

DOMESTIC PARTNERSHIP BENEFITS AND OBLIGATIONS
ACT OF 2009

JANUARY 22, 2010.—Ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2517]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 2517) to provide certain benefits to domestic partners of Federal employees, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Domestic Partnership Benefits and Obligations Act of 2009”.

(b) **REFERENCES.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 5, United States Code.

(c) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; references; table of contents.

TITLE I—DOMESTIC PARTNERSHIPS

Sec. 101. Domestic partnerships.

TITLE II—CIVIL SERVICE RETIREMENT SYSTEM

Sec. 201. Definitions.
Sec. 202. Creditable service.
Sec. 203. Computation of annuity.
Sec. 204. Cost-of-living adjustment of annuities.
Sec. 205. Survivor annuities.
Sec. 206. Lump-sum benefits; designation of beneficiary; order of precedence.
Sec. 207. Alternative forms of annuities.
Sec. 208. Administration; regulations.
Sec. 209. Participation in the Thrift Savings Plan.

TITLE III—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

Sec. 301. Definitions.
Sec. 302. Creditable service.
Sec. 303. Survivor reduction for a current spouse or a current domestic partner.
Sec. 304. Survivor reduction for a former spouse or former domestic partner.
Sec. 305. Survivor elections; deposit; offsets.
Sec. 306. Survivor reductions; computation.
Sec. 307. Insurable interest reductions.
Sec. 308. Alternative forms of annuities.
Sec. 309. Lump-sum benefits; designation of beneficiary; order of precedence.
Sec. 310. Annuities: methods of payment; election; purchase.
Sec. 311. Protections for spouses, domestic partners, former spouses, and former domestic partners.
Sec. 312. Justices and judges.
Sec. 313. Survivor annuities: definitions.
Sec. 314. Rights of a widow, widower, or surviving partner.
Sec. 315. Rights of a former spouse or former domestic partner.
Sec. 316. Authority of the Office of Personnel Management.
Sec. 317. Cost-of-living adjustments.
Sec. 318. Fiduciary responsibilities; liability and penalties.

TITLE IV—INSURANCE BENEFITS

Sec. 401. Life insurance.
Sec. 402. Health insurance.
Sec. 403. Enhanced dental benefits.
Sec. 404. Enhanced vision benefits.
Sec. 405. Long-term care insurance.

TITLE V—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

Sec. 501. Reimbursement for taxes incurred on money received for travel expenses.
Sec. 502. Relocation expenses of employees transferred or reemployed.
Sec. 503. Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred.
Sec. 504. Relocation expenses of an employee who is performing an extended assignment.

TITLE VI—COMPENSATION FOR WORK INJURIES

Sec. 601. Definitions.
Sec. 602. Death gratuity for injuries incurred in connection with employee’s service with an Armed Force.
Sec. 603. Beneficiaries of awards unpaid at death; order of precedence.
Sec. 604. Augmented compensation for dependents.
Sec. 605. Limitations on right to receive compensation.
Sec. 606. Compensation in case of death.
Sec. 607. Lump-sum payment.
Sec. 608. Regulations.
Sec. 609. Effective date.

TITLE VII—PROVISIONS RELATING TO EMPLOYMENT OF RELATIVES AND OTHER MATTERS

Sec. 701. Employment of relatives; restrictions.
Sec. 702. Settlement of accounts.
Sec. 703. Benefits for captives.
Sec. 704. Compensation for disability or death.
Sec. 705. Family and medical leave.

TITLE VIII—ADDITIONAL PROVISIONS

Sec. 801. Applicability.
Sec. 802. Regulations.

TITLE IX—AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978

Sec. 901. Amendment to the Ethics in Government Act of 1978.

TITLE X—REPORTING REQUIREMENTS

Sec. 1001. Report of the president.

Sec. 1002. GAO report.

TITLE I—DOMESTIC PARTNERSHIPS**SEC. 101. DOMESTIC PARTNERSHIPS.**

(a) IN GENERAL.—Chapter 21 is amended by adding at the end the following:

“§ 2110. Domestic partnerships

“(a) ESTABLISHMENT.—To establish the existence of a domestic partnership, between an employee, former employee, or annuitant and another individual, for purposes of the provisions of law to which this section applies, the employee, former employee, or annuitant (as the case may be) shall be required to file an affidavit, in such form and manner as the Office of Personnel Management shall by regulation prescribe, attesting to the following:

“(1) Both individuals are members of the same sex.

“(2) Both individuals are at least 18 years of age and competent to contract.

“(3) The filing employee, former employee, or annuitant (as the case may be) has notified the other individual of the filing of the affidavit attesting that their partnership satisfies the requirements of this subsection.

“(4) Such individuals are in a domestic partnership with one another and intend to remain so indefinitely.

“(5) Such individuals—

“(A) have a common residence; or

“(B) do not have a common residence because of financial, employment-related, or other reasons, as identified in the affidavit.

“(6) Neither individual is married to or in a domestic partnership with anyone outside of the domestic partnership referred to in paragraph (4).

“(7) The 2 individuals share responsibility for a significant measure of each other’s common welfare and financial obligations.

“(8) The 2 individuals are not related in a way that, if they were of the opposite sex, would prohibit legal marriage in the jurisdiction in which either individual resides.

“(9) The filing employee, former employee, or annuitant (as the case may be) understands that willful falsification of information set forth in the affidavit or failure to provide appropriate notification of the termination of the domestic partnership may lead to the recovery of amounts obtained as a result of such falsification or failure (as the case may be), criminal or other penalties, and (in appropriate cases) disciplinary action.

An affidavit shall not be effective for purposes of this section unless the filing individual is an employee, former employee, or annuitant as of the time of filing. No 2 individuals shall, for purposes of the provisions of law to which this section applies, be treated as being in a domestic partnership with one another unless there is in effect, in accordance with regulations prescribed by the Office, an affidavit filed in accordance with the preceding provisions of this subsection. An affidavit so filed shall remain in effect until the earlier of the date of the death of either individual or the date as of which the domestic partnership is otherwise terminated, as determined under such regulations.

“(b) DOMESTIC PARTNER.—For purposes of the provisions of law to which this section applies, the term ‘domestic partner’ means an individual who is in a domestic partnership, as described in subsection (a).

“(c) EMPLOYEE DEFINED.—For purposes of this section, the term ‘employee’ means an employee as defined by section 2105, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard (as described in section 2105(c)), an employee of the United States Postal Service or of the Postal Regulatory Commission (as described in section 2105(e)), a Member of Congress, a member of the commissioned corps of the Public Health Service, a member of the commissioned corps of the National Oceanic and Atmospheric Administration, and any other individual who is employed by the Government (as determined under regulations of the President or a designee thereof), but does not include a technician (within the meaning of section 8337(h) or, notwithstanding any provision of chapter 43 of title 38, a member of the armed forces.

“(d) ANNUITANT DEFINED.—For purposes of this section, the term ‘annuitant’ means—

“(1) an annuitant within the meaning of section 8331 or 8401; and
 “(2) as determined under regulations prescribed by the President or a designee thereof, any other individual who is entitled to benefits (based on the service of such individual) under a retirement system for employees of the Government.

“(e) CONFIDENTIALITY.—No individual may—

“(1) use the information obtained under subsection (a) for any purpose other than the administration of any provision of law to which this section applies; or

“(2) furnish any information obtained under subsection (a) to anyone, or permit anyone to examine or otherwise gain access to any such information, except for—

“(A) an individual who needs such information for a purpose that satisfies paragraph (1); or

“(B) a member of the domestic partnership to which the information pertains or an authorized representative thereof.

“(f) APPLICABILITY.—This section applies for purposes of the provisions of this title (excluding chapter 81) and any provision of law identified in or under title VIII of the Domestic Partnership Benefits and Obligations Act of 2009.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 21 is amended by adding at the end the following:

“2110. Domestic partnerships.”.

TITLE II—CIVIL SERVICE RETIREMENT SYSTEM

SEC. 201. DEFINITIONS.

Section 8331 is amended—

(1) in paragraph (30), by striking “and” at the end;

(2) in paragraph (31), by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(32) ‘former domestic partner’ means a former domestic partner of an individual—

“(A) if such individual performed at least 18 months of civilian service as an employee or Member; and

“(B) if the former domestic partner was in a domestic partnership with such individual for at least 9 months.”.

SEC. 202. CREDITABLE SERVICE.

Section 8332 is amended—

(1) in subsection (c)(3)(C)(ii), by striking “former spouse.” and inserting “former spouse or former domestic partner.”; and

(2) in paragraphs (4) and (5) of subsection (o), by striking “spouse” each place it appears and inserting “spouse, domestic partner.”.

SEC. 203. COMPUTATION OF ANNUITY.

Section 8339 is amended—

(1) in subsection (j)—

(A) in paragraph (1)—

(i) by inserting “(or domestic partner)” after “the spouse” each place it appears;

(ii) by inserting “(or has a domestic partner)” after “is married”; and

(iii) by inserting “(or domestic partner’s)” after “the spouse’s” each place it appears;

(B) in paragraph (2), by inserting “(or former domestic partner)” after “former spouse” each place it appears;

(C) in paragraph (3)—

(i) in the first sentence—

(I) by inserting “(or former domestic partner)” after “former spouse” each place it appears; and

(II) by inserting “(or being in a domestic partnership with)” after “based on marriage to”;

(ii) in the second sentence—

(I) by inserting “(or the domestic partnership of the former domestic partner with)” after “the marriage of the former spouse to”; and

(II) by striking “is dissolved,” and inserting “is dissolved (or terminated),”;

(iii) in the sixth sentence, by striking “former spouse.” and inserting “former spouse (or former domestic partner).”;

(iv) in subparagraph (B)—

(I) by striking “is then married,” and inserting “is then married (or is then in a domestic partnership),”; and

(II) by striking “the spouse’s written consent.” and inserting “the written consent of the spouse (or domestic partner).”; and

(v) by amending the next to last sentence to read as follows: “In the case of a retired employee or Member whose annuity is being reduced in order to provide a survivor annuity for a former spouse (or former domestic partner), an election to provide or increase a survivor annuity for any other former spouse (or any other former domestic partner), and to continue an appropriate reduction for that purpose, may be made within the same period that, and subject to the same conditions under which, an election could be made under paragraph (5)(B) for a current spouse (or a current domestic partner), subject to the provisions of this paragraph relating to consent of a current spouse (or of a current domestic partner), if the retired employee or Member is then married (or in a domestic partnership).”; and

(D) by amending paragraph (5) to read as follows:

“(5)(A) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse (or the current domestic partner) of a retired employee or Member shall be terminated for each full month—

“(i) after the death of the spouse (or domestic partner), or

“(ii) after the dissolution of the marriage of the spouse (or the termination of the domestic partnership of the domestic partner) to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse (or domestic partner) is entitled, as a former spouse (or former domestic partner), to a survivor annuity under section 8341(h).

“(B) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse (or a former domestic partner) of a retired employee or Member shall be terminated for each full month after the former spouse remarries (or the former domestic partner enters into a subsequent domestic partnership) before reaching age 55 or dies. This reduction shall be replaced by an appropriate reduction or reductions under paragraph (4) if the retired employee or Member has (i) another former spouse (or another former domestic partner) who is entitled to a survivor annuity under section 8341(h), (ii) a current spouse to whom the employee or Member was married (or a current domestic partner with whom the employee or Member was in a domestic partnership) at the time of retirement and with respect to whom a survivor annuity was not jointly waived under paragraph (1), or (iii) a current spouse whom the employee or Member married (or a current domestic partner with whom the employee or Member entered into domestic partnership) after retirement and with respect to whom an election has been made under subparagraph (C) or subsection (k)(2).

“(C)(i) Upon remarriage (or entry into a subsequent domestic partnership), a retired employee or Member who was married (or in a domestic partnership) at the time of retirement, including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee’s or Member’s spouse or former spouse (or domestic partner or former domestic partner) as of the time of retirement, may irrevocably elect during such marriage (or domestic partnership), in a signed writing received by the Office—

“(I) within 2 years after such remarriage (or such subsequent domestic partnership), or

“(II) if later, within 2 years after—

“(aa) the death or remarriage of any former spouse (or the death of or entry into a subsequent domestic partnership by any former domestic partner) of such employee or Member who was entitled to a survivor annuity under section 8341(h), or

“(bb) if there was more than 1, the death or remarriage of the last such surviving former spouse (or the death of or entry into a subsequent domestic partnership by the last such surviving former domestic partner),

a reduction in the employee’s or Member’s annuity under paragraph (4) for the purpose of providing an annuity for such employee’s or Member’s spouse (or domestic partner) in the event such spouse (or domestic partner) survives the employee or Member.

“(ii) Such election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage (or entry into the subsequent domestic partnership), and the retired employee or Member shall deposit in the Fund an amount determined

by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such retired employee or Member would have been reduced if the election had been in effect since the date of retirement or, if later, the date the previous reduction in such retired employee's or Member's annuity was terminated under subparagraph (A) or (B), plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which an annuity would have been reduced if the election had been in effect on and after the applicable date referred to in such sentence shall be 6 percent.

“(iii) The Office shall, by regulation, provide for payment of the deposit required under clause (ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under clause (ii), except that total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph or paragraph (3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction required by this clause, which shall be effective on the same date as the election under clause (i), shall be permanent and unaffected by any future dissolution of the marriage (or termination of the domestic partnership). Such reduction shall be independent of and in addition to the reduction required under clause (i).

“(iv) Notwithstanding any other provision of this subparagraph, an election under this subparagraph may not be made for the purpose of providing an annuity in the case of a spouse by remarriage (or a domestic partner by a subsequent domestic partnership) if such spouse was married to (or if such domestic partner was in a domestic partnership with) the employee or Member at the time of such employee's or Member's retirement, and all rights to survivor benefits for such spouse (or domestic partner) under this subchapter based on marriage (or domestic partnership) to such employee or Member were then waived under paragraph (1) or a similar prior provision of law.

“(v) An election to provide a survivor annuity to a person under this subparagraph—

“(I) shall prospectively void any election made by the employee or Member under subsection (k)(1) with respect to such person; or

“(II) shall, if an election was made by the employee or Member under such subsection (k)(1) with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subparagraph.

“(vi) The deposit provisions of clauses (ii) and (iii) shall not apply if—

“(I) the employee or Member makes an election under this subparagraph after having made an election under subsection (k)(1); and

“(II) the election under subsection (k)(1) becomes void under clause (v).”;

(2) in subsection (k)—

(A) in paragraph (1)—

(i) by striking “a married employee or Member” and inserting “an employee or Member who is married (or in a domestic partnership)”;

and

(ii) by inserting “(or domestic partner)” after “spouse” each place it appears;

(B) in paragraph (2)—

(i) by striking the matter before subparagraph (B) and inserting the following:

“(2)(A) An employee or Member, who is unmarried (and not in a domestic partnership) at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to such employee's or Member's spouse (or domestic partner) and who later marries (or enters into a domestic partnership), may irrevocably elect, in a signed writing received in the Office—

“(i) within 2 years after such employee or Member marries (or enters into a domestic partnership), or

“(ii) if later, within 2 years after—

“(I) the death or remarriage of any former spouse (or the death of or entry into a subsequent domestic partnership by any former domestic partner) of such employee or Member who was entitled to a survivor annuity under section 8341(h), or

“(II) if there was more than 1, the death (or entry into a subsequent domestic partnership) by the last such surviving former spouse (or surviving former domestic partner),

a reduction in the retired employee or Member's current annuity as provided in subsection (j).”;

(ii) in subparagraph (B)(i) (in the matter before subclause (I)), by striking “marriage.” and inserting “marriage (or entry into a domestic partnership).”;

(iii) in subparagraph (B)(ii), by inserting “(or in a domestic partnership)” after “married”; and

(iv) in subparagraph (C), by striking “marriage.” and inserting “marriage (or domestic partnership).”; and

(3) in subsection (o)(1)—

(A) in subparagraphs (A)(i) and (B)(i), by striking “is married,” and inserting “is married (or is in a domestic partnership).”; and

(B) in subparagraph (A) (in the matter following clause (ii)), by inserting “(or domestic partner)” after “spouse”.

SEC. 204. COST-OF-LIVING ADJUSTMENT OF ANNUITIES.

Section 8340 is amended—

(1) in subsection (a)—

(A) by striking “and” at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting “; and”; and

(C) by adding at the end the following:

“(3) the terms ‘widow’, ‘widower’, and ‘surviving partner’ have the respective meanings given them under section 8341.”; and

(2) in subsection (c)(1)—

(A) in the matter before subparagraph (A), by striking all after “who retires,” and before “of a deceased annuitant” and inserting “to the widow, widower, or former spouse (or the surviving partner or former domestic partner) of a deceased employee or Member, or to the widow, widower, or former spouse (or the surviving partner or former domestic partner), or insurable interest designee”; and

(B) in subparagraph (B)(ii), by striking “a widow, widower, former spouse, or insurable interest designee” and inserting “a widow, widower, or former spouse (or surviving partner or former domestic partner) or insurable interest designee”.

SEC. 205. SURVIVOR ANNUITIES.

Section 8341 is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively;

(B) by inserting after paragraph (2) the following:

“(3) ‘surviving partner’ means the surviving domestic partner of an employee or Member who—

“(A) was in a domestic partnership with such employee or Member for at least 9 months immediately before the death of such employee or Member; or

“(B) satisfies such other requirement, based on parenthood, as the Office of Personnel Management shall by regulation prescribe based on the definition of a widow or widower under this section.”; and

(C) in paragraph (5) (as so redesignated by subparagraph (A))—

(i) in subparagraph (A), by inserting “(or surviving domestic partner)” after “the surviving spouse”; and

(ii) by adding at the end the following: “The Office shall prescribe regulations to provide that, for purposes of applying the provisions of paragraph (5)(A)(ii) (relating to the treatment of a stepchild) in the case of a domestic partnership, rules similar to those prescribed to carry out section 8901(5)(B) in similar circumstances shall apply.”;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking “widow or widower” each place it appears and inserting “widow or widower (or surviving partner)”; and

(ii) by striking “remarriage,” and inserting “remarriage (or entry into a subsequent domestic partnership).”; and

(B) in paragraph (2)—

(i) by striking “widow or widower” each place it appears and inserting “widow or widower (or surviving partner)”; and

(ii) by inserting “(or in a domestic partnership with)” after “married to”;

(C) in paragraph (3)—

(i) in the matter before subparagraph (A), by inserting “(or domestic partner)” after “spouse”;

- (ii) by striking “widow or widower” each place it appears and inserting “widow or widower (or surviving partner)”; and
- (iii) in subparagraph (B), by inserting “(or enters into a subsequent domestic partnership)” after “remarries”; and
- (D) in paragraph (4)—
 - (i) by striking “widow or widower” each place it appears and inserting “widow or widower (or surviving partner)”; and
 - (ii) in subparagraph (B), by inserting “(or former domestic partner)” after “former spouse”;
- (3) in subsection (d)—
 - (A) by striking “widow or widower” each place it appears and inserting “widow or widower (or surviving partner)”;
 - (B) in subparagraph (B), by inserting “(or former domestic partner)” after “former spouse”; and
 - (C) in clause (ii), by inserting “(or enters into a subsequent domestic partnership)” after “remarries”;
- (4) in subsection (e)—
 - (A) by striking the matter before paragraph (2) and inserting the following:

“(e)(1) For the purposes of this subsection—

 - “(A) the term ‘former spouse’ includes a former spouse who was married to an employee or Member for less than 9 months and a former spouse of an employee or Member who completed less than 18 months of service covered by this subchapter; and
 - “(B) the term ‘former domestic partner’ includes a former domestic partner who was in a domestic partnership with an employee or Member for less than 9 months and a former domestic partner of an employee or Member who completed less than 18 months of service covered by this subchapter.”;
 - (B) in paragraph (2), by striking “a spouse or a former spouse” each place it appears and inserting “a spouse or former spouse (or a domestic partner or former domestic partner)”;
 - (C) in paragraph (3)—
 - (i) in subparagraph (E), by striking “dies or marries;” and inserting “dies, marries, or enters into a domestic partnership;” and
 - (ii) in the matter following subparagraph (E)—
 - (I) by inserting “(or domestic partner or former domestic partner)” after “spouse or former spouse”; and
 - (II) by striking “spouse, former spouse, or child” and inserting “spouse or former spouse (or domestic partner or former domestic partner) or child;” and
 - (D) in paragraph (4), by striking “marriage, then, if such marriage” and inserting “marriage, then, if such marriage (or a domestic partnership, then, if such domestic partnership)”;
 - (5) by striking subsection (f) and inserting the following:

“(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married (or a domestic partner to whom in a domestic partnership) at the date of separation, the surviving spouse (or surviving partner)—

 - “(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the Member commencing on the day after the Member dies and terminating on the last day of the month before the surviving spouse dies or remarries (or the surviving domestic partner dies or enters into a subsequent domestic partnership); or
 - “(2) may elect to receive the lump-sum credit instead of annuity if the spouse (or domestic partner) is the individual who would be entitled to the lump-sum credit and files application therefor with the Office before the award of the annuity.

Notwithstanding the preceding sentence, an annuity payable under this subsection to the surviving spouse (or surviving domestic partner) of a Member may not exceed the difference between—

 - “(A) the annuity which would otherwise be payable to such surviving spouse (or such surviving domestic partner) under this subsection, and
 - “(B) the amount of the survivor annuity payable to any former spouse (or any former domestic partner) of such Member under subsection (h).”;
 - (6) by striking subsection (g) and inserting the following:

“(g) In the case of a surviving spouse (or surviving domestic partner) whose annuity under this section is terminated because of remarriage (or entry into a subsequent domestic partnership) before becoming 55 years of age, annuity at the same

rate shall be restored commencing on the day the remarriage (or subsequent domestic partnership) is dissolved by death, annulment, or divorce (or terminated), if—

“(1) the surviving spouse (or surviving domestic partner) elects to receive this annuity instead of a survivor benefit to which he may be entitled, under this subchapter or another retirement system for Government employees, by reason of the remarriage (or subsequent domestic partnership); and

“(2) any lump sum paid on termination of the annuity is returned to the Fund.”;

(7) by striking subsection (h) and inserting the following:

“(h)(1) Subject to paragraphs (2) through (5), a former spouse (or former domestic partner) of a deceased employee, Member, annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

“(2)(A) The annuity payable to a former spouse (or former domestic partner) under this subsection may not exceed the difference between—

“(i) the amount applicable in the case of such former spouse (or former domestic partner), as determined under subparagraph (B), and

“(ii) the amount of any annuity payable under this subsection to any other former spouse (or former domestic partner) of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3), or a court order previously issued.

“(B) The applicable amount, for purposes of subparagraph (A)(i) in the case of a former spouse (or former domestic partner), is the amount which would be applicable—

“(i) under subsection (b)(4)(A) in the case of a widow or widower (or surviving partner), if the deceased was an employee or Member who died after retirement;

“(ii) under subparagraph (A) of subsection (d) in the case of a widow or widower (or surviving partner), if the deceased was an employee or Member described in the first sentence of such subsection; or

“(iii) under subparagraph (A) of subsection (f) in the case of a surviving spouse (or surviving domestic partner), if the deceased was a Member described in the first sentence of such subsection.

“(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

“(A) shall not commence before—

“(i) the day after the employee, Member, or annuitant dies, or

“(ii) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe,

whichever is later, and

“(B) shall terminate—

“(i) except as provided in subsection (k), in the case of an annuity computed by reference to clause (i) or (ii) of paragraph (2)(B), no later than the last day of the month before the former spouse remarries (or former domestic partner enters into a subsequent domestic partnership) before becoming 55 years of age or dies; or

“(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies (or the former domestic partner enters into a subsequent domestic partnership or dies).

“(4) For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) shall not be effective—

“(A) if such modification is made after the retirement or death of the employee or Member concerned, and

“(B) to the extent that such modification involves an annuity under this subsection.

“(5) For purposes of this subchapter, a decree, order, agreement, or election referred to in paragraph (1) shall not be effective, in the case of a former spouse (or former domestic partner), to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse (or former domestic partner) under section 8339(j)(1) or a similar prior provision of law.

“(6) Any payment under this subsection to a person bars recovery by any other person.

“(7) As used in this subsection, ‘court’ means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.”;

(8) by striking subsection (i) and inserting the following:

“(i) The requirement in subsections (a)(1)(A), (a)(2)(A), and (a)(5)(A) that the surviving spouse (or surviving domestic partner) of an employee or Member have been married to (or in a domestic partnership with) such employee or Member for at least 9 months immediately before the employee’s or Member’s death in order to qualify as the widow or widower (or surviving partner) of such employee or Member shall be deemed satisfied in any case in which the employee or Member dies within the applicable 9-month period, if—

“(1) the death of the employee or Member was accidental; or

“(2) the surviving spouse (or surviving domestic partner) of such individual had been previously married to (or in a domestic partnership with) the individual that was subsequently dissolved (or terminated), and the aggregate time married (or in a domestic partnership) is at least 9 months.”; and

(9) by redesignating subsection (k) as subsection (j) and amending such subsection to read as follows:

“(j)(1) Subsections (b)(3)(B), (d)(ii), and (h)(3)(B)(i), to the extent that they provide for termination of a survivor annuity because of a remarriage (or entry into a subsequent domestic partnership) before age 55, shall not apply if the widow, widower or former spouse was married to (or the surviving partner or former domestic partner was in a domestic partnership with) the individual on whose service the survivor annuity is based for at least 30 years.

“(2) A remarriage (or entry into a subsequent domestic partnership) described in paragraph (1) shall not be taken into account for purposes of subparagraph (B) or (C) of section 8339(j)(5) or any other provision of this chapter which the Director of the Office of Personnel Management may by regulation identify in order to carry out the purposes of this subsection.”.

SEC. 206. LUMP-SUM BENEFITS; DESIGNATION OF BENEFICIARY; ORDER OF PRECEDENCE.

Section 8342 is amended—

(1) in subsection (c), by inserting “(or surviving partner)” after “widow or widower”; and

(2) in subsection (j)—

(A) in paragraph (1)(A), by inserting “(or the domestic partner, if any, and any former domestic partner)” after “the spouse, if any, and any former spouse”; and

(B) by inserting “(or domestic partner or former domestic partner)” after “spouse or former spouse” each place it appears.

SEC. 207. ALTERNATIVE FORMS OF ANNUITIES.

Section 8343a is amended—

(1) in subsection (b)(2), by inserting “(or in a domestic partnership)” after “married”;

(2) in subsection (b)(2)(B), by inserting “(or surviving domestic partner)” after “surviving spouse”; and

(3) in subsection (e), by inserting “(or in a domestic partnership)” after “married”.

SEC. 208. ADMINISTRATION; REGULATIONS.

Section 8347(n)(1)(D) is amended by striking “their spouses, and their former spouses” and inserting “their spouses, domestic partners, former spouses, and former domestic partners”.

SEC. 209. PARTICIPATION IN THE THRIFT SAVINGS PLAN.

Section 8351(b)(5) is amended—

(1) in subparagraphs (A), (B), and (C), by inserting “(or domestic partner)” after “spouse” each place it appears;

(2) in subparagraph (B), by striking “a married employee or Member” and inserting “an employee or Member who is married (or in a domestic partnership)”;

and

(3) in subparagraph (D), by inserting “(or domestic partner or former domestic partner)” after “spouse or former spouse”.

TITLE III—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

SEC. 301. DEFINITIONS.

Section 8401 is amended—

- (1) in paragraph (35), by striking “and” at the end;
- (2) in paragraph (36), by striking the period at the end and inserting “; and”;
- and
- (3) by adding at the end the following:
 - “(37) ‘former domestic partner’ means a former domestic partner of an individual—
 - “(A) if such individual performed at least 18 months of civilian service creditable under section 8411 as an employee or Member; and
 - “(B) if the former domestic partner was in a domestic partnership with such individual for at least 9 months.”.

SEC. 302. CREDITABLE SERVICE.

Section 8411 is amended—

- (1) in subsection (c)(4)(C)(ii), by inserting “(or former domestic partner)” after “former spouse”;
- (2) in subsection (1)(4)(B)(i), by inserting “(or domestic partner)” after “spouse”; and
- (3) in subsection (1)(5), by inserting “(or domestic partner)” after “spouse” each place it appears.

SEC. 303. SURVIVOR REDUCTION FOR A CURRENT SPOUSE OR A CURRENT DOMESTIC PARTNER.

