

**DESCRIPTION OF REVENUE AND
SOCIAL SECURITY PROVISIONS
INCLUDED IN
H.R. 416, THE "FEDERAL RETIREMENT
COVERAGE CORRECTIONS ACT"**

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INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides legislative background on H.R. 416, the "Federal Retirement Coverage Corrections Act", and a description of revenue and social security provisions contained in H.R. 416, scheduled for markup by the House Committee on Ways and Means ("Ways and Means") on February 11, 1999.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of Revenue and Social Security Provisions Included in H.R. 416, the "Federal Retirement Coverage Corrections Act"* (JCX-5-99R), February 11, 1999.

I. LEGISLATIVE BACKGROUND OF H.R. 416

H.R. 416 was ordered reported by the House Committee on Government Reform and Oversight on February 3, 1999.²

H.R. 416 was proposed to correct errors in mis-classification of Federal employees which resulted in thousands of Federal employees being erroneously placed in the wrong Federal retirement systems. These retirement systems include: (1) the Civil Service Retirement System ("CSRS"); (2) the Federal Employees Retirement System ("FERS"); (3) the Civil Service Retirement System Social Security Offset Plan ("CSRS Offset"); or (4) Social Security only. H.R. 416 applies to all Federal employees, including former employees, annuitants and survivors. The bill extends the same correction options to employees of the foreign service and intelligence agencies.

H.R. 416 provides a comprehensive solution to these retirement coverage errors. In general, employees may choose between the retirement system they were mistakenly placed in or the system they should have been placed in retroactive to the date of the error. Two exceptions apply to this general rule. The first exception does not permit an employee who was erroneously placed in the CSRS to elect to remain in it; the employee may elect instead to be enrolled in the CSRS Offset system. The second exception applies to employees who should have been enrolled in Social Security only. Unless such employees are vested in the system in which they were mistakenly placed, they may not elect to remain in such system.

H.R. 416 requires the employing agencies to take certain steps to make the employee whole with respect to retirement plan benefits under the correct plan. Depending on the precise circumstances of the individual, these steps may include: (1) make-up contributions to the plan by the employing agency (including contributions to the Thrift Savings Plan ("TSP") in lieu of elective deferrals the employee would have been eligible to make had the employee been properly enrolled); (2) intra-fund or intra-Governmental transfers of funds; and (3) certain make-up contributions by the employing agency for social security taxes. The employing agencies will make all necessary payments from appropriated funds. Employees who were mistakenly permitted to contribute to the TSP would be able to maintain their elective deferrals (plus earnings) in the TSP subject to the rules generally applicable to such plan. In some cases, employees could forfeit benefits previously accrued (e.g., matching contributions made to an individual mistakenly enrolled in FERS). H.R. 416 amends the Social Security Act so CSRS-eligible employees who choose FERS or Social Security coverage may receive Social Security benefits.

² H.R. 416, as introduced, was referred jointly to the Committee on Government Reform and Oversight and the Committee on Ways and Means.

II. DESCRIPTION OF REVENUE PROVISIONS IN H.R. 416

Present Law

Under present law, Federal employees generally participate in one of four retirement plans: CSRS, FERS, CSRS Offset, or Social Security only. Participants in CSRS, CSRS Offset, and FERS may participate in the Federal Thrift Savings Plan ("TSP"), which is a qualified cash or deferred arrangement under section 401(k) of the Internal Revenue Code. The Federal retirement plan in which any person participates depends on a number of factors, including the individual's employment status and date of hire. The rules governing participation in the TSP vary depending on the Federal retirement plan (i.e., CSRS, CSRS Offset, or FERS) under which the individual is covered. The Federal retirement plans are generally subject to the same rules applicable to tax-qualified retirement plans maintained by private sector-employers. These rules include limits on the amount of elective deferrals that may be made on behalf of an employee in a tax year under a section 401(k) plan, such as the TSP, and an overall limitation on contributions and benefits that may be provided to an employee under the plan.

