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DOMESTIC PARTNERSHIP BENEFITS AND OBLIGATIONS ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1102

TO PROVIDE BENEFITS TO DOMESTIC PARTNERS OF FEDERAL EMPLOYEES

DECEMBER 17, 2010.—Ordered to be printed

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DECEMBER 17, 2010.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1102]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1102) to provide benefits to domestic partners of Federal employees, having considered the same, reports favorably thereon with amendment and recommends that the bill, as amended, do pass.

CONTENTS

		Page
I.	Purpose and Summary	1
II.	Background and Need for the Legislation	2
III.	Legislative History	26
IV.	Section-by-Section Analysis	28
V.	Estimated Cost of the Legislation	56
VI.	Evaluation of Regulatory Impact	60
VII.	Changes in Existing Law	60

I. PURPOSE AND SUMMARY

The purpose of the Domestic Partnership Benefits and Obligations Act of 2010 is to bring the federal government in line with most of the nation's largest employers by giving federal employees in same-sex domestic partnerships and their partners the same employment benefits currently offered to married federal employees and their spouses and to subject them to the same employment-related obligations. Employment benefits extended by the bill include health insurance, pension rights, family and medical leave, and group life insurance. Obligations imposed by the bill include financial disclosure requirements, conflict-of-interest restrictions, and anti-nepotism rules.

II. Background and Need for the Legislation

With two million civilian employees, plus over six hundred thousand postal employees, the federal government is the nation's largest employer.[1] It strives, in its own words, to serve as America's "model employer for the 21st Century" with personnel policies that allow it to "recruit, retain and honor a world-class workforce to serve the American people."[2]

While the federal government has established successful personnel policies in many respects, there is a category of federal workers for whom the government's benefits policies have fallen short: employees who are in same-sex domestic partnerships. Same-sex domestic partners—the bill's specific definition of which is discussed later in this report—in general terms are two unrelated adults of the same sex who have undertaken a long-term mutual commitment to make a domestic life together and to help care for each other financially and otherwise.[3] Federal employees with same-sex domestic partners in our federal workforce perform the same jobs as their married co-workers, yet, unlike those co-workers, cannot, by law, access a range of benefits for their partners and those partners' children. This disparity not only effectively and unfairly diminishes these employees' compensation when compared with their co-workers; it also causes great unease for many of these employees, whose domestic partners live without health insurance and the range of other important benefits that married employees and their families take for granted. Moreover, in its treatment of employees with same-sex domestic partners, the federal government is falling increasingly farther behind the private sector, where a large and growing number of leading employers—including over 60 percent of Fortune 500 companies—provide benefits for such employees and their domestic partners.[4]

This situation has real consequences for the government as an employer—problems in recruiting qualified employees, challenges in retaining them, and loss of productivity when effective employees become distracted or disheartened.[5] After reviewing the current policy's impact on the federal workforce and the prevalence and effect of domestic partner benefits in the private sector, the Committee has concluded that it is time to amend the law to extend domestic partner benefits to the federal workforce, so that the federal government can more closely mirror the policies of over 60 percent of Fortune 500 companies and can better compete as a model 21st Century employer.

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[1] *See* Bureau of Labor Statistics, U.S. Department of Labor, "Career Guidelines, 2010–11 Edition: Federal Government," http://www.bls.gov/oco/cg/cgs041.htm; U.S. Postal Service, 2009 Annual Report, "The Challenge to Deliver: Creating the 21st Century Postal Service," http://www.usps.com/financials/_pdf/annual_report_2009.pdf.

[2] U.S. Office of Personnel Management, Strategic Plan 2010–2015, "A New Day for Federal Service," at page 4, http://www.opm.gov/strategicplan/StrategicPlan_20100310.pdf.

[3] *See* Employee Benefit Research Institute, Facts from EBRI, "Domestic Partner Benefits: Facts and Background" (Updated February 2009), http://ebri.org/pdf/publications/facts/0209fact.pdf, entered into the record of this Committee's hearing held on October 15, 2009 (described in note 38 below and accompanying text) at page 51.

[4] *See* section II.A.1, below, of this report.

[5] These consequences are described in testimony and other materials presented to this Committee at hearings on September 24, 2008 and October 15, 2009 (described in notes 37 and 38 below and the accompanying text) and are discussed in section II.B.1, below, of this report.

A. AVAILABILITY OF DOMESTIC PARTNERSHIP BENEFITS

1. Most of the largest non-federal employers provide benefit coverage for their employees with same-sex domestic partners

Many leading employers across the economy provide benefits to employees with domestic partners—and the number of those doing so has increased dramatically in recent years. (Such benefits are sometimes referred to as domestic partnership benefits, domestic partner benefits, or DP benefits.) Based on surveys by the Society for Human Resource Management and the Kaiser Family Foundation as well as its own research, the Human Rights Campaign Foundation has reported that, whereas only 7 percent of employers offered benefits for employees' same-sex domestic partners in 1997, now at least one out of three employers and 50 percent of employers with 5,000 or more workers provide such benefits.[6] Among the largest employers, as illustrated in the nearby chart (figure 1), 85 percent of Fortune 20 companies, nearly 60 percent of Fortune 500 companies, and over 75 percent of the highest-gross-revenue earning law firms extend benefits to their employees with same-sex domestic partners. And the numbers of companies providing such benefits are steadily increasing: of Fortune 100 companies, 64 percent offered same-sex partner benefits in 2003, and by 2009 that number had risen to 83 percent. Moreover, among non-federal governmental employers, 20 States and several hundred local jurisdictions now extend benefits to their employees with same-sex domestic partners.[7] As described later in this report, several leading companies explained to the Committee their reasons for maintaining domestic partner benefit programs, including that offering such benefits—

- "gives us an advantage" in helping to "ensure we attract, develop and advance the very best talent available in the marketplace,"[8]
- "can improve low productivity and morale caused by inequitable workplace practices,"[9] and
- "has not been a financial burden," but rather, "by enabling us to attract and retain a wide variety of talented employees at every level of the organization", the company's domestic partner benefit program "actually strengthens our financial underpinnings."[10]

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[6] Human Rights Campaign Foundation, "The State of the Workplace for Lesbian, Gay, Bisexual and Transgender Americans 2007–2008" (2009) at page 9, http://www.hrc.org/documents/HRC_Foundation_State_of_the_Workplace_2007-2008.pdf.

[7] The 20 States are: Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Montana, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin. *See* Human Rights Campaign, Employer Database, http://www.hrc.org/issues/workplace/list.asp, *also* http://www.hrc.org/issues/workplace/search.asp?form=private_quick_search.aspx; *see also* Center for American Progress, "One Simple Step for Equality: States Prove that the Federal Government Can Offer Domestic Partner Benefits with Ease", by Winnie Stachelberg, Josh Rosenthal, and Claire Stein-Ross (September 2008), http://www.americanprogress.org/issues/2008/09/pdf/domestic_partner_benefits.pdf, entered into the record of this Committee's hearing held on September 24, 2008 (described in note 37 below and the accompanying text) at page 173).

[8] Statement of William H. Hendrix, Dow Chemical Company, quoted in text accompanying notes 42–43 below.

[9] Statement of Yvette C. Burton, IBM, quoted in text accompanying note 68 below.

[10] Statement of Kathleen Marvel, the Chubb Corporation, quoted in text accompanying note 119 below.

