the CSRS continuity-of-service exception to the regulatory exclusions.
10. Social Security only classified as CSRS. Example: a term appointee (excluded from CSRS coverage) was erroneously placed under CSRS.
11. Social Security only classified as CSRS Offset. This is similar to #10, except that the agency correctly applied the Social Security coverage rule.
12. Social Security only classified as FERS. Correctly covered by Social Security, an employee's agency may have erroneously allowed FERS coverage.

#### CORRECTION OF ERRORS UNDER CURRENT LAW

CSRS, CSRS Offset, FERS, and Social Security. Coverage under CSRS, CSRS Offset, and FERS are governed by provisions of title 5 of the United States Code. Also, title III of the FERS Act of 1986 includes limited coverage election provisions applicable to the 1987 FERS open season, and the 6-month period after a separated employee is rehired. In addition, OPM is authorized by law to exclude individuals whose employment is temporary or intermittent, and has issued implementing regulations to do so.

Social Security coverage for benefit purposes is governed by provisions of title 42 (sections 409 and 410) of the United States Code. Social Security (FICA) taxes are governed by provisions of title 26 (sections 3101 through 3127) of the Code. The authority to determine the applicability of these taxes on wages paid to a Federal civilian employee is the responsibility of the employing agency, subject to oversight by the Treasury Department.

The law does not authorize either OPM or the Treasury Department to waive application of retirement plan coverage and tax provisions. Accordingly, coverage under these systems is mandatory for employees who meet the statutory requirements.

Under current law, an agency's error does not entitle an employee to retain erroneous coverage.

If an employee should have been covered by Social Security but was erroneously placed in CSRS, retroactive Social Security taxes must be paid. Under section 6501(a) of the Internal Revenue Code, however, only 3 years of retroactive taxes are assessed. The employee's Social Security record--on which Social Security benefits will be based--is adjusted upward for all affected years even without payment of the OASDI tax beyond the 3-year statute of limitations.<sup>14</sup>

Conversely, if an employee was erroneously placed under Social Security (CSRS Offset, FERS, or Social Security only), IRS will refund only 3 years worth of the erroneous OASDI tax. The employee receives Social Security credit for all years beyond the 3-year statute of limitations for which no refund was permitted (42 U.S.C. § 405(c)). The employing agency is responsible for ensuring the shortfall to the CSRS Fund, and may collect the overpayment of salary (the amounts due the Fund) from the employee.

The combination of the 3-year statute of limitations on tax collection, the unlimited upward adjustment of the Social Security earnings record without payment, and the possible refund of excess CSRS deductions complicates efforts at creating a solution for employees who were erroneously placed in full CSRS.

The situation is further complicated by the fact that it appears agencies have not uniformly applied the 3-year statute of limitations. Some are collecting the Social Security tax for the entire period covering the error, reallocating all past contributions to the appropriate funds. This results in substantial debts for some affected individuals primarily because the wage base for Social Security is wider than basic salary subject to retirement deductions, and includes such payments as overtime, awards or bonuses, and Postal Service COLAs. In these

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<sup>14</sup> In a recent decision of the United States Court of Appeals for the Federal Circuit in King v. MSPB, court ruled that a FERS employee erroneously classified as CSRS did not have a right to debt collection procedures, including a hearing, before the 7% retirement deductions could be reallocated between FERS (0.8%) and Social Security (6.2%). The court reasoned that because the Government had withheld the correct amount of basic pay, the Government was not collecting a debt, but rather merely needed to reallocate the money already withheld from salary. The court seemed to indicate that the 6.2% Social Security portion of the deduction was, for purposes of the law, the required tax (not CSRS deductions) at the time it was withheld.

cases, the agency is also paying the employer share of FICA tax beyond the 3-year period.

Thrift Savings Plan. TSP regulations have always provided a process for correcting employing agency errors in making contributions to the TSP on behalf of their employees. Included in those regulations is a provision which permits agencies to submit make-up earnings when agency errors result in lost earnings for TSP participants, if the agency has the legal authority to do so.

In 1989, the Comptroller General concluded that in the absence of a statutory authority, agencies were not allowed to pay into employee TSP accounts earnings lost due to their agency's delay in making contributions to those accounts. The Comptroller General, however, stated that the General Accounting Office would support legislation authorizing agencies to make payments to cover earnings otherwise lost due the employing agency's error.

The Federal Retirement Thrift Investment Board submitted legislation to Congress to address this issue. In the transmittal letter the Executive Director of the Board stated, in part:<sup>15</sup>

The enclosed bill would establish [make-up contributions] authority, and would provide for earnings to be paid retroactive to the inception of the Plan. . . .

The bill permits the Executive Director to require establishment of a process for decision-making and appeals in each agency concerning correction of employing agency errors. While the Executive Director is required by FERSA to act solely in the interest of the participants and beneficiaries of the TSP, the employing agencies are not subject to such a requirement. Each employing agency would be required to adjudicate employee claims and establish internal claims procedures, within certain guidelines promulgated in the Executive Director's regulations, for the employing agencies would continue to be responsible for factual findings regarding alleged agency errors. There would be no appeal of agency factual findings to the Board.

While employees would continue to have recourse to the courts for benefit claims against their agencies, as provided in FERSA, they would be obliged to exhaust agency claims procedures prior to resorting to the courts. In this way, agencies would be required to provide for an equitable

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<sup>15</sup> Letter of April 12, 1989, from Francis X. Cavanaugh, Executive Director, to the Honorable Dan Quayle, President of the Senate.

administrative settlement of claims in order to minimize the number of cases requiring time-consuming and costly litigation. The expenses of processing administrative claims would be borne by the employing agencies and would thus not require the use of participants' funds in the Thrift Savings Fund managed by the Board.

One of the more difficult issues relating to error correction concerns the employee who is, for an extended period of time, misclassified as covered by the Civil Service Retirement System (CSRS), but is really FERS. Based on this misclassification, the employee may have elected not to contribute to the TSP, with the thought that the CSRS basic benefit would be sufficient to meet his or her retirement needs. If the misclassification is not discovered until the time of retirement, the participant will find that he or she will actually get the full benefit of only two out of the three integral components of the FERS retirement program -- the less generous FERS basic benefit, and Social Security. With respect to the TSP, the retiring participant would only receive the one percent Government basic contribution (and earnings), but would not receive any matching contributions and associated earnings, since matching contributions are premised on employee contributions which may only be made by active employees. The retiring employee would also be denied the tax benefit associated with his own contributions to the TSP.

Under the draft legislation, a misclassified participant who has not yet separated from Federal service could elect to make up, from current salary, the missed contributions plus the earnings on those contributions. Alternatively, the participant could seek some other remedy in court, after exhausting any administrative claims procedures required by regulation.

Presumably, the first alternative would only be attractive to a participant in those situations where the participant is still employed in the Federal Government and where the error did not continue undiscovered for many years. The second alternative would be the only remedy for the participant who is separated from Federal service when the misclassification error is discovered. If the participant chooses to sue, the court could consider compensating the participant for loss of opportunity to obtain tax advantages on contributions and earnings, loss of opportunity to accumulate retirement savings, and any other relief the court deems appropriate in order to provide the participant with all of the benefits of the TSP to which the participant is entitled.

Another approach to the misclassification problem would be legislation providing that if a participant is misclassified as CSRS for several years, he or she may elect to be treated as a CSRS employee and receive the CSRS basic benefit. While this approach might be an equitable and practical solution, it is not included in the draft legislation because it goes beyond the Board's purview.

Congress enacted the Board's proposal as Public Law 101-335, the Thrift Savings Plan Technical Amendments Act of 1990. It did not specifically address the situation of a long-time FERS employee wrongly classified as CSRS who learns of the error at or near the time of separation. However, in its consideration of the Board's proposal, the House Post Office and Civil Service Committee,<sup>16</sup> stated--

The Committee. . . points out that section 8477(e)(3)(C)(i) of title 5, United States Code, allows any participant or beneficiary to file suit "to recover benefits of such participant or beneficiary under the provisions of subchapter III of this chapter, to enforce any right of such participant or beneficiary under such provisions, or to clarify any such right to future benefits under such provisions; \*\*\*". The Committee believes that lost earnings are clearly "a right or benefit" to which the participant is entitled and, therefore, believes that the right to file suit provided in current law is an appropriate means for participants and beneficiaries to seek relief if the administrative process proves unsatisfactory.

The Board's regulations state that when an employee should have been placed in FERS but was not, retroactive TSP contributions can only be made up by prospective payroll deduction, because, by law, employee contributions to the TSP can only be made by payroll deductions. An employee's make-up contributions are allocated among the three TSP funds in accordance with the most recent allocation elected by the employee on his or her most recent election form. No transfers or direct (lump-sum) contributions are permitted. An agency cannot require an employee to complete the make-up contributions in any less than 2 times the number of pay periods over which the error occurred. The agency may give the employee up to 4 times the number of pay periods over which the error occurred.