(a) IN GENERAL.— Section 8416 is amended—

- (1) in the catchline, by inserting “**or a current domestic partner**” after “**spouse**”;
 - (2) in subsection (a)—
 - (A) by inserting “(or in a domestic partnership)” after “married” each place it appears;
 - (B) by inserting “(or domestic partner)” after “spouse” each place it appears; and
 - (C) by inserting “(or domestic partner’s)” after “spouse’s” each place it appears;
 - (3) by amending subsection (b) to read as follows:
 - “(b)(1) Upon remarriage (or entry into a subsequent domestic partnership), a retired employee or Member who was married (or in a domestic partnership) at the time of retirement, including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee’s or Member’s spouse or former spouse (or domestic partner or former domestic partner) as of the time of retirement, may irrevocably elect during such marriage (or domestic partnership), in a signed writing received by the Office—
 - “(A) within 2 years after such remarriage (or entry into a subsequent domestic partnership), or
 - “(B) if later, within 2 years after—
 - “(i) the death or remarriage of any former spouse (or the death of or entry into a subsequent domestic partnership by any former domestic partner) of such employee or Member who was entitled to a survivor annuity under section 8445, or
 - “(ii) if there was more than 1, the death or remarriage of the last such surviving former spouse (or the death of or entry into a subsequent domestic partnership by the last such surviving former domestic partner),
- a reduction in the employee’s or Member’s annuity under section 8419(a) for the purpose of providing an annuity for such employee’s or Member’s spouse (or domestic partner) in the event such spouse (or domestic partner) survives the employee or Member.
- (2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage (or entry into the subsequent domestic partnership).
 - (3) An election to provide a survivor annuity to an individual under this subsection—
 - “(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or
 - “(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if

appropriate written application is made by such employee or Member at the time of making the election under this subsection.

“(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

“(A) the employee or Member was married to (or in a domestic partnership with) such individual at the time of retirement; and

“(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).”.

(4) in subsection (c)—

(A) by striking the matter before paragraph (2) and inserting the following:

“(c)(1) An employee or Member who is unmarried (and not in a domestic partnership) at the time of retiring under this chapter and who later marries (or enters into a domestic partnership) may irrevocably elect, in a signed writing received by the Office—

“(A) within 2 years after such employee or Member marries (or enters into a domestic partnership), or

“(B) if later, within 2 years after—

“(i) the death or remarriage of any former spouse (or the death of or entry into a subsequent domestic partnership by any domestic partner) of such employee or Member who was entitled to a survivor annuity under section 8445,

“(ii) if more than 1, the death or remarriage of the last such surviving former spouse (or the death of or the entry into a subsequent domestic partnership by the last such surviving domestic partner), a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).”; and

(B) in paragraph (2), by striking “marriage.” and inserting “marriage (or domestic partnership).”; and

(5) in subsection (d)(1)—

(A) by inserting “(or in a domestic partnership)” after “married”; and

(B) by inserting “(or domestic partner)” after “spouse” each place it appears.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 84, is amended by striking the item relating to section 8416 and inserting the following:

“8416. Survivor reduction for a current spouse or a current domestic partner.”.

SEC. 304. SURVIVOR REDUCTION FOR A FORMER SPOUSE OR FORMER DOMESTIC PARTNER.

(a) IN GENERAL.—Section 8417 is amended—

(1) in the catchline, by inserting “**or a former domestic partner**” after “**former spouse**”;

(2) in subsection (a), by inserting “(or a former domestic partner)” after “former spouse”;

(3) in subsection (b)—

(A) in paragraph (1), by inserting “(or former domestic partner)” after “former spouse” each place it appears;

(B) by amending paragraph (2) to read as follows:

“(2) An election under this subsection shall be made at the time of retirement or, if the marriage is dissolved (or the domestic partnership is terminated) after the date of retirement, within 2 years after the date on which the marriage of the former spouse to the employee or Member is so dissolved (or the domestic partnership of the former domestic partner with the employee or Member is so terminated).”; and

(C) in paragraph (3)—

(i) in subparagraph (A)(ii), by inserting “(or a surviving partner)” after “a widow or widower”; and

(ii) by amending subparagraph (B) to read as follows:

“(B) shall not be effective, in the case of an employee or Member who is then married (or in a domestic partnership), unless it is made with the spouse’s (or domestic partner’s) written consent.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 84 of title 5, United States Code, is amended by striking the item relating to section 8417 and inserting the following:

“8417. Survivor reduction for a former spouse or a former domestic partner.”.

SEC. 305. SURVIVOR ELECTIONS; DEPOSIT; OFFSETS.

Section 8418(b) is amended—

(1) by inserting “(or domestic partnership)” after “marriage”; and

(2) by striking “former spouse.” and inserting “former spouse (or former domestic partner).”.

SEC. 306. SURVIVOR REDUCTIONS; COMPUTATION.

Section 8419 is amended—

(1) in subsection (a), by inserting “(or domestic partner)” after “spouse” each place it appears; and

(2) by amending subsection (b) to read as follows:

“(b)(1) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse (or current domestic partner) of a retired employee or Member shall be terminated for each full month—

“(A) after the death of the spouse (or domestic partner); or

“(B) after the dissolution of the spouse’s marriage to (or the termination of the domestic partner’s domestic partnership with) the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse (or domestic partner) is entitled, as a former spouse (or former domestic partner), to a survivor annuity under section 8445.

“(2) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse (or former domestic partner) of a retired employee or Member shall be terminated for each full month after the former spouse remarries (or the former domestic partner enters into a subsequent domestic partnership) before reaching age 55 or dies. This reduction shall be replaced by appropriate reductions under subsection (a) if the retired employee or Member has—

“(A) another former spouse (or former domestic partner) who is entitled to a survivor annuity under section 8445;

“(B) a current spouse to whom the employee or Member was married (or a current domestic partner with whom the employee or Member was in a domestic partnership) at the time of retirement and with respect to whom a survivor annuity was not waived under section 8416(a) or, if waived, with respect to whom an election under section 8416(d) has been made; or

“(C) a current spouse whom the employee or Member married (or current domestic partner with whom the employee or Member entered into a domestic partnership) after retirement and with respect to whom an election has been made under subsection (b) or (c) of section 8416.”.

SEC. 307. INSURABLE INTEREST REDUCTIONS.

Section 8420 is amended—

(1) in subsection (b)(1)—

(A) by striking “married employee or Member” and inserting “employee or Member who is married (or in a domestic partnership);” and

(B) by inserting “(or domestic partner)” after “spouse” each place it appears; and

(2) in subsection (b)(2), by inserting “(or former domestic partner)” after “former spouse”.

SEC. 308. ALTERNATIVE FORMS OF ANNUITIES.

Section 8420a is amended—

(1) in subsection (b)(2)—

(A) in the matter before subparagraph (A), by inserting “(or in a domestic partnership)” after “married”; and

(B) in subparagraph (B), by striking “surviving spouse.” and inserting “surviving spouse (or surviving domestic partner).”;

(2) in subsection (d)—

(A) in paragraph (1), by striking “married,” and inserting “married (or in a domestic partnership),” and

(B) in paragraph (2), by inserting “(or former domestic partner)” after “former spouse” each place it appears; and

(3) in subsection (e), by inserting “(or in a domestic partnership)” after “married”.

SEC. 309. LUMP-SUM BENEFITS; DESIGNATION OF BENEFICIARY; ORDER OF PRECEDENCE.

Section 8424 is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking “the spouse, if any, and any former spouse” and inserting “any spouse or former spouse (and any domestic partner or former domestic partner);” and

(ii) in subparagraph (B), by striking “spouse or former spouse” each place it appears and inserting “spouse or former spouse (or domestic partner or former domestic partner);” and

- (B) in paragraph (2), by striking “spouse or former spouse” each place it appears and inserting “spouse or former spouse (or domestic partner or former domestic partner)”; and
- (2) in subsection (d), by striking “widow or widower” and inserting “widow or widower (or surviving partner)”.

SEC. 310. ANNUITIES: METHODS OF PAYMENT; ELECTION; PURCHASE.

Section 8434(a)(2) is amended—

- (1) in subparagraph (B), by inserting “(or domestic partner)” after “spouse”; and
- (2) in subparagraph (E)(i), by inserting “(or former domestic partner)” after “former spouse”.

SEC. 311. PROTECTIONS FOR SPOUSES, DOMESTIC PARTNERS, FORMER SPOUSES, AND FORMER DOMESTIC PARTNERS.

(a) IN GENERAL.— Section 8435 is amended—

- (1) in the catchline, by striking “**spouses and former spouses**” and inserting “**spouses, domestic partners, former spouses, and former domestic partners**”;
- (2) in subsection (a)—
- (A) in paragraph (1)—
- (i) in subparagraph (A), by striking “A married employee or Member (or former employee or Member)” each place it appears and inserting “An employee or Member, or former employee or former Member, who is married (or in a domestic partnership)”; and
- (ii) in subparagraph (B), by inserting “or domestic partner” after “spouse” each place it appears; and
- (B) in paragraph (2), by inserting “(or domestic partner’s)” after “spouse’s” each place it appears;
- (3) in subsection (b)—
- (A) in paragraph (1)—
- (i) by inserting “(or surviving domestic partner)” after “surviving spouse” each place it appears; and
- (ii) by inserting “(or in a domestic partnership)” after “married”; and
- (B) in paragraph (2)(A), by inserting “(or domestic partner)” after “spouse”;
- (4) in subsection (d)—
- (A) in paragraph (1), by inserting “(or former domestic partner)” after “former spouse” the first 2 places it appears;
- (B) in paragraphs (3) through (6), by inserting “(or former domestic partner)” after “former spouse” each place it appears;
- (C) in paragraph (3)(B), by inserting “(or former domestic partners)” after “former spouses”; and
- (D) in paragraph (3)(A), by inserting “(or surviving domestic partner)” after “surviving spouse”;
- (5) in subsection (e)(1)—
- (A) by striking the matter before subparagraph (B) and inserting the following:
- “(e)(1)(A) A loan or withdrawal under subsection (g) or (h) of section 8433 may be made to an employee or Member who is married (or in a domestic partnership) only if the employee’s or Member’s spouse (or domestic partner) consents to such loan or withdrawal in writing.”; and
- (B) in subparagraph (C), by inserting “(or domestic partner’s)” after “spouse’s” each place it appears; and
- (6) in subsection (g), by inserting “(or domestic partner or former domestic partner)” after “spouse or former spouse”.
- (b) CLERICAL AMENDMENT.—The table of sections for chapter 84 is amended by striking the item relating to section 8435 and inserting the following:

“8435. Protections for spouses, domestic partners, former spouses, and former domestic partners.”.

SEC. 312. JUSTICES AND JUDGES.

Section 8440a(b)(6) is amended by inserting “(or domestic partners)” after “spouses”.

SEC. 313. SURVIVOR ANNUITIES: DEFINITIONS.

Section 8441 is amended—

- (1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following:
- “(3) the term ‘surviving partner’ means the surviving domestic partner of an employee, Member, or annuitant, or of a former employee or Member, who—

“(A) was in a domestic partnership with such employee, Member, or annuitant, or former employee or Member, for at least 9 months immediately before the death of such employee, Member, or annuitant, or former employee or Member; or

“(B) satisfies such other requirement, based on parenthood, as the Office of Personnel Management shall by regulation prescribe based on the definition of a widow or widower under this section.”;

(2) in paragraph (5) (as so redesignated by paragraph (1))—

(A) in subparagraph (A), by inserting “(or surviving partner)” after “widow or widower”; and

(3) by adding at the end the following:

“The Office shall prescribe regulations to provide that, for purposes of applying the provisions of paragraph (5)(A)(ii) (relating to the treatment of a stepchild) in the case of a domestic partnership, rules similar to those prescribed to carry out section 8901(5)(B) in similar circumstances shall apply.”.

SEC. 314. RIGHTS OF A WIDOW, WIDOWER, OR SURVIVING PARTNER.

(a) IN GENERAL.—Section 8442 is amended—

(1) in the catchline, by striking “**widow or widower**” and inserting “**widow, widower, or surviving partner**”;

(2) in subsection (a)—

(A) by inserting “(or surviving partner)” after “widow or widower” each place it appears;

(B) in paragraph (1)(B), by inserting “(or entry into a domestic partnership)” after “marriage”; and

(C) in paragraph (2), by inserting “(or domestic partner)” after “spouse” each place it appears;

(3) in subsection (b), by inserting “(or surviving partner)” after “widow or widower” each place it appears;

(4) in subsection (c)—

(A) in paragraph (1), (in the matter before subparagraph (A)), by inserting “(or a surviving partner with whom in a domestic partnership)” after “widow or widower to whom married”; and

(B) by striking “widow or widower” each place it appears (other than where amended by subparagraph (A)) and inserting “widow or widower (or surviving partner)”;

(5) in subsection (d)—

(A) by striking “widow or widower” each place it appears and inserting “widow or widower (or surviving partner)”;

(B) in paragraph (1)(B), by inserting “(or enters into a subsequent domestic partnership)” after “remarries”;

(C) in paragraph (2)—

(i) by striking “remarriage before” and inserting “remarriage (or entry into a subsequent domestic partnership) before”;

(ii) by striking “remarriage is dissolved by death, divorce, or annulment,” and inserting “remarriage is dissolved by death, divorce, annulment (or subsequent domestic partnership is terminated).”;

(iii) in subparagraph (A), by striking “remarriage,” and inserting “remarriage (or entry into a subsequent domestic partnership).”;

(D) in paragraph (3)—

(i) by inserting “or entry into a subsequent domestic partnership” after “remarriage”; and

(ii) by inserting “(or in a domestic partnership for at least 30 years with)” after “married for at least 30 years to”;

(6) in subsection (e)—

(A) by inserting “(or surviving partner)” after “widow or widower” each place it appears;

(B) by inserting “(or in a domestic partnership with)” after “been married to”; and

(C) by amending paragraph (2) to read as follows:

“(2) the surviving spouse (or surviving domestic partner) of such individual had been previously married to (or in a domestic partnership with) the individual that was subsequently dissolved (or terminated), and the aggregate time married (or in a domestic partnership) is at least 9 months.”;

(7) in subsection (g), by striking “widow or widower” and inserting “widow, widower, or surviving partner” each place it appears; and

(8) in subsection (h)—

(A) by striking “widow or widower” each place it appears and inserting “widow or widower (or surviving partner).”;

(B) by inserting “(or former domestic partner)” after “former spouse” each place it appears.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 84 is amended by striking the item relating to section 8442 and inserting the following:

“8442. Rights of a widow, widower, or surviving partner.”.

SEC. 315. RIGHTS OF A FORMER SPOUSE OR FORMER DOMESTIC PARTNER.

(a) IN GENERAL.—Section 8445 is amended—

(1) in the catchline, by striking “**former spouse**” and inserting “**former spouse or former domestic partner**”;

(2) in subsection (a), by inserting “(or former domestic partner)” after “former spouse”;

(3) in subsection (b)—

(A) by inserting “(or former domestic partner)” after “former spouse” each place it appears; and

(B) in paragraph (2), by inserting “(or surviving partner)” after “widow or widower”;

(4) in subsection (c)(2), by inserting “(or the former domestic partner enters into a subsequent domestic partnership)” after “former spouse remarries”;

(5) in subsection (e), by inserting “(or former domestic partner)” after “former spouse” each place it appears; and

(6) by amending subsection (h) to read as follows:

“(h)(1) Subsection (c)(2), to the extent that it provides for termination of a survivor annuity because of a remarriage (or entry into a subsequent domestic partnership) before age 55, shall not apply if the former spouse (or former domestic partner) was married to (or in a domestic partnership with) the individual on whose service the survivor annuity is based for at least 30 years.

“(2) A remarriage (or entry into a subsequent domestic partnership) described in paragraph (1) shall not be taken into account for purposes of section 8419(b)(1)(B) or any other provision of this chapter which the Director may by regulation identify in order to carry out the purposes of this subsection.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 84 is amended by striking the item relating to section 8445 and inserting the following:

“8445. Rights of a former spouse or former domestic partner.”.

SEC. 316. AUTHORITY OF THE OFFICE OF PERSONNEL MANAGEMENT.

Section 8461(j)(1)(D) is amended by striking “such employees, their spouses, their former spouses, and their survivors” and inserting “such employees and their spouses, domestic partners, former spouses, former domestic partners, and survivors”.

SEC. 317. COST-OF-LIVING ADJUSTMENTS.

Section 8462(c) is amended—

(1) in paragraph (2), by striking “survivor (other than a widow or widower whose annuity is computed under section 8442(g) or a child under section 8443)” and inserting the following: “survivor, other than a widow or widower (or surviving partner) whose annuity is computed under section 8442(g) or a child under section 8443,”;

(2) in paragraph (4) (in the matter before subparagraph (A)), by inserting “(or surviving partner)” after “widow or widower”; and

(3) in paragraph (4)(B)(i), by inserting “(or surviving partner’s)” after “widow’s or widower’s”.

SEC. 318. FIDUCIARY RESPONSIBILITIES; LIABILITY AND PENALTIES.

Section 8477(a)(4)(F) is amended to read as follows:

“(F) a spouse (or domestic partner), sibling, ancestor, lineal descendant, or spouse (or domestic partner) of a lineal descendant of a person described in subparagraph (A), (B), or (D);”.

TITLE IV—INSURANCE BENEFITS

SEC. 401. LIFE INSURANCE.

(a) IN GENERAL.—Chapter 87 is amended—

(1) in section 8701(d)—

(A) in paragraph (1)(A), by inserting “or domestic partner” after “spouse”; and

(B) by adding at the end the following:

“(3) In the case of an individual whose domestic partner has a child by a previous marriage, domestic partnership (as defined under regulations of the Office of Per-

sonnel Management), or otherwise, such child shall, unless adopted by such individual, be treated as a stepchild of such individual.”;

(2) in section 8705(a), by inserting “or surviving domestic partner” after “widow or widower”; and

(3) in section 8714c(b)(1)(A), by striking “spouse;” and inserting “spouse or domestic partner;”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to calendar years beginning after the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 402. HEALTH INSURANCE.

(a) DEFINITIONS.—Section 8901 is amended—

(1) in paragraph (5) (in the matter before subparagraph (A)), by inserting “or domestic partner” after “the spouse”;

(2) in paragraph (8)(B), by striking “or former spouses,” and inserting “former spouses, or former domestic partners,”;

(3) by striking “and” at the end of paragraph (10), by redesignating paragraph (11) as paragraph (12), and by inserting after paragraph (10) the following:

“(11) ‘former domestic partner’ means a domestic partner—

“(A) whose domestic partnership with an employee, former employee, or annuitant has terminated,

“(B) who has not entered into another domestic partnership before age 55 after the domestic partnership to the employee, former employee, or annuitant was terminated,

“(C) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the termination of the domestic partnership to the employee, former employee, or annuitant, and

“(D)(i) who is receiving any portion of a survivor annuity under section 8341(h) or 8445 (or benefits similar to either of the aforementioned annuity benefits under a retirement system for Government employees other than the Civil Service Retirement System or the Federal Employees’ Retirement System),

“(ii) for whom an election has been made under section 8339(j)(3) or 8417(b) (or similar provision of law), or

“(iii) who is otherwise entitled to an annuity or any portion of an annuity as a former domestic partner under a retirement system for Government employees,

except that such term shall not include any such former domestic partner, who has not entered into another domestic partnership, of a former employee whose domestic partnership was terminated after the former employee’s separation from the service (other than by retirement); and”;

(4) by adding after paragraph (12) (as so redesignated by paragraph (3)), as a flush left sentence, the following:

“For purposes of paragraph (5), in the case of an employee or annuitant whose domestic partner has a child by a previous marriage, domestic partnership (as defined under regulations of the Office of Personnel Management), or otherwise, such child shall, unless adopted by such individual, be treated as a stepchild of such individual.”.

(b) CONTRACTING AUTHORITY.—Section 8902 is amended in subsections (g), (j), and (k)(1), by inserting “former domestic partner,” after “former spouse,” each place it appears.

(c) DEBARMENT AND OTHER SANCTIONS.—Section 8902a(a)(1)(B) is amended by striking “or former spouse” and inserting “former spouse, or former domestic partner”.

(d) HEALTH BENEFITS PLANS.—Section 8903(1) is amended—

(1) by inserting “former domestic partners,” after “former spouses,”; and

(2) by inserting “former domestic partner,” after “former spouse,”.

(e) ELECTION OF COVERAGE.—Section 8905 is amended—

(1) in subsection (c), by adding at the end the following:

“(3) The Office shall prescribe regulations to ensure that, in the administration of this subsection, parity of treatment is afforded—

“(A) to former spouses and former domestic partners; and

“(B) to the children of a marriage that has been dissolved and the children of a domestic partnership that has been terminated.”;

(2) in subsection (e)—

(A) by inserting “or domestic partner” after “has a spouse”; and

(B) by striking “either spouse,” and inserting “either spouse or domestic partner,”; and

- (3) in subsections (f) and (g), by inserting “former domestic partner,” after “former spouse,” each place it appears.
- (f) CONTINUED COVERAGE.—Section 8905a is amended by adding at the end the following:
- “(g) The Office shall prescribe regulations to ensure that, in the administration of this section, parity of treatment is afforded—
- “(1) to former spouses and former domestic partners; and
- “(2) to the children of a marriage that has been dissolved and the children of a domestic partnership that has been terminated.”
- (g) COVERAGE OF RESTORED EMPLOYEES AND SURVIVOR OR DISABILITY ANNUITANTS.—Section 8908(b) is amended—
- (1) by inserting “or surviving domestic partner” after “surviving spouse”; and
- (2) by inserting “or a subsequent domestic partnership” after “because of remarriage”.
- (h) REGULATIONS.—Section 8913(c) is amended—
- (1) by striking “and former spouses” and inserting “former spouses, and former domestic partners”; and
- (2) by striking “annuitant or former spouse” and inserting “annuitant, former spouse, or former domestic partner”.
- (i) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contract years beginning after the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 403. ENHANCED DENTAL BENEFITS.

- (a) IN GENERAL.—Chapter 89A is amended—
- (1) in section 8956(a)—
- (A) by inserting “or domestic partner” after “a spouse”; and
- (B) by striking “either spouse,” and inserting “either spouse or either domestic partner (as the case may be),”; and
- (2) in section 8957, by inserting “surviving domestic partner,” after “surviving spouse,”.
- (b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contract years beginning after the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 404. ENHANCED VISION BENEFITS.

- (a) IN GENERAL.—Chapter 89B is amended—
- (1) in section 8986(a)—
- (A) by inserting “or domestic partner” after “a spouse”; and
- (B) by striking “either spouse,” and inserting “either spouse or either domestic partner (as the case may be),”; and
- (2) in section 8987, by inserting “surviving domestic partner,” after “surviving spouse,”.
- (b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contract years beginning after the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 405. LONG-TERM CARE INSURANCE.

- (a) IN GENERAL.—Chapter 90 is amended—
- (1) in section 9001(5)—
- (A) in subparagraph (A), by striking “or (4).” and inserting “or (4) (and the domestic partner of an individual described in paragraph (1), (2), or (4) or of an individual who satisfies paragraph (3) by virtue of having been appointed to a position in the commissioned corps of the Public Health Service or the commissioned corps of the National Oceanic and Atmospheric Administration).”; and
- (B) in subparagraph (C), by inserting “or of the domestic partner of such an individual,” after “(4),”; and
- (2) in section 9002(e)(2)—
- (A) in the heading, by striking “SPOUSAL PARITY” and inserting the following: “PARITY FOR SPOUSE OR DOMESTIC PARTNER”; and
- (B) by inserting “or domestic partner” after “spouse”.
- (b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to calendar years beginning after the end of the 6-month period beginning on the date of the enactment of this Act.

TITLE V—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SEC. 501. REIMBURSEMENT FOR TAXES INCURRED ON MONEY RECEIVED FOR TRAVEL EXPENSES.

(a) IN GENERAL.—Section 5706c is amended—

(1) in subsection (a), by striking “by an employee and such employee’s spouse (if filing jointly),” and inserting “by an employee and such employee’s spouse (or, where allowable, such employee’s domestic partner), if filing jointly,”; and

(2) in subsection (b), by striking “employee and spouse, as the case may be,” and inserting “employee and spouse (or domestic partner), as the case may be”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years beginning after the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 502. RELOCATION EXPENSES OF EMPLOYEES TRANSFERRED OR REEMPLOYED.

(a) IN GENERAL.—Section 5724a(b)(1)(A) is amended by striking “employee’s spouse” and inserting “employee’s spouse (or domestic partner)”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to expenses incurred after the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 503. TAXES ON REIMBURSEMENTS FOR TRAVEL, TRANSPORTATION, AND RELOCATION EXPENSES OF EMPLOYEES TRANSFERRED.

(a) IN GENERAL.—Section 5724b(a) is amended—

(1) by striking “by an employee and such employee’s spouse (if filing jointly),” and inserting “by an employee and such employee’s spouse (or, where allowable, such employee’s domestic partner), if filing jointly,”; and

(2) by striking “employee and spouse, as the case may be,” and inserting “employee and spouse (or domestic partner), as the case may be,”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years beginning after the end of the 6-month period beginning on the date of the enactment of this Act.

SEC. 504. RELOCATION EXPENSES OF AN EMPLOYEE WHO IS PERFORMING AN EXTENDED ASSIGNMENT.

(a) IN GENERAL.—Section 5737(a)(4) is amended by inserting “(or domestic partner)” after “employee and spouse”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to expenses incurred after the end of the 6-month period beginning on the date of the enactment of this Act.

TITLE VI—COMPENSATION FOR WORK INJURIES

SEC. 601. DEFINITIONS.

Section 8101 is amended—

(1) in paragraph (9), by inserting “children (including adopted children) of a domestic partner,” after “adopted children,”;

(2) in paragraph (19), by striking “and” at the end;

(3) in paragraph (20), by striking the period and inserting a semicolon; and

(4) by adding after paragraph (20) the following:

“(21) ‘domestic partner’ means an individual who is in a domestic partnership with another individual of the same sex, as determined by the Secretary of Labor for purposes of this subchapter pursuant to regulations issued by the Secretary, in consultation with the Director of the Office of Personnel Management, consistent with the requirements that—

“(A) both individuals are at least 18 years of age and competent to contract;

“(B) both individuals intend to remain in the domestic partnership indefinitely;

“(C) such individuals—

“(i) have a common residence; or

“(ii) do not have a common residence because of financial, employment-related, or other reasons;

“(D) neither individual is married to or in a domestic partnership with anyone outside of the domestic partnership referred to in subparagraph (B);

“(E) the 2 individuals share responsibility for a significant measure of each other’s common welfare and financial obligations;

“(F) the 2 individuals are not related in a way that, if they were of the opposite sex, would prohibit legal marriage in the jurisdiction in which either of them resides;

“(G) at least 1 of them is an employee or an individual otherwise eligible for coverage under this subchapter based on such individual’s employment or other service; and

“(H) both individuals understand that willful falsification of information within the affidavit or failure to provide appropriate notification of the termination of the domestic partnership may lead to the recovery of the amounts obtained as a result of such falsification or failure (as the case may be), criminal or other penalties, and (in appropriate circumstances) disciplinary action; and

“(22) ‘surviving partner’ means the domestic partner living with or dependent for support on the decedent at the time of his or her death, or living apart for reasonable cause or because of his or her desertion.”.

SEC. 602. DEATH GRATUITY FOR INJURIES INCURRED IN CONNECTION WITH EMPLOYEE’S SERVICE WITH AN ARMED FORCE.

Section 8102a(d) is amended—

(1) in paragraph (1)(A), by striking “surviving spouse.” and inserting “surviving spouse (or surviving partner).”; and

(2) in paragraph (2)(C), by inserting “(including children of a domestic partner)” after “stepchildren”.

SEC. 603. BENEFICIARIES OF AWARDS UNPAID AT DEATH; ORDER OF PRECEDENCE.

Section 8109(a)(D) is amended—

(1) in clause (i), by striking “the widow or widower.” and inserting “the widow or widower (or the surviving partner).”; and

(2) in clause (ii)—

(A) by inserting “(or a surviving partner)” after “a widow or widower”; and

(B) by inserting “(or the surviving partner)” after “the widow or widower”; and

(3) in clause (iii), by striking “no widow or widower,” and inserting “no widow or widower (and no surviving partner).”.

SEC. 604. AUGMENTED COMPENSATION FOR DEPENDENTS.