FIGURE 1. HOW MANY FORTUNE-RANKED COMPANIES PROVIDE DOMESTIC PARTNERSHIP BENEFITS

	Fortune 20	Fortune 100	Fortune 500	Fortune 1000	AmLaw 200
2009 Interim	17 (85%)	83 (83%)	293 (59%)	404 (40%)	153 (77%)
2008 Total	17 (85%)	83 (83%)	286 (57%)	390 (39%)	146 (75%)
2003 Total		64 (64%)	200 (40%)		

Source: Human Rights Campaign, ''How Fortune-Ranked Companies Stack Up On LGPT Workplace Policies'' (Sept. 21, 2009), http://www.hrcbackstory.org/2009/09/how-fortune-ranked-companies-stack-up-on-lgbt-workplace-policies; entered into the record of the hearing before the Senate Committee on Homeland Security and Governmental Affairs, ''Domestic Partner Benefits: Fair Policy and Good Business for the Federal Government,'' S. Hrg. 111–758 (October 15, 2009), at page 25.

2. Federal employees in same-sex domestic partnerships and their partners are ineligible under statute from participating in many important benefit programs

Unlike the many non-federal employers that offer domestic partnership benefits to their employees, federal agencies largely lack statutory authority to do so. Among the most important benefits that help many employees care for their families are health, dental, and vision insurance, family and medical leave, workers' compensation, and retirement benefits. Because these and several other benefits for federal employees are limited to the employees and their spouses, children, stepchildren, and others in specific relationships specified in statute, federal employees in same-sex domestic partnerships cannot turn to these benefit programs for help in caring for their partners or (unless the employee can legally adopt them) the children of their partners.

One of the most important benefits to help employees take care of their families is health insurance, and federal employees can obtain family coverage under the Federal Employee Health Benefits (FEHB) Program and related dental and vision programs for a spouse, a dependent child, and a dependent stepchild. However, statutory provisions specify the family members that may be covered by these programs, including employees' spouses and employees' children, adopted and foster children, and stepchildren,[11] and federal employees in same-sex domestic partnerships therefore cannot obtain coverage for their partners or the children of their partners.

A second important benefit is the survivor annuity, granted to certain family members when retired federal employees predecease them. Surviving spouses, former spouses, and dependent children and stepchildren may have statutory rights to a survivor annuity under various circumstances, but, except in limited circumstances, those rights do not cover surviving partners, former partners, or children of partners.[12] Also, when federal employees die from work-related injuries, a surviving spouse, child, stepchild, or parent may be entitled to workers' compensation benefits under the Federal Employees' Compensation Act (FECA), but surviving partners or children of partners have no such statutory compensation rights.[13]

[11] *See* 5 U.S.C. 8901(5), 8905(a) (FEHB); 5 U.S.C. 8951(2), 8956(a), 8981(2), 8986(a) (Federal Employees Dental and Vision Insurance Program, or FEDVIP).

[12] *See* 5 U.S.C. 8341, 8441–8445. As discussed in notes 28–29 below and accompanying text, employees in same-sex domestic partnerships may sometimes be able to provide a survivor annuity to a same-sex domestic partner or to the dependent child of a partner under the "insurable interest" provisions of the federal annuity programs. However, married employees can provide their spouses and stepchildren the right to a survivor annuity under a broader range of circumstances and often of a larger size.

[13] *See* 5 U.S.C. 8101(9), 8109, 8133.

Under those portions of the Family and Medical Leave Act (FMLA) that are generally applicable to federal agencies, a federal employee is entitled to take up to 12 weeks of unpaid leave per year (and may substitute accrued or accumulated annual leave or sick leave for the unpaid leave) to care for a spouse, child, or parent with a serious health condition. But if the employee's same-sex domestic partner becomes seriously ill, the employee is not entitled to take FMLA leave to care for the partner.[14] Several other benefit programs for federal employees—group life insurance,[15] reimbursement for certain travel and relocation expenses,[16] and death gratuities for civilians serving with Armed Forces in military operations[17]—likewise have statutory provisions on eligibility that prevent federal employees in same-sex partnerships from fully participating.

3. Certain benefits, authorized under more flexible statutory authorities, are being extended to federal employees in same-sex domestic partnerships

A few federal agencies involved in financial services, a sector where competition for talent is especially fierce, have been granted some statutory flexibility to establish benefit packages for their own employees and have used that flexibility to extend limited benefits for employees in domestic partnerships. For example, the Treasury Department's Office of the Comptroller of the Currency (OCC) states in its employee-recruitment materials that employees with domestic partners and the children of domestic partners are eligible to receive a health insurance subsidy if the partners and children are not eligible for group health insurance through another employer or under another group-sponsored plan.[18] They also are eligible for coverage under the OCC's dental, vision, and group life insurance programs at little or no cost to the employee, and may receive the same allowances and benefits upon relocation that employees with spouses and children receive.[19] The Federal Reserve Board likewise promotes to potential recruits that it "provides limited health, dental, and vision benefits to domestic partners."[20] And Federal Deposit Insurance Corporation (FDIC) em-

[14] *See* 5 U.S.C. 6381–6382. These provisions establish minimum rights, and, as discussed in notes 33–34 below and accompanying text, the U.S. Forest Service (USFS), under an agreement with the employees' union, recently initiated a program modeled on the FMLA under which bargaining-unit employees may use up to 12 weeks of leave each year to care for their domestic partners with serious health conditions. Also, as discussed in note 32 below, OPM recently covered same-sex domestic partners and their children under a government-wide program allowing employees to take up to 24 hours of leave without pay (LWOP) per year to help with family members' routine medical, educational, and other needs.

[15] Under the Federal Employee Group Life Insurance (FEGLI) program, a participating employee may elect any beneficiary, including a same-sex partner; but if no beneficiary is designated, proceeds are paid to a surviving spouse, children or other descendents, or parents of the deceased, or to the employee's heirs, but not to the surviving same-sex domestic partner. *See* 5 U.S.C. 8705.

[16] When Federal employees are transferred or placed on an extended assignment, they can obtain reimbursement for travel with their spouse to line up housing in the new location, but not for such travel with their same-sex partner. *See* 5 U.S.C. 5724a, 5737.

[17] When a married federal employee dies of injuries incurred in connection with civilian service with an Armed Force in a military operation, the government pays up to $100,000 to the surviving spouse, but if the employee who died was in a same-sex domestic partnership, the partner receives nothing. *See* 5 U.S.C. 8102a.

[18] U.S. Department of the Treasury, Office of the Comptroller of the Treasury, Careers at the OCC, Benefits, http://www.occ.gov/about/careers/benefits.html.

[19] *Id.*

[20] Board of Governors of the Federal Reserve System, Careers at the Federal Reserve, Benefits (last update April 28, 2009), http://www.federalreserve.gov/careers/benefits.htm.

ployees with domestic partners are eligible for a health insurance subsidy, coverage under the FDIC's dental, vision, dependent life insurance, and business travel accident insurance plans, and allowances upon relocation.[21]

In addition, some programs offering benefits to federal employees—some government-wide and others agency-specific—are not statutorily limited to specific family members, and, in a June 17, 2009 memorandum to all departments and agencies, the President directed agencies to extend the same benefits to federal employees' same-sex domestic partners as the agency currently gives to spouses where such extension of benefits was permissible under the law.[22] The memorandum, stating that extending certain benefits would help agencies compete with the private sector in recruiting and retaining talent, noted that the Secretary of State, who oversees the Foreign Service, and the Director of the Office of Personnel Management (OPM), who oversees the civil service, had already identified areas where domestic partner benefits could be provided. The memorandum directed the Secretary and the Director to extend the benefits that they had identified, and it also instructed all agencies to identify additional authorities under which the agencies can extend other benefits to same-sex partners of federal employees and to report back to OPM.