For an employee retroactively placed in FERS, the Board's regulations require employing agencies to pay--

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<sup>16</sup> House Report 101-452, April 19, 1990, p. 9.

- the retroactive 1½ agency contribution, regardless of the employee's election to participate in the TSP,
- retroactive agency matching contributions up to 4½ (if the employee made any contributions to the TSP as an erroneous CSRS employee), and
- matching contributions on any prospective make-up contributions made by the employee, over and above the matching contributions on the employee's regular contributions, if any, and
- earnings on the make-up agency contributions. No earnings are paid on the employee's make-up contribution.<sup>17</sup>

There is an important limitation (currently \$9,500) on the combined current and retroactive employee contributions. This limitation is required under section 402(g)(2) of the Internal Revenue Code, with one exception applicable to certain employees returning to work after a period of military service.<sup>18</sup> Also, section 415(c) of the Internal Revenue Code places a limit of \$30,000 or 25 percent of salary, whichever is lower, on annual combined employer and employee contributions. These limitations apply to all tax-qualified retirement plans, as well as to the TSP.

#### EFFECT OF COVERAGE ERRORS

##### Errors that do not harm the employee affected.

The many kinds of errors make it somewhat difficult to describe the effect of errors on the employees affected by type of error. Nonetheless, it is possible to categorize some of the errors as essentially harmless.

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<sup>17</sup> The House Report 101-452 on the Thrift Savings Plan Technical Amendments of 1990 stated that if "the error involves an agency's failure to withhold contributions on behalf of an individual from the individual's pay, the agency is not responsible for lost earnings on those contributions."

<sup>18</sup> The Small Business Job Protection Act of 1996, Public Law 104-188, added section 414(u) to the Internal Revenue Code to provide that contributions made by a reemployed veteran under the Uniformed Services Employment and Reemployment Rights Act are not subject to the elective deferral limit that is otherwise applicable to TSP contributions and to all qualified plan contributions.

Erroneous FERS coverage (#4, #7, and #12). Employees who have been erroneously placed in FERS, and who by law could have filed an election of FERS but for the erroneous automatic FERS coverage, qualify for an election to remain in FERS retroactive to the error. (If they elect not to stay in FERS, they are covered by CSRS, CSRS Offset, or Social Security only, as would have been required by law in the absence of a FERS election.) While the error is unfortunate, the employee's election right, and the ability to keep the FERS coverage that he or she thought was in effect, leave this category essentially unharmed by the error.

In fact, the employee's eventual retirement benefit will be higher than the benefit under an automatic FERS situation, because prior service will form a CSRS component of the FERS benefit, rather than a straight FERS benefit. A CSRS component, computed under CSRS rules, yields a higher percentage of high-3 (7.5% for the first 5 years, 8.75% for the second 5 years, and 2% for years exceeding 10) than the FERS formula (1% or 1.1% for each year).

Most importantly, during the period of erroneous FERS coverage, these employees have been covered by Social Security, and allowed to participate as FERS employees in the TSP, with the Government contributions to their account. If the employee elects not to remain in FERS, the employee will have all Government contributions to the TSP, the earnings on those contributions over the years, and employee contributions in excess of 5 percent, backed out of his or her TSP account. However, this occurs only if the employee so elects, after deciding that the CSRS or CSRS Offset coverage, which he or she would have in the absence of a deemed retroactive election of FERS, is superior.

Erroneous Social Security only coverage (#3, #6, and #9). In the case of an employee erroneously placed in Social Security only, the discovery and correction of the error can only lead to greater benefits than the employee was expecting, by retroactively acquiring the defined benefit under CSRS, CSRS Offset, or FERS.

While we have not received complaints from employees who consider themselves to have been harmed by correction of this error, there is a potential harm with respect to the retirement benefit the employee would have had as a participant in one of the staff retirement plans. For example, an employee who was erroneously covered by Social Security only but should have been in FERS, was unaware of the ability to participate in the TSP with the Government contribution. While subject to the erroneous coverage, such an employee would have been allowed to contribute to a personal Individual Retirement Arrangement (IRA) with the same income tax advantage as available to any other person whose employer does not offer a retirement plan. However, the usual

\$2,000 limitation on tax-deferred IRA contributions may have been lower than the 10%-of-basic-pay limit on tax-deferred TSP contributions, with up-to-4% agency matching contributions and the agency automatic 1%.

CSRS Offset classified as CSRS (#8). Employees in this category acquire retroactive Social Security coverage when the error is corrected. We consider this error to be generally harmless for three reasons: the salary deductions under CSRS Offset are usually the same as for CSRS;<sup>19</sup> the CSRS Offset benefit, when combined with Social Security benefits, is at least equal to the CSRS benefit; and there is no TSP impact.

#### Errors that disadvantage the employee.

A major consideration in determining a coverage error's effect on an employee is the degree to which it has disadvantaged the employee's ability to plan for retirement, principally with respect to the level of personal or TSP savings. The duration of the error is an important consideration in this regard. Because retirement planning is a career-long affair, an error that is corrected after a matter of a few weeks or months would normally be entirely insignificant, while a long-term error could be truly harmful.<sup>20</sup> This would be particularly true in a case where an employee erroneously in CSRS or CSRS Offset must be retroactively switched to FERS, but, while believing he or she was under CSRS or CSRS Offset, did not save for retirement to supplement the defined benefits of FERS and Social Security.

The harm produced by the remaining errors on our list above (#1, #2, #5, #10, and #11) all affect an employee's ability to plan for retirement. Here there are two categories, discussed below, which are divided according to whether they affect the employee's TSP status retroactively.

No effect on TSP (#5, #10, and #11). Employees erroneously classified as CSRS-Offset (#5) and who should have been under CSRS will retroactively lose Social Security benefits, but only

<sup>19</sup> CSRS deductions are applied only to basic pay, whereas Social Security tax is applied to other wages, such as overtime.

<sup>20</sup> An error could be beneficial as well. For example, if an employee is erroneously placed in CSRS, contributing to the TSP, at the rate of 5% of basic pay, and then is retroactively placed in FERS, the employee will retroactively acquire 5% of salary in the way of the agency TSP contributions, the earnings on those contributions, plus Social Security benefits. This combination could easily exceed the value of the CSRS benefit alone.

for the last 3 years before the error was detected (earlier Social Security records are not corrected under the 3-year rule). However, these employees--who were eligible for TSP participation on the same basis under either their correct or incorrect coverage--should generally have had the same incentive to save for retirement, with respect to their correct coverage, because benefits under CSRS and CSRS-Offset are designed to be approximately the same.

Employees who were properly Social Security only but were erroneously classified as CSRS or CSRS Offset (#10 and #11) were, in effect, discouraged from saving for retirement to the extent that they were misinformed about their entitlement to future defined benefits. However, they were not eligible to participate in the TSP, even if correctly classified.

Error correction changes TSP status (#1 and #2). A FERS employee who is erroneously classified as CSRS (#1) has a significant change in the defined benefit when the error is retroactively corrected. The FERS basic benefit is a little over half that of the CSRS benefit. This decrease may be offset by increased Social Security benefits due to retroactive Social Security coverage, if, under the 3-year rule, no payment of tax beyond 3 years is required.

However, it is generally considered that, to obtain a retirement income under FERS that is similar to CSRS, the employee needs to save for retirement in the TSP. As explained above, TSP regulations allow an employee to make up lost contributions on a prospective basis, with the 1% and matching employer contributions and earnings. As spelled out in the legislative history of the Thrift Savings Plan Technical Amendments Act of 1990, the structure of the statutory make-up rules makes it difficult for an employee to be made whole if he or she separates from service before completing make-up contributions, and if the employee's current TSP contributions, plus make-up contributions would exceed the annual tax deferral limits. To these problem situations, we should add that for many employees the burden of make-up contributions on an employee's budget would be significant, where the employee was effectively prevented from spreading the creation of a TSP nest-egg over his or her entire career, forcing this saving activity into the years after the error is corrected.

These considerations would generally apply as well to FERS employees erroneously classified as CSRS Offset (#2) for a significant period. This situation, however, is not affected by the 3-year rule because the employee would have been covered under Social Security correctly.

For higher level employees, a correction from erroneous CSRS or CSRS Offset coverage to FERS would yield a refund of 6.2 percent

of salary for amounts exceeding the Social Security wage base. The employee would have contributed the full 7 percent of base pay during the error, but the FERS deduction for amounts over the Social Security wage base remains at the lower FERS basic benefit deduction rate (currently 0.8 percent). The difference is paid to the employee.

#### HOW WIDESPREAD ARE COVERAGE ERRORS?

There are no accurate records of the number of employees who have had their retirement coverage corrected in the past. Errors are corrected as they are found, one at a time, by the employing agencies. Some agencies have carried out large-scale efforts to identify erroneous retirement coverage cases among their employees, but we have no breakdowns of the categories into which these errors fall. Our information about the extent of retirement coverage misclassifications is therefore anecdotal and necessarily incomplete.