Section 8110(a) is amended—

(1) in paragraph (3), by striking “and” at the end;

(2) in paragraph (4), by striking the period and inserting “; and”; and

(3) by inserting after paragraph (4) the following:

“(5) a domestic partner, if—

“(A) he or she is a member of the same household as the employee;

“(B) he or she is receiving regular contributions from the employee for his or her support; or

“(C) the employee has been ordered by a court to contribute to his or her support.”.

SEC. 605. LIMITATIONS ON RIGHT TO RECEIVE COMPENSATION.

Section 8116(c) is amended by striking “spouse,” and inserting “spouse (or domestic partner).”.

SEC. 606. COMPENSATION IN CASE OF DEATH.

Section 8133 is amended—

(1) in subsection (a)—

(A) in paragraphs (1) and (2), by striking “the widow or widower,” and inserting “the widow or widower (or the surviving partner).”; and

(B) in paragraph (2), by inserting “(or the surviving partner)” after “for the widow or widower”; and

(C) in paragraph (3), by striking “no widow or widower,” and inserting “no widow or widower (and no surviving partner).”; and

(D) in paragraphs (4) and (5), by inserting “surviving partner,” after “widow, widower,” each place it appears; and

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

“(1) a widow or widower dies or remarries (or a surviving partner dies or enters into a subsequent domestic partnership) before reaching age 55;” and

(B) in the last sentence—

(i) by inserting “(or surviving partner)” after “widow or widower”; and

(ii) by inserting “(or more than one domestic partner)” after “husband or wife”.

SEC. 607. LUMP-SUM PAYMENT.

Section 8135(b) is amended to read as follows:

“(b) On remarriage (or entry into a subsequent domestic partnership) before reaching age 55 a widow or widower (or surviving partner) entitled to compensation under section 8133 of this title, shall be paid a lump sum equal to twenty-four times the monthly compensation payment (excluding compensation on account of another individual) to which that individual was entitled immediately before the remarriage (or subsequent domestic partnership).”.

SEC. 608. REGULATIONS.

(a) **IN GENERAL.**—The Secretary of Labor may prescribe regulations to carry out this title and the amendments made by this title.

(b) **CONSULTATION.**—The Secretary of Labor shall consult with the Director of the Office of Personnel Management and the heads of any other agencies whose programs are affected by this Act in order to standardize, to the extent possible, the process for establishing the existence of a domestic partnership under each such program.

SEC. 609. EFFECTIVE DATE.

(a) **IN GENERAL.**—Subject to succeeding provisions of this section, this title and the amendments made by this title—

(1) shall take effect on the date of enactment of this Act; and

(2) shall apply with respect to any injury or death occurring before, on, or after such date of enactment.

(b) **TIMELY CLAIM REQUIRED; LIMITATION ON PAYMENTS.**—No compensation shall be payable, by virtue of the enactment of this title—

(1) unless timely claim therefor is filed in accordance with the provisions of sections 8122 or 8193 of title 5, United States Code (as applicable), and subsection (c); or

(2) with respect to any period commencing before the date of enactment of this Act.

(c) **ALLOWABILITY OF CLAIMS.**—In the case of an original claim for compensation for a disability or death that occurred before the date of enactment of this Act (and which would not otherwise be payable, but for the enactment of the amendments made by this title)—

(1) such claim shall not be allowed if, as of such date of enactment, a claim based on such disability or death would no longer be timely (determined in accordance with such section 8122 or 8193 (as applicable), before the application of paragraph (2)); and

(2) the timeliness of any such claim, if not precluded by paragraph (1), shall be determined—

(A) by applying the provisions of such section 8122 or 8193 (as applicable); and

(B) as if the time limitations of such section 8122 or 8193 (as applicable) did not begin to run until the date on which implementing regulations under section 608 become effective.

(d) **PAYMENTS FOR PRIOR PERIODS NOT AFFECTED.**—No recovery shall be made of compensation paid to any individual whose entitlement to compensation is terminated or reduced as a result of the enactment of this title.

TITLE VII—PROVISIONS RELATING TO EMPLOYMENT OF RELATIVES AND OTHER MATTERS

SEC. 701. EMPLOYMENT OF RELATIVES; RESTRICTIONS.

Section 3110(a)(3) is amended by inserting “domestic partner,” after “husband, wife,”.

SEC. 702. SETTLEMENT OF ACCOUNTS.

(a) **DEFINITION.**—Section 5581 is amended—

(1) in paragraph (1), by striking “and” at the end;

(2) in paragraph (2), by striking “by Federal statute.” at the end and inserting “by Federal statute; and”; and

(3) by adding at the end the following:

“(3) ‘surviving partner’ has the meaning given it by sections 8341 and 8441, respectively.”

(b) ORDER OF PRECEDENCE.—Section 5582(b) is amended by inserting “(or surviving partner)” after “widow or widower”.

SEC. 703. BENEFITS FOR CAPTIVES.

Section 5569(j) is amended by adding at the end the following: “Such regulations shall include provisions to ensure that, in the administration of this section, a domestic partner shall be afforded the same status as a spouse.”

SEC. 704. COMPENSATION FOR DISABILITY OR DEATH.

Section 5570 is amended by adding at the end the following:
“(h) Regulations to carry out this section shall include provisions to ensure that, in the administration of this section, a domestic partner shall be afforded the same status as a spouse.”

SEC. 705. FAMILY AND MEDICAL LEAVE.

(a) DEFINITION.—Section 6381(6) is amended (in the matter before subparagraph (A)), by inserting “or a biological, adopted, or foster child of the domestic partner of the employee,” before “who is”.

(b) LEAVE REQUIREMENT.—Section 6382 is amended in subsections (a)(1)(C) and (e)(2)(A) by striking “spouse,” and inserting “spouse (or domestic partner).”

(c) CERTIFICATION.—Section 6383 is amended in subsections (a) and (b)(4)(A) by striking “spouse,” each place it appears and inserting “spouse (or domestic partner).”

TITLE VIII—ADDITIONAL PROVISIONS

SEC. 801. APPLICABILITY.

This title applies with respect to—

(1) benefits in the nature of family, medical, and emergency leave, as provided for under—

(A) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), insofar as that Act applies to the Government Accountability Office and the Library of Congress;

(B) section 202 of the Congressional Accountability Act of 1995 (2 U.S.C. 1312); or

(C) section 412 of title 3, United States Code;

(2) travel, transportation, and related payments and benefits, as provided for under—

(A) chapter 9 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4081 et seq.); or

(B) section 1599b of title 10, United States Code;

(3) benefits for members of the commissioned officer corps of the National Oceanic and Atmospheric Administration, as provided for under—

(A) section 261 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071); or

(B) any other provisions of title 10, United States Code (apart from those made applicable by the provision of law cited in subparagraph (A)); and

(4) benefits, provided for under any other provisions of law, which (as determined by the President or a designee)—

(A) relate to employees or annuitants (as those terms are defined by section 2110 of title 5, United States Code); and

(B) are necessary to carry out the purposes of this Act with respect to benefits.

SEC. 802. REGULATIONS.

The President (or designee) shall prescribe any regulations necessary to ensure that the provisions of law identified in or under section 801 are administered in a manner consistent with the purposes of this Act.

TITLE IX—AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978

SEC. 901. AMENDMENT TO THE ETHICS IN GOVERNMENT ACT OF 1978.

The Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by adding at the end of title I the following:

“DOMESTIC PARTNERS

“SEC. 112. (a) An employee, former employee, or annuitant and the domestic partner of such employee, former employee, or annuitant (as the case may be) shall be subject to the provisions of law cited in subsection (b) to the same extent and in the same manner as in the case of a married employee, former employee, or annuitant and the spouse of such employee, former employee, or annuitant (as the case may be).

“(b) The provisions of law cited in this subsection are as follows:

“(1) The preceding provisions of this title (relating to financial disclosure requirements of Federal personnel) and the provisions of title V (relating to Government-wide limitations on outside earned income and employment).

“(2) Regulations prescribed under section 7301 of title 5, United States Code (relating to regulations for the conduct of employees in the executive branch).

“(3) Section 7351 of title 5, United States Code (relating to gifts to superiors).

“(4) Section 7353 of title 5, United States Code (relating to gifts to Federal employees).

“(5) Chapter 11 of title 18, United States Code (relating to bribery, graft, and conflicts of interest).

“(6) Section 7342 of title 5, United States Code (relating to receipt and disposition of foreign gifts and decorations).

“(7) Section 1353 of title 31, United States Code (relating to acceptance of travel and related expenses from non-Federal sources).

“(8) Sections 4941 and 4946 of the Internal Revenue Code of 1986 (relating to taxes on self-dealing and definitions and special rules).

“(9) Section 455 of title 28, United States Code (relating to disqualification of justice, judge, or magistrate judge).

“(c) For purposes of this section, the term ‘domestic partner’ has the meaning given such term by section 2110 of title 5, United States Code.”.

TITLE X—REPORTING REQUIREMENTS

SEC. 1001. REPORT OF THE PRESIDENT.

Not later than 6 months after the date of the enactment of this Act, the President shall transmit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate—

(1) a report on the implementation of this Act, including the amendments made by this Act; and

(2) a description of any further measures that should be taken in order to carry out the purposes of this Act, including recommendations for any legislation or administrative action that may be necessary.

SEC. 1002. GAO REPORT.

Not later than 2 years after the date of the enactment of this Act, the Government Accountability Office shall transmit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the effect that this Act and any amendments made by this Act have had on premiums or any other periodic charges payable by enrollees under chapter 89 of title 5, United States Code (relating to the Federal employees health benefits program), and the impact of extending benefits to domestic partners on the employee retention and recruitment efforts by the Federal government.

PURPOSE AND SUMMARY

H.R. 2517, the “Domestic Partnership Benefits and Obligations Act”, was introduced on May 20, 2009, by Representatives Tammy Baldwin (D-WI) and Ileana Ros-Lehtinen (R-FL). The legislation would make available certain employment benefits to federal employees, former employees, and annuitants in same sex domestic partnerships.

In order to receive benefits, the legislation would require a federal employee, former employee, or annuitant with a same sex domestic partner to certify that the relationship satisfies certain criteria for establishing a domestic partnership under the Act. Once

a domestic partnership is established, the employee and the domestic partner of the employee would be eligible to receive employment benefits, including health care insurance under the Federal Employee Health Benefits Plan. The employee and the domestic partner of the employee would also be subject to the same ethical and financial obligations that apply to a married federal employee and his or her spouse. As amended, H.R. 2517 would also require the administration within 6 months to report to Congress on the implementation of the Act, and provide recommendations for additional measures that may be necessary in order to carry out the purposes of the Act.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2517 would make employment benefits available to federal employees, former employees, and annuitants in same sex domestic partnerships. Many federal benefits that are currently available to married federal employees, such as health insurance or survivor retirement benefits, among others, are not offered to gay and lesbian federal employees and their domestic partners. On June 17, 2009, President Obama issued a memorandum to all government agencies instructing them to identify and report back to the Office of Personnel Management on any benefits that may be made available, under existing statutory authority, to federal employees with same sex domestic partners. The President noted, however, that extending many important employment benefits, such as health care, would require legislative action, and endorsed passage of H.R. 2517 to ensure equal treatment of all federal employees in health care coverage and other important benefit areas.¹

In extending these benefits to employees in same sex domestic partnerships, H.R. 2517 is intended to provide for the equitable treatment of all employees in the civil service. The legislation will allow the federal government to uphold the merit system principle that equal pay be provided for equal work. It will ensure that the federal government is able to maintain its role as a model employer in the United States, and it will help the government attract the best and brightest Americans to Federal service.

According to the Bureau of Labor Statistics, nearly 13% of an employee's compensation comes in the form of insurance and retirement benefits. When these benefits are made available to members of an employee's family or household, it significantly increases the overall compensation received by the employee. Accordingly, a gay or lesbian civilian employee performing the same job, with identical duties, at the same pay grade, ultimately receives tens of thousands of dollars less in compensation than his or her married counterpart over the course of a career. It is difficult to square this reality with the merit system principle that requires "equal pay for equal work."²

Moreover, as the nation's largest civilian employer, the federal government has historically been a leader in offering benefits to its

¹See Statement by the President on the Presidential Memorandum on Federal Benefits and Non-Discrimination, and Support of the Lieberman-Baldwin Benefits Legislation. (June 17, 2009) http://www.whitehouse.gov/the_press_office/Statement-by-the-President-on-the-Presidential-Memorandum-on-Federal-Benefits-and-Non-Discrimination-and-Support-of-the-Lieberman-Baldwin-Benefits-Legislation/ (last viewed Nov. 23, 2009).

²See 5 U.S.C. § 2301(b)(3).

employees and fostering an equitable workplace. However, when it comes to offering domestic partner benefits, the federal government is clearly lagging behind other public and private sector employers. For example, the number of Fortune 500 companies that extend benefits to employees with same-sex partners has grown significantly from forty-six companies (9%) in 1997 to two hundred and eighty-six companies (57%) in 2009.³ Furthermore, almost 10,000 employers nationally offer benefits to domestic partners. Over five hundred of these employers are in the public sector. These employers include 23 State governments and the District of Columbia, over 150 local governments, and hundreds of educational institutions and non-profit entities.

As these statistics indicate, providing domestic partner benefits not only fosters a more equitable work environment, but makes good business sense. As the federal government prepares for a wave of upcoming retirements and competes for talent in the private sector, its recruitment and retention efforts similarly will be enhanced by taking this step toward a more progressive, equitable work environment.

H.R. 2517 will provide federal employees with same-sex domestic partners access to the major federal employee benefit programs, including health insurance, retirement and disability, dental and vision, group life insurance, long-term care insurance, compensation for work injuries, family and medical leave, travel and transportation, benefits for disability, death, and captivity, and other family benefits. In addition, employees and their domestic partners would assume the same obligations as those that apply to married employees and their spouses, such as financial disclosure requirements, conflict of interest, and anti-nepotism rules.⁴

LEGISLATIVE HISTORY

The Subcommittee on Federal Workforce, Postal Service, and the District of Columbia held a hearing on the legislation on July 8, 2009.⁵ At the hearing, the Office of Personnel Management testified that a number of technical changes and corrections were needed in order to guarantee the general applicability of the bill's provisions across all categories of personnel benefits, and to provide for practical administration of the benefits. Moreover, the hearing revealed that the bill, as introduced, would not extend domestic partnership benefits to current annuitants, and that there was ambiguity as to whether the bill would permit current employees to carry the same benefits into retirement.

On July 24, 2009, the Federal Workforce Subcommittee ordered that H.R. 2517 be reported to the full Committee by a 5–3 vote. At

³Human Rights Campaign Foundation, *The State of the Workplace for Gay, Lesbian, Bi-sexual, and Transgender Americans*, 2009.

⁴As Rep. Baldwin noted in testimony before the Federal Workforce Subcommittee, she is not required to disclose the financial interests of her partner, as is required of married Members of Congress and other government officials. "Surely, the public interest requires that [financial disclosure and conflict of interest] obligations apply also to partners of gay and lesbian office holders."

⁵The Subcommittee heard testimony from the Honorable Tammy Baldwin; Office of Personnel Management Director John Berry; M. V. Lee Badgett, Research Director of the Williams Institute on Sexual Orientation Law and Public Policy at the UCLA School of Law; Gregory A. Franklin, Assistant Executive Officer, Health Benefit Services, California Public Employees' Retirement System; Ambassador Michael Guest, former career Foreign Service officer; Rev. Lorilyn (Candy) Holmes; Frank S. Page, Ph.D., and; Carolyn E. Wright, Vice President, Corporate Human Resources, American Airlines.

the business meeting, the Subcommittee adopted an amendment, offered by Chairman Lynch, providing for these technical changes to the bill and clarifying the applicability of its provisions with regard to future and current retirees. The Subcommittee did not adopt an amendment that would have made the bill's provisions applicable to employees with opposite sex domestic partners.⁶

The Senate Committee on Homeland Security and Governmental Affairs held a hearing on companion legislation, S. 1102, on October 15, 2009.

The Oversight and Government Reform Committee held a markup of the bill on November 18, 2009. The Committee ordered the bill, as amended, to be reported favorably by a 23–12 vote.

SECTION-BY-SECTION

Sec. 1. Short title; references; table of contents

The short title of the bill is the Domestic Partnership Benefits and Obligations Act of 2009.

This section states that any changes to existing law shall be considered to be made to a section or other provision of title 5, United States Code, unless otherwise specified.

The section includes a table of contents.

Title I—Domestic Partnerships

Sec. 101. Domestic partnerships

This section would amend chapter 21 of title 5, United States Code, by adding a new section 2110, which sets forth the process for establishing a “domestic partnership” under the Act.

In order to establish a domestic partnership, for the purposes of receiving federal employment benefits, subsection 2110(a) requires an employee, former employee, or annuitant to file an affidavit in such form and manner as the Office of Personnel Management prescribes through regulation. The employee, former employee, or annuitant will be required to attest that his or her domestic partnership meets the criteria for establishing a domestic partnership as specified in paragraphs (1) through (9) of this section.

An affidavit will not be effective for purposes of this section unless the filing individual is an employee, former employee, or annuitant as of the time of filing.

An affidavit will remain in effect until the earlier of the date of the death of either individual or the date as of which the domestic partnership is otherwise terminated, as determined under regulations issued by the Office of Personnel Management.

The new section 2110(b) provides a definition of “domestic partner” for the purposes of this section and the provisions of law to which it applies.

⁶The Committee believes that providing domestic partner benefits to same sex couples takes an important first step toward a more inclusive federal workplace, is manageable from a cost perspective, and addresses the inequality currently facing employees in committed, same sex relationships. In addition, federal employees living with opposite sex domestic partners have the option of marriage, which would entitle the employee and his or her spouse to the receipt of these benefits. Same sex partners may only get married in a handful of states. Even in these cases, the federal government does not recognize the marriage because of the Defense of Marriage Act (DOMA). H.R. 2517 does not affect DOMA. Therefore, under current OPM guidelines, same sex partners, even where married, are ineligible to receive these benefits as spousal benefits.

The new section 2110(c) defines the term “employee” for the purposes of this section and the provisions of law to which it applies. It further provides authority to the President or designee to determine through regulation that any other individual who is employed by the Government is an “employee” for the purposes of this section. A technician (within the meaning of section 8337(h) of title 5) and, notwithstanding any provision of chapter 43 of title 38, a member of the armed forces are not considered employees for the purposes of this section.

The new section 2110(d) provides a definition of the term “annuitant” for the purposes of this section and the provisions of law to which it applies.

The new section 2110(e), concerning “confidentiality,” prohibits any individual from using the information obtained under subsection (a) for any purpose other than the administration of any provision of law to which this section applies. An individual is further prohibited from furnishing the information to anyone, or allowing anyone to gain access to the information, except for an individual who needs the information to administer a provision of law to which this section applies or to a member of the domestic partnership.

The new section 2110(f) states that this section applies for purposes of the provisions of this title (excluding chapter 81) and any provision of law identified in or under title VIII of this Act.

Title II—Civil Service Retirement System

Sec. 201. Definitions

This section amends section 8331 of title 5 by providing a definition of “former domestic partner.”

Sec. 202. Creditable service

This section amends section 8332 of title 5 by requiring the Office of Personnel Management to provide that domestic partners and former domestic partners (as applicable) be considered for the purposes of creditable service determinations and payments (based on such determinations) in a manner consistent with existing provisions of section 8332.

Sec. 203. Computation of annuity

This section amends section 8339 of title 5 by providing that a domestic partner, former domestic partner, or surviving partner (as applicable) be considered for the purposes of election, waiver, computation, and termination of, or entitlement to, a survivor annuity in a manner consistent with existing provisions of section 8339.

Sec. 204. Cost-of-living adjustment of annuities

This section amends section 8340 of title 5 to provide that a surviving partner or former domestic partner (as applicable) be eligible for an annuity increase in a manner consistent with the existing provisions of section 8340.

Sec. 205. Survivor annuities

This section amends section 8341 of title 5 by providing a definition of “surviving partner” and “former domestic partner.” The sec-

tion further requires the Office of Personnel Management to prescribe regulations for the treatment of children of a domestic partner in a manner consistent with the rules for stepchildren under such section. The section further amends section 8341 by providing that a domestic partner, former domestic partner, surviving partner, or surviving domestic partner (as applicable) be considered for the purposes of entitlement to and computation, commencement, termination and/or restoration of a survivor annuity in a manner consistent with the existing provisions of section 8341.

Sec. 206. Lump-sum benefits; designation of beneficiary; order of preference

This section amends section 8342 of title 5 by adding surviving partner as the primary beneficiary for any payable lump-sum benefits in the event the employee or Member has not designated a different beneficiary or beneficiaries. The section is further amended by providing that a domestic partner or former domestic partner (as applicable) be notified or consent to any payment made under such section in a manner consistent with the existing provisions of section 8342.

Sec. 207. Alternative forms of annuities

This section amends section 8343a of title 5 by providing that an individual in a domestic partnership be provided with an alternative form of annuity in a manner and under such circumstances as would be consistent with existing provisions of section 8343a.

Sec. 208. Administration; regulations

This section amends section 8347 of title 5 by requiring the Director of Central Intelligence to collect deposits made by domestic partners and former domestic partners in a manner consistent with the existing provisions of section 8347.

Sec. 209. Participation in the Thrift Savings Plan

This section amends section 8351 of title 5 by providing for notification of a domestic partner or former domestic partner (as applicable) in a manner consistent with the existing provisions of section 8351.

Title III—Federal Employees' Retirement System

Sec. 301. Definitions

This section amends section 8401 of title 5 by providing a definition of "former domestic partner."

Sec. 302. Creditable service

This section amends section 8411 of title 5 by requiring the Office of Personnel Management to provide that domestic partners and former domestic partners (as applicable) be considered for the purposes of creditable service determinations and payments (based on such determinations) in a manner consistent with existing provisions of section 8411.

Sec. 303. Survivor reduction for a current spouse or a current domestic partner

This section amends section 8416 of title 5 by providing that a domestic partner, former domestic partner, or surviving domestic partner (as applicable) be considered for the purposes of entitlement to or waiver of a survivor annuity, or a reduction in a current annuity in a manner consistent with existing provisions of section 8416. This section also amends the catchline of section 8416 and makes clerical amendments to reflect such changes.

Sec. 304. Survivor reduction for a former spouse or former domestic partner

This section amends section 8417 of title 5 by providing that a former domestic partner be considered for the purposes of entitlement to a survivor annuity and a corresponding election and reduction to an employee or Member's annuity in a manner consistent with existing provisions of section 8417.

Sec. 305. Survivor elections; deposit; offsets

This section amends section 8418 of title 5 by providing that a former domestic partner be considered for the purposes of any reduction in an annuity in a manner consistent with existing provisions of section 8418.

Sec. 306. Survivor reductions; computation

This section amends section 8419 of title 5 by providing that a domestic partner or former domestic partner (as applicable) be considered for the purposes of a reduction in an annuity or a termination of any such reduction in a manner consistent with existing provisions of section 8419.

Sec. 307. Insurable interest reductions

This section amends section 8420 of title 5 by providing that a domestic partner be considered for the purposes of the availability of an insurable interest reduction to an annuity in a manner consistent with existing provisions of section 8420.

Sec. 308. Alternative forms of annuities

This section amends section 8420a of title 5 by providing that a domestic partner, surviving domestic partner, or former domestic partner (as applicable) be considered for the purposes of the availability of an alternative form of annuity in a manner and under such circumstances as would be consistent with existing provisions of section 8420a.

Sec. 309. Lump-Sum benefits; designation of beneficiary; order of precedence

This section amends section 8424 of title 5 by providing that a domestic partner or former domestic partner (as applicable) be considered for the purposes of notification regarding a payable lump-sum benefit in a manner consistent with existing provisions of section 8424. This section further amends section 8424 by providing that any lump sum benefit be payable to a surviving partner in the event there is no beneficiary designated by the employee or Member.

Sec. 310. Annuities: methods of payment; election; purchase

This section amends section 8434 of title 5 by providing that a domestic partner or former domestic partner (as applicable) be considered for the purposes of payment of an annuity in a manner consistent with existing provisions of section 8434.

Sec. 311. Protections for spouses, domestic partners, former spouses, and former domestic partners

This section amends section 8435 of title 5 by providing that domestic partners, former domestic partners, and surviving domestic partners (as applicable) be considered for the purposes of notification and other protections regarding withdrawals and elections by an employee or Member, and for the purposes of entitlement to and calculation of a survivor annuity under this section in a manner consistent with existing provisions of section 8435. This section also amends the catchline of section 8435 and makes clerical amendments to reflect such changes.

Sec. 312. Justices and judges

This section amends section 8440a of title 5 by providing that domestic partners of justices or judges be considered for the purposes of rights relating to contributions to the Thrift Savings Fund in a manner consistent with existing provisions of section 8440a.

Sec. 313. Survivor annuities; definitions

This section amends section 8441 of title 5 by providing a definition of “surviving partner.” The section further requires the Office of Personnel Management to prescribe regulations for the treatment of children of a domestic partner in a manner consistent with the rules for stepchildren under such section.

Sec. 314. Rights of a widow, widower, or surviving partner

This section amends section 8442 of title 5 by providing that domestic partners or surviving partners (as applicable) be considered for the purposes of entitlement to and computation, commencement, termination, and payment of a survivor annuity or lump sum credit in a manner consistent with existing provisions of section 8442. This section also amends the catchline of section 8442 and makes clerical amendments to reflect such changes.

Sec. 315. Rights of a former spouse or former domestic partner

This section amends section 8445 of title 5 by providing that former domestic partners be considered for the purposes of entitlement to and calculation, commencement, and termination of an annuity in a manner consistent with existing provisions of section 8445. This section also amends the catchline of section 8445 and makes clerical amendments to reflect such changes.

Sec. 316. Authority of the Office of Personnel Management

This section amends section 8461 of title 5 by requiring the Director of Central Intelligence to collect deposits made by domestic partners and former domestic partners in a manner consistent with the existing provisions of section 8461.

Sec. 317. Cost-of-living adjustments

This section amends section 8462 of title 5 by providing that surviving partners be considered for the purposes of annuity increases in a manner consistent with existing provisions of section 8462.

Sec. 318. Fiduciary responsibilities; liability and penalties

This section amends section 8477 of title 5 by providing that a party of interest includes a domestic partner or domestic partner of a lineal descendant for the purposes of section 8477.

Title IV—Insurance Benefits

Sec. 401. Life insurance

This section amends Chapter 87 of title 5 by providing that a family member of an eligible individual includes a domestic partner for the purposes of such Chapter. The section also requires that children of a domestic partner be treated as stepchildren for the purposes of such Chapter. The section further requires that a claim be paid to a surviving domestic partner in the event an employee has not designated a different beneficiary. This section amends section 8714c by providing that a domestic partner be considered for the purposes of optional life insurance plans in a manner consistent with existing provisions of section 8714c. The effective date for the amendments made by this section is the calendar year beginning after the end of the 6-month period beginning on the date of enactment of this Act.

Sec. 402. Health insurance

This section amends Chapter 89 of title 5 by amending the definition of family member to include the domestic partner of an eligible enrollee for the purposes of such Chapter. This change will allow a domestic partner of an employee, former employee, or annuitant to be enrolled in a Federal Employee Health Benefits plan under family coverage in a manner consistent with existing provisions of such Chapter.

The section also provides a definition of former domestic partner for the purposes of Chapter 89. The section also requires that children of a domestic partner be treated as stepchildren for the purposes of this Chapter.

This section amends section 8902 of title 5 by adding former domestic partner to a list of individuals who must be covered by a plan in order for that plan to contract with the Office of Personnel Management. The amended definition of “family member,” which includes a domestic partner, would also apply to this requirement. In addition, a family member or former domestic partner will be entitled to direct access to care and to have payment or reimbursement in a manner consistent with existing provisions of such section.

This section also amends section 8902a of title 5 by providing that a family member or former domestic partner be considered for the purposes of debarment or other sanctions imposed on a carrier in a manner consistent with existing provisions and requirements in section 8902a.

This section amends section 8903 of title 5 by authorizing the Office of Personnel Management to contract for a Service Benefit

Plan that includes members of an employee's family and former domestic partners in a manner consistent with existing provisions of section 8903.

This section amends section 8905 of title 5 by requiring the Office of Personnel Management to prescribe regulations to ensure parity of treatment in the election of health coverage as to former spouses and former domestic partners. Such regulations will also be required to ensure parity of treatment in the election of health coverage as to children of a marriage that has been dissolved and children of a domestic partnership that has terminated. This section also allows a domestic partner who is otherwise eligible to enroll in a health benefits plan to enroll either as an individual or as a family member, but the individual may not enroll both as an employee, annuitant, or other eligible individual and as a member of the family. This section further allows a former domestic partner to elect to change coverage in a manner consistent with existing provisions of section 8905.