Following up on the Presidential memorandum, the Secretary of State announced on June 18, 2009, that "the Department of State is extending the full range of legally available benefits and allowances to same-sex domestic partners of members of the Foreign Service sent to serve abroad."[23] Also, the Director of OPM made regulatory changes to two civil service benefit programs, allowing domestic partners of federal employees to apply for coverage under the Federal Long Term Care Insurance Program (FLTCIP)[24] and clarifying that federal employees' domestic partners, their children, and their parents may be considered for determining employee eligibility to take sick leave and funeral leave and to receive donated annual leave under leave-transfer and leave-bank programs.[25]

The President issued a second memorandum, on June 2, 2010, requiring agencies to extend several additional kinds of benefits to employees in same-sex partnerships.[26] Specifically, the President

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[21] FDIC, New Employee Resources, Domestic Partner Program (Revised 03/14/2010), http://www.fdic.gov/newemployee/PDF/domesticpartnerprogramsummary.pdf.

[22] The President, Memorandum on Federal Benefits and Non-Discrimination (June 17, 2009), Daily Compilation of Presidential Documents, 2009 DCPD No. 00477, http://www.gpoaccess.gov/presdocs/2009/DCPD-200900477.pdf.

[23] Hillary Rodham Clinton, Secretary of State, "Benefits for Same-Sex Domestic Partners of Foreign Service Employees" (Washington, DC, June 18, 2009), http://www.state.gov/secretary/rm/2009a/06//125083.htm. Among the benefits provided for declared same-sex partners of employees serving oversees will be: diplomatic passports; the inclusion on employee travel orders; inclusion in housing allocations and payment of overseas differentials; the use of medical facilities at posts abroad; medical evacuation from posts abroad; emergency travel for the partners to visit gravely ill or injured employees; emergency evacuation from posts abroad; and training at the Foreign Service Institute.

[24] U.S. OPM, Final Rule, "Federal Long Term Care Insurance Program: Eligibility Changes," 75 Fed. Reg. 30267 (June 1, 2010) (amending 5 C.F.R. Part 875), http://www.gpo.gov/fdsys/pkg/FR-2010-06-01/pdf/2010-13015.pdf.

[25] U.S. OPM, Final Rule, "Absence and Leave" 75 Fed. Reg. 33491 (June 14, 2010) (amending 5 C.F.R. part 630), http://www.gpo.gov/fdsys/pkg/FR-2010-06-14/pdf/2010-14252.pdf. The regulatory changes allow the receipt of donated annual leave under the Voluntary Leave Transfer, Leave Bank, and Emergency Leave Transfer Programs. The regulation covers both same-sex and opposite-sex domestic partners.

[26] The President, Memorandum on Extension of Benefits to Same-Sex Domestic Partners of Federal Employees (June 2, 2010) ("2010 Presidential Memorandum"), Daily Compilation of

directed the OPM Director to clarify that employees' same-sex domestic partners and the partners' children qualify for a variety of benefits that are available to spouses and their children.[27] He also told the OPM Director to publish a rule change making it easier for employees, if they are in good health when they retire, to grant their same-sex domestic partners the right to a survivor annuity under the "insurable interest" provisions of federal annuity programs.[28] (Even with this change, employees in domestic partnerships will only be able to provide survivor annuities to their partners under far narrower circumstances, and often in smaller amounts, than married employees.[29]) Moreover, the Presidential memorandum requires the Administrator of General Services to clarify the scope of coverage of the Federal Travel Regulations so that employees may obtain reimbursement for appropriate travel, relocation, and subsistence expenses for a domestic partner and partner's children.[30]

Pursuant to this second memorandum, the OPM Director distributed guidance to all departments and agencies to ensure consistent and appropriate implementation of domestic partner benefits government-wide.[31] The OPM memorandum provided a uniform definition of "domestic partner" and listed the kinds of benefits that many agencies provide to their employees' spouses and their children and that, under the presidential memorandum, the agencies must extend to same-sex domestic partners and their children as well. The list includes benefits available at many agencies, such as credit union membership, access to fitness facilities, and counseling, as well as more specialized benefits that only certain agencies provide, such as access to medical treatment, reimbursement of health insurance premiums, life insurance for dependents, and employment opportunities for spouses when employees are transferred.

Under an interpretation of applicable FMLA provisions that the OPM Director issued on August 31, 2010, a federal employee who will share in raising a child born to or adopted by the employee's

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Presidential Documents, 2010 DCPD No. 00450, http://www.gpoaccess.gov/presdocs/2010/DCPD-201000450.pdf.

[27] *Id.*, sections 1(a)(i)–(iii), (v), (vii).

[28] *Id.*, section 1(a)(iv). Under current law, if an employee can demonstrate good health and can demonstrate that another individual has an "insurable interest" in the employee (*i.e.,* that the individual could reasonably expect to derive financial benefit from the employees' continued life), the employee may elect to receive a reduced annuity in order to provide a survivor annuity to the other individual. *See* 5 U.S.C. §§ 8339(k)(1), 8341(c), 8420, 8444; OPM, Retirement Information and Services, "Survivor Benefit Elections, Court-Ordered Benefits, and Children's Benefits" ("OPM, Survivor Benefit Elections"), http://www.opm.gov/retire/faq/post/faq2.asp. After OPM fulfills the requirement in the 2010 Presidential Memorandum, same-sex domestic partners of retiring employees would be presumed to have an insurable interest in the employee.

[29] Married employees' spouses and spouses' children can become entitled to a survivor annuity under a broader range of circumstances, and often of a larger size, than employees' same-sex domestic partners and partners' children. For example, when married employees die after retirement or after a significant period of service as an employee, the surviving spouse is generally entitled to a survivor annuity. *See* 5 U.S.C. §§ 8341, 8442, 8445; OPM, "Survivor Benefit Elections," note 28 above. By contrast, even after the OPM Director has added same-sex domestic partners to the list of individuals presumed to have an insurable interest, an employee who dies before retirement or who is not in good health at retirement would not be able to designate the domestic partner as a person entitled to a survivor annuity. Moreover, even if an employee is in good health at retirement and designates the domestic partner to receive a survivor annuity, the size of both the retiree's annuity and the domestic partner's survivor annuity may be significantly reduced if the employee is more than a few years older than the domestic partner.

[30] June 2010 Presidential Memorandum, note 26 above, section 1(b).

[31] OPM Director John Berry, Memorandum for Heads of Executive Departments and Agencies, "Implementation of the President's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees" (June 2, 2010), http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=2982.

domestic partner may take FMLA leave following the birth or adoption of the child, and a federal employee who provides care for such a child may take FMLA leave if the child has a serious health condition.[32] Also, the U.S. Forest Service (USFS) recently began a new program, modeled on the FMLA, providing leave benefits to employees in same-sex domestic partnerships.[33] Under the new program, which was negotiated with the USFS employees' union, employees in bargaining units will be able to take up to 12 weeks of unpaid or accrued leave each year to care for a domestic partner with a serious health condition.[34]

While these Executive actions represent significant steps, such actions cannot, by statute, allow federal employees in domestic partnerships and their partners to have full access to health insurance, survivor annuities, workers' compensation, and other key employee benefits. For this reason, the President, in issuing each of his memoranda, recognized that legislation would be needed and called upon the Congress to enact the Domestic Partnership Benefits and Obligations Act.[35]

B. DOMESTIC PARTNERSHIP BENEFITS AND OBLIGATIONS LEGISLATION FOR FEDERAL EMPLOYEES

To help the federal government catch up with major national employers, Senator Lieberman and Senator Collins introduced the Domestic Partnership Benefits and Obligations (DPBO) Act (S. 1102). Thirty other Senators currently cosponsor the bill.