The limit on the amount of elective deferrals that an employee may make to a section 401(k) plan for 1999 is \$10,000. The overall limit on contributions and benefits for an employee for a year is different for defined benefit plans and defined contributions plans. The limitation for an annual benefit under a defined benefit plan is the lesser of (1) \$130,000 (for 1999), or (2) 100 percent of the participant's average compensation for his high three years. The limitation for annual contributions and other additions under a defined contribution plan is the lesser of (1) \$30,000, or (2) 25 percent of the participant's compensation.

Description of the Bill

H.R. 416 would provide for the correction of certain retirement coverage errors affecting Federal employees, by addressing situations in which Federal employees have been mistakenly enrolled in the wrong Federal retirement plan.

The bill would provide that the Federal retirement plans will not fail to be treated as qualified retirement plans under the Internal Revenue Code by reason of any action taken pursuant to the bill. Thus, for example, the bill would permit an employing agency to make up contributions on behalf of an employee, or former employee, who was entitled to such contributions in prior years without violating the applicable overall contribution and benefit limitations (sec. 415) for the year in which the make-up contribution is made. However, the amount contributed may not violate the section 415 limit for the year for which the contribution is made.

The bill would provide that no amount is includible in the income of any individual for Federal tax purposes by reason of fund transfers or government contributions made pursuant to the bill. In addition, the bill would provide that no amount transferred would be subject to employment taxes under Subtitle C of the Code.

Effective Date

The revenue provisions would be effective on the date of enactment.

III. DESCRIPTION OF SOCIAL SECURITY PROVISIONS CONTAINED IN H.R. 416

Present Law

Under present law, as mentioned previously, federal employees participate in one of four retirement systems, CSRS, CSRS Offset, Social Security only, and FERS. Individuals who are eligible for CSRS Offset, Social Security only, or FERS receive Social Security coverage. Individuals who are eligible for CSRS do not receive Social Security coverage. Under the CSRS, CSRS Offset and FERS retirement systems, both the employee and the employing agency make contributions to the Civil Service Retirement and Disability Fund (CSRDF).

For those employees enrolled in one of the retirement systems with Social Security coverage, Social Security taxes are paid into the general fund of the Treasury and transferred to the Social Security Trust Funds. If Social Security taxes should have been, but were not paid with respect to an individual's employment, the taxes may be assessed subject to the statute of limitations of three years. Similarly, improperly paid Social Security taxes may be refunded for the period within the statute of limitations.

Previously unrecorded earnings may be added to an individual's Social Security earnings record at any time. Improperly recorded earnings may only be removed from an individual's earnings record for the period within the statute of limitations.

Description of the Bill

The bill provides when an individual who was incorrectly enrolled in CSRS changes to one of the retirement systems that provides for Social Security coverage, that the individual will receive credit on his or her Social Security earnings record for earnings retroactive to the date of the retirement coverage error. Under the bill, the Social Security Trust Funds are made whole for any contributions that should have been made on behalf of the employee.

The bill provides that all of the amounts that should have been paid into the Social Security Trust Funds from the time of the incorrect enrollment shall be transferred to the Trust Funds. The amounts will be transferred to the Trust Funds from the employee's account in CSRDF and, if that amount is not sufficient, from the appropriated accounts of the agency. The bill provides conforming changes to the coverage provisions of the Social Security Act and the Internal Revenue Code if an individual elects to remain in the retirement system to which he or she was incorrectly enrolled.

If an individual who was incorrectly enrolled in a retirement system that has Social Security coverage elects to become enrolled in CSRS, then, as under present law, Social Security taxes paid on behalf of the individual for the period subject to the statute of limitation (i.e.,

within the last 3 years) would be refunded to the agency and to the employee. The bill provides that the agency shall deposit in the CSRDF an amount equal to the shortfall in CSRS contributions that should have been made on behalf of the employee and that the employee shall reimburse the agency for such deposits up to the amount of the Social Security taxes refundable to the employee. As under present law, earnings on the employee's Social Security earnings record for the period subject to the statute of limitations would be deleted, but earnings for prior periods would not.

The bill also provides authority for the Commissioner of Social Security to obtain necessary information from agencies, to notify the Secretary of the Treasury to transfer into the Social Security Trust Funds those Social Security taxes paid as a result of elections under the bill, and to correct earnings records.

Effective Date

The Social Security provisions would be effective on the date of enactment.