This section also amends section 8905a of title 5 by requiring the Office of Personnel Management to prescribe regulations to ensure parity of treatment in the continuation of health coverage as to former spouses and former domestic partners. Such regulations will also be required to ensure parity of treatment in the continuation of health coverage as to children of a marriage that has been dissolved and children of a domestic partnership that has terminated.

This section also amends section 8908 of title 5 by providing that a surviving domestic partner be eligible to re-enroll in a health benefits plan under such conditions as would be consistent with existing provisions of section 8908.

The section amends section 8913 of title 5 by providing that domestic partners and former domestic partners be considered for the purposes of regulations issued by the Office of Personnel Management regarding the beginning and ending dates of coverage under a health benefit plan in a manner consistent with existing provisions of section 8913.

The amendments made by this section will apply with respect to contract years beginning after the end of the 6-month period beginning on the date of enactment of this Act.

Sec. 403. Enhanced dental benefits

This section amends Chapter 89A of title 5 by providing that a domestic partner, who is eligible to enroll in a dental benefits plan both as an individual and as a member of family, may enroll as an employee, annuitant, or other eligible individual or as a member of the family, but not as both.

This section amends section 8957 of title 5 by providing that a surviving domestic partner be eligible to continue enrollment in a dental benefits plan in a manner consistent with existing provisions of section 8957.

The amendments made by this section will apply with respect to contract years beginning after the end of the 6-month period beginning on the date of the enactment of this Act.

Sec. 404. Enhanced vision benefits

This section amends Chapter 89B of title 5 by providing that a domestic partner, who is eligible to enroll in a vision benefits plan

both as an individual and as a member of family, may enroll as an employee, annuitant, or other eligible individual or as a member of the family, but not as both.

This section amends section 8987 of title 5 by providing that a surviving domestic partner be eligible to continue enrollment in a vision benefits plan in a manner consistent with existing provisions of section 8987.

The amendments made by this section will apply with respect to contract years beginning after the end of the 6-month period beginning on the date of the enactment of this Act.

Sec. 405. Long-term care insurance

This section amends section 9001 of title 5 by providing that a domestic partner be a qualified relative for the purposes of eligibility to obtain long-term care insurance coverage under Chapter 90 of title 5.

This section also amends section 9002 of title 5 by providing that a domestic partner of an individual, for the purposes of underwriting, be treated as nearly as practicable as an individual is treated.

The amendments made by this section will apply with respect to calendar years beginning after the end of the 6-month period beginning on the date of enactment of this Act.

Title V—Travel, Transportation, and Subsistence

Sec. 501. Reimbursement for taxes incurred on money received for travel expenses

This section amends section 5706c by providing the head of an agency or department with the authority to reimburse an employee for taxes incurred by an employee and the employee's domestic partner (where joint filing by the employee and domestic partner is allowable) on account of any travel or transportation reimbursement received.

Sec. 502. Relocation expenses of employees transferred or reemployed

This section amends section 5724a by providing an agency with the authority to pay the transportation expenses of an employee and the employee's domestic partner when the employee is transferred in the interest of the Government.

Sec. 503. Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred

This section amends section 5724b by providing an agency with the authority to reimburse an employee for taxes incurred by an employee and the employee's domestic partner (where joint filing by the employee and domestic partner is allowable) on account of any moving or storage expenses for which reimbursement is provided.

Sec. 504. Relocation expenses of an employee who is performing an extended assignment

This section amends section 5737 of title 5 by providing an agency with the authority to pay the travel and transportation expenses

of an employee and the employee's domestic partner to seek a new residence at the employee's assignment location if the employee is assigned from the employee's official station to a duty station for a period of not less than 6 months and not greater than 30 months.

Title VI—Compensation for Work Injuries

Sec. 601. Definitions

This section amends section 8101 of title 5 by amending the definition of children to include children (and adopted children) of a domestic partner. This section further provides a definition of "domestic partner" and "surviving partner" for the purposes of Subchapter I of Chapter 81.

Sec. 602. Death gratuity for injuries incurred in connection with employee's service with an armed force

This section amends section 8102a by providing that a death gratuity be paid to the surviving partner of an employee who dies in connection with the employee's service with an Armed Force in a contingency operation, in a manner consistent with existing provisions of section 8102a. Subject to the order of precedence in this section, the children of a domestic partner may also be considered for the purposes of the death gratuity authorized by this section.

Sec. 603. Beneficiaries of awards unpaid at death; order of precedence

This section amends section 8109 of title 5 and the order of precedence in such section to account for the surviving partner of an individual for the purposes of any compensation that is unpaid at the time of death of the individual.

Sec. 604. Augmented compensation for dependents

This section amends section 8110 of title 5 by adding a "domestic partner" to the definition of "dependent" for the purposes of augmented compensation under section 8110.

Sec. 605. Limitations on right to receive compensation

This section amends section 8116 of title 5 by providing that a domestic partner of an employee is limited to the exclusive remedies provided by Subchapter I in the case of the death or injury of an employee in accordance with existing provisions of section 8116.

Sec. 606. Compensation in the case of death

This section amends section 8133 of title 5 and the order of precedence in such section to account for the surviving partner of an individual for the purposes of any compensation payable upon the death of an employee if the death results from an injury sustained in the performance of duty and in accordance with the existing provisions of section 8133.

Sec. 607. Lump-sum payment

This section amends section 8135 of title 5 by providing that a surviving partner be considered for the purposes of a lump sum

payment in a manner consistent with the existing provisions of section 8135.

Sec. 608. Regulations

This section provides the Secretary of Labor with authority to issue regulations to carry out this title and the amendments made by this title. The Secretary of Labor is required to consult with the Director of the Office of Personnel Management and the heads of any other agencies whose programs are affected by this Act in order to standardize, to the extent possible, the process for establishing a domestic partnership under each such program.

Sec. 609. Effective date

This title and the amendments made by this title shall take effect on the date of enactment of this act.

This title and the amendments to Chapter 81 made by this title are intended to apply with respect to any injury or death occurring before, on, or after the date of enactment of this Act, subject to the following conditions. Compensation shall be payable, retroactive to the date of enactment, but only with respect to any period commencing on or after the date of enactment. Any claim shall be considered timely if it has not expired (pursuant to the provisions of section 8122 and 8193) as of the date of enactment, and the period for filing any such claim that remains unexpired on the date of enactment shall be extended as if the time limitations in section 8122 or 8193 started on the day of enactment. No recovery shall be made of compensation paid to any individual whose entitlement to compensation is terminated or reduced as a result of the enactment of this title.

Title VII—Provisions Relating to Employment of Relatives and Other Matters

Sec. 701. Employment of relatives; restrictions

This section amends section 3110 of title 5 by adding a domestic partner to the list of relatives that fall under the restrictions on appointment and related prohibitions in section 3110.

Sec. 702. Settlement of accounts

This section amends section 5581 and 5582 of title 5 by providing that a surviving partner be considered for the purposes of the order of precedence established in section 5582 with respect to settlement of accounts of deceased employees.

Sec. 703. Benefits for captives

This section amends section 5569 of title 5 by providing that regulations issued under such section ensure parity of treatment between a domestic partner and a spouse for the purposes of benefits provided under such section.

Sec. 704. Compensation for disability or death

This section amends section 5570 of title 5 by providing that regulations issued under such section ensure parity of treatment between a domestic partner and a spouse for the purposes of benefits provided under such section.

Sec. 705. Family and medical leave

This section amends section 6381 of title 5 by providing that a biological, adopted, or foster child of a domestic partner be considered for the purposes of family and medical leave provided under Chapter 63, Subchapter V of title 5. Section 6382 of title 5 is amended to allow an employee a total of 12 administrative work-weeks of leave to care for a domestic partner in a manner consistent with the existing provisions of this section, and subject to the requirements of section 6383.

Title VIII—Additional Provisions

Sec. 801. Applicability

This section sets forth additional provisions of law to which this Act applies. The Committee intends for the additional provisions in paragraphs (1) through (4) of this section to be administered in a manner consistent with the other Titles and the purposes of this Act. To this end, benefits under these provisions of law should be made available to employees, annuitants, and the domestic partners of employees and annuitants (as applicable) in a manner consistent with any existing eligibility rules or requirements governing the receipt of such benefits. In addition, the President (or designee) is to determine any other benefits that relate to employees or annuitants and which are necessary to carry out the purposes of this Act. This Act shall apply to any provisions of law identified by the President (or designee) under this section. Such provisions shall be made available to employees and annuitants and to the domestic partners of employees and annuitants (as applicable) in a manner consistent with any existing eligibility rules or requirements governing the receipt of such benefits.

Sec. 802. Regulations

The President (or designee) shall prescribe any regulations necessary to ensure that the provisions of law identified in or under section 801 are administered in a manner consistent with the purposes of this Act.

Title IX—Amendment to the Ethics in Government Act of 1978

Sec. 901. Amendment to the Ethics in Government Act of 1978

This section amends the Ethics in Government Act of 1978 (5 U.S.C. App.) by adding a new section relating to domestic partners. The section provides that an employee, former employee, or annuitant, and the domestic partner of such employee, former employee, or annuitant shall be subject to the provisions of certain laws and regulations (relating to financial disclosure, conflicts of interest, receipt of gifts, and other ethical obligations and criminal penalties) to the same extent and in the same manner as in the case of a married employee, former employee, or annuitant and the spouse of such employee, former employee, or annuitant (as the case may be).

Title X—Reporting Requirements

Sec. 1001. Report of the President

This section provides that not later than 6 months after the date of the enactment of this Act, the President shall transmit a report on the implementation of this Act and a description of any further measures or legislative recommendations that should be taken in order to carry out the purposes of this Act.

Sec. 1002. GAO report

This section requires the Government Accountability Office to provide a report 2 years after enactment describing the Act's impact, if any, on premiums under chapter 89 of title 5, United States Code (relating to the Federal employees health benefits program). This section would additionally require the GAO to study the impact of extending benefits to domestic partners on the employee retention and recruitment efforts by the Federal Government.

EXPLANATION OF AMENDMENTS

The following amendments were offered in Committee:

Chairman Towns offered an amendment in the nature of a substitute, which was considered and adopted by the Committee by a voice vote. The amendment was modeled on the changes adopted by the Federal Workforce Subcommittee. It further clarifies the process for establishing a domestic partnership under the Act. The amendments to title 5 in the substitute reflect technical suggestions provided by several government agencies, including the Office of Personnel Management, the Departments of Labor and Defense, the General Services Administration, and the Office of Government Ethics. The changes, described in detail in the section-by-section summary in the preceding section of this report, are intended to ensure uniform and practical administration of the benefits provided under the Act. The amendment additionally requires the Administration to report to Congress on the implementation of the Act, and provide recommendations for additional measures that may be necessary in order to carry out the purposes of the Act.

An amendment to the Towns amendment in the nature of a substitute, offered by Mr. Chaffetz, was defeated by a yea-nay vote of 11–21. The amendment would have postponed any implementation of the Act, subject to a determination by the Office of Personnel Management, in consultation with the Secretary of Health and Human Services and the Comptroller General, that the Act would not cause any increase in the premiums or any other periodic charges payable by enrollees under the Federal employees' health benefits program.

An amendment to the Towns amendment in the nature of a substitute, offered by Mr. Chaffetz, was adopted, amended, by voice vote. The amendment requires the Government Accountability Office to provide a report two years after enactment describing the Act's impact on premiums under chapter 89 of title 5, United States Code (relating to the Federal employees health benefits program). An amendment to the Chaffetz amendment, offered by Mr. Quigley, was adopted by a voice vote. The amendment would additionally require the GAO to study the impact of extending benefits

to domestic partners on the employee retention and recruitment efforts by the Federal government.

An amendment to the Towns amendment in the nature of a substitute, offered by Mr. Jordan, was defeated by a yea-nay vote of 12–22. The amendment would have stated that nothing in the Act or in any amendment made by this Act shall be considered to modify, supersede, or otherwise affect the Defense of Marriage Act or any amendment made by the Defense of Marriage Act, including providing benefits to any person other than a person defined pursuant to section of the Defense of Marriage Act.

An amendment to the Towns amendment in the nature of a substitute, offered by Mr. Issa, was defeated by a yea-nay vote of 15–20. The amendment was identical to the Jordan amendment, but would have omitted the clause beginning “including providing benefits” from the Jordan amendment.

An amendment to the Towns amendment in the nature of a substitute, offered by Mr. Bilbray, was defeated by a yea-nay vote of 15–20. The amendment would have required domestic partners to be processed by E-Verify prior to the receipt of employment benefits.

An amendment to the Towns amendment in the nature of a substitute, offered by Mr. Issa, was defeated by a voice vote. The amendment would have removed the requirement that a domestic partner be of the same sex as the employee, former employee, or annuitant, and made other changes to the criteria for establishing a domestic partnership. The amendment further would have required an employee to pay the full cost of enrolling a domestic partner in a Federal Employees’ Health Benefits Plan.

An amendment to the Towns amendment in the nature of a substitute, offered by Mr. Chaffetz, was withdrawn by Mr. Chaffetz. The amendment would have limited any explanation provided by an employee for not having a common residence with his or her domestic partner to financial or employment-related considerations.

COMMITTEE CONSIDERATION

On Wednesday, November 18, 2009, the Committee met in open session and favorably ordered H.R. 2517, as amended, to be reported to the House by a 23–12 vote.

ROLL CALL VOTES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM - 111TH CONGRESS
ROLL CALL VOTE # 003

BILL: H.R. 2517, the "Domestic Partnership Benefits and Obligations Act of 2009"

AMENDMENT: Rep. Chaffetz, #1A, Amendment to the Towns Amendment in the Nature of a Substitute.

DISPOSITION: Defeated by a roll call vote of 21 nays to 11 yeas.

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MR. TOWNS (<i>Chairman</i>)		X		MR. ISSA (<i>Ranking</i>)	X		
MR. KANJORSKI		X		MR. BURTON	X		
MRS. MALONEY		X		MR. MICA			
MR. CUMMINGS				MR. SOUDER	X		
MR. KUCINICH		X		MR. DUNCAN			
MR. TIERNEY		X		MR. TURNER	X		
MR. CLAY		X		MR. WESTMORELAND			
MS. WATSON		X		MR. McHENRY	X		
MR. LYNCH		X		MR. BILBRAY	X		
MR. COOPER				MR. JORDAN	X		
MR. CONNOLLY		X		MR. FLAKE	X		
MR. QUIGLEY		X		MR. FORTENBERRY	X		
MS. KAPTUR				MR. CHAFFETZ	X		
MS. NORTON		X		MR. SCHOCK			
MR. KENNEDY		X		MR. LUETKEMEYER	X		
MR. DAVIS		X		MR. CAO			
MR. Van HOLLEN		X					
MR. CUELLAR							
MR. HODES		X					
MR. MURPHY		X					
MR. WELCH		X					
MR. FOSTER		X					
MS. SPEIER		X					
MR. DRIEHAUS		X					
MS. CHU		X					

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM - 111TH CONGRESS
ROLL CALL VOTE # 004**

BILL: H.R. 2517, the "Domestic Partnership Benefits and Obligations Act of 2009"

AMENDMENT: Rep. Jordon, #1C, Amendment to the Towns Amendment in the Nature of a Substitute.

DISPOSITION: Defeated by a roll call vote of 22 nays to 12 yeas.

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MR. TOWNS (<i>Chairman</i>)		X		MR. ISSA (<i>Ranking</i>)	X		
MR. KANJORSKI		X		MR. BURTON	X		
MRS. MALONEY		X		MR. MICA			
MR. CUMMINGS		X		MR. SOUDER	X		
MR. KUCINICH		X		MR. DUNCAN			
MR. TIERNEY		X		MR. TURNER	X		
MR. CLAY		X		MR. WESTMORELAND			
MS. WATSON		X		MR. McHENRY	X		
MR. LYNCH		X		MR. BILBRAY	X		
MR. COOPER				MR. JORDAN	X		
MR. CONNOLLY		X		MR. FLAKE	X		
MR. QUIGLEY		X		MR. FORTENBERRY	X		
MS. KAPTUR				MR. CHAFFETZ	X		
MS. NORTON		X		MR. SCHOCK	X		
MR. KENNEDY		X		MR. LUETKEMEYER	X		
MR. DAVIS		X		MR. CAO			
MR. Van HOLLEN		X					
MR. CUELLAR							
MR. HODES		X					
MR. MURPHY		X					
MR. WELCH		X					
MR. FOSTER		X					
MS. SPEIER		X					
MR. DRIEHAUS		X					
MS. CHU		X					

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM - 111TH CONGRESS
ROLL CALL VOTE # 005**

BILL: H.R. 2517, the "Domestic Partnership Benefits and Obligations Act of 2009"

AMENDMENT: Rep. Issa, #1D, Amendment to the Towns Amendment in the Nature of a Substitute.

DISPOSITION: Defeated by a roll call vote of 20 nays to 15 yeas.

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MR. TOWNS (<i>Chairman</i>)		X		MR. ISSA (<i>Ranking</i>)	X		
MR. KANJORSKI	X			MR. BURTON	X		
MRS. MALONEY		X		MR. MICA			
MR. CUMMINGS		X		MR. SOUDER	X		
MR. KUCINICH		X		MR. DUNCAN			
MR. TIERNEY		X		MR. TURNER	X		
MR. CLAY		X		MR. WESTMORELAND			
MS. WATSON		X		MR. McHENRY	X		
MR. LYNCH		X		MR. BILBRAY	X		
MR. COOPER		X		MR. JORDAN	X		
MR. CONNOLLY		X		MR. FLAKE	X		
MR. QUIGLEY		X		MR. FORTENBERRY	X		
MS. KAPTUR				MR. CHAFFETZ	X		
MS. NORTON		X		MR. SCHOCK	X		
MR. KENNEDY		X		MR. LUETKEMEYER	X		
MR. DAVIS		X		MR. CAO			
MR. Van HOLLEN		X					
MR. CUELLAR							
MR. HODES		X					
MR. MURPHY		X					
MR. WELCH		X					
MR. FOSTER	X						
MS. SPEIER		X					
MR. DRIEHAUS	X						
MS. CHU		X					

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM - 111TH CONGRESS
ROLL CALL VOTE # 006**

BILL: H.R. 2517, the "Domestic Partnership Benefits and Obligations Act of 2009"

AMENDMENT: Rep. Bilbray, #1E, Amendment to the Towns Amendment in the Nature of a Substitute.

DISPOSITION: Defeated by a roll call vote of 20 nays to 15 yeas.

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MR. TOWNS (<i>Chairman</i>)		X		MR. ISSA (<i>Ranking</i>)	X		
MR. KANJORSKI	X			MR. BURTON	X		
MRS. MALONEY		X		MR. MICA			
MR. CUMMINGS		X		MR. SOUDER	X		
MR. KUCINICH		X		MR. DUNCAN			
MR. TIERNEY		X		MR. TURNER	X		
MR. CLAY		X		MR. WESTMORELAND			
MS. WATSON		X		MR. McHENRY	X		
MR. LYNCH		X		MR. BILBRAY	X		
MR. COOPER		X		MR. JORDAN	X		
MR. CONNOLLY		X		MR. FLAKE	X		
MR. QUIGLEY		X		MR. FORTENBERRY	X		
MS. KAPTUR				MR. CHAFFETZ	X		
MS. NORTON		X		MR. SCHOCK	X		
MR. KENNEDY		X		MR. LUETKEMEYER	X		
MR. DAVIS		X		MR. CAO			
MR. Van HOLLEN		X					
MR. CUELLAR							
MR. HODES		X					
MR. MURPHY		X					
MR. WELCH		X					
MR. FOSTER	X						
MS. SPEIER		X					
MR. DRIEHAUS	X						
MS. CHU		X					

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM - 111TH CONGRESS
ROLL CALL VOTE # 007**

BILL: H.R. 2517, the "Domestic Partnership Benefits and Obligations Act of 2009"

AMENDMENT:

DISPOSITION: FAVORABLY REPORTED, without objection, by a roll call vote of 23 yeas to 12 nays.

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MR. TOWNS (<i>Chairman</i>)		X		MR. ISSA (<i>Ranking</i>)	X		
MR. KANJORSKI		X		MR. BURTON	X		
MRS. MALONEY		X		MR. MICA			
MR. CUMMINGS		X		MR. SOUDER	X		
MR. KUCINICH		X		MR. DUNCAN			
MR. TIERNEY		X		MR. TURNER	X		
MR. CLAY		X		MR. WESTMORELAND			
MS. WATSON		X		MR. McHENRY	X		
MR. LYNCH		X		MR. BILBRAY	X		
MR. COOPER		X		MR. JORDAN	X		
MR. CONNOLLY		X		MR. FLAKE	X		
MR. QUIGLEY		X		MR. FORTENBERRY	X		
MS. KAPTUR				MR. CHAFFETZ	X		
MS. NORTON		X		MR. SCHOCK	X		
MR. KENNEDY		X		MR. LUETKEMEYER	X		
MR. DAVIS		X		MR. CAO			
MR. Van HOLLEN		X					
MR. CUELLAR							
MR. HODES		X					
MR. MURPHY		X					
MR. WELCH		X					
MR. FOSTER		X					
MS. SPEIER		X					
MR. DRIEHAUS		X					
MS. CHU		X					

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations.

The definition of “employee” in H.R. 2517 would apply to congressional and legislative branch employees, allowing individual employees in Congress and the legislative branch to establish a domestic partnership and to provide benefits to which they are otherwise eligible to same sex domestic partners.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report, including the need for the Federal government to maintain its role as a model employer and to comply with merit system principles requiring equal pay for equal work.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goals and objectives are reflected in the descriptive portions of this report, including strengthening the Federal civil service by fostering a more inclusive environment that complies with merit system principles requiring equal pay for equal work.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 2517. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

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

UNFUNDED MANDATES STATEMENT

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

EARMARK IDENTIFICATION

H.R. 2517 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2517. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2517 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 17, 2009.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2517, the Domestic Partnership Benefits and Obligations Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Amber Marcellino.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 2517—Domestic Partnership Benefits and Obligations Act of 2009

Summary: H.R. 2517 would make same-sex domestic partners of certain federal employees (both current and retired) eligible to receive the same employment benefits as married spouses of federal employees. Those benefits include health insurance, survivor annuities, compensation for work-related injuries and travel and relocation benefits that affect the federal budget, as well as other benefits that do not have an impact on the budget, such as life insurance and vision and dental benefits.

CBO estimates that enacting H.R. 2517 would increase direct spending by \$596 million through 2019, and that enacting the bill

would not have any direct impact on federal revenues. Over the same period, CBO estimates that discretionary spending would also increase, by \$302 million, assuming appropriation of the necessary funds. Providing additional health insurance benefits through the Federal Employee Health Benefits (FEHB) program causes the largest increase in both mandatory and discretionary spending—\$590 million and \$266 million, respectively.

Some of the costs of H.R. 2517 would derive from providing health benefits to the domestic partners of active workers and retirees of the U.S. Postal Service (USPS); cash flows of the USPS are classified as “off-budget.” CBO’s estimate of direct spending includes such off-budget costs totaling \$242 million between 2010 and 2019.

H.R. 2517 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2517 is shown in the following table. The direct spending and discretionary impacts of the bill fall within budget functions 550 (health) and 600 (income security).

	By fiscal year, in millions of dollars—											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010– 2014	2010– 2019
CHANGES IN DIRECT SPENDING (OUTLAYS)												
Federal Employees Health Benefits (FEHB) Program:												
On-Budget (non-postal)	0	18	27	31	34	38	42	47	52	58	110	348
Off-Budget (postal)	0	14	20	22	24	27	29	32	35	38	80	242
Federal Employment Compensation Act (FECA) Benefits	1	3	3	3	4	4	4	4	4	4	15	35
Survivor Annuities	-3	-11	-9	-7	-5	-3	-1	1	3	6	-35	-27
Total Changes in Direct Spending	-3	24	41	49	58	66	75	85	95	106	169	596
On-Budget	-3	10	21	27	34	40	46	53	60	67	89	354
Off-Budget	0	14	20	22	24	27	29	32	35	38	80	242
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
FEHB Program Costs for Active Employees:												
Estimated Authorization Level	0	17	24	26	28	30	32	34	36	39	95	266
Estimated Outlays	0	17	24	26	28	30	32	34	36	39	95	266
FECA Agency Costs:												
Estimated Authorization Level	*	2	3	3	4	4	4	4	4	4	12	32
Estimated Outlays	*	1	2	3	3	4	4	4	4	4	10	30
Travel and Relocation Benefits:												
Estimated Authorization Level	*	1	1	1	1	1	1	1	1	1	6	6
Estimated Outlays	*	1	1	1	1	1	1	1	1	1	6	6
Total Changes in Spending Subject to Appropriation:												
Estimated Authorization Level	*	20	28	30	32	34	36	39	41	44	110	304
Estimated Outlays	*	26	29	32	34	37	39	41	44	47	108	302

Sources: Congressional Budget Office.
 Notes: Components may not sum to totals because of rounding. * = costs of less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that that H.R. 2517 will be enacted in the second half of 2010 and that the necessary amounts will be appropriated for each year. CBO assumes that about 0.33 percent of federal employees would choose to register a same-sex domestic partnership if given the opportunity. That figure is based on information previously gathered from state and local governments as well as recent research on organizations that have adopted similar policies. CBO estimates that approximately 80 percent of individuals eligible under the proposal would move from single to family health coverage and that 85 percent would elect a survivor benefit for a domestic partner. H.R. 2517 applies to eligible current federal employees, as well as current and future retirees, other than members of the armed services.

DIRECT SPENDING

Federal Employees Health Benefits Program. H.R. 2517 would extend eligibility for health benefits to the same-sex domestic partners of current and future federal retirees. Unlike premiums for current workers, the government's share of health care premiums for retirees is classified as direct spending. For each year over the 2011–2019 period, CBO projects that approximately 5,200 additional family coverage policies would be added to the FEHB program by current and future non-Postal Service retirees choosing to cover same-sex domestic partners. As a result, direct spending would increase by \$348 million from 2011 to 2019.

Postal Service employees also would be eligible for same-sex domestic partner coverage under H.R. 2517. CBO estimates that providing health benefits to the domestic partners of active postal workers would result in about 2,000 Postal Service employees moving from individual to family coverage plans. Additionally, CBO anticipates that approximately 1,100 current and future retirees from the Postal Service would move to family coverage for their same-sex domestic partners.

The cash flows of the Postal Service are classified as off-budget, although the total federal budget records the agency's net spending (gross outlays less offsetting collections). CBO estimates that extending FEHB benefits to the same-sex domestic partners of Postal Service workers would increase off-budget costs by \$242 million through 2019.

Federal Employment Compensation Act (FECA) Benefits. FECA provides compensation to federal civilian employees for disability due to personal injury sustained while in the performance of duty. Married workers currently receive slightly higher FECA benefits for wage replacement than do single workers. Additionally, if an employee dies of an employment-related injury or disease, his or her spouse receives a death benefit. CBO projects that H.R. 2517, if enacted, would extend additional FECA benefits to roughly 1,000 federal employees each year. Over the 2010–2019 period, those additional benefits would total \$35 million.

Survivor Annuities. Under current law, federal employees who are eligible to receive retirement benefits may elect to provide their spouses with a survivor annuity by reducing the value of their own retirement benefit. The required annuity reductions and survivor benefit levels vary between the Federal Employees' Retirement System (FERS) and the Civil Service Retirement System; a federal

employee who elects survivor benefits reduces his retirement annuity between 5 percent and 10 percent in order to provide a survivor benefit ranging from 25 percent to 55 percent of the employee's annuity.

Under H.R. 2517, eligible federal employees with a registered same-sex domestic partner would become eligible for a survivor benefit for their partner at retirement, following the same rules and regulations as for married spouses. CBO estimates that 85 percent of federal employees who register a domestic partner would elect survivor benefits if given the opportunity. On that basis, CBO projects that an average of 1,500 new federal retirees per year (through 2019) would add survivor benefits for their domestic partners and that approximately 2,000 current retirees would also elect survivor benefits for a domestic partner. Accordingly, those individuals would collect smaller retirement annuities, thereby lowering direct spending. A portion of those savings would be offset by payments of survivor benefits to surviving partners as some retirees die over the next 10 years. However, in the near term, the estimated annuity reductions outweigh the additional survivor benefits. On net, CBO estimates that direct spending would decrease by \$27 million over the 2010–2019 period.