#### CONSIDERATIONS FOR A PROPOSAL TO CORRECT COVERAGE PROBLEMS

Defined benefits versus savings. With respect to the defined benefit portions of CSRS, CSRS Offset, FERS, and Social Security, the current coverage correction rules place the employee in the same position that the employee would have had in the absence of an error. A threshold question, therefore, is whether an employee whose coverage has been erroneous for a period of time should be allowed to retain the erroneous defined benefit coverage.

Employees who due to erroneous retirement coverage have been prevented from saving, or effectively discouraged from saving, have been harmed if, and to the extent that, they cannot make up the lost opportunity to save. This issue is the primary concern of employees who are retroactively placed in FERS or, to a much lesser extent, Social Security only.

Retroactivity. A threshold question in addressing the problems relating to error correction is retroactivity. The transition to FERS, and the mistakes associated with it, began in January 1984. Since then, many coverage errors have been found and corrected under existing rules. Many of those employees have been "made whole" within the meaning of the current TSP law on retroactive corrections. Others have disputed whether they could be made whole under the statutory make-up provisions, and have obtained monetary settlements from their agencies, as appears to have been the intent of Congress in 1990. Still others have let pass their opportunity for make-up contributions to the TSP, or to seek remuneration for the error. In any event, undoing all past corrections, or even giving the employees an option to have the

correction, seems clearly administratively untenable and likely to lead to new errors and inequities. However, there may be a method of addressing the most serious errors (FERS employees who were classified as CSRS or CSRS Offset) where the error situation lasted for a significant period.

Duration of the error. Erroneous coverage situations may be corrected in a matter of weeks or months, or may continue for over a decade. While the length of the error situation has no bearing on our ability to place the employee retroactively in the same defined-benefit position as she would have had without the error, this is not true of the savings component, when it is affected by the error. The length of the error situation and the seriousness of the problem are directly related.

Social Security coverage. The cornerstone in the establishment of FERS was the 1983 amendments to the Social Security Act and the Internal Revenue Code that placed most new Federal employees under the Social Security system. FERS was created in response to that fundamental change in policy. Some of the most serious coverage error cases are those in which a person legally required to be covered under Social Security was placed in full CSRS instead. Because Social Security is the nation's basic social insurance system covering essentially everyone in the labor force, a change in policy that would allow employees to be exempted from Social Security coverage as a result of an employer error would require a basic reversal in policy. This would be required if employees misclassified as CSRS were allowed to remain in full CSRS, exempt from Social Security, after discovery of the error.

Benefits of CSRS Offset coverage. CSRS Offset is designed to provide an individual mandatorily subject to Social Security with the equivalent of full CSRS benefits. Accordingly, an employee misclassified as CSRS who is retroactively corrected to CSRS Offset is not harmed by the retroactive change. CSRS Offset benefits, in actual practice, are generally superior to CSRS because at age 62, when a retiree becomes eligible for Social Security, the Social Security benefit begins and only a portion of that benefit is deducted from the full CSRS benefit. Thus, the combination of benefits from OPM and the Social Security Administration generally exceeds what would otherwise be paid as a full CSRS benefit. The exception -- where the combined CSRS Offset benefit and Social Security benefits might not equal a full CSRS benefit -- applies to a person who chooses to delay applying for Social Security or to work beyond age 62 outside the Government.<sup>21</sup>

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<sup>21</sup> The reduction in a CSRS Offset retiree's benefits occurs at age 62 if the employee is eligible for Social Security benefits, even if he or she does not apply for Social Security.

## MOLDING A REMEDY

Gaps in the 1990 remedy. Current law allows an employee who due to an employing agency error has been either prevented or discouraged from participating in the TSP to make up lost contributions through future salary withholdings. This approach to making an employee whole after a retirement coverage error has significant gaps. First, because it relies on future salary withholdings, an employee whose coverage error is discovered upon separation from service does not have an opportunity to make up lost contributions. This could also be said of an employee who does not have adequate income or savings that would allow him or her to make catch-up contributions during the period when this would be allowed. Second, if an employee did not participate in the TSP during the period of the error, all lost earnings on the agency contributions are based on the G-Fund rates of return for the period. The G-Fund is the most conservative of the TSP investment funds, and these earnings may be less than those that the employee may have earned had the employee directed investments to the other funds. Third, some highly paid employees may be unable to maximize TSP benefits due to the tax code's elective deferral limitation that applies to TSP contributions. Finally, the apparent Congressional intent that employees who are dissatisfied with the remedy should sue for relief is not a well-conceived public policy in view of the admitted gaps in the relief provided by law.

### Objectives for a new legislative remedy.

1. The Government is a responsible employer. OPM recognizes that some employees have been truly disadvantaged by being placed in the wrong retirement system. Our first and most important objective in proposing a legislative remedy is that we should demonstrate that the Government cares about these employees and their families. The law should allow us to help employees who have been disadvantaged by a Government error in their retirement coverage for a significant period of time.

2. Choice. Our second major objective is to provide employees with a choice between corrected coverage and the coverage the employee reasonably thought he or she was

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Therefore, if a CSRS Offset retiree chooses not to apply for Social Security at age 62, or if he or she is working outside the Government and therefore subject to a reduction of the Social Security benefit, the reduction in the CSRS Offset benefit will take place despite the fact that the individual may not receive the Social Security benefit or that the Social Security benefit is reduced due to the Social Security earnings test.

receiving, without disturbing Social Security coverage laws. Employees should not simply be forced to retain erroneous coverage following discovery of a long-term coverage error, which might further disadvantage the employee and also create an undesirable precedent under the Social Security program. Some employees who have been misclassified as CSRS or CSRS Offset may prefer to keep what they have, but an employee who contributed a significant amount to the TSP may feel equally strongly that it would be to his or her advantage to be retroactively corrected to FERS. Employees should be allowed a choice.

3. Clarity. Our third objective is that the options provided to an employee should be easy to understand. **People affected by retirement coverage errors include current and separated employees whose errors may or may not have already been discovered and corrected, as well as retirees and survivors.** Both for the people who must counsel employees, and for the affected individuals, we should avoid complex rules, conditions, and exceptions. We need to build a choice that leaves each individual with a clear understanding of his or her retirement coverage and enables him or her to plan for retirement income security.

To further this objective, affected employees must be made aware of the available remedy, and strongly encouraged to participate in a timely manner in taking corrective action. Neither the Government nor affected employees should be waiting until retirement -- when errors are hardest to correct -- to find out about corrective options.

4. Ease of administration and reasonable cost. Our final major objective is that the administrative burden of the remedy should be kept to a minimum, and that the cost of the remedy should be reasonable, consistent with our other objectives.

#### Who Should be Affected by the Remedy?

Current and former employees who should have been placed in FERS, but were misclassified as CSRS or CSRS Offset for a significant period of time have been disadvantaged, as a class. The coverage error effectively eliminated the FERS structural incentive for the employee to save for retirement by taking away the Government match and incorrectly lead the employee to anticipate receiving a larger defined benefit than the benefit that will be available if the employee is retroactively corrected to FERS coverage. Also, to the extent a survivor annuitant's benefits flow from the benefits of an employee who has been similarly disadvantaged, the survivor annuitant should also be eligible for the remedy.

It is true that some employees erroneously in CSRS or CSRS Offset participated and may have even maximized their participation in the TSP during the erroneous coverage period. However, even if the employee did maximize TSP at 5 percent during the period of the error, and under the current remedy is immediately awarded a maximum retroactive Government contribution, he or she will have been prevented from taking advantage of tax deferrals on the 6-10 percent of contributions he or she could have made during the period of the error. Moreover, by the apparent provision of CSRS or CSRS Offset coverage during the error, the employee's retirement planning would have been altered by the error.

Employees who were erroneously placed in Social Security only rather than being placed correctly in FERS will retroactively retain the Social Security coverage they thought they had during the period of the erroneous coverage, and in addition will retroactively gain the FERS basic benefit, the 1% TSP automatic Government contribution and earnings, plus, in most cases, eligibility to do make-up contributions. Therefore, our proposed remedy does not provide any further options for them.

#### General Principles for Legislation

The basic premises of the proposed legislative remedy are set out in this section. The proposal affects direct spending and receipts and is therefore subject to the pay-as-you-go requirements of the Budget Enforcement Act.

1. Current and former employees who by law were required to have FERS coverage but were erroneously placed in CSRS or CSRS Offset for 3 or more years of service after January 1, 1987, should be allowed to elect to have either FERS or CSRS Offset retroactive to the date of the erroneous placement, and those with less than 3 years of erroneous coverage will continue to be corrected to FERS under existing rules.