S. 1102 would amend applicable statutory provisions to make federal employees in same-sex domestic partnerships and their partners eligible for the same employee benefits and subject to the same employee obligations as married employees and their spouses.

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[32] OPM Director John Berry, Memorandum for Chief Human Capital Officers, "Interpretation of Son or Daughter' Under the Family and Medical Leave Act" (Aug. 31, 2010), http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=3122. The OPM Director's interpretation applies to both same-sex and opposite-sex partners, and is based on the recent Administrator's Interpretation No. 2010–3, published by the U.S. Department of Labor, Wage and Hour Division, interpreting provisions of the FMLA and of the Department's FMLA regulations that apply generally to the private sector and to other employees outside of the federal civil service, http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf.

Moreover, the OPM Director on September 10 issued amended guidance on the government's "24-Hour LWOP Family Support Policy." Under a Presidential memorandum issued in 1997, federal agencies are encouraged to allow their employees to schedule up to 24 hours of leave without pay (LWOP) each year to participate in school activities for children, to accompany their children to routine medical or dental appointments, and to help elderly relatives get routine medical and dental care and other services. The June 2010 Presidential Memorandum instructed the OPM Director to issue amended guidance so that the 1997 policy may be used to meet the needs of a same-sex domestic partner and a partner's children. The OPM Director issued such guidance on September 10, 2010. *See* OPM Director John Berry, Memorandum for Chief Human Capital Officers, "Extension of 24-Hour LWOP Family Support Policy to Same-Sex Domestic Partners of Federal Employees" (Sept. 10, 2010), http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=3146.

[33] *See* Emily Long, "Domestic Partner Benefits Get Another Boost," *GOVERNMENTEXECUTIVE.COM* (Oct. 27, 2010), http://www.govexec.com/dailyfed/1010/102710l1.htm; NFFE, "Master Agreement Focus—Leave (Article 20)," THE VOICE: THE OFFICIAL NEWSLETTER OF THE FOREST COUNCIL (FSC) (Fall Issue, Oct., 2010), at page 3, http://www.nffe-fsc.org/documents/voice/The_Voice_Fall_Issue_v.6.pdf.

[34] Under the USFS agreement, both same-sex and opposite-sex domestic partners are covered. The agreement also allows an employee to use leave to care for the parents of a domestic partner, the domestic partner of other close relatives, and any other individual related by blood or affinity whose relationship to the employee is the equivalent of a family relationship.

[35] The President, Statement on the Extension of Benefits to Same-Sex Domestic Partners of Federal Employees (June 2, 2010), Daily Compilation of Presidential Documents, 2010 DCPD No. 00449, http://www.gpoaccess.gov/presdocs/2010/DCPD-201000449.pdf; the President, Statement on Signing a Memorandum on Federal Benefits and Non-Discrimination and Support of Domestic Partners Benefits and Obligations Legislation (June 17, 2009), Daily Compilation of Presidential Documents, 2009 DCPD No. 00476 http://www.gpoaccess.gov/presdocs/2009/DCPD-200900476.pdf.

The bill uses a strict definition of domestic partner, requiring those seeking benefits to certify (subject to criminal penalties if they submit false information) that they and their domestic partners have a common residence and, among other things, share responsibility for a significant measure of each other's welfare and financial obligations. The bill makes employees in domestic partnerships eligible for all benefits available to married federal employees, including health insurance, retirement benefits, workers' compensation, and family and medical leave. Under the legislation, employees who apply for domestic partner benefits would also have to comply with obligations that currently relate to married employees and their spouses, such as financial disclosure requirements, conflict of interest rules, and nepotism restrictions. The bill does not alter the definition of marriage or spouse as established under the Defense of Marriage Act (DOMA), which establishes that these terms in any federal statute or regulation can mean only an opposite-sex union or a person of the opposite sex who is a husband or wife.[36] Nothing in S. 1102 would cause a same-sex marriage or a same-sex spouse recognized by any State's law, or a domestic partnership or a domestic partner recognized under S. 1102, to be deemed a "marriage" or a "spouse" within the meaning of any federal statute or regulation.

To examine the proposed DPBO Act, the Committee held a hearing on September 24, 2008, in the 110th Congress (2008 Hearing),[37] and a second hearing during the 111th Congress, on October 15, 2009 (2009 Hearing).[38] At these hearings, the Committee heard testimony and received statements from major national corporations, federal employees and their representatives, elected and appointed officials of the federal government, and advocacy and research organizations.

The testimony showed that employers offer domestic partner benefits for two basic reasons: it is a good business decision, giving employers an advantage in attracting and retaining employees in the diverse contemporary workforce, and it is the right and fair thing to do.[39]

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[36] 1 U.S.C. § 7. This provision is further discussed in section II.C.3, below, of this report.

[37] Hearing before the Committee on Homeland Security and Governmental Affairs, "Domestic Partner Benefits for Federal Employees: Fair Policy and Good Business," S. Hrg. 110-944 (September 24, 2008) ("2008 Hearing"), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi? dbname=110_senate_hearings&docid=f:45581.wais.pdf. Some hearing materials are also available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ ID=4567a0c5-c026-461d-8b28-d30898f5e3d9. The 2008 Hearing discussed the bill introduced in the 110th Congress (S. 2521), which was identical to this Congress's S. 1102.

[38] Hearing before the Committee on Homeland Security and Governmental Affairs, "Domestic Partner Benefits: Fair Policy and Good Business for the Federal Government," S. Hrg. 111–758 (October 15, 2009) ("2009 Hearing"). Some hearing materials are available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=d5347e63-e680-4ebf-8b9d-5eb5f8cd5e79.

[39] *See also* Employee Benefit Research Institute, Facts from EBRI, note 3 above.

1. Offering domestic partner benefits would be a good business decision for the federal government, as it is for non-federal employers

a. Recruitment and retention

The primary reason why employers offer domestic partnership benefits is to attract and retain employees,[40] and witnesses before this Committee described how such benefit programs provide a competitive advantage to their companies. Testifying for IBM, Yvette C. Burton told the Committee that "[f]or over a decade, IBM has used domestic partner benefits as a differentiating and competitive method to attract employees."[41] For Dow Chemical Company, William H. Hendrix, III, explained in similar terms—

> With a shrinking and ever more diverse talent pool—particularly in the sciences and engineering—it is essential for us to actively include everyone to ensure we attract, develop and advance the very best talent available in the marketplace.[42]

"When we discuss Domestic Partnership policies in the workplace," Hendrix concluded, "we do so knowing that this policy gives us an advantage."[43]

The General Electric Company (GE) submitted a letter for the 2008 Hearing that described specific statements by gay and lesbian university students who were about to enter the labor market and "expressed that while a record of innovation and strong culture were key drivers of an employment decision, the lack of domestic partner benefits would be an automatic disqualifier."[44] The letter also said that gay and lesbian employees already at GE "frequently echo this sentiment," explaining, "While most do not participate in these benefits based upon their own individual family status, many indicate that it is a key reason why they remain at GE."[45]

A survey of State governments that offer domestic partner benefits to employees, prepared by the Center for American Progress, likewise found that offering these benefits yield advantages in recruitment and retention.[46]

The private-sector witnesses also informed the Committee that the competitive advantage from offering domestic partnership benefits goes beyond recruits and employees who are gay or lesbian. Dr. Hendrix testified about Dow's experience: "We have had potential employees who are heterosexual and married express that they felt DP benefits were a good indicator of how the company would treat

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[40] *See Id.*; Hewitt Associates, "Benefit Programs for Domestic Partners & Same-Sex Spouses," Hewitt Associates, Lincolnshire, IL (July 2005).