SPENDING SUBJECT TO APPROPRIATION

In total, CBO estimates that implementing H.R. 2517 would increase discretionary spending by \$302 million over the 2010–2019 period, assuming the appropriation of the necessary amounts.

FEHB Program Costs for Active Federal Employees. H.R. 2517 would allow federal employees to add same-sex domestic partners to their health insurance policies. Federal agencies pay about 70 percent of health-care premiums for active employees; thus, as premiums rise, so do agency contributions. In 2010, family coverage policies for active workers are projected to cost the federal government approximately \$5,200 more than individual coverage policies. CBO estimates that providing additional family coverage policies to approximately 4,000 non-Postal Service employees who would elect coverage for same-sex domestic partners would increase agency spending subject to appropriation by \$266 million over the 2010–2019 period, assuming the appropriation of the necessary funds.

FECA Agency Costs. As discussed under the direct spending section, this bill would result in increased spending for federal workers' compensation. The additional benefits that would be paid to workers are considered mandatory spending. However, employing agencies reimburse the Department of Labor for the provision of those benefits using funds from their discretionary appropriations. CBO estimates that enactment of H.R. 2517 thus would increase the need for appropriations to agencies' salaries and expense accounts, with increased outlays totaling \$30 million through 2019.

Travel and Relocation Benefits. H.R. 2517 would provide the same benefits to same-sex domestic partners as to married spouses for travel and relocation expenses. In general, such benefits include the transport of household goods, reimbursement for taxes incurred during relocation, and expenses incurred during a real estate transaction (such as closing costs or purchase assistance). CBO estimates that including domestic partners in travel and relocation benefits would total about \$6 million over the 2010–2019 period.

Intergovernmental and private-sector impact: H.R. 2517 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no cost on state, local, or tribal governments.

Estimate prepared by: Federal spending: Retirement—Amber G. Marcellino, FEHB—Kirstin Nelson, FECA—Christi Hawley Anthony; Impact on State, local, and tribal governments: Elizabeth Cove Delisle; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART A—GENERAL PROVISIONS

* * * * *

CHAPTER 21—DEFINITIONS

Sec.

2101. Civil service; armed forces; uniformed services.

* * * * *

2110. *Domestic partnerships.*

* * * * *

§ 2110. Domestic partnerships

(a) *ESTABLISHMENT.*—*To establish the existence of a domestic partnership, between an employee, former employee, or annuitant and another individual, for purposes of the provisions of law to which this section applies, the employee, former employee, or annuitant (as the case may be) shall be required to file an affidavit, in such form and manner as the Office of Personnel Management shall by regulation prescribe, attesting to the following:*

(1) *Both individuals are members of the same sex.*

(2) *Both individuals are at least 18 years of age and competent to contract.*

(3) *The filing employee, former employee, or annuitant (as the case may be) has notified the other individual of the filing of the affidavit attesting that their partnership satisfies the requirements of this subsection.*

(4) *Such individuals are in a domestic partnership with one another and intend to remain so indefinitely.*

(5) *Such individuals—*

(A) *have a common residence; or*

(B) *do not have a common residence because of financial, employment-related, or other reasons, as identified in the affidavit.*

(6) *Neither individual is married to or in a domestic partnership with anyone outside of the domestic partnership referred to in paragraph (4).*

(7) *The 2 individuals share responsibility for a significant measure of each other's common welfare and financial obligations.*

(8) *The 2 individuals are not related in a way that, if they were of the opposite sex, would prohibit legal marriage in the jurisdiction in which either individual resides.*

(9) *The filing employee, former employee, or annuitant (as the case may be) understands that willful falsification of information set forth in the affidavit or failure to provide appropriate notification of the termination of the domestic partnership may lead to the recovery of amounts obtained as a result of such falsification or failure (as the case may be), criminal or other penalties, and (in appropriate cases) disciplinary action.*

An affidavit shall not be effective for purposes of this section unless the filing individual is an employee, former employee, or annuitant as of the time of filing. No 2 individuals shall, for purposes of the provisions of law to which this section applies, be treated as being in a domestic partnership with one another unless there is in effect, in accordance with regulations prescribed by the Office, an affidavit filed in accordance with the preceding provisions of this subsection. An affidavit so filed shall remain in effect until the earlier of the date of the death of either individual or the date as of which the domestic partnership is otherwise terminated, as determined under such regulations.

(b) *DOMESTIC PARTNER.—For purposes of the provisions of law to which this section applies, the term “domestic partner” means an individual who is in a domestic partnership, as described in subsection (a).*

(c) *EMPLOYEE DEFINED.—For purposes of this section, the term “employee” means an employee as defined by section 2105, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard (as described in section 2105(c)), an employee of the United States Postal Service or of the Postal Regulatory Commission (as described in section 2105(e)), a Member of Congress, a member of the commissioned corps of the Public Health Service, a member of the commissioned corps of the National Oceanic and Atmospheric Administration, and any other individual who is employed by the Government (as determined under regulations of the President or a designee thereof), but does not include a technician (within the meaning of section 8337(h) or, notwithstanding any provision of chapter 43 of title 38, a member of the armed forces.*

(d) *ANNUITANT DEFINED.—For purposes of this section, the term “annuitant” means—*

(1) *an annuitant within the meaning of section 8331 or 8401; and*

(2) as determined under regulations prescribed by the President or a designee thereof, any other individual who is entitled to benefits (based on the service of such individual) under a retirement system for employees of the Government.

(e) CONFIDENTIALITY.—No individual may—

(1) use the information obtained under subsection (a) for any purpose other than the administration of any provision of law to which this section applies; or

(2) furnish any information obtained under subsection (a) to anyone, or permit anyone to examine or otherwise gain access to any such information, except for—

(A) an individual who needs such information for a purpose that satisfies paragraph (1); or

(B) a member of the domestic partnership to which the information pertains or an authorized representative thereof.

(f) APPLICABILITY.—This section applies for purposes of the provisions of this title (excluding chapter 81) and any provision of law identified in or under title VIII of the Domestic Partnership Benefits and Obligations Act of 2009.

* * * * *

SUBPART B—EMPLOYMENT AND RETENTION

* * * * *

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

* * * * *

§ 3110. Employment of relatives; restrictions

(a) For the purpose of this section—

(1) * * *

* * * * *

(3) “relative” means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, *domestic partner*, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

* * * * *

SUBPART D—PAY AND ALLOWANCES

* * * * *

CHAPTER 55—PAY ADMINISTRATION

* * * * *

SUBCHAPTER VII—PAYMENTS TO MISSING EMPLOYEES

* * * * *

§ 5569. Benefits for captives

(a) * * *

* * * * *

(j) The President may prescribe regulations necessary to administer this section. *Such regulations shall include provisions to ensure that, in the administration of this section, a domestic partner shall be afforded the same status as a spouse.*

* * * * *

§ 5570. Compensation for disability or death

(a) * * *

* * * * *

(h) *Regulations to carry out this section shall include provisions to ensure that, in the administration of this section, a domestic partner shall be afforded the same status as a spouse.*

SUBCHAPTER VIII—SETTLEMENT OF ACCOUNTS

§ 5581. Definitions

For the purpose of this subchapter—

(1) “employee” means—

(A) * * *

(B) an individual employed by the government of the District of Columbia;

but does not include the employee of—

(i) * * *

* * * * *

(iv) the Senate within the purview of section 36a of title 2; [and]

(2) “money due” means the pay and allowances due on account of the services of a deceased employee for the Government of the United States or the government of the District of Columbia. It includes, but is not limited to—

(A) * * *

* * * * *

It does not include benefits, refunds, or interest payable under subchapter III of chapter 83 of this title applicable to the service of the deceased employee, or amounts the disposition of which is otherwise expressly prescribed [by Federal statute.] *by Federal statute; and*

(3) *“surviving partner” has the meaning given it by sections 8341 and 8441, respectively.*

§ 5582. Designation of beneficiary; order of precedence

(a) * * *

(b) In order to facilitate the settlement of the accounts of deceased employees, money due an employee at the time of his death shall be paid to the person or persons surviving at the date of

death, in the following order of precedence, and the payment bars recovery by another person of amounts so paid:

First, to the beneficiary or beneficiaries designated by the employee in a writing received in the employing agency before his death.

Second, if there is no designated beneficiary, to the widow or widower (*or surviving partner*) of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed legal representative of the estate of the employee.

Sixth, if none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of his death.

* * * * *

**CHAPTER 57—TRAVEL, TRANSPORTATION, AND
SUBSISTENCE**

**SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES;
MILEAGE ALLOWANCES**

* * * * *

§ 5706c. Reimbursement for taxes incurred on money received for travel expenses

(a) Under regulations prescribed pursuant to section 5707 of this title, the head of an agency or department, or his or her designee, may use appropriations or other funds available to the agency for administrative expenses, for the reimbursement of Federal, State, and local income taxes incurred by an employee of the agency or **by an employee and such employee's spouse (if filing jointly),** *by an employee and such employee's spouse (or, where allowable, such employee's domestic partner), if filing jointly,* for any travel or transportation reimbursement made to an employee for which reimbursement or an allowance is provided.

(b) Reimbursements under this section shall include an amount equal to all income taxes for which the **employee and spouse, as the case may be,** *employee and spouse (or domestic partner), as the case may be* would be liable due to the reimbursement for the taxes referred to in subsection (a). In addition, reimbursements under this section shall include penalties and interest, for the tax years 1993 and 1994 only, as a result of agencies failing to withhold the appropriate amounts for tax liabilities of employees affected by the change in the deductibility of travel expenses made by Public Law 102-486.

* * * * *

**SUBCHAPTER II—TRAVEL AND TRANSPORTATION EXPENSES;
NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES**

* * * * *

§ 5724a. Relocation expenses of employees transferred or re-employed

(a) * * *

(b)(1) Under regulations prescribed under section 5738, an agency may pay to or on behalf of an employee who transfers in the interest of the Government between official stations located within the United States—

(A) the expenses of transportation of the employee and the [employee's spouse] *employee's spouse (or domestic partner)* for travel to seek permanent residence quarters at a new official station; and

* * * * *

§ 5724b. Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred

(a) Under regulations prescribed under section 5738 of this title and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of substantially all of the Federal, State, and local income taxes incurred by an employee, or [by an employee and such employee's spouse (if filing jointly),] *by an employee and such employee's spouse (or, where allowable, such employee's domestic partner), if filing jointly*, for any moving or storage expenses furnished in kind, or for which reimbursement or an allowance is provided (but only to the extent of the expenses paid or incurred). Reimbursements under this subsection shall also include an amount equal to all income taxes for which the [employee and spouse, as the case may be,] *employee and spouse (or domestic partner), as the case may be*, would be liable due to the reimbursement for the taxes referred to in the first sentence of this subsection.

* * * * *

§ 5737. Relocation expenses of an employee who is performing an extended assignment

(a) Under regulations prescribed under section 5738 of this title, an agency may pay to or on behalf of an employee assigned from the employee's official station to a duty station for a period of not less than six months and not greater than 30 months, the following expenses in lieu of payment of expenses authorized under subchapter I of this chapter:

(1) * * *

* * * * *

(4) Travel and transportation expenses of the employee and spouse (*or domestic partner*) to seek new residence quarters at the assignment location in accordance with section 5724a(b) of this title.

* * * * *

SUBPART E—ATTENDANCE AND LEAVE

* * * * *

CHAPTER 63—LEAVE

* * * * *

SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

§ 6381. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * *

(6) the term “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, or a biological, adopted, or foster child of the domestic partner of the employee, who is—

(A) * * *

* * * * *

§ 6382. Leave requirement

(a)(1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

(A) * * *

* * * * *

(C) In order to care for the [spouse,] spouse (or domestic partner), or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

* * * * *

(e)(1) * * *

(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) is foreseeable based on planned medical treatment, the employee—

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, [spouse,] spouse (or domestic partner), parent, or covered servicemember of the employee, as appropriate; and

* * * * *

§ 6383. Certification

(a) An employing agency may require that a request for leave under subparagraph (C) or (D) of section 6382(a)(1) be supported by certification issued by the health care provider of the employee or of the son, daughter, [spouse,] spouse (or domestic partner), or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employing agency.

(b) A certification provided under subsection (a) shall be sufficient if it states—

(1) * * *

* * * * *

(4)(A) for purposes of leave under section 6382(a)(1)(C), a statement that the employee is needed to care for the son, daughter, [spouse,] *spouse (or domestic partner)*, or parent, and an estimate of the amount of time that such employee is needed to care for such son, daughter, [spouse,] *spouse (or domestic partner)*, or parent; and

* * * * *

SUBPART G—INSURANCE AND ANNUITIES

* * * * *

CHAPTER 81—COMPENSATION FOR WORK INJURIES

SUBCHAPTER I—GENERALLY

§ 8101. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * *

(9) “child” means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children, *children (including adopted children) of a domestic partner*, and posthumous children, but does not include married children;

* * * * *

(19) “organ” means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back; [and]

(20) “United States medical officers and hospitals” includes medical officers and hospitals of the Army, Navy, Air Force, Department of Veterans Affairs, and United States Public Health Service, and any other medical officer or hospital designated as a United States medical officer or hospital by the Secretary of Labor [.]

(21) “domestic partner” means an individual who is in a domestic partnership with another individual of the same sex, as determined by the Secretary of Labor for purposes of this subchapter pursuant to regulations issued by the Secretary, in consultation with the Director of the Office of Personnel Management, consistent with the requirements that—

(A) both individuals are at least 18 years of age and competent to contract;

(B) both individuals intend to remain in the domestic partnership indefinitely;

(C) such individuals—

(i) have a common residence; or

(ii) do not have a common residence because of financial, employment-related, or other reasons;

(D) neither individual is married to or in a domestic partnership with anyone outside of the domestic partnership referred to in subparagraph (B);

(E) the 2 individuals share responsibility for a significant measure of each other's common welfare and financial obligations;

(F) the 2 individuals are not related in a way that, if they were of the opposite sex, would prohibit legal marriage in the jurisdiction in which either of them resides;

(G) at least 1 of them is an employee or an individual otherwise eligible for coverage under this subchapter based on such individual's employment or other service; and

(H) both individuals understand that willful falsification of information within the affidavit or failure to provide appropriate notification of the termination of the domestic partnership may lead to the recovery of the amounts obtained as a result of such falsification or failure (as the case may be), criminal or other penalties, and (in appropriate circumstances) disciplinary action; and

(22) "surviving partner" means the domestic partner living with or dependent for support on the decedent at the time of his or her death, or living apart for reasonable cause or because of his or her desertion.

* * * * *

§ 8102a. Death gratuity for injuries incurred in connection with employee's service with an Armed Force

(a) * * *

* * * * *

(d) ELIGIBLE SURVIVORS.—

(1) Subject to paragraph (5), a death gratuity payable upon the death of a person covered by subsection (a) shall be paid to or for the living survivor highest on the following list:

(A) The employee's [surviving spouse.] *surviving spouse (or surviving partner)*.

* * * * *

(2) Paragraph (1)(B) applies, without regard to age or marital status, to—

(A) * * *

* * * * *

(C) stepchildren (*including children of a domestic partner*) who were a part of the decedent's household at the time of death;

* * * * *

§ 8109. Beneficiaries of awards unpaid at death; order of precedence

(a) If an individual—

(1) * * *

* * * * *

the compensation specified by the schedule that is unpaid at his death, whether or not accrued or due at his death, shall be paid—

(A) * * *

* * * * *

- (D) in the following order of precedence:
 - (i) If there is no child, to **the widow or widower.** *the widow or widower (or the surviving partner).*
 - (ii) If there are both a widow or widower *(or a surviving partner)* and a child or children, one-half to the widow or widower *(or the surviving partner)* and one-half to the child or children.
 - (iii) If there is **no widow or widower,** *no widow or widower (and no surviving partner),* to the child or children.

* * * * *

§ 8110. Augmented compensation for dependents

(a) For the purpose of this section, “dependent” means—

(1) * * *

* * * * *

(3) an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support, and who is—

(A) * * *

(B) over 18 years of age and incapable of self-support because of physical or mental disability; **and**

(4) a parent, while wholly dependent on and supported by the employee**;** *and*

(5) *a domestic partner, if—*

(A) *he or she is a member of the same household as the employee;*

(B) *he or she is receiving regular contributions from the employee for his or her support; or*

(C) *the employee has been ordered by a court to contribute to his or her support.*

* * * * *

§ 8116. Limitations on right to receive compensation

(a) * * *

* * * * *

(c) The liability of the United States or an instrumentality thereof under this subchapter or any extension thereof with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, **spouse,** *spouse (or domestic partner),* dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen’s compensation statute or under a Federal tort liability statute. However, this subsection does not apply to a master or a member of a crew of a vessel.

* * * * *

§ 8133. Compensation in case of death

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal

to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

(1) To **the widow or widower,** *the widow or widower (or the surviving partner)*, if there is no child, 50 percent.

(2) To **the widow or widower,** *the widow or widower (or the surviving partner)*, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower *(or the surviving partner)* and children.

(3) To the children, if there is **no widow or widower,** *no widow or widower (and no surviving partner)*, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.

(4) To the parents, if there is no widow, widower, *surviving partner*, or child, as follows—

(A) * * *

* * * * *

If there is a widow, widower, *surviving partner*, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, *surviving partner*, and children, will not exceed a total of 75 percent.

(5) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, *surviving partner*, child, or dependent parent, as follows—

(A) * * *

* * * * *

If there is a widow, widower, *surviving partner*, child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, *surviving partner*, children, and dependent parents, will not exceed a total of 75 percent.

(b) The compensation payable under subsection (a) of this section is paid from the time of death until—

[(1) a widow, or widower dies or remarries before reaching age 55;]

(1) a widow or widower dies or remarries (or a surviving partner dies or enters into a subsequent domestic partnership) before reaching age 55;

* * * * *

Notwithstanding paragraph (2) of this subsection, compensation payable to or for a child, a brother or sister, or grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries. A widow or widower *(or surviving partner)* who has entitlements to benefits under this title derived from more than one husband or wife *(or more than one domestic partner)* shall elect one entitlement to be utilized.

* * * * *

§ 8135. Lump-sum payment

(a) * * *

[(b) On remarriage before reaching age 55 a widow or widower entitled to compensation under section 8133 of this title, shall be paid a lump sum equal to twenty-four times the monthly compensation payment (excluding compensation on account of another individual) to which he was entitled immediately before the remarriage.]

(b) On remarriage (or entry into a subsequent domestic partnership) before reaching age 55 a widow or widower (or surviving partner) entitled to compensation under section 8133 of this title, shall be paid a lump sum equal to twenty-four times the monthly compensation payment (excluding compensation on account of another individual) to which that individual was entitled immediately before the remarriage (or subsequent domestic partnership).

* * * * *

CHAPTER 83—RETIREMENT

* * * * *

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

§ 8331. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * *

(30) the term “air traffic controller” or “controller” means—

(A) * * *

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2109(1)(B);

[and]

(31) “customs and border protection officer” means an employee in the Department of Homeland Security (A) who holds a position within the GS-1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years **[.]**; and

(32) “former domestic partner” means a former domestic partner of an individual—

(A) if such individual performed at least 18 months of civilian service as an employee or Member; and

(B) if the former domestic partner was in a domestic partnership with such individual for at least 9 months.

§ 8332. Creditable service

(a) * * *

* * * * *

(c)(1) * * *

* * * * *

(3)(A) * * *

* * * * *

(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

(i) * * *

(ii) this paragraph shall be carried out in any case which involves a **[former spouse.]** *former spouse or former domestic partner.*

* * * * *

(o)(1) * * *

* * * * *

(4) The Office of Personnel Management shall prescribe any regulations necessary to carry out this subsection. Such regulations shall include—

(A) * * *

(B) provisions under which the Office may provide for—

(i) the payment, to the **[spouse]** *spouse, domestic partner,* or children of any individual referred to in the first sentence of paragraph (1), of any amounts which (but for this clause) would otherwise have been nonpayable by reason of such first sentence, subject to paragraph (5); and

* * * * *

(5) Regulations to carry out clause (i) of paragraph (4)(B) shall include provisions to ensure that the authority to make any payment to the **[spouse]** *spouse, domestic partner,* or children of an individual under such clause shall be available only to the extent that the application of such clause is considered necessary and appropriate taking into account the totality of the circumstances, including the financial needs of the **[spouse]** *spouse, domestic partner,* or children, whether the **[spouse]** *spouse, domestic partner,* or children participated in an offense described in paragraph (2) of which such individual was finally convicted, and what measures, if any, may be necessary to ensure that the convicted individual does not benefit from any such payment.

* * * * *

§ 8339. Computation of annuity

(a) * * *

* * * * *

(j)(1) The annuity computed under subsections (a)-(i), (n), (q), (r), and (s) (or a portion of the annuity, if jointly designated for this purpose by the employee or Member and the spouse (*or domestic partner*) of the employee or Member under procedures prescribed by the Office of Personnel Management) for an employee or Mem-

ber who is married (*or has a domestic partner*) at the time of retiring under this subchapter is reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for the spouse (*or domestic partner*) under section 8341(b) of this title, unless the employee or Member and the spouse (*or domestic partner*) jointly waive the spouse's (*or domestic partner's*) right to a survivor annuity in a written election filed with the Office at the time that the employee or Member retires. Each such election shall be made in accordance with such requirements as the Office shall, by regulation, prescribe, and shall be irrevocable. The Office shall provide, by regulation, that an employee or Member may waive the survivor annuity without the spouse's (*or domestic partner's*) consent if the employee or Member establishes to the satisfaction of the Office—

(A) that the spouse's (*or domestic partner's*) whereabouts cannot be determined, or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's (*or domestic partner's*) consent would otherwise be inappropriate.

(2) If an employee or Member has a former spouse (*or former domestic partner*) who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsections (a)-(i), (n), (q), (r), and (s) (or any designated portion of the annuity, in the event that the former spouse (*or former domestic partner*) is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in paragraph (4) of this subsection.

(3) An employee or Member who has a former spouse (*or former domestic partner*) may elect, under procedures prescribed by the Office, to have the annuity computed under subsections (a)-(i), (n), (q), (r), and (s) or a portion thereof reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for such former spouse (*or former domestic partner*) under section 8341(h) of this title, unless all rights to survivor benefits for such former spouse (*or former domestic partner*) under this subchapter based on marriage to (*or being in a domestic partnership with*) such employee or Member were waived under paragraph (1) of this subsection. An election under this paragraph shall be made at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to (*or the domestic partnership of the former domestic partner with*) the employee or Member **[is dissolved,** *is dissolved (or terminated)*], subject to a deposit in the Fund by the retired employee or Member of an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such employee or Member would have been reduced if the election had been continuously in effect since the date the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date the annuity commenced shall be 6 percent. The Office shall, by regulation, provide for payment of the deposit required under this paragraph by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under this paragraph, except that the total reductions in the annu-

ity of an employee or Member to pay deposits required by the provisions of this paragraph, paragraph (5), or subsection (k)(2) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r) including adjustments under section 8340. The reduction, which shall be effective on the same date as the election under this paragraph, shall be permanent and unaffected by any future termination of the entitlement of the **former spouse.** *former spouse (or former domestic partner).* Such reduction shall be independent of and in addition to the reduction required under the first sentence of this paragraph. An election under this paragraph—

(A) * * *

(B) shall not be effective, in the case of an employee or Member who **is then married,** *is then married (or is then in a domestic partnership),* unless it is made with **the spouse's written consent.** *the written consent of the spouse (or domestic partner).*

The Office shall provide by regulation that subparagraph (B) of this paragraph may be waived for either of the reasons set forth in the last sentence of paragraph (1) of this subsection. **In the case of a retired employee or Member whose annuity is being reduced in order to provide a survivor annuity for a former spouse, an election to provide or increase a survivor annuity for any other former spouse (and to continue an appropriate reduction) may be made within the same period that, and subject to the same conditions under which, an election could be made under paragraph (5)(B) of this subsection for a current spouse (subject to the provisions of this paragraph relating to consent of a current spouse, if the retired employee or Member is then married.)** *In the case of a retired employee or Member whose annuity is being reduced in order to provide a survivor annuity for a former spouse (or former domestic partner), an election to provide or increase a survivor annuity for any other former spouse (or any other former domestic partner), and to continue an appropriate reduction for that purpose, may be made within the same period that, and subject to the same conditions under which, an election could be made under paragraph (5)(B) for a current spouse (or a current domestic partner), subject to the provisions of this paragraph relating to consent of a current spouse (or of a current domestic partner), if the retired employee or Member is then married (or in a domestic partnership).* The opportunity to make an election under the preceding sentence is in addition to any opportunity otherwise afforded under this paragraph.

* * * * *

[(5)(A) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

[(i) after the death of the spouse, or

[(ii) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8341(h) of this title.

[(B) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse

remarries before reaching age 55 or dies. This reduction shall be replaced by an appropriate reduction or reductions under paragraph (4) of this subsection if the retired employee or Member has (i) another former spouse who is entitled to a survivor annuity under section 8341(h) of this title, (ii) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not jointly waived under paragraph (1) of this subsection, or (iii) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subparagraph (C) of this paragraph or subsection (k)(2) of this section.

[(C)(i) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the employee or Member's annuity under paragraph (4) of this subsection for the purpose of providing an annuity for such employee or Member's spouse in the event such spouse survives the employee or Member.

[(ii) Such election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage, and the retired employee or Member shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such retired employee or Member would have been reduced if the election had been in effect since the date of retirement or, if later, the date the previous reduction in such retired employee or Member's annuity was terminated under subparagraph (A) or (B) of this paragraph, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which an annuity would have been reduced if the election had been in effect on and after the applicable date referred to in such sentence shall be 6 percent.

[(iii) The Office shall, by regulation, provide for payment of the deposit required under clause (ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under clause (ii), except that total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph or paragraph (3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction required by this clause, which shall be effective on the same date as the election under clause (i), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under clause (i).

[(iv) Notwithstanding any other provision of this subparagraph, an election under this subparagraph may not be made for the purpose of providing an annuity in the case of a spouse by remarriage if such spouse was married to the employee or Member at the time of such employee or Member's retirement, and all rights to survivor benefits for such spouse under this subchapter based on marriage to such employee or Member were then waived under paragraph (1) of this subsection or a similar prior provision of law.

[(v) An election to provide a survivor annuity to a person under this subparagraph—

[(I) shall prospectively void any election made by the employee or Member under subsection (k)(1) of this section with respect to such person; or

[(II) shall, if an election was made by the employee or Member under such subsection (k)(1) with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subparagraph.

[(vi) The deposit provisions of clauses (ii) and (iii) of this subparagraph shall not apply if—

[(I) the employee or Member makes an election under this subparagraph after having made an election under subsection (k)(1) of this section; and

[(II) the election under such subsection (k)(1) becomes void under clause (v) of this subparagraph.]

(5)(A) *Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse (or the current domestic partner) of a retired employee or Member shall be terminated for each full month—*

(i) after the death of the spouse (or domestic partner), or

(ii) after the dissolution of the marriage of the spouse (or the termination of the domestic partnership of the domestic partner) to the employee or Member,

except that an appropriate reduction shall be made thereafter if the spouse (or domestic partner) is entitled, as a former spouse (or former domestic partner), to a survivor annuity under section 8341(h).

(B) *Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse (or a former domestic partner) of a retired employee or Member shall be terminated for each full month after the former spouse remarries (or the former domestic partner enters into a subsequent domestic partnership) before reaching age 55 or dies. This reduction shall be replaced by an appropriate reduction or reductions under paragraph (4) if the retired employee or Member has (i) another former spouse (or another former domestic partner) who is entitled to a survivor annuity under section 8341(h), (ii) a current spouse to whom the employee or Member was married (or a current domestic partner with whom the employee or Member was in a domestic partnership) at the time of retirement and with respect to whom a survivor annuity was not jointly waived under paragraph (1), or (iii) a current spouse whom the employee or Member married (or a current domestic partner with whom the employee or Member entered into domestic partnership) after retirement and with respect to whom an election has been made under subparagraph (C) or subsection (k)(2).*

(C)(i) Upon remarriage (or entry into a subsequent domestic partnership), a retired employee or Member who was married (or in a domestic partnership) at the time of retirement, including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse (or domestic partner or former domestic partner) as of the time of retirement, may irrevocably elect during such marriage (or domestic partnership), in a signed writing received by the Office—

(I) within 2 years after such remarriage (or such subsequent domestic partnership), or

(II) if later, within 2 years after—

(aa) the death or remarriage of any former spouse (or the death of or entry into a subsequent domestic partnership by any former domestic partner) of such employee or Member who was entitled to a survivor annuity under section 8341(h), or

(bb) if there was more than 1, the death or remarriage of the last such surviving former spouse (or the death of or entry into a subsequent domestic partnership by the last such surviving former domestic partner),

a reduction in the employee's or Member's annuity under paragraph (4) for the purpose of providing an annuity for such employee's or Member's spouse (or domestic partner) in the event such spouse (or domestic partner) survives the employee or Member.