-- Why CSRS Offset? CSRS Offset coverage provides, through combined CSRS and Social Security benefits, equivalent benefits to those provided full CSRS employees and survivors. Accordingly, for a person erroneously placed in full CSRS, the CSRS Offset benefit equates to the benefit the person could reasonably have expected during the period of the error. During employment, the difference is that the majority of the employee's withholding for retirement will go toward Social Security and the remainder into CSRS and, after retirement, instead of receiving the benefit from a single source, the retiree's benefits will come from two sources, the CSRS fund and the Social Security Old-Age, Survivors, and Disability Fund. Because the CSRS Offset benefit generally replicates the CSRS benefit in this way,

an employee placed retroactively in CSRS Offset will not be disadvantaged.

While equity is served by placing otherwise disadvantaged employees into CSRS Offset retroactively, the principal advantage of CSRS Offset in these situations is that it can be accomplished for all categories of affected employees without amending Social Security coverage laws. It bears repeating that covering Federal employees under Social Security was a long-debated political issue that was resolved in the Social Security Amendments of 1983, effective January 1, 1984. The result of that process is the basic Government policy that Social Security coverage is mandatory for Government employees who have not been continuously exempted from Social Security since before 1984. The CSRS Offset plan was created to allow this policy to remain undisturbed without harming employees.

Furthermore, CSRS Offset is the key to providing a remedy that gives equal treatment to the various categories of affected individuals, and that does not place an unreasonable, and, in some situations, impossible, strain on administrative practicality. The remedy proposed in this paper, as explained below in more detail, applies to employees who have retired as well as the survivors of employees and retirees. In these situations, the coverage error was discovered and corrected at or before retirement or death in service, that is, the employee was retroactively placed in FERS, and FERS benefits have already begun. Since FERS has three tiers, the Social Security and TSP benefits may or may not have begun, depending on the beneficiary's age and entitlement. In those cases where the benefit stream includes distributions from the TSP and/or Social Security benefits based in whole or in part on the period of the erroneous coverage, it would be entirely impractical to attempt to back-out those distributions and benefits. With respect to Social Security benefits already paid, however, the obvious solution is to leave them unaffected by not disturbing the Social Security coverage already provided, that is, by allowing the record to show the employee retired or died as a CSRS Offset employee or retiree. With respect to the problem of past distributions from the TSP, the remedy would provide an equitable benefit, as described below.

Accordingly, a remedy that provides CSRS Offset as an elective choice is preferable for reasons of both equity and administrative practicality.

-- Why 3 years? A retirement coverage error that has exceeded 3 years is clearly a significant one, and while we have not found a perfect analogy in the current situation, there are

a number of reasons to pick 3 years of erroneous coverage as the standard for triggering an election right.

The principal basis for determining that employees have been disadvantaged by a coverage error, as explained above, is the effect on the individual's planning/saving behavior. The 3-year standard parallels the TSP's 3-year vesting rule applicable to most FERS participants,<sup>22</sup> under which an employee first qualifies as owner of the automatic 1% TSP contribution under FERS. If an employee leaves FERS before completing 3 years of service, the plan retains the 1% and earnings, not the employee. Also, 3 years are generally required to attain career status in the civil service and, in addition, are the number of years for which tax code limits tax return re-filing.

Moreover, employees generally must wait until the second semi-annual TSP enrollment season to begin to make contributions to the TSP. If an employee erroneously in CSRS or CSRS Offset had been properly placed in FERS, he or she would not have begun contributing to the TSP until 6 months to a year after initial FERS employment. Thus, if an error lasted for 2 years and was then discovered, the maximum disadvantage with regard to the TSP behavior would have been 18 months, which would have made make-up contributions relatively easy to make. Also, only in very rare circumstances would an employee be retiring after a 2-year error of this kind, and would not have a large investment in the Federal retirement system with regard to overall retirement planning. Using 3 years as the standard, will generally allow those with 2 or more years of TSP disadvantage to obtain an election right under the proposed principles for a remedy.

-- Why January 1, 1987? FERS took effect January 1, 1987. During the interim period from 1984 through 1986, there was no TSP. Accordingly, employees did not become disadvantaged with respect to the TSP until FERS began. We recognize that the TSP did not begin accepting contributions until April 1987, but the rate of contributions was originally capped in 1987 at a higher rate for employees to be able to compensate for the delayed beginning. For the sake of simplicity, however, it is preferable to begin counting errors from January 1, 1987, the date when FERS and, by design, the TSP began.

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<sup>22</sup> A 2-year vesting standard applies to FERS employees in Congressional and certain noncareer positions, under 5 U.S.C. § 8432(g).

-- Why not establish a compensatory payment that would make up for the lost opportunity to save in the TSP? Rather than a retroactive coverage change, it would appear at first glance that a compensatory payment into the TSP or to the individual might be appropriate in erroneous coverage situations. In that way, the loss incurred by the individual--a TSP account that is smaller than it would have been had the individual known he or she was under FERS rather than CSRS or CSRS Offset--would be addressed directly. This approach has two drawbacks.

The first major drawback is the difficulty of delivering the compensatory payment equitably to the various categories of disadvantaged employees. While it would be possible to create a method to compensate employees in this way, the method would be inequitable unless it took into account the fact that the employee may have already obtained TSP benefits through current and/or make-up contributions under the existing remedy. For example, a liberal approach might add a 5 percent employer-provided make-up contribution to the TSP, which would be reduced by the amount of employer-provided contribution already obtained for that period. To compute this, the employing agency would have to do a manual computation for each pay period involved in the make-up contributions. The recordkeeping requirements of the TSP allow the retroactive match amount to be combined with the current Government match amount, which does not therefore appear separately in the payroll submission for make-up contributions. To determine the amount of the offset would require the agency to review each pay period record and subtract the retroactive Government match from the current Government match; lost earnings would also have to be submitted for each pay period. This manual process, which would involve several years of pay periods during which the make-up contributions could have occurred, would be highly labor-intensive and susceptible to further errors. Our conclusion is that this approach is not feasible.

Second, the compensatory payment approach does not take into account the differences between CSRS and FERS, apart from the lack of a Government contribution to the TSP. Important differences include different eligibility requirements for retirement (under FERS an immediate benefit is payable at minimum retirement age with 10 years of service), different treatment of military service (each year of military service under FERS is generally worth only half as much in annuity as under CSRS), different survivor benefits (under CSRS a survivor annuity is payable after 18 months of civilian service whereas 10 years are required under FERS, and the CSRS survivor annuity is generally 55% of the employee annuity, compared to 50% under FERS), and differences in crediting civilian service (under CSRS, temporary service is

creditable, whereas under FERS it is not unless performed before 1989). These differences and others could not practically and equitably be bridged by making a compensatory payment to a person retroactively forced into FERS. A choice is needed to reflect the individual circumstance of each employee.

2. Whether an employee elects CSRS Offset or FERS, payment of Social Security tax should be required for all years, including those beyond the existing 3-year limit.

CSRS Offset was designed to provide the equivalent of CSRS benefits for employees who had a substantial interest in CSRS at the time FERS was created but who were required to be under Social Security. Both CSRS and CSRS Offset employees pay 7 percent of pay as retirement withholding. The 6.2 percent erroneously withheld as CSRS contributions should not be returned to the employee, but should be treated as withheld Social Security tax. It has been well-established that the Social Security benefits of an individual should not be withheld due to the failure of the employer to make required withholdings. Where a Federal employer withheld the correct amount of contributions, but misallocated them to the wrong retirement fund -- a technical accounting error -- it is illogical for the taxpayers to fund the benefits and return the required funding to the individual. That would place the employee in a position superior to his or her fellow worker who had the same pay and same amount withheld, but did not "benefit" from a Government error. All the amounts required as Social Security tax, but wrongly treated as CSRS contributions during the error, should be retained by the Government to the credit of the Social Security trust funds.

The 3-year rule on retroactive taxes would continue to apply with respect to amounts not already withheld during the erroneous classification. As a result, amounts of Social Security tax that would have been required for overtime or awards, for example, which are subject to FICA taxes but not CSRS withholding, would need to be paid, but not for periods beyond the 3-year statute. However, employees affected by the Government's error should not be required to pay the additional taxes due. Rather, the legislative remedy should authorize OPM to use money in the Civil Service Retirement and Disability Fund to pay the amounts due to the Old Age, Survivors, and Disability Trust Fund, in accordance with the 3-year rule, that were not paid as a result of the Government error.

3. Make-up TSP contributions would remain subject to the Internal Revenue Code's elective deferral limits.

The Code's limits on the amount of money an individual may defer taxes on are an important feature of the various provisions that prevent higher paid employees from receiving disproportionately favorable treatment under qualified retirement plans in the private sector. An exception for Federal employees in coverage error situations is not warranted, particularly if these individuals have a choice between CSRS Offset and FERS. An individual who was erroneously placed in CSRS is made whole, with respect to his or her expectations during the period of the error, if allowed to have CSRS Offset coverage. Therefore, FERS would be that person's choice only if he or she believed that FERS benefits would exceed those expectations. Moreover, individuals whose erroneous coverage has been corrected to FERS have already been subject to the tax deferral limits in TSP make-up situations.