[41] Statement of Yvette C. Burton, Ph.D., Global Business Development Executive, GLBT and Human Capital Management Segments, IBM, entered into the record of the 2008 Hearing, note 37 above, at pages 34, 37.

[42] Statement of William H. Hendrix, Ph.D. Global Leader, Gays, Lesbians and Allies at Dow, Dow Chemical Company, at page 2, entered into the record of the 2009 Hearing, note 38 above, at page 85.

[43] *Id.*

[44] Letter from Deborah A. Elam, Vice President and Chief Diversity Officer, Corporate Human Resources, General Electric Company (September 17, 2008) ("GE Letter"), entered into the record of the 2008 Hearing, note 37 above, at pages 147, 148.

[45] *Id.*

[46] Center for American Progress, "One Simple Step for Equality: States Prove that the Federal Government Can Offer Domestic Partner Benefits with Ease," note 7 above.

ALL employees within the workforce."[47] Hendrix further described that other companies reported similar findings:

> Many companies report that the implementation of domestic partner benefits helps attract and retain critical talent from non-gay and lesbian talent. These particular candidates have reported that the existence of a domestic partner benefits policy shows that the company values and truly believes in a workplace that respects and protects all employees. It also shows our commitment to including diverse perspectives. This trend is especially prevalent among younger candidates of the workforce—a segment crucial to the future demographics of any employer.[48]

Dr. Burton testified likewise that IBM found its domestic partner benefits help attract and retain heterosexual talent—particularly among younger recruits and employees.[49]

Dr. Hendrix also explained that Dow's domestic partner benefit policy is a valuable tool in recruiting for key mid-career and management positions.[50] For example, Dow recently hired a mid-level scientist, who had critical skills that Dow needed for a business project, and whom Dow was able to lure away from a small start-up that lacked domestic partner benefits partly because the recruit was attracted to such benefits at Dow.[51] Dow also found its benefit policy was of paramount importance in convincing another recruit, who recently relocated from a California university to Dow's Midland, Michigan, facility because the employee would not have wanted to move if the relocation had left his partner without health insurance coverage.[52]

The Committee also heard testimony from federal officers and employees and employee representatives, who provided their views on the advantages that the federal government could gain from offering domestic partner benefits—advantages of the same kind as those that witnesses from the private sector described. OPM Director John Berry testified at the Committee's 2009 hearing that the government's failure to provide benefits to employees with same-sex domestic partners "directly undermines the Federal Government's ability to recruit and retain the Nation's best workers."[53] Berry based his opinion on the experience of employers in both the public and private sector who have found domestic partner benefits an effective tool for recruitment and retention, as well as the prevalence of these benefits in the private sector, especially among large employers.[54] From this, he concluded,

> If we fail to offer comparable job benefits to all our employees, the Federal Government will have a more difficult time competing effectively with other large employers for talent.

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[47] Response from William H. Hendrix, Dow Chemical Company, to question #1, Post-Hearing Question Submitted from Senator Tom Carper for the Record of the 2009 Hearing, note 38 above, at page 106 (emphasis in original).

[48] Statement of William H. Hendrix, Dow Chemical Company, note 42 above, at page 87.

[49] Statement of Yvette C. Burton, IBM, note 41 above, at pages 38–39.

[50] Response from William H. Hendrix, Dow Chemical Company, to question #1, Post-Hearing Question Submitted from Senator Joseph I. Lieberman for the Record of the 2009 Hearing, note 38 above, at page 104.

[51] *Id.*

[52] *Id.*

[53] Statement of John Berry, Director, U.S. Office of Personnel Management (OPM), at page 2, entered into the record of the 2009 Hearing, note 38 above, at page 36.

[54] Response by OPM Director John Berry to question #1, Post-Hearing Questions Submitted from Senator Lieberman for the Record of the 2009 Hearing, note 38 above, at page 95.

> . . . Offering domestic partner benefits will help address employment gaps and assist agencies in recruitment and retention.[55]

The perspective of an experienced agency manager was provided at the Committee's 2008 hearing by Frank A. Hartigan, a Deputy Regional Director with 24 years' experience at the Federal Deposit Insurance Corporation (FDIC).[56] Mr. Hartigan, who testified on his own behalf, and who also is gay, reaffirmed that "[t]he lack of domestic partner benefits puts the government at a distinct disadvantage when trying to attract and retain a qualified workforce," and he explained how offering such benefits is particularly important for agency recruitment and retention of younger candidates: "Young gay and lesbian individuals certainly consider domestic partner benefits when deciding between potential jobs and employers. They are much more enlightened to the issue of domestic partner benefits than I was when I entered the federal workforce."[57]

Hartigan, from his perspective as a federal manager, reported observations similar to those of private-sector witnesses (noted above),[58] that offering domestic partner benefits is particularly valuable for attracting and hiring younger workers, including both gay or lesbian and heterosexual candidates. And strengthening the ability to attract and hire younger workers is especially critical for the federal government. As this Committee recently concluded in a different context, "the government must hire a large number of entry-level employees to create a career pipeline, especially to fill the many openings impending retirements will soon create," but the current federal hiring process is weakest when it comes to recruiting and hiring younger workers.[59]

The federal government also has a continuing need to attract mid-career candidates in highly skilled and specialized fields, and, as Dr. Hendrix illustrated with examples involving Dow Chemical Company's successful hiring efforts,[60] the ability to offer domestic partner benefits can serve as an important recruitment tool when targeting particular individuals. Colleen M. Kelley, National President of the National Treasury Employees Union (NTEU), observed in testimony before the Committee that many desirable mid-career candidates "are part of a settled domestic partner couple", and "[t]o ask a highly qualified candidate to relocate and to expect the candidate's domestic partner to leave his or her employment and employer sponsored health insurance to move to a new city is simply a recipe to miss out on the best and most able candidates."[61]

Finally, Hartigan—testifying before the FDIC started providing domestic partner benefits—gave the following illustration of how the lack of such benefits significantly harmed his agency by causing the loss of a highly valuable employee:

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[55] *Id.*

[56] Statement of Frank A. Hartigan, Deputy Regional Director, San Francisco Regional Office of the Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, testifying on his own behalf, entered into the record of the 2008 Hearing, note 37 above, at page 53.

[57] *Id.* at page 55.

[58] *See* text accompanying notes 48–49 above.

[59] Senate Committee on Homeland Security and Governmental Affairs, Report to accompany S. 732, "Federal Hiring Process Improvement Act of 2010," S. Rept. 111–184 (May 12, 2010), at page 3.

[60] *See* text accompanying notes 50–52 above.

[61] Statement of Colleen M. Kelley, National President, NTEU, entered into the record of the 2008 Hearing, note 37 above, at pages 41, 46.