(ii) Such election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage (or entry into the subsequent domestic partnership), and the retired employee or Member shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such retired employee or Member would have been reduced if the election had been in effect since the date of retirement or, if later, the date the previous reduction in such retired employee's or Member's annuity was terminated under subparagraph (A) or (B), plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which an annuity would have been reduced if the election had been in effect on and after the applicable date referred to in such sentence shall be 6 percent.

(iii) The Office shall, by regulation, provide for payment of the deposit required under clause (ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under clause (ii), except that total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph or paragraph (3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r), including adjustments under section 8340. The reduction required by this clause, which shall be effective on the same date as the election under clause (i), shall be permanent and unaffected by any future dissolution of the marriage (or termination of the domestic partnership). Such reduction shall be independent of and in addition to the reduction required under clause (i).

(iv) *Notwithstanding any other provision of this subparagraph, an election under this subparagraph may not be made for the purpose of providing an annuity in the case of a spouse by remarriage (or a domestic partner by a subsequent domestic partnership) if such spouse was married to (or if such domestic partner was in a domestic partnership with) the employee or Member at the time of such employee's or Member's retirement, and all rights to survivor benefits for such spouse (or domestic partner) under this subchapter based on marriage (or domestic partnership) to such employee or Member were then waived under paragraph (1) or a similar prior provision of law.*

(v) *An election to provide a survivor annuity to a person under this subparagraph—*

(I) shall prospectively void any election made by the employee or Member under subsection (k)(1) with respect to such person; or

(II) shall, if an election was made by the employee or Member under such subsection (k)(1) with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subparagraph.

(vi) *The deposit provisions of clauses (ii) and (iii) shall not apply if—*

(I) the employee or Member makes an election under this subparagraph after having made an election under subsection (k)(1); and

(II) the election under subsection (k)(1) becomes void under clause (v).

(k)(1) At the time of retiring under section 8336 or 8338 of this title, an employee or Member who is found to be in good health by the Office may elect a reduced annuity instead of an annuity computed under subsections (a)-(i), (n), (q), (r), and (s) and name in writing an individual having an insurable interest in the employee or Member to receive an annuity under section 8341(c) of this title after the death of the retired employee or Member. The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent. An annuity which is reduced under this paragraph or any similar prior provision of law shall, effective the first day of the month following the death of the individual named under this paragraph, be recomputed and paid as if the annuity had not been so reduced. In the case of **【a married employee or Member】** *an employee or Member who is married (or in a domestic partnership)*, an election under this paragraph on behalf of the spouse (or domestic partner) may be made only if any right of such spouse (or domestic partner) to a survivor annuity based on the service of such employee or Member is waived in accordance with subsection (j)(1) of this section.

【(2)(A) An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to such employee or Member's spouse and who later marries, may irrevocably elect, in a signed writing received in the Office within 2 years after such employee or Member marries or, if later, within 2 years after the

death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section.】

(2)(A) *An employee or Member, who is unmarried (and not in a domestic partnership) at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to such employee's or Member's spouse (or domestic partner) and who later marries (or enters into a domestic partnership), may irrevocably elect, in a signed writing received in the Office—*

- (i) *within 2 years after such employee or Member marries (or enters into a domestic partnership), or*
- (ii) *if later, within 2 years after—*

(I) *the death or remarriage of any former spouse (or the death of or entry into a subsequent domestic partnership by any former domestic partner) of such employee or Member who was entitled to a survivor annuity under section 8341(h), or*

(II) *if there was more than 1, the death (or entry into a subsequent domestic partnership) by the last such surviving former spouse (or surviving former domestic partner),*
a reduction in the retired employee or Member's current annuity as provided in subsection (j).

(B)(i) The election and reduction shall take effect on the first day of the first month beginning after the expiration of the 9-month period beginning on the date of marriage (or entry into a domestic partnership). Any such election to provide a survivor annuity for a person—

(I) * * *

* * * * *

(ii) The retired employee or Member shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the retired employee or Member's annuity would have been reduced under subsection (j)(4) of this section since the commencing date of the annuity, if the employee or Member had been married (or in a domestic partnership) at the time of retirement and had elected to provide a survivor annuity at that time, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date of the annuity commenced shall be 6 percent.

(C) The Office shall, by regulation, provide for payment of the deposit required under subparagraph (B)(ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subparagraph (B)(ii), except that total reductions in the annuity of an employee or Member to pay deposits required by this subsection or subsection (j)(3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), (q), and (r) including adjustments under section 8340. The reduction required by this

subparagraph, which shall be effective on the same date as the election under subparagraph (A), shall be permanent and unaffected by any future termination of the marriage (*or domestic partnership*). Such reduction shall be independent of and in addition to the reduction required under subparagraph (A).

- * * * * *
- (o)(1)(A) An employee or Member—
 (i) who, at the time of retirement, **[is married,]** *is married* (*or is in a domestic partnership*), and

* * * * *

may, during the 18-month period beginning on the date of the retirement of such employee or Member, elect to have a reduction under subsection (j) made in the annuity of the employee or Member (or in such portion thereof as the employee or Member may designate) in order to provide a survivor annuity for the spouse (*or domestic partner*) of such employee or Member.

- (B) An employee or Member—
 (i) who, at the time of retirement, **[is married,]** *is married* (*or is in a domestic partnership*), and

* * * * *

§ 8340. Cost-of-living adjustment of annuities

- (a) For the purpose of this section—
 (1) the term “base quarter”, as used with respect to a year, means the calendar quarter ending on September 30, of such year; **[and]**
 (2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter~~].~~; *and*
 (3) *the terms “widow”, “widower”, and “surviving partner” have the respective meanings given them under section 8341.*

* * * * *

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

- (1) The first increase (if any) made under subsection (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, **[to the widow, widower, or former spouse, of a deceased employee or Member, or to the widow, widower, former spouse, or insurable interest designee]** *to the widow, widower, or former spouse (or the surviving partner or former domestic partner) of a deceased employee or Member, or to the widow, widower, or former spouse (or the surviving partner or former domestic partner), or insurable interest designee* of a deceased annuitant whose annuity has not been increased under this subsection or subsection (b) of this section, shall be equal to the product (adjusted to the nearest 1/10 of 1 percent) of—
 (A) * * *
 (B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—
 (i) * * *

(ii) in the case of **[a widow, widower, former spouse, or insurable interest designee]** *a widow, widower, or former spouse (or surviving partner or former domestic partner) or insurable interest designee* of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

* * * * *

§ 8341. Survivor annuities

(a) For the purpose of this section—

(1) * * *

* * * * *

(3) *“surviving partner” means the surviving domestic partner of an employee or Member who—*

(A) was in a domestic partnership with such employee or Member for at least 9 months immediately before the death of such employee or Member; or

(B) satisfies such other requirement, based on parenthood, as the Office of Personnel Management shall by regulation prescribe based on the definition of a widow or widower under this section;

[(3)] (4) *“dependent”, in the case of any child, means that the employee or Member involved was, at the time of the employee or Member’s death, either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office of Personnel Management shall prescribe; and*

[(4)] (5) *“child” means—*

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, and (ii) a stepchild but only if the stepchild lived with the employee or Member in a regular parent-child relationship, and (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee or Member, and who is adopted by the surviving spouse (or surviving domestic partner) of the employee or Member after his death;

* * * * *

For the purpose of this paragraph and subsection (e) of this section, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the Office of Personnel Management that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim. *The Office shall prescribe regulations to provide that, for purposes of applying the provisions*

of paragraph (5)(A)(ii) (relating to the treatment of a stepchild) in the case of a domestic partnership, rules similar to those prescribed to carry out section 8901(5)(B) in similar circumstances shall apply.

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a **【widow or widower】** *widow or widower (or surviving partner)*, the **【widow or widower】** *widow or widower (or surviving partner)* is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)-(i), (n), (p), (q), (r), and (s) as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of **【remarriage,】** *remarriage (or entry into a subsequent domestic partnership)* the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be.

(2) If an annuitant—

(A) * * *

* * * * *

dies and is survived by a **【widow or widower】** *widow or widower (or surviving partner)*, the **【widow or widower】** *widow or widower (or surviving partner)* is entitled to an annuity in an amount which would have been paid had the annuitant been married to (or in a domestic partnership with) the **【widow or widower】** *widow or widower (or surviving partner)* at the time of retirement.

(3) A spouse (or domestic partner) acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the **【widow or widower】** *widow or widower (or surviving partner)* under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the **【widow or widower】** *widow or widower (or surviving partner)*—

(A) * * *

(B) except as provided in subsection (k), remarries (or enters into a subsequent domestic partnership) before becoming 55 years of age.

(4) Notwithstanding the preceding provisions of this subsection, the annuity payable under this subsection to the **【widow or widower】** *widow or widower (or surviving partner)* of a retired employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such **【widow or widower】** *widow or widower (or surviving partner)* under this subsection (determined without regard to any waiver or designation under section 8339(j)(1) of this title or a prior similar provision of law), and

(B) the amount of the survivor annuity payable to any former spouse (or former domestic partner) of such employee or Member under subsection (h) of this section.

* * * * *

(d) If an employee or Member dies after completing at least 18 months of civilian service, his **【widow or widower】** *widow or widower (or surviving partner)* is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)-(f), (i), (n), (p), (q), (r), and (s) as may apply with respect to the employee or Member, except that, in the computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) * * *

* * * * *

Notwithstanding the preceding sentence, the annuity payable under this subsection to the **【widow or widower】** *widow or widower (or surviving partner)* of an employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such **【widow or widower】** *widow or widower (or surviving partner)* under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse *(or former domestic partner)* of such employee or Member under subsection (h) of this section.

The annuity of the **【widow or widower】** *widow or widower (or surviving partner)* commences on the day after the employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the **【widow or widower】** *widow or widower (or surviving partner)*—

(i) * * *

(ii) except as provided in subsection (k), remarries *(or enters into a subsequent domestic partnership)* before becoming 55 years of age.

【(e)(1) For the purposes of this subsection, “former spouse” includes a former spouse who was married to an employee or Member for less than 9 months and a former spouse of an employee or Member who completed less than 18 months of service covered by this subchapter.】

(e)(1) For the purposes of this subsection—

(A) the term “former spouse” includes a former spouse who was married to an employee or Member for less than 9 months and a former spouse of an employee or Member who completed less than 18 months of service covered by this subchapter; and

(B) the term “former domestic partner” includes a former domestic partner who was in a domestic partnership with an employee or Member for less than 9 months and a former domestic partner of an employee or Member who completed less than 18 months of service covered by this subchapter.

(2) If an employee or Member dies after completing at least 18 months of civilian service, or an employee or Member dies after retiring under this subchapter, and is survived by **【a spouse or a former spouse】** *a spouse or former spouse (or a domestic partner or former domestic partner)* who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(A) * * *

* * * * *

subject to section 8340 of this title. If the employee or Member is not survived by **[a spouse or a former spouse]** *a spouse or former spouse (or a domestic partner or former domestic partner)* who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(i) * * *

* * * * *

(3) The annuity of a child under this subchapter or under the Act of May 29, 1930, as amended from and after February 28, 1948, commences on the day after the employee or Member dies, or commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by subsection (a)(3) of this section, if any lump sum paid is returned to the Fund. This annuity and the right thereto terminate on the last day of the month before the child—

(A) * * *

* * * * *

(E) **[dies or marries;]** *dies, marries, or enters into a domestic partnership;* whichever first occurs. On the death of the surviving spouse or former spouse (*or domestic partner or former domestic partner*) or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the **[spouse, former spouse, or child]** *spouse or former spouse (or domestic partner or former domestic partner) or child*, had not survived the employee or Member.

(4) If the annuity of a child under this subchapter terminates under paragraph (3)(E) because of **[marriage, then, if such marriage]** *marriage, then, if such marriage (or a domestic partnership, then, if such domestic partnership)* ends, such annuity shall resume on the first day of the month in which it ends, but only if—

(A) * * *

* * * * *

[(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married at the date of separation, the surviving spouse—

[(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the Member commencing on the day after the Member dies and terminating on the last day of the month before the surviving spouse dies or remarries; or

[(2) may elect to receive the lump-sum credit instead of annuity if the spouse is the individual who would be entitled to the lump-sum credit and files application therefor with the Office before the award of the annuity.

Notwithstanding the preceding sentence, an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between—

[(A) the annuity which would otherwise be payable to such surviving spouse under this subsection, and

[(B) the amount of the survivor annuity payable to any former spouse of such Member under subsection (h) of this section.

[(g) In the case of a surviving spouse whose annuity under this section is terminated because of remarriage before becoming 55 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

[(1) the surviving spouse elects to receive this annuity instead of a survivor benefit to which he may be entitled, under this subchapter or another retirement system for Government employees, by reason of the remarriage; and

[(2) any lump sum paid on termination of the annuity is returned to the Fund.

[(h)(1) Subject to paragraphs (2) through (5) of this subsection, a former spouse of a deceased employee, Member, annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

[(2)(A) The annuity payable to a former spouse under this subsection may not exceed the difference between—

[(i) the amount applicable in the case of such former spouse, as determined under subparagraph (B) of this paragraph, and

[(ii) the amount of any annuity payable under this subsection to any other former spouse of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3) of this title, or a court order previously issued.

[(B) The applicable amount, for purposes of subparagraph (A)(i) of this paragraph in the case of a former spouse, is the amount which would be applicable—

[(i) under subsection (b)(4)(A) of this section in the case of a widow or widower, if the deceased was an employee or Member who died after retirement;

[(ii) under subparagraph (A) of subsection (d) of this section in the case of a widow or widower, if the deceased was an employee or Member described in the first sentence of such subsection; or

[(iii) under subparagraph (A) of subsection (f) of this section in the case of a surviving spouse, if the deceased was a Member described in the first sentence of such subsection.

[(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

[(A) shall not commence before—

[(i) the day after the employee, Member, or annuitant dies, or

[(ii) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be,

together with such additional information or documentation as the Office may prescribe, whichever is later, and

【(B) shall terminate—

【(i) except as provided in subsection (k), in the case of an annuity computed by reference to clause (i) or (ii) of paragraph (2)(B) of this subsection, no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies; or

【(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies.

【(4) For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

【(A) if such modification is made after the retirement or death of the employee or Member concerned, and

【(B) to the extent that such modification involves an annuity under this subsection.

【(5) For purposes of this subchapter, a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse under section 8339(j)(1) of this title or a similar prior provision of law.

【(6) Any payment under this subsection to a person bars recovery by any other person.

【(7) As used in this subsection, “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

【(i) The requirement in subsections (a)(1)(A) and (a)(2)(A) of this section that the surviving spouse of an employee or Member have been married to such employee or Member for at least 9 months immediately before the employee or Member’s death in order to qualify as the widow or widower of such employee or Member shall be deemed satisfied in any case in which the employee or Member dies within the applicable 9-month period, if—

【(1) the death of the employee or Member was accidental; or

【(2) the surviving spouse of such individual had been previously married to the individual and subsequently divorced, and the aggregate time married is at least 9 months.

【(k)(1) Subsections (b)(3)(B), (d)(ii), and (h)(3)(B)(i) (to the extent that they provide for termination of a survivor annuity because of a remarriage before age 55) shall not apply if the widow, widower, or former spouse was married for at least 30 years to the individual on whose service the survivor annuity is based.

【(2) A remarriage described in paragraph (1) shall not be taken into account for purposes of section 8339(j)(5)(B) or (C) or any other provision of this chapter which the Office may by regulation identify in order to carry out the purposes of this subsection.】

(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married (or a domestic partner to whom in a do-

mestic partnership) at the date of separation, the surviving spouse (or surviving partner)—

(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the Member commencing on the day after the Member dies and terminating on the last day of the month before the surviving spouse dies or remarries (or the surviving domestic partner dies or enters into a subsequent domestic partnership); or

(2) may elect to receive the lump-sum credit instead of annuity if the spouse (or domestic partner) is the individual who would be entitled to the lump-sum credit and files application therefor with the Office before the award of the annuity.

Notwithstanding the preceding sentence, an annuity payable under this subsection to the surviving spouse (or surviving domestic partner) of a Member may not exceed the difference between—

(A) the annuity which would otherwise be payable to such surviving spouse (or such surviving domestic partner) under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse (or any former domestic partner) of such Member under subsection (h).

(g) In the case of a surviving spouse (or surviving domestic partner) whose annuity under this section is terminated because of remarriage (or entry into a subsequent domestic partnership) before becoming 55 years of age, annuity at the same rate shall be restored commencing on the day the remarriage (or subsequent domestic partnership) is dissolved by death, annulment, or divorce (or terminated), if—

(1) the surviving spouse (or surviving domestic partner) elects to receive this annuity instead of a survivor benefit to which he may be entitled, under this subchapter or another retirement system for Government employees, by reason of the remarriage (or subsequent domestic partnership); and

(2) any lump sum paid on termination of the annuity is returned to the Fund.

(h)(1) Subject to paragraphs (2) through (5), a former spouse (or former domestic partner) of a deceased employee, Member, annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2)(A) The annuity payable to a former spouse (or former domestic partner) under this subsection may not exceed the difference between—

(i) the amount applicable in the case of such former spouse (or former domestic partner), as determined under subparagraph (B), and

(ii) the amount of any annuity payable under this subsection to any other former spouse (or former domestic partner) of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3), or a court order previously issued.

(B) *The applicable amount, for purposes of subparagraph (A)(i) in the case of a former spouse (or former domestic partner), is the amount which would be applicable—*

(i) under subsection (b)(4)(A) in the case of a widow or widower (or surviving partner), if the deceased was an employee or Member who died after retirement;

(ii) under subparagraph (A) of subsection (d) in the case of a widow or widower (or surviving partner), if the deceased was an employee or Member described in the first sentence of such subsection; or

(iii) under subparagraph (A) of subsection (f) in the case of a surviving spouse (or surviving domestic partner), if the deceased was a Member described in the first sentence of such subsection.

(3) *The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—*

(A) shall not commence before—

(i) the day after the employee, Member, or annuitant dies,

or

(ii) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe,

whichever is later, and

(B) shall terminate—

(i) except as provided in subsection (k), in the case of an annuity computed by reference to clause (i) or (ii) of paragraph (2)(B), no later than the last day of the month before the former spouse remarries (or former domestic partner enters into a subsequent domestic partnership) before becoming 55 years of age or dies; or

(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies (or the former domestic partner enters into a subsequent domestic partnership or dies).

(4) *For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) shall not be effective—*

(A) if such modification is made after the retirement or death of the employee or Member concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(5) *For purposes of this subchapter, a decree, order, agreement, or election referred to in paragraph (1) shall not be effective, in the case of a former spouse (or former domestic partner), to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse (or former domestic partner) under section 8339(j)(1) or a similar prior provision of law.*

(6) *Any payment under this subsection to a person bars recovery by any other person.*

(7) As used in this subsection, “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(i) The requirement in subsections (a)(1)(A), (a)(2)(A), and (a)(5)(A) that the surviving spouse (or surviving domestic partner) of an employee or Member have been married to (or in a domestic partnership with) such employee or Member for at least 9 months immediately before the employee’s or Member’s death in order to qualify as the widow or widower (or surviving partner) of such employee or Member shall be deemed satisfied in any case in which the employee or Member dies within the applicable 9-month period, if—

(1) the death of the employee or Member was accidental; or

(2) the surviving spouse (or surviving domestic partner) of such individual had been previously married to (or in a domestic partnership with) the individual that was subsequently dissolved (or terminated), and the aggregate time married (or in a domestic partnership) is at least 9 months.

(j)(1) Subsections (b)(3)(B), (d)(ii), and (h)(3)(B)(i), to the extent that they provide for termination of a survivor annuity because of a remarriage (or entry into a subsequent domestic partnership) before age 55, shall not apply if the widow, widower or former spouse was married to (or the surviving partner or former domestic partner was in a domestic partnership with) the individual on whose service the survivor annuity is based for at least 30 years.

(2) A remarriage (or entry into a subsequent domestic partnership) described in paragraph (1) shall not be taken into account for purposes of subparagraph (B) or (C) of section 8339(j)(5) or any other provision of this chapter which the Director of the Office of Personnel Management may by regulation identify in order to carry out the purposes of this subsection.

§ 8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) * * *

* * * * *

(c) Lump-sum benefits authorized by subsections (d)-(f) of this section shall be paid to the person or persons surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other person:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before his death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower (or surviving partner) of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of his death.

For the purpose of this subsection, "child" includes a natural child and an adopted child, but does not include a stepchild.

* * * * *

(j)(1)(A) Payment of the lump-sum credit under subsection (a) may be made only if the spouse, if any, and any former spouse (*or the domestic partner, if any, and any former domestic partner*) of the employee or Member are notified of the employee or Member's application.

(B) The Office shall prescribe regulations under which the lump-sum credit shall not be paid without the consent of a spouse or former spouse (*or domestic partner or former domestic partner*) of the employee or Member where the Office has received such additional information and documentation as the Office may require that—

(i) * * *

(ii) payment of the lump-sum credit would extinguish the entitlement of the spouse or former spouse (*or domestic partner or former domestic partner*), under a court order on file with the Office, to a survivor annuity under section 8341(h) or to any portion of an annuity under section 8345(j).

(2)(A) Notification of a spouse or former spouse (*or domestic partner or former domestic partner*) under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) of this subsection may be waived with respect to a spouse or former spouse (*or domestic partner or former domestic partner*) if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse (*or domestic partner or former domestic partner*) cannot be determined.

* * * * *

§ 8343a. Alternative forms of annuities

(a) * * *

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

(1) * * *

(2) in the case of an employee or Member who is married (*or in a domestic partnership*) at the time of retirement, an alternative which provides for—

(A) * * *

(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse (*or surviving domestic partner*).

* * * * *

(e) An employee or Member who is married (*or in a domestic partnership*) at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month pe-

riod beginning on the date of retirement, make the election provided for under section 8339(o) of this title, subject to the deposit requirement thereunder.

* * * * *

§ 8347. Administration; regulations

(a) * * *

* * * * *

(n)(1) Notwithstanding any other provision of this subchapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this subchapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

(A) * * *

* * * * *

(D) collect deposits to the Fund made by such employees, [their spouses, and their former spouses] *their spouses, domestic partners, former spouses, and former domestic partners*;

* * * * *

§ 8351. Participation in the Thrift Savings Plan

(a) * * *

(b)(1) * * *

* * * * *

(5)(A) The provisions of section 8435 of this title that require a waiver or consent by the spouse (*or domestic partner*) of an employee or Member (or former employee or Member) shall not apply with respect to sums in the Thrift Savings Fund contributed by the employee or Member (or former employee or Member) and earnings in the fund attributable to such sums.

(B) An election or change of election authorized by subchapter III of chapter 84 of this title shall be effective in the case of [a married employee or Member] *an employee or Member who is married (or in a domestic partnership)*, and a loan or withdrawal may be approved under section 8433(g) and (h) of this title in such case, only after the Executive Director notifies the employee's or Member's spouse (*or domestic partner*) that the election or change of election has been made or that the Executive Director has received an application for such loan or withdrawal, as the case may be.

(C) Subparagraph (B) may be waived with respect to a spouse (*or domestic partner*) if the employee or Member establishes to the satisfaction of the Executive Director of the Federal Retirement Thrift Investment Board that the whereabouts of such spouse (*or domestic partner*) cannot be determined.

(D) Except with respect to the making of loans or withdrawals under section 8433(g) or (h), none of the provisions of this paragraph requiring notification to a spouse or former spouse (*or domestic partner or former domestic partner*) of an employee, Member, former employee, or former Member shall apply in any case in which the nonforfeitable account balance of the employee, Member, former employee, or former Member is \$3,500 or less.

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CHAPTER 84—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

Sec.

8401. Definitions.

* * * * *

[8416. Survivor reduction for a current spouse.

[8417. Survivor reduction for a former spouse.]

8416. Survivor reduction for a current spouse or a current domestic partner.

8417. Survivor reduction for a former spouse or a former domestic partner.

* * * * *

[8435. Protections for spouses and former spouses.]

8435. Protections for spouses, domestic partners, former spouses, and former domestic partners.

* * * * *

[8442. Rights of a widow or widower.]

8442. Rights of a widow, widower, or surviving partner.

* * * * *

[8445. Rights of a former spouse.]

8445. Rights of a former spouse or former domestic partner.

* * * * *

SUBCHAPTER I—GENERAL PROVISIONS

§ 8401. Definitions

For the purpose of this chapter—

(1) * * *

* * * * *

(35) the term “air traffic controller” or “controller” means—

(A) * * *

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2109(1)(B);

[and]

(36) the term “customs and border protection officer” means an employee in the Department of Homeland Security (A) who holds a position within the GS-1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years **[.]**; and

(37) “former domestic partner” means a former domestic partner of an individual—

(A) if such individual performed at least 18 months of civilian service creditable under section 8411 as an employee or Member; and

(B) if the former domestic partner was in a domestic partnership with such individual for at least 9 months.

* * * * *

SUBCHAPTER II—BASIC ANNUITY

* * * * *

§ 8411. Creditable service

- (a) * * *
- * * *
- (c)(1) * * *
- * * *
- (4)(A) * * *
- * * *

(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

- (i) * * *
- (ii) this paragraph shall be carried out in any case which involves a former spouse (*or former domestic partner*).
- * * *
- (1)(1) * * *
- * * *

(4) The Office of Personnel Management shall prescribe any regulations necessary to carry out this subsection. Such regulations shall include—

- (A) * * *
- (B) provisions under which the Office may provide for—
 - (i) the payment, to the spouse (*or domestic partner*) or children of any individual referred to in the first sentence of paragraph (1), of any amounts which (but for this clause) would otherwise have been nonpayable by reason of such first sentence, subject to paragraph (5); and
- * * *

(5) Regulations to carry out clause (i) of paragraph (4)(B) shall include provisions to ensure that the authority to make any payment under such clause to the spouse (*or domestic partner*) or children of an individual shall be available only to the extent that the application of such clause is considered necessary and appropriate taking into account the totality of the circumstances, including the financial needs of the spouse (*or domestic partner*) or children, whether the spouse (*or domestic partner*) or children participated in an offense described in paragraph (2) of which such individual was finally convicted, and what measures, if any, may be necessary to ensure that the convicted individual does not benefit from any such payment.

* * * * *

§ 8416. Survivor reduction for a current spouse or a current domestic partner

(a)(1) If an employee or Member is married (*or in a domestic partnership*) at the time of retiring under this chapter, the reduction described in section 8419(a) shall be made unless the employee or Member and the spouse (*or domestic partner*) jointly waive, by written election, any right which the spouse (*or domestic partner*)

may have to a survivor annuity under section 8442 based on the service of such employee or Member. A waiver under this paragraph shall be filed with the Office under procedures prescribed by the Office.

(2) Notwithstanding paragraph (1), an employee or Member who is married (*or in a domestic partnership*) at the time of retiring under this chapter may waive the annuity for a surviving spouse (*or domestic partner*) without the spouse's (*or domestic partner's*) consent if the employee or Member establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

(A) that the spouse's (*or domestic partner's*) whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's (*or domestic partner's*) consent would otherwise be inappropriate.

* * * * *

[(b)(1) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the employee's or Member's annuity under section 8419(a) for the purpose of providing an annuity for such employee's or Member's spouse in the event such spouse survives the employee or Member.

[(2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage.

[(3) An election to provide a survivor annuity to an individual under this subsection—

[(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

[(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

[(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

[(A) the employee or Member was married to such individual at the time of retirement; and

[(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).