4. There should be specific authority in the law to validate amounts already paid or to pay new compensation for all or a portion of similar claims in special circumstances, in accordance with regulatory standards issued by OPM. New compensatory payments would be made, if approved, from the Civil Service Retirement and Disability Fund.

Some employees have filed suit for damages resulting from a coverage error and may have received settlements from their employing agencies. If an employee has settled a dispute over having been forced retroactively into FERS, the amount received should not be retained by the employee in addition to his or her regaining CSRS Offset benefits by means of an election under new legislation. This would generally constitute unwarranted enrichment. However, if an employee can demonstrate that being placed retroactively in CSRS Offset does not fully compensate him or her, the law should authorize OPM to allow the employee to obtain (or retain, if already paid) amounts relating to expenses, such as attorney's fees, that would not have been incurred but for the error. If the employee remains in FERS, however, none of the amounts paid as compensation need be returned.

5. Employees, retirees, survivors, and certain separated employees should have a limited window of opportunity in which to exercise their election right.

Employees whose errors have not yet been discovered should have 6 months after discovery of the error, in which to make an election between CSRS-Offset and FERS. This is the same period of time allowed for employees to elect FERS during the original FERS open season and the period following a break in service and reemployment in the Government. The opening of this 6-month window would roll forward from the

date of enactment to the time of future discovery of an error.

If the error has previously been corrected, the employee, former employee, and or annuitant should have an 18-month window in which to make the election. It would be appropriate to open this window 6 months after enactment of remedial legislation. During this 6 months, OPM would be able to issue implementing guidance and regulations, and to publicize the opening of the window.

The legislation will need transitional provisions for employees whose erroneous coverage is discovered during the 6-month period or who may still be making up TSP contributions under existing rules:

OPM's regulations will provide for extension of the window if the individual eligible to make the election was prevented from making a timely election due to a cause beyond his or her control.

6. To maximize the remedy's correct implementation, any future placement in CSRS will have to be approved by OPM in situations where a CSRS employee has had a break in service of more than 1 year. In addition, OPM's implementing regulations and guidance to Federal agencies, which will be responsible for advising their employees of the available remedy within the window period, will stress the need for outreach and communication with employees. Our guidance will include decision support tools to assist agencies in counseling employees eligible to elect between CSRS Offset and FERS.

#### HOW THE REMEDY WILL WORK

The proposed remedial legislation can be summarized as follows for the following categories of affected individuals who were erroneously placed in CSRS or CSRS Offset but should have been in FERS, including those who were previously corrected. Flow charts are attached.

#### I. Current and Separated Employees - Error Not Yet Corrected (See Charts 1 and 3).

- If the error continued for 3 or more years after January 1, 1987, the individual will have 6 months after discovery of the error in which to elect to be covered by either CSRS Offset or FERS, retroactive to the date the erroneous coverage began.

- All past erroneous CSRS deductions would be reallocated between Social Security and either CSRS Offset or FERS, in accordance with the election.
- If the employee elects FERS, he or she would be allowed to have make-up contributions under existing rules, taken exclusively from future salary.
- A separated employee whose erroneous CSRS or CSRS Offset deductions remain in the retirement fund would have the same election right -- CSRS Offset or FERS -- which must be exercised within 6 months after discovery of the error. Discovery of the error could occur at any time up to reemployment, application for a refund of the contributions, or retirement on a deferred annuity. If reemployed prior to retirement, and the individual elects FERS, he or she could have TSP make-up contributions.

**II. Current and Separated Employees (Not Yet Retired) - Error Previously Corrected (See Charts 2 and 3).**

- If the error continued for 3 or more years after January 1, 1987, the individual will have an 18-month window, beginning 6 months after legislation is enacted, in which to elect to be covered by either CSRS Offset or FERS, retroactive to the date the erroneous coverage began. OPM would be required to issue implementing regulations and guidance within the 6 months after enactment.
- If the individual elects CSRS Offset and retirement withholdings have already been reallocated, no further reallocation will be required to the Social Security fund, since Social Security coverage remains the same under either system. If the amount corresponding to Social Security tax beyond the 3-year correction period has been disbursed to the individual at the time the error was originally corrected, that amount would be collected from the employee by the employing agency, or waived in accordance with standards of equity and good conscience.
- If the individual elects CSRS Offset, the Government TSP contributions, excess employee contributions (amounts over 5 percent of basic pay), and the earnings on the agency contributions must be backed out of the individual's account, in accordance with existing rules. Distributions of previously untaxed money to the employee will be subject to income tax.

- If a separated employee whose erroneous coverage was previously discovered and corrected has taken a refund of FERS deductions or a distribution from the TSP, no further action will be taken. If a separated employee did not take a FERS refund or TSP distribution, he or she will have 18 months in which to make the election between CSRS Offset and FERS. If the individual elects FERS, he or she could have TSP make-up contributions if reemployed prior to retirement.

### III. FERS Retirees and Survivors (See Chart 4).

- If the error continued for 3 or more years after January 1, 1987, the individual will have an 18-month window, beginning 6 months after legislation is enacted, in which to elect to be covered by either CSRS Offset or FERS, retroactive to the date the erroneous coverage began.
- If the retiree elects CSRS Offset and retirement withholdings have already been reallocated, no further reallocation will be required to the Social Security fund, since Social Security coverage remains the same under either system. If the amount corresponding to Social Security tax beyond the 3-year correction period has been disbursed to the individual at the time the original error was corrected, that amount would be collected from the employee by the employing agency, or waived in accordance with standards of equity and good conscience.
- If the individual elects CSRS Offset, the amount in the employee's TSP account at the time of retirement representing the Government contributions and earnings on these contributions (whether or not this amount was subsequently distributed from the TSP) will form the basis for an actuarial reduction of the retiree's annuity, using the same rules as apply to lump-sum payments made at the time of retirement under the alternative form of annuity provisions of CSRS and FERS.
- If the retiree elects to remain in FERS, no further action would be required.
- If an otherwise eligible employee or retiree has died before making an election, the survivor annuitant, if any, would be allowed to elect between a CSRS Offset survivor benefit and the FERS survivor benefit. If the survivor elects CSRS Offset benefits, and the employee died in service, the FERS basic employee death benefit

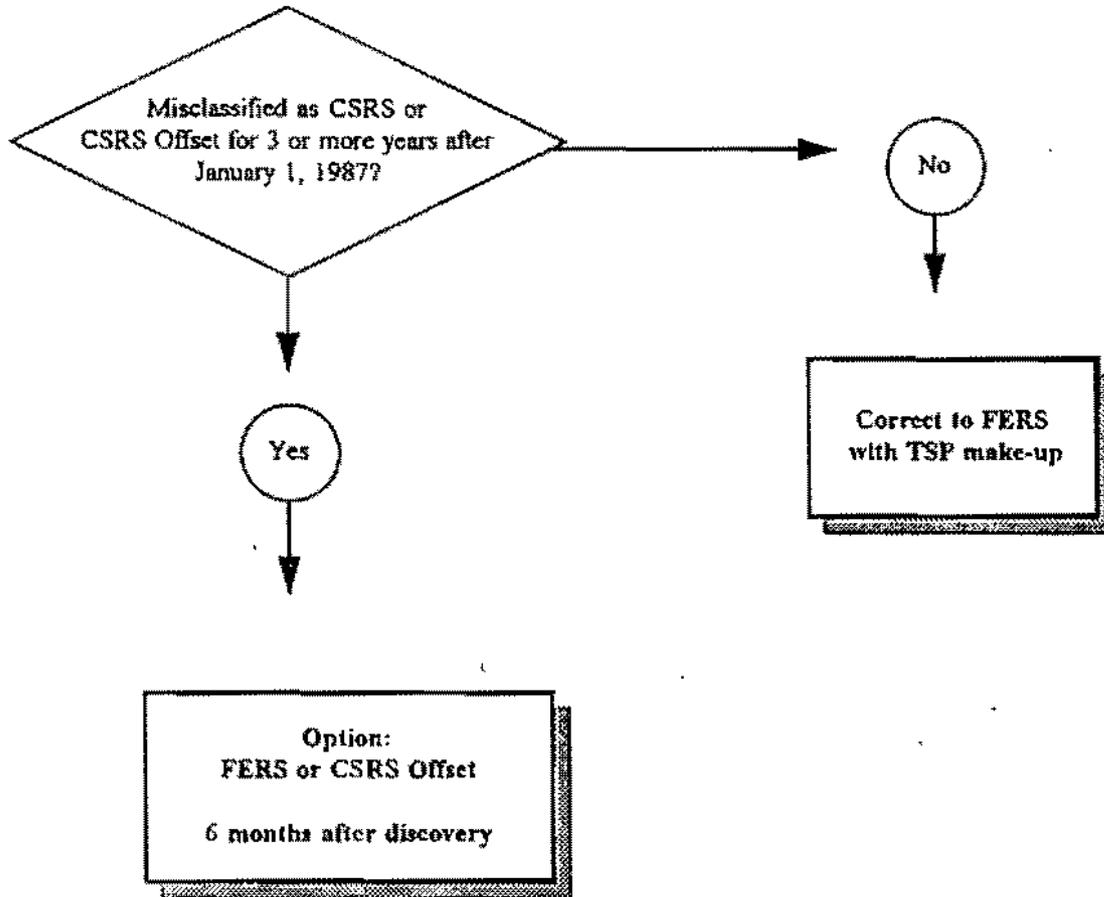
would form the basis for an actuarial reduction in the survivor's CSRS Offset benefit.