> Another manager recently told me about a woman who left the government for private-sector employment, specifically because of the lack of domestic partner benefits. The employee left the FDIC, taking the training and expertise that was paid for by the agency to a private-sector company that offers domestic partner benefits. The federal government lost a very smart and valuable employee in this situation.[62]

b. Productivity

Beyond the value for recruitment and retention, businesses have found that offering domestic partner benefits helps improve the existing workforce's productivity. Research shows that employee benefits can provide concrete value to the company by helping employees avoid financial concerns that harm productivity through absenteeism and "presenteeism."[63] An employee testimonial, illustrating how a lack of domestic partner benefits could undermine productivity, came to the Committee in a statement from the Chubb Corporation (a leading insurance and financial corporation):

> For most of the 12 years since Chubb began offering DPB [domestic partnership benefits], my partner (for the past 15 years) and I have not had the need to utilize them—but there have been two occasions which were exceptions. . . . My partner has various health issues which require ongoing prescriptions that would cost thousands of dollars each month if he had no medical coverage, and so the security of being able to add him to my coverage for brief periods of time was critical to both our financial and emotional well being. It is not too much of a leap to be able to see how important the availability of such benefits can be to an employee's overall productivity.[64]

Companies have also found that offering same-sex domestic partnership benefits helps them in less tangible, but important, ways by enabling gay and lesbian employees to be more fully engaged in their work and committed to the company. Dr. Hendrix explained that one reason Dow's GLBT[65] policies, including domestic partner benefits, have been good for the workplace is that employees "know that they can perform their jobs openly and with full support of their family situation without fear of repercussion and therefore have more reason to be committed to the company in return."[66] Dr. Burton expanded on this same point:

> Unfortunately, many GLBT employees spend a good deal of their workdays concealing their orientation from co-workers for fear of backlash or adverse impact to career advancement. The absence of domestic partner benefits contributes to this prob-

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[62] Written statement of Frank A. Hartigan, note 56 above, at page 57.

[63] *See* MetLife, Inc., 8th Annual Study of Employee Benefit Trends: Findings from the National Survey of Employers and Employees (2010), at page 10, 32, http://metlife.com/assets/institutional/services/insights-and-tools/ebts/Employee-Benefits-Trends-Study.pdf. The term "presenteeism," analogous to absenteeism, is most often used to refer to the problem of workers' being on the job but, because of illness or other medical conditions, not fully functioning. However, as in the MetLife survey and in the testimony of Frank Hartigan at the September 2008 Hearing, the term is also used to refer to lost productivity due to employees' being on the job but not fully functioning because of financial or other concerns.

[64] Statement of Kathleen Marvel, Senior Vice President and Chief Diversity Officer, the Chubb Corporation, entered into the record of the 2008 Hearing, note 37 above, at pages 149, 151–152.

[65] The acronym "GLBT" or "LGBT" refers collectively to gay, lesbian, bisexual, and transgendered.

[66] Statement of William H. Hendrix, Dow Chemical Company, note 42 above, 2009 Hearing at page 86.

> lem by signaling to all employees that GLBT employees are not equally valued in the workplace. . . .[67]

To address this kind of situation, Dr. Burton has found that offering such benefits "can improve low productivity and morale caused by inequitable workplace practices, thereby creating a positive work environment."[68] GE, which offers domestic partner benefits, likewise described the experience of its own gay and lesbian employees who reported that "the benefits are not only a protection of the health and welfare of their current and future families, but representative of a culture where they can bring their whole selves to work enabling performance and innovation."[69]

Hartigan illustrated how the failure to provide benefits for employees' same-sex domestic partners affects productivity within federal agencies by describing his and his colleagues' actual observations. Like the witnesses from IBM and Dow, Hartigan explained how a lack of domestic partner benefits causes needless and harmful "presenteeism" and offered this stark example:

> A colleague of mine who has been with the government for 23 years recently relocated. His partner of 18 years left his full-time position with benefits to relocate with him. This particular employee has moved several times for the agency to take positions of increasing authority and responsibility. However, during the most recent move, his partner experienced a medical crisis requiring emergency treatment and hospitalization. This occurred before the partner had found new employment and benefits. The medical bills resulting from the emergency totaled nearly $30,000. Had the federal government offered domestic partner medical benefits, the employee would have purchased family coverage for his partner. This situation caused the employee severe mental distress at a time when he had just taken on a new and more challenging job. Needless to say, he was not able to give his all to his new position.[70]

In this example, the employee agreed to the relocation and he and his partner endured the costs. Frequently, though, employees and their partners will not take such a risk, resulting in another kind of harm to agency productivity: that employees sometimes decline transfers to positions where their talents would better serve the agency's mission, because accepting the transfer would leave the domestic partner without medical benefits. Hartigan described examples of this situation as well, including the following experience of an FDIC colleague. The employee and same-sex partner were considering whether to relocate to enable the employee to take a job with higher responsibility, but—

> given the lack of domestic partner health insurance benefits, this was never an option for them. Since the partner could not be covered by FEHB insurance, they did not want to take the risk of the partner being unemployed, if only for a short time during the relocation process.[71]

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[67] Statement of Yvette C. Burton, IBM, note 41 above, at page 38.
[68] *Id.*
[69] GE Letter, note 44 above, 2008 Hearing at page 148.
[70] Statement of Frank A. Hartigan, note 56 above, 2008 Hearing at page 63.
[71] *Id.* at pages 61–62.

2. Providing domestic partnership benefits to its employees, and imposing domestic partnership obligations upon them, would be the right and fair thing for the federal government to do

In addition to explaining why offering domestic partner benefits would be a good business decision for the federal government, witnesses explained why it would be the right thing to do. For example, Sherry Bracey, the program manager of the Women's and Fair Practices Department of the American Federation of Government Employees, AFL–CIO, (AFGE)[72] illustrated the unfairness of current law by comparing, in detail, the benefits available to a high-performing and valuable federal employee whose family consists of an opposite-sex spouse and two stepchildren, compared with the benefits available to a high-performing and valuable federal employee whose family consists of a same-sex domestic partner and the partner's two children.[73]

Because DPBO legislation is not yet law, Bracey explained, "the two workers will receive vastly different compensation in return for their work for the federal government."[74] One will be eligible for a family health-insurance FEHB plan, partly paid for by the employing agency, covering all members of the family, whereas the employee with the domestic partner and children will be eligible for only single coverage under an FEHB plan and will have to find coverage for the rest of the family through the partner's employment, if any, or on the open market.

If the married employee dies early, the surviving spouse and children could be eligible for substantial benefits under one of the retirement systems; in identical circumstances, the other employee's surviving partner and children would receive nothing. If the two employees became disabled, the one with a spouse and stepchildren would receive substantially higher disability benefits than the one with a partner and the partner's children. If the two federal employees live until after retirement and then die, the surviving spouse or stepchild of the married employee would have a greater chance of receiving a substantial survivor annuity than the surviving partner and partner's child.

Hartigan, from his experience as a federal manager, provided a concrete example of how this disparity affected a federal employee and the employee's family. One of Hartigan's colleagues at the FDIC had worked for the government for nearly 28 years, was in a long-term relationship with a same-sex domestic partner and together with the partner was raising three adopted children. The employee could obtain health insurance under FEHB for himself and the adopted children, but not for his partner. They therefore had to purchase separate insurance for the partner from the private insurance market, at a cost of nearly $9,000 per year. That insurance had such high deductibles and other limits that the couple had to postpone needed surgery for the partner because they could not afford it. And this financial strain was imposed on a family struggling to save for college.