[(c)(1) An employee or Member who is unmarried at the time of retiring under this chapter and who later marries may irrevocably elect, in a signed writing received by the Office within 2 years after such employee or Member marries or, if later, within 2 years after

the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).】

(b)(1) Upon remarriage (or entry into a subsequent domestic partnership), a retired employee or Member who was married (or in a domestic partnership) at the time of retirement, including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse (or domestic partner or former domestic partner) as of the time of retirement, may irrevocably elect during such marriage (or domestic partnership), in a signed writing received by the Office—

(A) within 2 years after such remarriage (or entry into a subsequent domestic partnership), or

(B) if later, within 2 years after—

(i) the death or remarriage of any former spouse (or the death of or entry into a subsequent domestic partnership by any former domestic partner) of such employee or Member who was entitled to a survivor annuity under section 8445, or

(ii) if there was more than 1, the death or remarriage of the last such surviving former spouse (or the death of or entry into a subsequent domestic partnership by the last such surviving former domestic partner),

a reduction in the employee's or Member's annuity under section 8419(a) for the purpose of providing an annuity for such employee's or Member's spouse (or domestic partner) in the event such spouse (or domestic partner) survives the employee or Member.

(2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage (or entry into the subsequent domestic partnership).

(3) An election to provide a survivor annuity to an individual under this subsection—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

(A) the employee or Member was married to (or in a domestic partnership with) such individual at the time of retirement; and

(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).

(c)(1) An employee or Member who is unmarried (and not in a domestic partnership) at the time of retiring under this chapter and who later marries (or enters into a domestic partnership) may irrevocably elect, in a signed writing received by the Office—

(A) *within 2 years after such employee or Member marries (or enters into a domestic partnership), or*

(B) *if later, within 2 years after—*

(i) *the death or remarriage of any former spouse (or the death of or entry into a subsequent domestic partnership by any domestic partner) of such employee or Member who was entitled to a survivor annuity under section 8445,*

(ii) *if more than 1, the death or remarriage of the last such surviving former spouse (or the death of or the entry into a subsequent domestic partnership by the last such surviving domestic partner),*

a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).

(2) The election and reduction shall take effect the first day of the first month beginning 9 months after the date of **[marriage.] marriage (or domestic partnership)**. Any such election to provide a survivor annuity for an individual—

(A) * * *

* * * * *

(d)(1) An employee or Member—

(A) who is married *(or in a domestic partnership)* on the date of retiring under this chapter, and

(B) with respect to whose spouse *(or domestic partner)* a waiver under subsection (a) has been made,

may, during the 18-month period beginning on such date, elect to have a reduction made under section 8419 in order to provide a survivor annuity under section 8442 for such spouse *(or domestic partner)*.

* * * * *

§ 8417. Survivor reduction for a former spouse or a former domestic partner

(a) If an employee or Member has a former spouse *(or a former domestic partner)* who is entitled to a survivor annuity as provided in section 8445, the reduction described in section 8419(a) shall be made.

(b)(1) An employee or Member who has a former spouse *(or former domestic partner)* may elect, under procedures prescribed by the Office, a reduction in the annuity of the employee or Member under section 8419(a) in order to provide a survivor annuity for such former spouse *(or former domestic partner)* under section 8445.

[(2) An election under this subsection shall be made at the time of retirement or, if the marriage is dissolved after the date of retirement, within 2 years after the date on which the marriage of the former spouse to the employee or Member is so dissolved.]

(2) An election under this subsection shall be made at the time of retirement or, if the marriage is dissolved (or the domestic partnership is terminated) after the date of retirement, within 2 years after the date on which the marriage of the former spouse to the employee or Member is so dissolved (or the domestic partnership of the former domestic partner with the employee or Member is so terminated).

(3) An election under this subsection—

(A) shall not be effective to the extent that it—

(i) * * *

(ii) would cause the total of survivor annuities payable under sections 8442 and 8445, respectively, based on the service of the employee or Member to exceed the amount which would be payable to a widow or widower (or a surviving partner) of such employee or Member under such section 8442 (determined without regard to any reduction to provide for an annuity under such section 8445); and

[(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.]

(B) shall not be effective, in the case of an employee or Member who is then married (or in a domestic partnership), unless it is made with the spouse's (or domestic partner's) written consent.

* * * * *

§ 8418. Survivor elections; deposit; offsets

(a) * * *

(b) The Office shall, by regulation, provide for payment of the deposit required under subsection (a) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subsection (a), except that the total reductions in the annuity of an employee or Member to pay deposits required by this section shall not exceed 25 percent of the annuity computed under section 8415 or section 8452, including adjustments under section 8462. The reduction required by this subsection, which shall be effective at the same time as the election under section 8416(b) and (c) or section 8417(b), shall be permanent and unaffected by any future termination of the marriage (or domestic partnership) or the entitlement of the [former spouse.] former spouse (or former domestic partner). Such reduction shall be independent of and in addition to the reduction required under section 8416(b) and (c) or section 8417(b).

* * * * *

§ 8419. Survivor reductions; computation

(a)(1) Except as provided in paragraph (2), the annuity of an annuitant computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable) or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse (or domestic partner) of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced by 10 percent if a survivor annuity, or a combination of survivor annuities, under section 8442 or 8445 (or both) are to be provided for.

(2)(A) If no survivor annuity under section 8442 is to be provided for, but one or more survivor annuities under section 8445 involving a total of less than the entirety of the amount referred to in subsection (b)(2) of such section are to be provided for, the annuity of the annuitant involved (as computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable)) or one-half of the annuity, if jointly designated for this

purpose by the employee or Member and the spouse (*or domestic partner*) of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced by an appropriate percentage determined under subparagraph (B).

* * * * *

[(b)(1) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

[(A) after the death of the spouse; or

[(B) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8445.

[(2) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by appropriate reductions under subsection (a) if the retired employee or Member has one or more of the following:

[(A) another former spouse who is entitled to a survivor annuity under section 8445;

[(B) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not waived under section 8416(a) (or, if waived, with respect to whom an election under section 8416(d) has been made); or

[(C) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subsection (b) or (c) of section 8416.]

(b)(1) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse (or current domestic partner) of a retired employee or Member shall be terminated for each full month—

(A) after the death of the spouse (or domestic partner); or

(B) after the dissolution of the spouse's marriage to (or the termination of the domestic partner's domestic partnership with) the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse (or domestic partner) is entitled, as a former spouse (or former domestic partner), to a survivor annuity under section 8445.

(2) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse (or former domestic partner) of a retired employee or Member shall be terminated for each full month after the former spouse remarries (or the former domestic partner enters into a subsequent domestic partnership) before reaching age 55 or dies. This reduction shall be replaced by appropriate reductions under subsection (a) if the retired employee or Member has—

(A) another former spouse (or former domestic partner) who is entitled to a survivor annuity under section 8445;

(B) a current spouse to whom the employee or Member was married (or a current domestic partner with whom the employee or Member was in a domestic partnership) at the time of retirement and with respect to whom a survivor annuity was not

waived under section 8416(a) or, if waived, with respect to whom an election under section 8416(d) has been made; or

(C) a current spouse whom the employee or Member married (or current domestic partner with whom the employee or Member entered into a domestic partnership) after retirement and with respect to whom an election has been made under subsection (b) or (c) of section 8416.

§ 8420. Insurable interest reductions

(a) * * *

(b)(1) In the case of a [married employee or Member] *employee or Member who is married (or in a domestic partnership)*, an election under this section on behalf of the spouse *(or domestic partner)* may be made only if any right of such spouse *(or domestic partner)* to a survivor annuity based on the service of such employee or Member is waived in accordance with section 8416(a).

(2) Paragraph (1) does not apply in the case of an employee or Member if such employee or Member has a former spouse *(or former domestic partner)* who would become entitled to an annuity under section 8445 as a survivor of such employee or Member.

§ 8420a. Alternative forms of annuities

(a) * * *

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

(1) * * *

(2) in the case of an employee or Member who is married *(or in a domestic partnership)* at the time of retirement, an alternative which provides for—

(A) * * *

(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a [surviving spouse.] *surviving spouse (or surviving domestic partner).*

* * * * *

(d) An employee or Member who, at the time of retiring under this subchapter—

(1) is [married,] *married (or in a domestic partnership)*, shall be ineligible to make an election under this section unless a waiver is made under section 8416(a); or

(2) has a former spouse *(or former domestic partner)*, shall be ineligible to make an election under this section if the former spouse *(or former domestic partner)* is entitled to benefits under section 8445 or 8467 (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

(e) An employee or Member who is married *(or in a domestic partnership)* at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election pro-

vided for under section 8416(d), subject to the deposit requirement thereunder.

* * * * *

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

(a) * * *

(b)(1)(A) Payment of the lump-sum credit under subsection (a) may be made only if [the spouse, if any, and any former spouse] *any spouse or former spouse (and any domestic partner or former domestic partner)* of the employee or Member are notified of the employee or Member's application.

(B) The Office shall prescribe regulations under which the lump-sum credit shall not be paid without the consent of a [spouse or former spouse] *spouse or former spouse (or domestic partner or former domestic partner)* of the employee or Member where the Office has received such additional information or documentation as the Office may require that—

(i) * * *

(ii) payment of the lump-sum credit would extinguish the entitlement of the [spouse or former spouse] *spouse or former spouse (or domestic partner or former domestic partner)*, under a court order on file with the Office, to a survivor annuity under section 8445 or to any portion of an annuity under section 8467.

(2)(A) Notification of a [spouse or former spouse] *spouse or former spouse (or domestic partner or former domestic partner)* under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) may be waived with respect to a [spouse or former spouse] *spouse or former spouse (or domestic partner or former domestic partner)* if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such [spouse or former spouse] *spouse or former spouse (or domestic partner or former domestic partner)* cannot be determined.

* * * * *

(d) Lump-sum benefits authorized by subsections (e) through (g) shall be paid to the individual or individuals surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other individual:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before the death of such employee or Member. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the [widow or widower] *widow or widower (or surviving partner)* of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of death of the employee or Member.

For the purpose of this subsection, “child” includes a natural child and an adopted child, but does not include a stepchild.

* * * * *

SUBCHAPTER III—THRIFT SAVINGS PLAN

* * * * *

§ 8434. Annuities: methods of payment; election; purchase

(a)(1) * * *

(2) The methods of payment prescribed under paragraph (1) shall include, but not be limited to—

(A) * * *

(B) a method which provides for the payment of a monthly annuity to an annuitant for the joint lives of the annuitant and the spouse (*or domestic partner*) of the annuitant and an appropriate monthly annuity to the one of them who survives the other of them for the life of the survivor;

* * * * *

(E) a method which provides for the payment of a monthly annuity—

(i) to the annuitant for the joint lives of the annuitant and an individual who is designated by the annuitant under regulations prescribed by the Executive Director and (I) is a former spouse (*or former domestic partner*) of the annuitant, or (II) has an insurable interest in the annuitant; and

* * * * *

§ 8435. Protections for [spouses and former spouses] spouses, domestic partners, former spouses, and former domestic partners

(a)(1)(A) [A married employee or Member (or former employee or Member)] *An employee or Member, or former employee or former Member, who is married (or in a domestic partnership)* may withdraw all or part of a Thrift Savings Fund account under subsection (b)(2), (3), or (4) of section 8433 of this title or change a withdrawal election only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B). [A married employee or Member (or former employee or Member)] *An employee or Member, or former employee or former Member, who is married (or in a domestic partnership)* may make a withdrawal from a Thrift Savings Fund account under subsection (c)(1) of section 8433 of this title only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).

(B) An employee or Member (or former employee or Member) may make an election or change referred to in subparagraph (A) if the employee or Member and the employee's or Member's spouse *or domestic partner* (or the former employee or Member and the former employee's or Member's spouse *or domestic partner*) jointly waive, by written election, any right which the spouse *or domestic partner* may have to a survivor annuity with respect to such employee or Member (or former employee or Member) under section 8434 of this title or subsection (b).

(2) Paragraph (1) shall not apply to an election or change of election by an employee or Member (or former employee or Member) who establishes to the satisfaction of the Executive Director (at the time of the election or change and in accordance with regulations prescribed by the Executive Director)—

(A) that the spouse's *(or domestic partner's)* whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the spouse's *(or domestic partner's)* waiver would otherwise be inappropriate.

(b)(1) Notwithstanding any election under subsection (b) of section 8434 of this title, the method described in subsection (a)(2)(B) of such section (or, if more than one form of such method is available, the form which the Board determines to be the one which provides for a surviving spouse *(or surviving domestic partner)* a survivor annuity most closely approximating the annuity of a surviving spouse *(or surviving domestic partner)* under section 8442 of this title) shall be deemed the applicable method under such subsection (b) in the case of an employee, Member, former employee, or former Member who is married *(or in a domestic partnership)* on the date on which an annuity contract is purchased to provide for the employee's, Member's, former employee's, or former Member's annuity under this subchapter.

(2) Paragraph (1) shall not apply if—

(A) a joint waiver of such method is made, in writing, by the employee or Member and the spouse *(or domestic partner)*; or

* * * * *

(d)(1) Subject to paragraphs (2) through (7), a former spouse *(or former domestic partner)* of a deceased employee or Member (or a deceased former employee or Member) who died after performing 18 or more months of service and a former spouse *(or former domestic partner)* of a deceased former employee or Member who died entitled to an immediate or deferred annuity under subchapter II of this chapter is entitled to a survivor annuity under this subsection if and to the extent that—

(A) * * *

* * * * *

(3) The amount of the survivor annuity payable from the Thrift Savings Fund to a former spouse *(or former domestic partner)* of a deceased employee, Member, former employee, or former Member under this section may not exceed the excess, if any, of—

(A) the amount of the survivor annuity determined for a surviving spouse *(or surviving domestic partner)* of the deceased employee, Member, former employee, or former Member under the method described in subsection (b)(1), over

(B) the total amount of all other survivor annuities payable under this subchapter to other former spouses (*or former domestic partners*) of such deceased employee, Member, former employee, or former Member based on the order of precedence provided in paragraph (4).

(4) If more than one former spouse (*or former domestic partner*) of a deceased employee, Member, former employee, or former Member is entitled to a survivor annuity pursuant to this subsection, the amount of each such survivor annuity shall be limited appropriately to carry out paragraph (3) in the order of precedence established for the entitlements by the chronological order of the dates on which elections are properly made pursuant to section 8434(a)(2)(E) of this title and the dates on which the court decrees, orders, or agreements applicable to the entitlement were issued, as the case may be.

(5) Subsections (c) and (d) of section 8445 of this title shall apply to an entitlement of a former spouse (*or former domestic partner*) to a survivor annuity under this subsection.

(6) For the purposes of this section, a court decree, order, or agreement or an election referred to in subsection (a) of this section shall not be effective, in the case of a former spouse (*or former domestic partner*), to the extent that the election is inconsistent with any joint waiver previously executed with respect to such former spouse (*or former domestic partner*) under subsection (a)(2) or (b)(2).

* * * * *

[(e)(1)(A) A loan or withdrawal may be made to a married employee or Member under section 8433(g) and (h) of this title only if the employee's or Member's spouse consents to such loan or withdrawal in writing.]

(e)(1)(A) A loan or withdrawal under subsection (g) or (h) of section 8433 may be made to an employee or Member who is married (or in a domestic partnership) only if the employee's or Member's spouse (or domestic partner) consents to such loan or withdrawal in writing.

* * * * *

(C) Subparagraph (A) shall not apply to a loan or withdrawal to an employee or Member who establishes to the satisfaction of the Executive Director (at the time the employee or Member applies for such loan or withdrawal and in accordance with regulations prescribed by the Executive Director)—

- (i) that the spouse's (*or domestic partner's*) whereabouts cannot be determined; or
- (ii) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's (*or domestic partner's*) consent would otherwise be inappropriate.

* * * * *

(g) Except with respect to the making of loans or withdrawals under section 8433(g) and (h), none of the provisions of this section requiring notification to, or the consent or waiver of, a spouse or former spouse (*or domestic partner or former domestic partner*) of an employee, Member, former employee, or former Member shall apply in any case in which the nonforfeitable account balance of

the employee, Member, former employee, or former Member is \$3,500 or less.

* * * * *

§ 8440a. Justices and judges

(a) * * *

(b)(1) * * *

* * * * *

(6) The provisions of section 8351(b)(5) of this title shall govern the rights of spouses (or *domestic partners*) of justices or judges contributing to the Thrift Savings Fund under this section.

* * * * *

SUBCHAPTER IV—SURVIVOR ANNUITIES

§ 8441. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * *

(3) *the term “surviving partner” means the surviving domestic partner of an employee, Member, or annuitant, or of a former employee or Member, who—*

(A) was in a domestic partnership with such employee, Member, or annuitant, or former employee or Member, for at least 9 months immediately before the death of such employee, Member, or annuitant, or former employee or Member; or

(B) satisfies such other requirement, based on parenthood, as the Office of Personnel Management shall by regulation prescribe based on the definition of a widow or widower under this section;

[(3)] (4) the term “dependent”, in the case of any child, means that the employee, Member, or annuitant involved was, at the time of death of the employee, Member, or annuitant either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe; and

[(4)] (5) the term “child” means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, (ii) a stepchild but only if the stepchild lived with the employee, Member, or annuitant in a regular parent-child relationship, (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee, Member, or annuitant and who is adopted by the widow or widower (or *surviving partner*) of the employee, Member, or annuitant after the death of such employee, Member, or annuitant;

* * * * *

The Office shall prescribe regulations to provide that, for purposes of applying the provisions of paragraph (5)(A)(ii) (relating to the treatment of a stepchild) in the case of a domestic partnership, rules

similar to those prescribed to carry out section 8901(5)(B) in similar circumstances shall apply.

§ 8442. Rights of a [widow or widower] widow, widower, or surviving partner

(a)(1) Except as provided in subsection (g), if an annuitant dies and is survived by a widow or widower (*or surviving partner*), the widow or widower (*or surviving partner*) is entitled to an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the annuitant, (or one-half thereof, if designated for this purpose under section 8419 of this title), unless—

(A) * * *

(B) in the case of a marriage (*or entry into a domestic partnership*) after retirement, the annuitant did not file an election under section 8416(b) or (c), as the case may be.

(2) A spouse (*or domestic partner*) acquired after retirement is entitled to an annuity under this subsection (as provided in paragraph (1)) only upon electing this annuity instead of any other survivor benefit to which such spouse (*or domestic partner*) may be entitled under this subchapter or section 8424 or under another retirement system for Government employees.

(b)(1) If an employee or Member dies after completing at least 18 months of civilian service creditable under section 8411 and is survived by a widow or widower (*or surviving partner*), the widow or widower (*or surviving partner*) is entitled to—

(A) * * *

* * * * *

(2) The Office shall prescribe regulations under which the total amount payable to a widow or widower (*or surviving partner*) under paragraph (1)(A) may, at the election of the widow or widower (*or surviving partner*), be paid—

(A) * * *

* * * * *

(c)(1) If a former employee or Member dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for an annuity, and is survived by a widow or widower to whom married (*or a surviving partner with whom in a domestic partnership*) on the date of separation, the [widow or widower] widow or widower (*or surviving partner*) may elect to receive—

(A) * * *

(B) the lump-sum credit, if the [widow or widower] widow or widower (*or surviving partner*) is the individual who would be entitled to the lump-sum credit and if such [widow or widower] widow or widower (*or surviving partner*) files application therefor with the Office.

(2)(A)(i) Subject to clause (ii) and subparagraph (B)(ii), the annuity of the [widow or widower] widow or widower (*or surviving partner*) is equal to 50 percent of an annuity computed under section 8415 for the former employee or Member.

(ii)(I) In computing an amount under section 8415 for a former employee or Member (described in subclause (II)) in order to compute the annuity for a [widow or widower] widow or widower (*or surviving partner*) under this subsection, the computation under

section 8415 shall be made as if the former employee or Member had attained the applicable minimum retirement age under section 8412(h).

* * * * *

(B)(i) Notwithstanding the first sentence of subsection (d)(1), the annuity of the **【widow or widower】** *widow or widower (or surviving partner)* of a former employee or Member under subparagraph

(A)(ii) commences—

(I) * * *

(II) if the **【widow or widower】** *widow or widower (or surviving partner)* so designates in the election, as of the day after the death of the former employee or Member.

(ii) The present value of the annuity of a **【widow or widower】** *widow or widower (or surviving partner)* who chooses the earlier commencement date under clause (i)(II) shall be actuarially equivalent to the present value of an annuity computed for the **【widow or widower】** *widow or widower (or surviving partner)*, determined as if the commencement date under clause (i)(I) were applicable.

(3)(A) * * *

(B) Nothing in this subsection shall be considered to affect the provisions of this chapter relating to a lump-sum credit in the case of the **【widow or widower】** *widow or widower (or surviving partner)* of a former employee or Member who dies after completing less than 10 years of service.

(d)(1) The annuity of a **【widow or widower】** *widow or widower (or surviving partner)* under this section commences on the day after the death of the individual on whose service such annuity is based. This annuity and the right thereto terminate on the last day of the month before the **【widow or widower】** *widow or widower (or surviving partner)*—

(A) * * *

(B) except as provided in paragraph (3), remarries *(or enters into a subsequent domestic partnership)* before becoming 55 years of age.

(2) In the case of a **【widow or widower】** *widow or widower (or surviving partner)* whose annuity under this section is terminated because of **【remarriage before】** *remarriage (or entry into a subsequent domestic partnership)* before becoming 55 years of age, the annuity shall be restored at the same rate commencing on the day the **【remarriage is dissolved by death, divorce, or annulment,】** *remarriage is dissolved by death, divorce, annulment (or subsequent domestic partnership is terminated)*, if—

(A) the **【widow or widower】** *widow or widower (or surviving partner)* elects to receive this annuity instead of any other survivor benefit to which such **【widow or widower】** *widow or widower (or surviving partner)* may be entitled (under this subchapter or section 8424 or under another retirement system for Government employees) by reason of the **【remarriage;】** *remarriage (or entry into a subsequent domestic partnership)*; and

* * * * *

(3) Paragraph (1)(B) (relating to termination of a survivor annuity because of a remarriage *or entry into a subsequent domestic partnership* before age 55) shall not apply if the **【widow or widower】** *widow or widower (or surviving partner)* was married for at

least 30 years to *(or in a domestic partnership for at least 30 years with)* the individual on whose service the survivor annuity is based.

(e) The requirement in paragraphs (1)(A) and (2)(A) of section 8441 that the widow or widower *(or surviving partner)* of an annuitant, employee, or Member, or of a former employee or Member, have been married to *(or in a domestic partnership with)* such individual for at least 9 months immediately before the death of the individual in order to qualify as the widow or widower *(or surviving partner)* of such individual shall be deemed satisfied in any case in which the individual dies within the applicable 9-month period, if—

(1) * * *

[(2) the surviving spouse of the individual had been previously married to such individual and subsequently divorced, and the aggregate time married is at least 9 months.]

(2) *the surviving spouse (or surviving domestic partner) of such individual had been previously married to (or in a domestic partnership with) the individual that was subsequently dissolved (or terminated), and the aggregate time married (or in a domestic partnership) is at least 9 months.*

* * * * *

(g)(1) If the [widow or widower] *widow, widower, or surviving partner* of an annuitant under section 8452 (hereinafter in this subsection referred to as a “disability annuitant”) is determined under subsection (a) to be entitled to an annuity based on the service of such disability annuitant, the annuity of the [widow or widower] *widow, widower, or surviving partner* shall be equal to 50 percent of the amount determined under paragraph (2) (or one-half thereof if designated for this purpose under section 8419 of this title), rather than of the amount referred to in subsection (a).

(2)(A) Except as provided in subparagraph (B), the amount on which the annuity of the [widow or widower] *widow, widower, or surviving partner* of a disability annuitant is based shall be the amount of the annuity to which such disability annuitant was entitled, as computed under section 8452 (including appropriate reduction under subsection (a)(2) of such section and any adjustments under section 8462 allowed under section 8452), as of the day before the date of the disability annuitant’s death.

(B)(i) In the case of a [widow or widower] *widow, widower, or surviving partner* entitled to an annuity based on the service of a disability annuitant who dies before age 62, the amount under clause (ii) shall apply instead of the amount which would otherwise apply under subparagraph (A).

* * * * *

(h) The following rules shall apply notwithstanding any other provision of this section:

(1) The annuity payable under this section to a [widow or widower] *widow or widower (or surviving partner)* may not exceed the difference between—

(A) the amount of the annuity which would otherwise be payable to such [widow or widower] *widow or widower (or surviving partner)* under this section; and

(B) the amount of the annuity payable to any former spouse *(or former domestic partner)* of the deceased employee, Member, or annuitant, or former employee or Mem-

ber, based on an election made under section 8417(b) or a court order previously issued or agreement previously entered into as described in section 8445(a).

(2) The amount payable under subsection (b)(1)(A) to a [widow or widower] *widow or widower (or surviving partner)* may not exceed the difference between—

(A) the amount which would otherwise be payable to such [widow or widower] *widow or widower (or surviving partner)* under such subsection; and

(B) the portion of such amount payable to any former spouse *(or former domestic partner)* of the deceased employee, Member, or annuitant, or former employee or Member, based on a court order previously issued or agreement previously entered into.

* * * * *

§ 8445. Rights of a [former spouse] *former spouse or former domestic partner*

(a) Subject to subsections (b) through (e), a former spouse *(or former domestic partner)* of a deceased employee, Member, or annuitant (or of a former employee or Member who dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for annuity) is entitled to an annuity under this section, if and to the extent expressly provided for in an election under section 8417(b), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(b)(1) The annuity payable to a former spouse *(or former domestic partner)* under this section may not exceed the difference between—

(A) the amount applicable in the case of such former spouse *(or former domestic partner)*, as determined under paragraph (2); and

(B) the amount of any annuity payable under this section to any other former spouse *(or former domestic partner)* of the employee, Member, or annuitant, or former employee or Member, based on an election previously made under section 8417(b), or a court order previously issued or agreement previously entered into as described in subsection (a).

(2) The applicable amount, for purposes of paragraph (1)(A) in the case of a former spouse *(or former domestic partner)*, is the amount of the annuity which would be payable under the provisions of section 8442 (including subsection (f) of such section, but without regard to subsection (h) of such section) if such former spouse *(or former domestic partner)* were a widow or widower *(or surviving partner)* entitled to an annuity under such provisions based on the service of the deceased employee, Member, or annuitant, or former employee or Member.

(c) The commencement and termination of an annuity payable under this section shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(1) * * *

(2) except as provided in subsection (h), shall terminate no later than the last day of the month before the former spouse remarries (or the former domestic partner enters into a subsequent domestic partnership) before becoming 55 years of age or dies.

* * * * *

(e) For purposes of this chapter, a decree, order, agreement, or election referred to in subsection (a) shall not be effective, in the case of a former spouse (or former domestic partner), to the extent that it is inconsistent with any joint waiver previously executed with respect to such former spouse (or former domestic partner) under section 8416(a).

* * * * *

[(h)(1) Subsection (c)(2) (to the extent that it provides for termination of a survivor annuity because of a remarriage before age 55) shall not apply if the former spouse was married for at least 30 years to the individual on whose service the survivor annuity is based.

[(2) A remarriage described in paragraph (1) shall not be taken into account for purposes of section 8419(b)(1)(B) or any other provision of this chapter which the Office may by regulation identify in order to carry out the purposes of this subsection.]

(h)(1) Subsection (c)(2), to the extent that it provides for termination of a survivor annuity because of a remarriage (or entry into a subsequent domestic partnership) before age 55, shall not apply if the former spouse (or former domestic partner) was married to (or in a domestic partnership with) the individual on whose service the survivor annuity is based for at least 30 years.

(2) A remarriage (or entry into a subsequent domestic partnership) described in paragraph (1) shall not be taken into account for purposes of section 8419(b)(1)(B) or any other provision of this chapter which the Director may by regulation identify in order to carry out the purposes of this subsection.

* * * * *

SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

§ 8461. Authority of the Office of Personnel Management

(a) * * *

* * * * *

(j)(1) Notwithstanding any other provision of this chapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this chapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

(A) * * *

* * * * *

(D) collect deposits to the Fund made by [such employees, their spouses, their former spouses, and their survivors] *such employees and their spouses, domestic partners, former spouses, former domestic partners, and survivors;*

* * * * *

§ 8462. Cost-of-living adjustments

(a) * * *

* * * * *

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) * * *

(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's **【**survivor (other than a widow or widower whose annuity is computed under section 8442(g) or a child under section 8443)**】** *survivor, other than a widow or widower (or surviving partner) whose annuity is computed under section 8442(g) or a child under section 8443*, shall be increased by the total percentage by which the deceased annuitant's annuity had been increased under this section during the period beginning on the date the deceased annuitant's annuity commenced and ending on the date of the deceased annuitant's death.