#### CONCLUSION

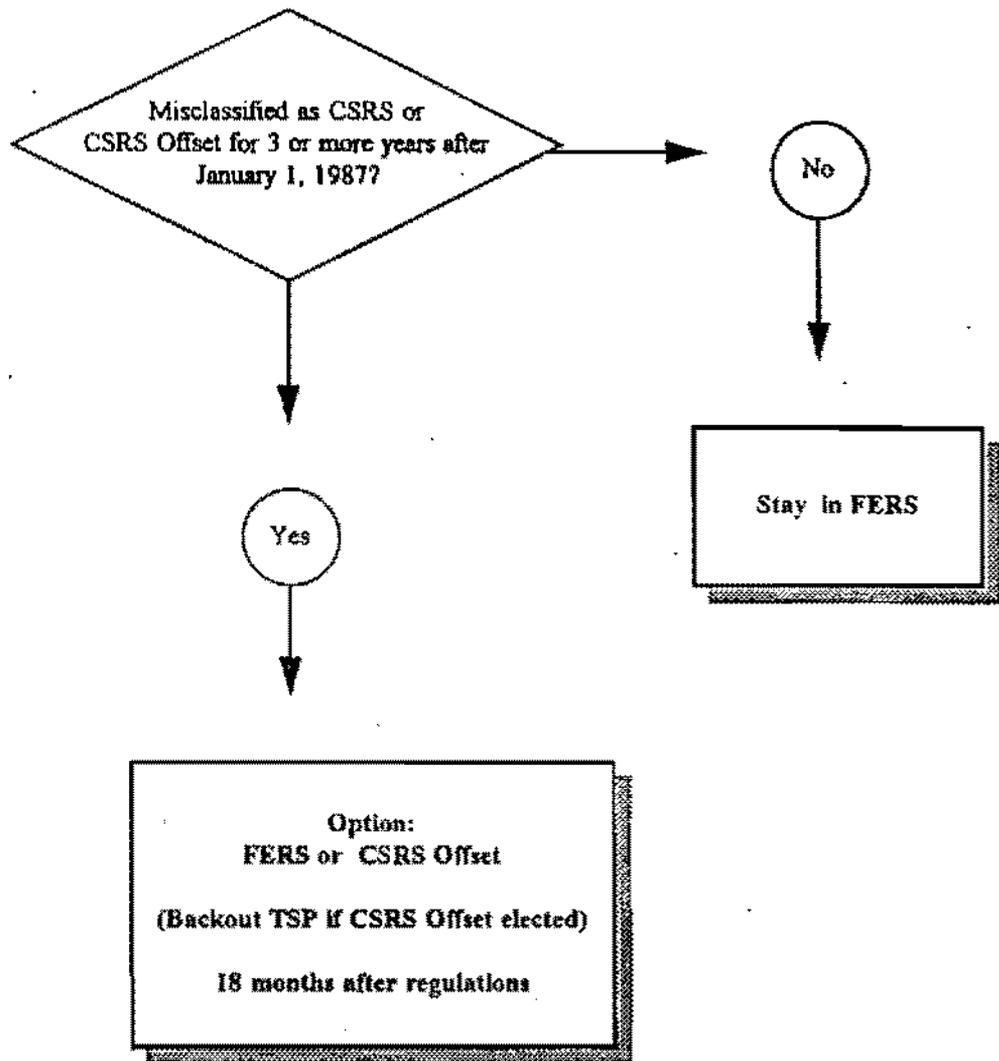
Individuals affected by a Government error which placed them in CSRS or CSRS Offset for 3 or more years after January 1, 1987, should be provided a choice between CSRS Offset and FERS in most cases, as outlined above. This approach is equitable because it provides individuals with a choice between a benefit they reasonably expected to receive during the period of the error and the benefits they should have received but for the Government's error.

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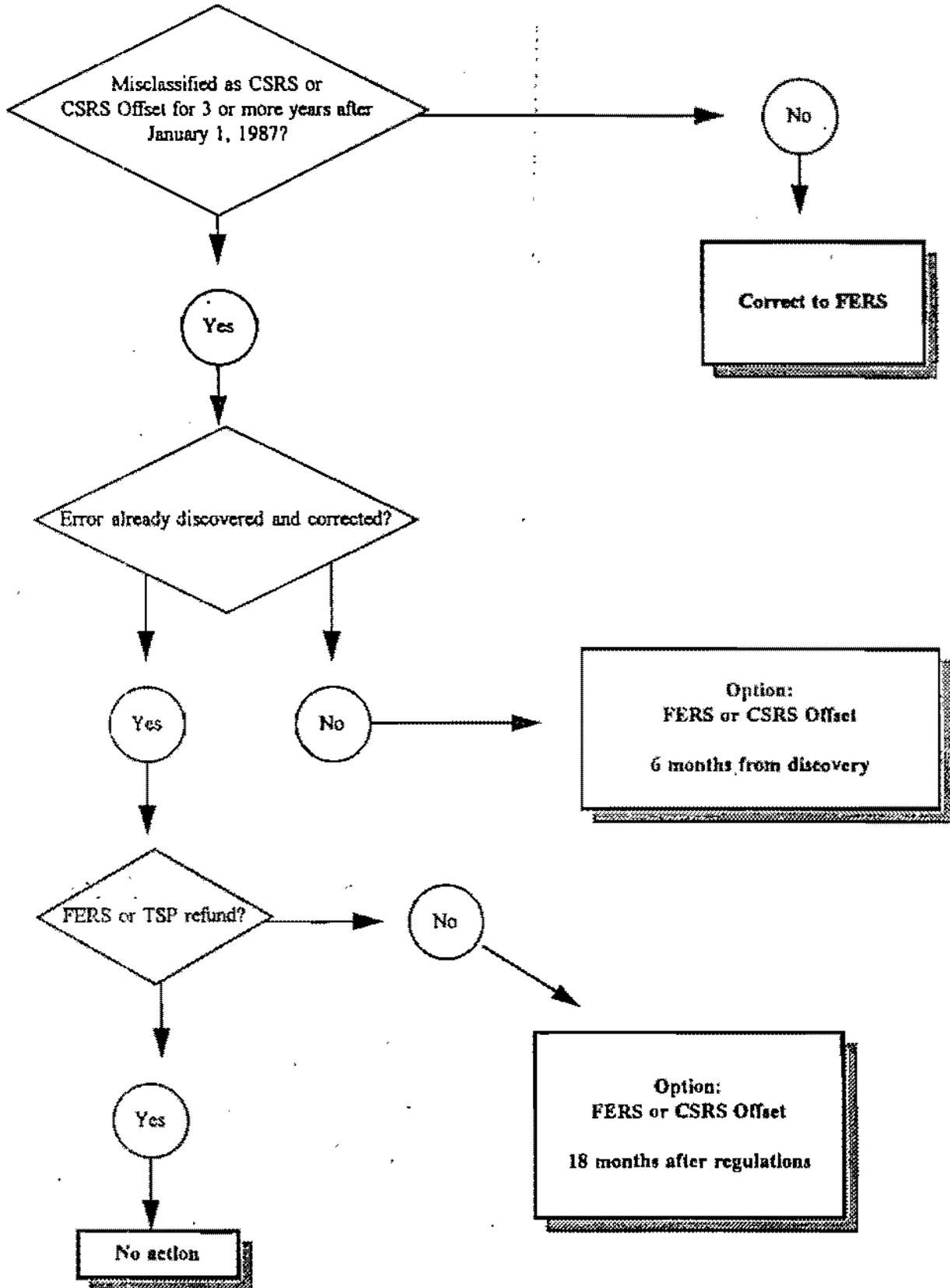
# 1. Current Employee (Error not corrected)