Witnesses also described the pervasive disappointment and unhappiness that such unfair treatment engenders in the federal

[72] AFGE is the largest federal-sector labor union, representing more than 600,000 employees.
[73] Statement of Sherry Bracey, Program Manager, Women's and Fair Practices Department, AFGE, entered into the record of the 2008 Hearing, note 37 above, at pages 48, 50–52.
[74] *Id.* at page 51.

workforce. Ms. Kelley, the NTEU National President, told the Committee that NTEU members[75] frequently express concern at union meetings, conferences and direct inquiries about the lack of domestic partner benefits.[76] She emphasized that resolutions supporting such benefits have been debated and passed at NTEU national conventions, where it was demonstrated that "the federal employee support for domestic partner benefits is broad and nationwide."[77] "And increasingly," she testified, "particularly among new hires, it is not only desire and need but there is an *expectation* of domestic partner benefits from NTEU members who have received those benefits in the private sector."[78]

Sherry Bracey, testifying for AFGE, put these issues of unfairness into the context of the merit system principle of pay equity,[79] which the federal system of personnel management is bound to uphold:

> How can anyone square these facts with the merit system principle of equal pay for substantially equal work?
>
> The answer is that one cannot justify discriminating against federal employees who are in domestic partnerships versus federal employees who are in conventional marriages. All else equal, sexual orientation should not form the basis of discrimination in compensation. . . .[80]

"Perhaps the worst effect of the disparity," according to Hartigan, "is in how it can make the gay or lesbian employee feel about their employer, about their colleagues, and about themselves."[81] He explained:

> One of my colleagues expressed it this way, "It is difficult for me to understand why I would be punished, when a married counterpart who was promoted at the same time as me, is receiving full relocation benefits. Do we really want productive government employees to feel punished?"[82]

Ms. Kelley, president of NTEU, also explained that "[t]he integrity of the civil service system demands not only that there be fairness in benefits but that nepotism and other abuses not be permitted because of an exemption of domestic partners."[83] Accordingly, she emphasized to the Committee the importance of bringing federal employees and their same-sex domestic partners under "the same duties, obligations and ethics requirements that married federal employees are mandated to follow such as anti-nepotism rules and financial disclosure requirements."[84]

C. CRITICISMS AND CONCERNS ABOUT S. 1102, AND RESPONSES TO THOSE CRITICISMS AND CONCERNS

Criticisms and concerns about the DPBO legislation have been persuasively answered.

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[75] NTEU is the largest independent federal-sector labor union, representing over 150,000 workers at 31 different agencies.

[76] Statement of Colleen M. Kelley, NTEU, note 61 above, 2008 Hearing at page 44.

[77] *Id.*

[78] *Id.* (emphasis in original).

[79] The Merit System Principles are codified at 5 U.S.C. § 2301, and the third such principle states, in relevant part: "Equal pay should be provided for work of equal value . . . ."

[80] Statement of Sherri Bracey, AFGE, note 73 above, 2008 Hearing at page 52.

[81] Statement of Frank A. Hartigan, note 56 above, 2008 Hearing at page 63.

[82] *Id.*

[83] Statement of Colleen M. Kelley, NTEU, note 61 above, 2008 Hearing at page 42.

[84] *Id.*

1. S. 1102 would not open up employee benefit programs to fraud

Then-Deputy Director of OPM Howard C. Weizmann testified at the 2008 Hearing about his concern that a benefits system based on employees' self-reporting of domestic partner relationships could invite fraudulent claims.[85] As Weizmann explained it, spousal benefits that OPM now provides are based on the documentation of a state-sanctioned marriage, whereas providing benefits to those in domestic partnerships certified by affidavit under the DPBO legislation could lead to fraud and abuse.[86] Other witnesses, including current OPM Director Berry in subsequent testimony, disagreed. After careful consideration, the Committee has concluded there is no reason to believe that S. 1102 would open up benefit programs to fraud.

To further explore this issue, the Committee questioned other witnesses about their experience in implementing domestic partner benefit programs. At the 2008 Hearing, Dr. Burton of IBM spoke about her own company's findings, and also those of other companies that are clients of IBM and whose employee benefits programs IBM supports. Based on this, Burton testified that fraud has not been a problem for domestic partner benefit programs using self-reported affidavits. In fact, according to Burton, "the risk studies since 1982 suggest that there is not fraud. There is greater fraud in marriage licenses being produced that are not valid than there are in affidavits."[87]

Dr. Hendrix of Dow Chemical told the Committee at the 2009 Hearing about his company's system under which employees self-report the existence of a domestic partnership, a process similar to what would be required under S. 1102, and he testified that the company has had no issue with fraudulent claims for benefits.[88] Hendrix explained that a search was undertaken in preparation for his testimony and that "we could not find a case [of fraud] in our search."[89]

A benefits system for federal employees based on self-reporting of domestic partnership relationships would actually have a lower risk of fraud than similar systems in the private sector. OPM Director Berry emphasized that the federal government is different from the private sector in that a federal employee who makes misrepresentations of this sort is subject to clear and specific criminal penalties for lying to the federal government.[90] Under the criminal code, submitting a false claim or a false statement to any agency of the United States is punishable by a fine and imprisonment for not more than five years.[91]

S. 1102 itself includes strong anti-fraud provisions, requiring both the employee and the other individual who seek to qualify as

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[85] Statement of Howard C. Weizmann, then-Deputy Director, OPM, entered into the record of the 2008 Hearing, note 37 above, at pages 31, 32.

[86] *Id.*; oral testimony of then-Deputy Director of OPM Howard C. Weizmann, at the 2008 Hearing, note 37 above, at page 18.

[87] Oral testimony of Yvette C. Burton, IBM, at the 2008 Hearing, note 37 above, at pages 26–27.

[88] Statement of William H. Hendrix, Dow Chemical Company, note 42 above, 2009 Hearing at page 88.

[89] Oral testimony of William H. Hendrix, Dow Chemical Company, at the 2009 Hearing, note 38 above, at page 18.

[90] Oral testimony of OPM Director John Berry, at the 2009 Hearing, note 38 above, at page 18.

[91] 18 U.S.C. § 287 (false, fictitious or fraudulent claims), § 1001 (false statements or entries).

domestic partners to execute an affidavit in which they both attest that they satisfy all of the conditions for eligibility. Moreover, the two individuals must state in the affidavit that they understand that willful falsification may lead to penalties including criminal penalties.

Director Berry further observed that the OPM Inspector General regularly audits the civil service benefit programs to be sure fraud is not occurring and that the Inspector General would be assigned to identify any risk of fraud in the new domestic partner program. Director Berry testified, in conclusion, that he does not see the risk of fraud as a large threat or as a reason not to proceed with the legislation.[92]

Another factor that would discourage fraudulent claims under the legislation is that employees who establish domestic partnerships would not only gain eligibility for certain benefits; they would also assume the same obligations and potential liabilities that apply to married federal employees under current law. For example, employees with financial disclosure obligations under the Ethics in Government Act[93] would have to include information about their domestic partners, as married employees must include information about their spouses, and employees who establish domestic partnerships would subject themselves to criminal conflict-of-interest prohibitions against participating as a federal employee in any matter in which the domestic partner has a financial interest.[94] More broadly, employees in domestic partnerships would not be able to withdraw money or take loans or distributions from their retirement savings accounts under the Thrift Savings Plan without their partner's consent,[95] and those in domestic partnerships at retirement would, unless the partner consented otherwise, receive reduced annuities in order to fund the partner's survivor annuity.[96] Ceding such rights to the domestic partner may be welcome to employees who are genuinely committed to caring for the partner, but these limitations would strongly discourage any employees in casual relationships who might be tempted to falsely claim domestic-partner status.