* * * * *

(4) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to a widow or widower (*or surviving partner*) whose annuity is computed under section 8442(g) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

(A) * * *

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month) since—

(i) the effective date of the adjustment last made under this section in the annuity of the annuitant on whose service on the widow's or widower's (*or surviving partner's*) annuity is based; or

* * * * *

SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

* * * * *

§ 8477. Fiduciary responsibilities; liability and penalties

(a) For the purposes of this section—

(1) * * *

* * * * *

(4) the term “party in interest” includes—

(A) * * *

* * * * *

【(F) a spouse, sibling, ancestor, lineal descendant, or spouse of a lineal descendant of a person described in subparagraph (A), (B), or (D);**】**

(F) a spouse (or domestic partner), sibling, ancestor, lineal descendant, or spouse (or domestic partner) of a lineal

descendant of a person described in subparagraph (A), (B), or (D);

* * * * *

CHAPTER 87—LIFE INSURANCE

§ 8701. Definitions

(a) * * *

* * * * *

(d)(1) For the purpose of this chapter, “family member”, when used with respect to any individual, means—

(A) the spouse or *domestic partner* of the individual; and

* * * * *

(3) *In the case of an individual whose domestic partner has a child by a previous marriage, domestic partnership (as defined under regulations of the Office of Personnel Management), or otherwise, such child shall, unless adopted by such individual, be treated as a stepchild of such individual.*

* * * * *

§ 8705. Death claims; order of precedence; escheat

(a) Except as provided in subsection (e), the amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower or *surviving domestic partner* of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other next of kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

* * * * *

§ 8714c. Optional life insurance on family members

(a) * * *

(b)(1) The optional life insurance on family members provided under this section shall be made available to each eligible employee who has elected coverage under this section, under conditions the

Office shall prescribe, in multiples, at the employee’s election, of 1, 2, 3, 4, or 5 times—

- (A) \$5,000 for a [spouse;] *spouse or domestic partner*; and

* * * * *

CHAPTER 89—HEALTH INSURANCE

§ 8901. Definitions

For the purpose of this chapter—

- (1) * * *

* * * * *

(5) “member of family” means the *spouse or domestic partner* of an employee or annuitant and an unmarried dependent child under 22 years of age, including—

- (A) * * *

* * * * *

(8) “employee organization” means—

- (A) * * *

(B) an association or other organization which is national in scope, in which membership is open only to employees, annuitants, [or former spouses,] *former spouses, or former domestic partners*, or any combination thereof, and which, during the 90-day period beginning on the date of enactment of section 8903a of this title, applied to the Office for approval of a plan provided under such section;

* * * * *

(10) “former spouse” means a former spouse of an employee, former employee, or annuitant—

- (A) * * *

* * * * *

except that such term shall not include any such unremarried former spouse of a former employee whose marriage was dissolved after the former employee’s separation from the service (other than by retirement); [and]

(11) “*former domestic partner*” means a *domestic partner*—

(A) *whose domestic partnership with an employee, former employee, or annuitant has terminated,*

(B) *who has not entered into another domestic partnership before age 55 after the domestic partnership to the employee, former employee, or annuitant was terminated,*

(C) *who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the termination of the domestic partnership to the employee, former employee, or annuitant, and*

(D)(i) *who is receiving any portion of a survivor annuity under section 8341(h) or 8445 (or benefits similar to either of the aforementioned annuity benefits under a retirement system for Government employees other than the Civil Service Retirement System or the Federal Employees’ Retirement System),*

(ii) *for whom an election has been made under section 8339(j)(3) or 8417(b) (or similar provision of law), or*

(iii) who is otherwise entitled to an annuity or any portion of an annuity as a former domestic partner under a retirement system for Government employees, except that such term shall not include any such former domestic partner, who has not entered into another domestic partnership, of a former employee whose domestic partnership was terminated after the former employee's separation from the service (other than by retirement); and

[(11)] (12) "qualified clinical social worker" means an individual—
(A) * * *

* * * * *
For purposes of paragraph (5), in the case of an employee or annuitant whose domestic partner has a child by a previous marriage, domestic partnership (as defined under regulations of the Office of Personnel Management), or otherwise, such child shall, unless adopted by such individual, be treated as a stepchild of such individual.

§ 8902. Contracting authority

(a) * * *

* * * * *
(g) A contract may not be made or a plan approved which does not offer to each employee, annuitant, family member, former spouse, former domestic partner, or person having continued coverage under section 8905a of this title whose enrollment in the plan is ended, except by a cancellation of enrollment, a temporary extension of coverage during which he may exercise the option to convert, without evidence of good health, to a nongroup contract providing health benefits. An employee, annuitant, family member, former spouse, former domestic partner, or person having continued coverage under section 8905a of this title who exercises this option shall pay the full periodic charges of the nongroup contract.

* * * * *
(j) Each contract under this chapter shall require the carrier to agree to pay for or provide a health service or supply in an individual case if the Office finds that the employee, annuitant, family member, former spouse, former domestic partner, or person having continued coverage under section 8905a of this title is entitled thereto under the terms of the contract.

(k)(1) When a contract under this chapter requires payment or reimbursement for services which may be performed by a clinical psychologist, optometrist, nurse midwife, nursing school administered clinic, or nurse practitioner/clinical specialist, licensed or certified as such under Federal or State law, as applicable, or by a qualified clinical social worker as defined in section 8901(11), an employee, annuitant, family member, former spouse, former domestic partner, or person having continued coverage under section 8905a of this title covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist, qualified clinical social worker, optometrist, nurse midwife, nursing school administered clinic, or nurse practitioner/nurse clinical specialist without supervision or referral by another health practi-

tioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed.

* * * * *

§ 8902a. Debarment and other sanctions

(a)(1) For the purpose of this section—

(A) * * *

(B) the term “individual covered under this chapter” or “covered individual” means an employee, annuitant, family member, [or former spouse] *former spouse, or former domestic partner* covered by a health benefits plan described by section 8903 or 8903a;

* * * * *

§ 8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) SERVICE BENEFIT PLAN.—One Government-wide plan, which may be underwritten by participating affiliates licensed in any number of States, offering two levels of benefits, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees, annuitants, members of their families, former spouses, *former domestic partners*, or persons having continued coverage under section 8905a of this title, or, under certain conditions, payment is made by a carrier to the employee, annuitant, family member, former spouse, *former domestic partner*, or person having continued coverage under section 8905a of this title.

* * * * *

§ 8905. Election of coverage

(a) * * *

* * * * *

(c)(1) * * *

* * * * *

(3) *The Office shall prescribe regulations to ensure that, in the administration of this subsection, parity of treatment is afforded—*

(A) *to former spouses and former domestic partners; and*

(B) *to the children of a marriage that has been dissolved and the children of a domestic partnership that has been terminated.*

* * * * *

(e) If an employee, annuitant, or other individual eligible to enroll in a health benefits plan under this chapter has a spouse or *domestic partner* who is also eligible to enroll, [either spouse,] *either spouse or domestic partner*, but not both, may enroll for self and family, or each spouse may enroll as an individual. However, an individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

(f) An employee, annuitant, former spouse, *former domestic partner*, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan under this chapter may change his coverage or that of himself and members of his family by an application filed within 60 days after a change in family status or at other times and under conditions prescribed by regulations of the Office.

(g)(1) Under regulations prescribed by the Office, the Office shall, before the start of any contract term in which—

(A) * * *

* * * * *

provide a period of not less than 3 weeks during which any employee, annuitant, former spouse, *former domestic partner*, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan described by such section shall be permitted to transfer that individual's enrollment to another such plan or to cancel such enrollment.

(2) In addition to any opportunity afforded under paragraph (1) of this subsection, an employee, annuitant, former spouse, *former domestic partner*, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan under this chapter shall be permitted to transfer that individual's enrollment to another such plan, or to cancel such enrollment, at such other times and subject to such conditions as the Office may prescribe in regulations.

* * * * *

§ 8905a. Continued coverage

(a) * * *

* * * * *

(g) *The Office shall prescribe regulations to ensure that, in the administration of this section, parity of treatment is afforded—*

(1) to former spouses and former domestic partners; and

(2) to the children of a marriage that has been dissolved and the children of a domestic partnership that has been terminated.

* * * * *

§ 8908. Coverage of restored employees and survivor or disability annuitants

(a) * * *

(b) A surviving spouse *or surviving domestic partner* whose survivor annuity under this title was terminated because of remarriage *or a subsequent domestic partnership* and is later restored may, under such regulations as the Office of Personnel Management may prescribe, enroll in a health benefits plan described by section 8903 or 8903a of this title if such spouse was covered by any such plan immediately before such annuity was terminated.

* * * * *

§ 8913. Regulations

(a) * * *

* * * * *

(c) The regulations of the Office shall provide for the beginning and ending dates of coverage of employees, annuitants, members of their families, ~~and former spouses~~ *former spouses, and former domestic partners* under health benefit plans. The regulations may permit the coverage to continue, exclusive of the temporary extension of coverage described by section 8902(g) of this title, until the end of the pay period in which an employee is separated from the service, or until the end of the month in which an ~~annuitant or former spouse~~ *annuitant, former spouse, or former domestic partner* ceases to be entitled to annuity, and in case of the death of an employee or annuitant, may permit a temporary extension of the coverage of members of his family for not to exceed 90 days.

* * * * *

CHAPTER 89A—ENHANCED DENTAL BENEFITS

* * * * *

§ 8956. Election of coverage

(a) An eligible individual may enroll in a dental benefits plan for self-only, self plus one, or for self and family. If an eligible individual has a spouse *or domestic partner* who is also eligible to enroll, ~~either spouse,~~ *either spouse or either domestic partner (as the case may be)*, but not both, may enroll for self plus one or self and family. An individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

* * * * *

§ 8957. Coverage of restored survivor or disability annuitants

A surviving spouse, *surviving domestic partner*, disability annuitant, or surviving child whose annuity is terminated and is later restored, may continue enrollment in a dental benefits plan subject to the terms and conditions prescribed in regulations issued by the Office.

* * * * *

CHAPTER 89B—ENHANCED VISION BENEFITS

* * * * *

§ 8986. Election of coverage

(a) An eligible individual may enroll in a vision benefits plan for self-only, self plus one, or for self and family. If an eligible individual has a spouse *or domestic partner* who is also eligible to enroll, ~~either spouse,~~ *either spouse or either domestic partner (as the case may be)*, but not both, may enroll for self plus one or self and family. An individual may not be enrolled both as an employee,

annuitant, or other individual eligible to enroll and as a member of the family.

* * * * *

§ 8987. Coverage of restored survivor or disability annuitants

A surviving spouse, *surviving domestic partner*, disability annuitant, or surviving child whose annuity is terminated and is later restored, may continue enrollment in a vision benefits plan subject to the terms and conditions prescribed in regulations issued by the Office.

* * * * *

CHAPTER 90—LONG-TERM CARE INSURANCE

* * * * *

§ 9001. Definitions

For purposes of this chapter:

(1) * * *

* * * * *

(5) **QUALIFIED RELATIVE.**—The term “qualified relative” means each of the following:

(A) The spouse of an individual described in paragraph (1), (2), (3), **[or (4).]** or (4) (and the domestic partner of an individual described in paragraph (1), (2), or (4) or of an individual who satisfies paragraph (3) by virtue of having been appointed to a position in the commissioned corps of the Public Health Service or the commissioned corps of the National Oceanic and Atmospheric Administration).

* * * * *

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

* * * * *

§ 9002. Availability of insurance

(a) * * *

* * * * *

(e) **UNDERWRITING STANDARDS.**—

(1) * * *

(2) **[SPOUSAL PARITY] PARITY FOR SPOUSE OR DOMESTIC PARTNER.**—For the purpose of underwriting standards, a spouse or domestic partner of an individual described in paragraph (1), (2), (3), or (4) of section 9001 shall, as nearly as practicable, be treated like that individual.

* * * * *



ETHICS IN GOVERNMENT ACT OF 1978

* * * * *

**TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF
FEDERAL PERSONNEL**

* * * * *

DOMESTIC PARTNERS

SEC. 112. (a) An employee, former employee, or annuitant and the domestic partner of such employee, former employee, or annuitant (as the case may be) shall be subject to the provisions of law cited in subsection (b) to the same extent and in the same manner as in the case of a married employee, former employee, or annuitant and the spouse of such employee, former employee, or annuitant (as the case may be).

(b) The provisions of law cited in this subsection are as follows:

(1) The preceding provisions of this title (relating to financial disclosure requirements of Federal personnel) and the provisions of title V (relating to Government-wide limitations on outside earned income and employment).

(2) Regulations prescribed under section 7301 of title 5, United States Code (relating to regulations for the conduct of employees in the executive branch).

(3) Section 7351 of title 5, United States Code (relating to gifts to superiors).

(4) Section 7353 of title 5, United States Code (relating to gifts to Federal employees).

(5) Chapter 11 of title 18, United States Code (relating to bribery, graft, and conflicts of interest).

(6) Section 7342 of title 5, United States Code (relating to receipt and disposition of foreign gifts and decorations).

(7) Section 1353 of title 31, United States Code (relating to acceptance of travel and related expenses from non-Federal sources).

(8) Sections 4941 and 4946 of the Internal Revenue Code of 1986 (relating to taxes on self-dealing and definitions and special rules).

(9) Section 455 of title 28, United States Code (relating to disqualification of justice, judge, or magistrate judge).

(c) For purposes of this section, the term "domestic partner" has the meaning given such term by section 2110 of title 5, United States Code.

* * * * *

MINORITY VIEWS

INTRODUCTION

In October 2009, the unemployment rate in the United States reached 10.2%. This number reflects 15.7 million out of work Americans.¹ Add in workers forced to settle for part-time work or those who have simply given up looking, and the rate is 17.5 percent.² Over the past year, the private sector has hemorrhaged millions of jobs, and yet the federal government has grown by 111,000 new employees during this same period.³

It is in this economic environment—toxic for the private sector, yet growing and gold-plated for the federal workforce—that the Committee on Oversight and Government Reform considered H.R. 2517: the Domestic Partnership Benefits and Obligations Act of 2009, a bill to provide the same benefits to same-sex domestic partners of federal employees as are given to spouses of federal employees.

LEGISLATIVE ACTIVITY

On May 20, 2009, Rep. Tammy Baldwin introduced H.R. 2517, the Domestic Partnership Benefits and Obligations Act of 2009. The bill currently has 135 cosponsors.

On the same day, Senator Joseph Lieberman of Connecticut introduced the Senate version, S. 1102. The bill currently has 24 Senate cosponsors.

The only hearing on H.R. 2517 during the 111th Congress occurred on July 8, 2009, before the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia. Notably, the full Committee on Oversight and Government Reform failed to hold a legislative hearing on this bill, thereby depriving most Members of the Committee an opportunity to hear testimony on the merits and flaws of the bill prior to its consideration.

On July 30, 2009, the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia marked up the bill, incorporating by voice vote a manager's amendment. These changes were intended to conform the bill with existing civil service law essentially providing identical benefits to domestic partners as current law provides to spouses. However, the legislation would now apply to domestic partners who "do not have a common residence because of financial, employment-related, or other reasons, as identified in the affidavit." Of note, S. 1102, which is still in committee in the Senate, retains the common residence requirement.

¹United States Department of Labor, Bureau of Labor Statistics Press Release, November 6, 2009, available at: <http://www.bls.gov/news.release/empit.nr0.htm>.

²Jeannine Aversa, *Jobless: 10 percent is tougher than it used to be*, Associated Press, Nov. 8, 2009.

³During the entire eight year period of 2000 to 2008 the federal government added only 156,000 new employees.

At the subcommittee mark up, Rep. Brian Bilbray of California introduced an amendment to H.R. 2517 that would have struck references to sexual orientation and family relation. A “domestic partner” for purposes of the bill would have then been any designee, without regard to sexual orientation. The amendment failed on a voice vote. The Subcommittee reported the amended version on a party-line vote of 5 to 3.

On Wednesday, November 18, 2009, the Committee on Oversight and Government Reform met to consider H.R. 2517. Republican members offered five amendments designed to ensure the fiscal prudence of the bill, close loopholes and protect the legal definition of marriage.

Mr. Chaffetz of Utah offered an amendment that would suspend the implementation of the bill unless and until the President of the United States makes a determination that the bill will not increase Federal Employee Health Benefit Program (FEHBP) premiums. The amendment was rejected on a party-line vote of 11 to 21, with 9 not voting.

Mr. Chaffetz of Utah offered another amendment that would require the GAO to conduct a study on the bill’s impact on premiums and report to Congress within two years after the bill is enacted. Mr. Quigley of Illinois offered an amendment to the amendment that added additional language requiring the GAO to study the bill’s impact on recruitment and retention efforts as well. The amendments passed by voice vote.

Mr. Jordan of Ohio offered an amendment that would clarify that H.R. 2517 does not modify, supersede or otherwise affect the Defense of Marriage Act (DOMA). The amendment further specified that the provision of benefits to anyone other than a spouse as defined by DOMA is not intended to modify, supersede or otherwise affect DOMA. The amendment was rejected on a party-line vote of 12 to 22, with 7 not voting.

During debate on Mr. Jordan’s amendment, Democrat Members voiced concern over language in the amendment regarding the provision of benefits to anyone other than a spouse. In response, Ranking Member Issa offered a revised DOMA amendment that eliminated the language in question. The amendment was again rejected by a vote of 15 to 20, with 6 not voting.

Mr. Bilbray of California offered an amendment that would require anyone who would be eligible to receive federal benefits through a domestic partnership as defined by H.R. 2517 to be screened through the E-Verify program to ensure that they are lawfully present in the United States.

E-Verify provides employers with a tool that they can use to meet their Immigration and Reform Control Act (IRCA) obligations. Rather than relying on personal opinions as to the authenticity of employee documents, E-Verify objectively determines, based on government databases, whether an employee is eligible to work in the U.S. Thus, protecting employers from immigration actions based on knowingly employing illegal workers. Additionally, employers can use the E-Verify system to confirm the eligibility of new hires without opening themselves up to discrimination lawsuits. The amendment was rejected by a vote of 15 to 20, with 6 not voting.

The Committee favorably reported H.R. 2517 on a vote of 23 to 12, with 6 not voting.

REPUBLICAN VIEWS, H.R. 2517

H.R. 2517 is being considered during an economic climate in which unemployment is at 10.2% and climbing. Minority groups have been especially hard hit. Hispanic unemployment is at 13.1% while African-American unemployment reached 15.7% in October 2009.⁴

During consideration of this bill concerns about fiscal responsibility were cast aside by the Committee in order to bestow costly new benefits upon a select class of federal employees. Although the Administration has testified that adding health insurance benefits for partners of gay and lesbian employees and retirees would cost taxpayers \$56 million in 2010⁵, the Administration has not provided an estimate of the full costs of this bill—a bill that is not limited to health benefits.

On December 17, 2009, the Congressional Budget Office estimated that over ten years the full cost of this bill would be nearly \$900 million. The first year included in the ten-year estimate, 2010, shows essentially zero cost apparently due to eligibility requirements. The annual estimated cost in 2019 is \$150 million. It is obvious that the true ten-year cost will be well over \$1 billion. Of greater concern is the rate of increase in the estimated costs. The annual estimated cost of the bill nearly triples from \$52 million in 2011 to \$150 million in 2019.

In addition to being costly, H.R. 2517 is unnecessary. Average federal compensation is more than double the average private sector compensation. Federal employees on average earn \$119,982 in wages and benefits while private sector employees earn just \$59,909 on average.⁶

Moreover, the current economic environment, in which the private workforce continues to shrink while the federal workforce keeps expanding, makes dubious the claim that “. . . the government is not keeping pace with leading private-sector employers in recruiting and retaining top talent.”⁷ The turnover rate for the public sector work force is significantly lower than that of the private sector.⁸ The private sector has shed over 5 million jobs since October 2008, a loss of about 5%. Meanwhile, over the same time period, the federal government has grown by 111,000 new employees, a growth of about 5%. Clearly, the recruitment and retention policies of the federal government are working. Federal employees already enjoy what are widely considered to be some of the most gold-plated benefits packages in the workforce.

⁴Christopher S. Rugaber, *Meltdown 101: When unemployment last hit 10 pct*, Associated Press, Nov. 6, 2009.

⁵*Domestic Partnership Benefits and Obligations Act of 2009: Hearing on H.R. 2517 Before the H. Comm. On Oversight & Government Reform*. 111th Cong. (2009) (statement of John Berry, Director, U.S. Office of Personnel Management).

⁶Chris Edwards, *Federal Pay Continues Rapid Ascent*, CATO @ Liberty, Aug. 24, 2009, available at: <http://www.cato-at-liberty.org/2009/08/24/federal-pay-continues-rapid-ascent/>.

⁷*Domestic Partnership Benefits and Obligations Act of 2009: Hearing on H.R. 2517 Before the H. Comm. On Oversight & Government Reform*. 111th Cong. (2009) (statement of Rep. Tammy Baldwin of Wisconsin).

⁸Bureau of Labor Statistics web site, accessed November 24, 2009.

H.R. 2517 is needlessly broad, which will create any number of unforeseen and unintended problems during implementation. Nearly any two individuals of the same sex can qualify as “domestic partners” under the bill as long as they are not direct relatives. The bill, as written, in fact confers more generous and flexible benefits to same sex ‘partners’ than it does for opposite sex ‘partners.’

This open-ended definition of “domestic partner” invites unintended consequences, fraud, and abuse. Any two individuals of the same sex who are 18 or older and “share responsibility for a significant measure of each other’s common welfare” and intend to do so “indefinitely” will qualify for benefits. Unlike the Senate version, H.R. 2517 does not require a common residence. Nor does H.R. 2517 require that the ‘partners’ be gay or lesbian. Many potential relationships could qualify for benefits as ‘partners’ under this bill including relatives, friends, and roommates.

Supporters of H.R. 2517 claim that a sworn affidavit is sufficient legal documentation, and the bill’s sponsor, Rep. Baldwin, testified that the bill has “strong anti-fraud provisions.”⁹ However, the bill contains neither enforcement nor anti-fraud provisions. The requirements and terms of the affidavit are vague and without settled legal definitions, which will make nearly impossible any attempt to identify or prevent fraud.

The open-ended and often circular definition of “domestic partner” in H.R. 2517 will create major difficulty in implementing this legislation by federal agencies trying to eliminate waste, fraud and abuse. In fact, in September of 2008, the U.S. Office of Personnel Management testified before the Senate Homeland Security and Government Affairs Committee that it had concerns about the administration of benefits for a domestic partnership:

Currently, spousal benefits are based on the documentation of a state-sanctioned marriage. The bill under consideration would provide benefits to those in domestic partnerships or relationships which are certified by affidavit. OPM believes this process could lead to fraud and abuse in the programs we administer.”¹⁰

By trying to address what the Majority contends is a current injustice with H.R. 2517, they are creating a new injustice. This bill discriminates on the basis of sex. While any two adults could easily claim to be domestic partners under the bill, only adults of the same sex would qualify. While seeking to address a perceived inequality, this benefit creates a protected class whose sole distinction is based on gender. By giving same sex couples greater benefits than heterosexual couples, the bill creates significant potential for legal challenges.

Undoubtedly, there are unmarried heterosexual couples, who choose to remain unmarried, but would like to receive these same benefits and can meet all other stipulations of the legislation. Furthermore, H.R. 2517 will create situations, in states that recognize

⁹*Domestic Partnership Benefits and Obligations Act of 2009: Hearing on H.R. 2517 Before the H. Comm. On Oversight & Government Reform*, 111th Cong. (2009) (statement of Rep. Tammy Baldwin of Wisconsin).

¹⁰*Domestic Partner Benefits for Federal Employees: Hearing on S. 2521 Before the S. Comm. On Homeland Security and Governmental Affairs*, 110th Cong. (2008) (statement of Howard C. Weizmann, Deputy Director, U.S. Office of Personnel Management).

common law marriage, in which common law married heterosexual couples will not qualify for benefits until after a certain time period has elapsed, whereas same sex domestic partners in the same state will immediately qualify. By enacting this legislation, the government will be placing more restrictions on heterosexual couples than on same sex couples, creating for the first time, a bias favoring same sex relationships with regard to eligibility for federal employment benefits ironically in the name of equality.

The creation of a new inequality in the name of eliminating an old one is in reality an attempt to circumvent the Defense of Marriage Act of 1996, which guarantees the rights of states to define marriage as a union between one man and one woman.

H.R. 2517 is a clear circumvention of the intent of Congress. In passing DOMA in 1996, among other things, Congress wanted to ensure that federal benefits relating to marriage would continue to be limited to opposite-sex married couples. Moreover, DOMA was enacted in order to allow individual states to determine their own marriage laws, without interference from the federal government. H.R. 2517 cannot be interpreted in any way other than as a circumvention of federal definition of marriage.

The Committee is indirectly repealing Section 3 of DOMA, which defines the terms “marriage” and “spouse,” for the purposes of federal law only, to reaffirm that they refer exclusively to relationships between persons of the opposite sex. H.R. 2517 would effectively repeal Section 3 of DOMA by creating a marriage-like domestic partner status that would be treated as if it were the same as an opposite-sex marriage for the purposes of federal law and spousal benefits.

Unquestionably, the 111th Congress has the authority to repeal DOMA, or modify it in any way that it sees fit. In so doing, the effects of repealing any provisions of DOMA would be made clear to the public during the course of vigorous debate. However, the Majority has chosen to circumvent Congressional intent and avoid that debate altogether by reporting H.R. 2517.

Not only is H.R. 2517 a repudiation of Congressional intent, it is also a repudiation of the American people. State ballot initiatives legalizing gay marriage have been voted down over and over again—31 times. It is a simple fact that Americans from Maine to California have voted time and again to defend traditional marriage.

H.R. 2517 is opposed by many organizations, including the Family Research Council, Concerned Women for America, the Southern Baptist Ethics & Religious Liberty Commission, and Focus on the Family:

This bill, as constructed, violates the Defense of Marriage Act (DOMA) of 1996 by mandating the same federal employee benefits to partners in same-sex relationships as those given to a married federal employee’s spouse. In both spirit and letter, H.R. 2517 abrogates DOMA by obfus-

cating and eclipsing the traditional definition of marriage: between a man and a woman.¹¹

Under Federal law, legal marriage is the union between a man and a woman. This bill would contradict existing law by elevating relationships outside of marriage to that of a binding legal marriage. Marriage between one man and one woman provides unique benefits to individuals, children and society that cannot be replicated by any other living arrangement. The Domestic Partnership Benefits and Obligations Act of 2009 demeans the importance of marriage and is wholly inappropriate because it undermines Federal law.¹²

H.R. 2517 puts the federal government in the precarious position of sanctioning same-sex relationships, a departure from its historic recognition of marriage as only between one man and one woman. Most notably, the bill undermines the basis for the Defense of Marriage Act, which prohibits the federal government from both recognizing same-sex marriages and forcing states to recognize such marriages performed in other states.¹³

By allowing H.R. 2517 to move forward, this Committee would ignore the unique and irreplaceable benefits that traditional marriage confers on society and on its children. The Committee should also take note that majority opinion still resides with traditional marriage, as evidenced by the thirty-one states that have already passed marriage referendums.¹⁴

CONCLUSION

Committee Republican Members believe that during an economic period of double digit unemployment, when millions of Americans find themselves out of work. H.R. 2517 is the wrong bill at the wrong time. In our view, passing H.R. 2517 during the worst economic disaster since the Great Depression is an insult, not only to American taxpayers and working families, but to the 15.7 million unemployed Americans.

And yet our concerns over H.R. 2517 are not limited to its cost, the many technical flaws within the legislation, or even the creation of a new inequity in the provision of federal employee benefits. This bill is a direct repudiation of American voters in the wake of defeat after defeat of state ballot campaigns. H.R. 2517 is an end-run around existing federal law, another assault on federalism by progressives and an attempt to obfuscate the true debate. For these reasons, Republicans opposed the bill during its consideration by the Committee on Oversight and Government Reform, and we urge its defeat when considered by the full House of Representatives.

¹¹ Letter from Thomas McClusky, Senior Vice President, Family Research Council, to Rep. Darrell Issa (Nov. 17, 2009).

¹² Letter from Wendy Wright, President, Concerned Women for America, to Reps. Edolphus Towns and Darrell Issa (Nov. 13, 2009).

¹³ Letter from Richard D. Land, President, The Ethics & Religious Liberty Commission of the Southern Baptist Convention, to Rep. Darrell Issa (Nov. 17, 2009).

¹⁴ Letter from Tom Minnery, Senior Vice President, Focus on the Family, to Rep. Darrell Issa (Nov. 18, 2009).

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