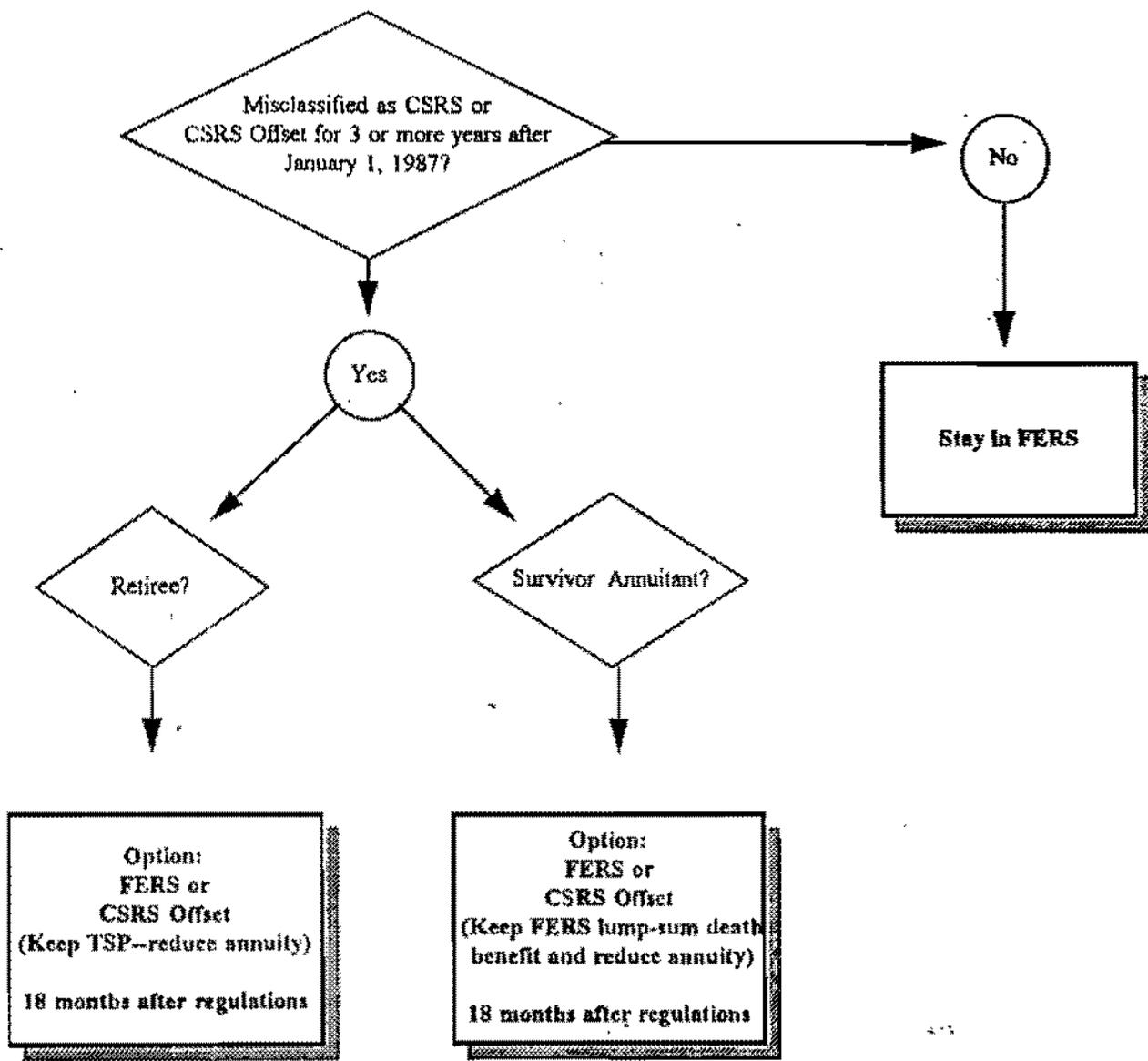
## 2. Current Employee (Error corrected)



### 3. Separated Employee (Not retired)



## 4. Annuitants



STATEMENT OF  
WILLIAM E. FLYNN, III, ASSOCIATE DIRECTOR  
FOR RETIREMENT AND INSURANCE  
OFFICE OF PERSONNEL MANAGEMENT

at a hearing of the

CIVIL SERVICE SUBCOMMITTEE  
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT  
UNITED STATES HOUSE OF REPRESENTATIVES

ON

ERRONEOUS ENROLLMENTS IN THE FEDERAL RETIREMENT SYSTEMS

JULY 31, 1997

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO APPEAR TODAY TO DISCUSS THE SUBJECT OF ERRONEOUS ENROLLMENTS IN THE FEDERAL RETIREMENT SYSTEMS.

IN THE SENATE COMMITTEE REPORT ATTACHED TO PUBLIC LAW 104-52, THE TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1996, OPM WAS DIRECTED TO REVIEW THE PROBLEM OF EMPLOYEES WHO HAVE BEEN PLACED IN THE WRONG RETIREMENT SYSTEM.

A SOLUTION TO THIS PROBLEM AFFECTS THE POLICIES AND OPERATIONS OF A NUMBER OF AGENCIES BESIDES OPM: THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD, THE SOCIAL SECURITY ADMINISTRATION, AND THE TREASURY DEPARTMENT. MORE DISCUSSIONS WITH THOSE AGENCIES ON AN APPROACH TO THIS ISSUE ARE NEEDED. I AM HOPEFUL THAT WE WILL BE ABLE TO PRESENT OUR REPORT, INCLUDING RECOMMENDATIONS FOR A LEGISLATIVE SOLUTION, TO THE CONGRESS IN THE NEAR FUTURE.

AT TODAY'S HEARING, NONETHELESS, I WOULD LIKE TO SHARE WITH THE SUBCOMMITTEE OUR PERSPECTIVE ON THIS PROBLEM AS WELL AS THE GENERAL OBJECTIVES WE BELIEVE SHOULD BE SOUGHT IN MOLDING A REMEDY TO THIS ISSUE.

RETIREMENT COVERAGE ERRORS ARE GENERALLY THE RESULT OF THE DIFFICULTIES GOVERNMENT AGENCIES HAVE EXPERIENCED IN THE STILL-ONGOING TRANSITION THAT BEGAN IN 1984 FROM THE CIVIL SERVICE RETIREMENT SYSTEM (CSRS) TO THE FEDERAL EMPLOYEES RETIREMENT SYSTEM (FERS). TWO SETS OF STATUTORY TRANSITION RULES MUST BE APPLIED. FIRST, EFFECTIVE IN 1984, CAME THE EXCEPTIONS TO THE UNIVERSAL SOCIAL SECURITY COVERAGE LEGISLATION INTENDED TO COVER FEDERAL EMPLOYEES UNDER SOCIAL SECURITY. THIS SET OF RULES WAS RETROACTIVELY AMENDED IN MID-1984 TO COVER SOME EMPLOYEES PREVIOUSLY EXCLUDED FROM SOCIAL SECURITY TAXES. THE GRANDFATHERING PROVISIONS OF THE FERS ACT OF 1986 COMPRISE THE SECOND SET OF TRANSITION RULES. FERS WAS DESIGNED TO COVER ALL EMPLOYEES HIRED AFTER 1983. THE EXCEPTIONS TO THESE RULES INVOLVED EMPLOYEES WHO WERE EXCLUDED FROM SOCIAL SECURITY AND MET ONE OF TWO VERSIONS OF A 5-YEAR SERVICE TEST IN THE LAW. ANOTHER IMPORTANT ASPECT OF THIS HISTORY IS THE CREATION OF A HYBRID SYSTEM KNOWN AS CSRS OFFSET, WHICH COMBINES CSRS AND SOCIAL SECURITY BENEFITS, AND WILL CONTINUE FOR THE DURATION OF THE TRANSITION.

FEDERAL AGENCIES MUST APPLY THE CURRENT RULES TO SELECT FOR EACH EMPLOYEE THE CORRECT RETIREMENT COVERAGE FROM AMONG FOUR POSSIBILITIES: CSRS, CSRS OFFSET, FERS, AND SOCIAL SECURITY ONLY. WITH FOUR POSSIBLE COVERAGES, THERE ARE 12 POSSIBLE ERRONEOUS COVERAGE SITUATIONS, ALL OF WHICH HAVE ACTUALLY OCCURRED: FERS MISCLASSIFIED AS CSRS, FERS MISCLASSIFIED AS CSRS OFFSET, FERS MISCLASSIFIED AS SOCIAL SECURITY ONLY, CSRS MISCLASSIFIED AS CSRS OFFSET, AND SO ON.

THE LAW REQUIRES AGENCIES THAT FIND A MISTAKE IN AN EMPLOYEE'S RETIREMENT COVERAGE TO CORRECT IT. AN EMPLOYEE ERRONEOUSLY PLACED IN FERS AT A TIME WHEN HE OR SHE HAD THE STATUTORY OPPORTUNITY TO ELECT FERS MUST BE RETROACTIVELY PLACED IN THE CORRECTED COVERAGE UNLESS THE EMPLOYEE EXERCISES THE FERS ELECTION OPTION. WHERE THE LAW MANDATES FERS COVERAGE, BUT THE EMPLOYEE WAS ERRONEOUSLY PLACED IN CSRS OR CSRS OFFSET, THE ERROR MUST BE CORRECTED RETROACTIVELY BECAUSE EMPLOYEES DO NOT HAVE A RIGHT TO ELECT CSRS OR CSRS OFFSET.

AFTER DISCOVERY OF A COVERAGE ERROR, THE LAW REQUIRES THAT AN EMPLOYEE'S DEFINED BENEFIT COVERAGE, INCLUDING SOCIAL SECURITY, BE FULLY CORRECTED WITH RETROACTIVE AMENDMENTS TO RETIREMENT RECORDS AND REALLOCATION OF EMPLOYEE AND AGENCY CONTRIBUTIONS. OF THE VARIOUS COVERAGE ERROR SITUATIONS, THEREFORE, THOSE THAT NEGATIVELY AFFECT THE EMPLOYEE'S DEFINED CONTRIBUTION PLAN PARTICIPATION ARE THOSE THAT MAY DISADVANTAGE THE EMPLOYEE. AN

EMPLOYEE'S PARTICIPATION IN THE THRIFT SAVINGS PLAN (TSP) IS A MATTER OF PERSONAL CHOICE, AFFECTED BY THE EMPLOYEE'S AVAILABLE INCOME AND PERSONAL RETIREMENT PLANNING, WHICH IN TURN RELIES ON A CORRECT COVERAGE DETERMINATION.

IN 1989, THE COMPTROLLER GENERAL CONCLUDED THAT IN THE ABSENCE OF A STATUTORY AUTHORITY, AGENCIES WERE NOT ALLOWED TO PAY INTO EMPLOYEE TSP ACCOUNTS EARNINGS LOST DUE TO THE AGENCY'S DELAY IN MAKING TSP CONTRIBUTIONS. IN 1990, CONGRESS ADDRESSED THIS SITUATION. PUBLIC LAW 101-335 PROVIDED A REMEDY THAT, IN GENERAL TERMS, REQUIRES THE EMPLOYER TO DEPOSIT INTO THE TSP THE AMOUNTS AN EMPLOYEE WOULD HAVE RECEIVED IN THE WAY OF A GOVERNMENT CONTRIBUTION AND EARNINGS ON THAT CONTRIBUTION, BUT FOR THE AGENCY'S ERROR. APART FROM THE 1 PERCENT GOVERNMENT CONTRIBUTION AND EARNINGS ON THAT AMOUNT WHICH MUST BE DEPOSITED FOR ALL FERS EMPLOYEES REGARDLESS OF WHETHER THE EMPLOYEE CONTRIBUTES, THE TOTAL AMOUNT OF THE AGENCY'S MAKE-UP CONTRIBUTION DEPENDS ON THE EMPLOYEE'S PAST CONTRIBUTIONS TO THE TSP AND HIS OR HER FUTURE SALARY WITHHOLDINGS TO MAKE-UP FOR THE PERIOD OF THE ERRONEOUS COVERAGE.

THIS APPROACH TO MAKING AN EMPLOYEE WHOLE AFTER A RETIREMENT COVERAGE ERROR HAS SIGNIFICANT GAPS. FIRST, BECAUSE IT RELIES ON FUTURE SALARY WITHHOLDINGS, AN EMPLOYEE WHOSE COVERAGE ERROR IS DISCOVERED UPON SEPARATION FROM SERVICE DOES NOT HAVE AN OPPORTUNITY TO MAKE UP LOST CONTRIBUTIONS. THIS COULD ALSO BE

SAID OF AN EMPLOYEE WHO DOES NOT HAVE INCOME AVAILABLE FOR THIS PURPOSE DURING THE PERIOD WHEN THE MAKE-UP CONTRIBUTIONS WOULD BE ALLOWED. SECOND, IF AN EMPLOYEE DID NOT PARTICIPATE IN THE TSP DURING THE PERIOD OF THE ERROR, RETROACTIVE EARNINGS ON MAKE-UP CONTRIBUTIONS ARE CALCULATED USING THE G FUND RATES OF RETURN. THIRD, SOME HIGHLY PAID EMPLOYEES MAY BE UNABLE TO MAXIMIZE TSP BENEFITS DUE TO THE TAX CODE'S ELECTIVE DEFERRAL LIMITATION THAT APPLIES TO TSP CONTRIBUTIONS.

OPM BELIEVES THAT A COMPREHENSIVE SOLUTION IS DESIRABLE, ONE THAT ADDRESSES SITUATIONS IN WHICH A LONG-TERM COVERAGE ERROR HAS BEEN CORRECTED IN THE PAST AS WELL AS THOSE IN WHICH THE ERROR HAS NOT YET BEEN DISCOVERED AND CORRECTED. I WOULD LIKE TO LAY OUT FOR THE SUBCOMMITTEE OUR MAJOR OBJECTIVES FOR A REMEDY.

OPM RECOGNIZES THAT SOME EMPLOYEES HAVE BEEN TRULY DISADVANTAGED BY BEING PLACED IN THE WRONG RETIREMENT SYSTEM. OUR FIRST AND MOST IMPORTANT OBJECTIVE IS THAT A REMEDY SHOULD DEMONSTRATE THAT THE GOVERNMENT IS COMMITTED TO AN EQUITABLE SOLUTION FOR THESE EMPLOYEES AND THEIR FAMILIES. RETIREMENT COVERAGE ERRORS IN CERTAIN CASES HAVE IMPEDED AN EMPLOYEE'S ABILITY TO PLAN FOR RETIREMENT, PRINCIPALLY WITH RESPECT TO THE LEVEL OF PERSONAL SAVINGS. THE DURATION OF THE ERROR IS AN IMPORTANT CONSIDERATION. BECAUSE RETIREMENT PLANNING IS A CAREER-LONG AFFAIR, A SHORT-TERM ERROR WOULD NORMALLY BE INSIGNIFICANT, WHILE A LONG-TERM ERROR COULD BE TRULY HARMFUL. THIS IS THE CASE WHERE

AN EMPLOYEE MISCLASSIFIED AS CSRS OR CSRS OFFSET MUST BE RETROACTIVELY SWITCHED TO FERS, BUT, BECAUSE OF THE ERROR, DID NOT SAVE FOR RETIREMENT TO SUPPLEMENT THE DEFINED BENEFITS OF FERS AND SOCIAL SECURITY. THE LAW SHOULD ALLOW US TO HELP EMPLOYEES WHO HAVE BEEN DISADVANTAGED IN THIS WAY FOR A SIGNIFICANT PERIOD OF TIME.

OUR SECOND MAJOR OBJECTIVE IS TO PROVIDE EMPLOYEES WITH A CHOICE BETWEEN CORRECTED COVERAGE AND A BENEFIT THE EMPLOYEE REASONABLY EXPECTED TO RECEIVE, WITHOUT DISTURBING SOCIAL SECURITY COVERAGE LAWS. EMPLOYEES SHOULD NOT SIMPLY BE FORCED TO RETAIN ERRONEOUS COVERAGE FOLLOWING DISCOVERY OF A LONG-TERM COVERAGE ERROR, WHICH MIGHT FURTHER DISADVANTAGE THE EMPLOYEE. SOME EMPLOYEES WHO HAVE BEEN MISCLASSIFIED AS CSRS OR CSRS OFFSET MAY PREFER TO KEEP WHAT THEY HAVE, BUT AN EMPLOYEE WHO CONTRIBUTED A SIGNIFICANT AMOUNT TO THE TSP MAY FEEL EQUALLY STRONGLY THAT IT WOULD BE TO HIS OR HER ADVANTAGE TO BE RETROACTIVELY CORRECTED TO FERS. EMPLOYEES SHOULD BE ALLOWED A CHOICE.

OUR THIRD OBJECTIVE IS THAT THE OPTIONS PROVIDED TO AN EMPLOYEE SHOULD BE EASY TO UNDERSTAND. PEOPLE AFFECTED BY RETIREMENT COVERAGE ERRORS INCLUDE CURRENT AND SEPARATED EMPLOYEES WHOSE ERRORS MAY OR MAY NOT HAVE ALREADY BEEN DISCOVERED AND CORRECTED, AS WELL AS RETIREES AND SURVIVORS. BOTH FOR THE PEOPLE WHO MUST COUNSEL EMPLOYEES, AND FOR THE AFFECTED INDIVIDUALS, WE SHOULD AVOID COMPLEX RULES, CONDITIONS, AND EXCEPTIONS. I TRUST WE CAN

BUILD A CHOICE THAT LEAVES EACH INDIVIDUAL WITH A CLEAR UNDERSTANDING OF HIS OR HER RETIREMENT COVERAGE AND ENABLES HIM OR HER TO PLAN FOR RETIREMENT INCOME SECURITY.

OUR FINAL MAJOR OBJECTIVE IS THAT THE ADMINISTRATIVE BURDEN OF THE REMEDY SHOULD BE KEPT TO A MINIMUM, AND THAT THE COST OF THE REMEDY SHOULD BE REASONABLE, CONSISTENT WITH OUR OTHER OBJECTIVES.

IN CONCLUSION, MR. CHAIRMAN, I EXPECT THAT A PROPOSAL FOR A COMPREHENSIVE REMEDY TO THE CURRENT PROBLEM WILL BE SENT TO CONGRESS IN THE NEAR FUTURE. IN THE MEANTIME, I HOPE THIS INFORMATION HAS BEEN HELPFUL AND I WILL BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.