The testimony and other information before the Committee thus support its conclusion that enactment of S. 1102 would not create any unique or new risk of fraud.

2. The Committee considered the pros and cons of covering employees in opposite-sex as well as same-sex domestic partnerships under the legislation

At both the 2008 and 2009 hearings, the Committee and witnesses discussed the pros and cons of providing benefits to employees in opposite-sex, as well as same-sex, partnerships. At the 2008 Hearing, Dr. Burton of IBM said that many companies have ex-

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[92] Oral testimony of OPM Director John Berry, at the 2009 Hearing, note 38 above, at page 18.

[93] Title I, Ethics in Government Act of 1978 (5 U.S.C. app. § 101 *et seq.*).

[94] 18 U.S.C. § 208.

[95] *See* 5 U.S.C § 8435; Thrift Savings Plan, Changes in Your Family Status: Marriage, Spouse's Rights, https://www.tsp.gov/lifeevents/spouse/marriage.shtml#spouseRights.

[96] See 5 U.S.C. § 8339, 8341, 8416, 8419; *see also* OPM, Retirement Information and Services, "Survivor Benefit Elections, Court-Ordered Benefits, and Children's Benefits", http://www.opm.gov/retire/faq/post/faq2.asp (spouse is generally entitled to a survivor annuity, with commensurate reduction in the employee's annuity, unless the spouse consents to waive the right).

tended domestic partner benefits only to same-sex partners.[97] She explained that these companies' intent is to offer equal treatment to their employees, and their domestic partner guides will often recognize that opposite-sex partners have the option of marrying.[98] Testifying for Dow Chemical at the 2009 Hearing, Dr. Hendrix offered a somewhat different perspective: that there had been discussion on this subject within Dow as the company was moving forward with its domestic partner benefit program, and Dow decided that the goal of recruiting and retaining the best and the brightest would be best served by offering benefits to employees in same-sex and opposite-sex partnerships without distinction.[99]

Director Berry testified at the 2009 Hearing that neither employees and their same-sex domestic partners nor employees and their opposite-sex domestic partners can participate in several basic benefit programs but, that "[o]pposite-sex domestic partners . . . may gain eligibility through a valid marriage."[100] Berry explained that legislation is needed "before the Government can offer its gay and lesbian employees some of the most important benefits," and that enacting S. 1102 "would address the problem and provide for true equality in benefits for all Federal employees."[101]

Director Berry also recognized that covering only same-sex domestic partners raises "a fairness issue,"[102] and he was open to the possibility of exploring coverage of opposite-sex partnerships at some point in the future. But he emphasized that providing benefits to opposite-sex partners would have a very significant financial impact on the government.[103] Berry explained that the cost of the bill as currently drawn is one that the administration "can manage and can offset," whereas including opposite-sex partners would be a step that "we just cannot afford . . . at this time."[104] Given the ability of opposite-sex domestic partners to qualify for benefits through marriage and the significant cost associated with covering them, OPM was not in a position to support this additional expansion of benefits.

3. Enactment of S. 1102 would not contradict DOMA or demean the importance of marriage

Certain advocacy organizations have argued that the legislation is at odds with DOMA and devalues marriage. For example, on Oc-

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[97] Oral testimony of Yvette C. Burton, IBM, at the 2008 Hearing, note 37 above, at page 20. *See, generally*, the Employee Benefit Research Institute, Facts From EBRI, note 3 above ("According to a 2007 survey by Hewitt Associates, . . . [s]eventeen percent of [surveyed] firms offered domestic partner coverage to same-sex couples only; 1 percent of firms offered coverage to opposite-sex couples only; 32 percent of surveyed firms offered coverage for same or opposite-sex couples.").

[98] *Id.*

[99] Oral testimony of William H. Hendrix, Dow Chemical Company, at the 2009 Hearing, note 38 above, at page 17.

[100] Statement of John Berry, note 53 above, 2009 Hearing at page 35.

[101] *Id.* at page 36.

[102] Oral testimony of OPM Director John Berry, at the 2009 Hearing, note 38 above, at page 17.

[103] *Id.* The earliest introduced version of the DPBO bill, sponsored by Representative Barney Frank (D-Mass.) in 2003, would have covered opposite-sex as well as same-sex partnerships, and the Congressional Budget Office (CBO) estimated that the bill would have cost the federal government nearly six times as much as a bill that covered same-sex partnerships only. Congressional Budget Office, Cost Estimate, H.R. 2526, Domestic Partnership Benefits and Obligations Act of 2003 (August 4, 2003) ("Approximately 83 percent of the costs would come from partners in opposite-sex partnerships and approximately 17 percent of the costs derive from partners in same-sex partnerships."), http://www.cbo.gov/ftpdocs/44xx/doc4484/hr2426.pdf.

[104] Oral testimony of OPM Director John Berry, at the 2009 Hearing, note 38 above, at page 17.

tober 14, 2009, the day of this Committee's 2009 Hearing, the Concerned Women for America issued a statement referring to the hearing and then stating, "Federal law defines marriage as the union between a man and a woman," and S. 1102 "would contradict the law by elevating relationships outside of marriage to that of a legal marriage." [105] The statement further argued that "[m]arriage between one man and one woman provides unique benefits to individuals, children, and society that cannot be replicated by any other living arrangement" and that the DBPO legislation "demeans the importance of marriage." [106] A few months later, on January 29, 2010, an article on the website of the Family Research Council stated that the DPBO bill "disobeys DOMA and devalues marriage." [107]

Two witnesses at the 2009 Hearing provided their thoughts on these arguments. OPM Director Berry stated:

> We believe that S. 1102 does not contradict existing law by creating an equivalence between domestic partnerships and marriage, and it certainly does not demean the importance of marriage. Rather, the bill allows same-sex couples in committed relationships to register as domestic partners for purposes of Federal benefits and obligations—a status entirely distinct from the State-recognized status of marriage. This administration believes that same-sex couples in committed relationships should enjoy the same benefits and shoulder the same obligations as married opposite-sex couples, but it also believes that the institution of marriage is one that should be left to the States. Accordingly, this bill does nothing to change any State's definition of marriage.[108] And, responding to a question from the Committee asking whether S. 1102 would elevate same-sex relationships and thereby demean marriage, Dr. Hendrix answered, from his private-sector perspective, that "Dow's decision to offer DP benefits is a business decision, based on attracting and retaining top talent without regard for personal characteristics, including sexual orientation and gender identity." [109]

The regulation of marriage—who may marry, how they may enter into that union, and under what circumstances and procedures they may dissolve it—is a matter of State law, and nothing in S. 1102 would have any impact on the right of the States to define the contours of marriage. Just as importantly, S. 1102 would have no effect on DOMA's intended result, which is to limit the federal benefits and obligations flowing from state-sanctioned marriages to only those marriages that are between a man and a woman. Section 3 of DOMA (1 § U.S.C. 7) [110] directs that:

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[105] Concerned Women for America, Media, "Domestic Partnership Legislation Demeans Marriage and Undermines Federal Law" (October 14, 2009), http://www.cwfa.org/content.asp?id=17857.

[106] *Id.*

[107] Family Research Council, Washington Update, "Obama Uses Stump to Thump DOMA" (January 29, 2010), http://www.frc.org/get.cfm?i=WU10A22, also http://www.frc.org/get.cfm?it=WU&row=151 (indicating the date of the publication).

[108] Response from OPM Director John Berry, to question #5, Post-Hearing Questions Submitted from Senator Joseph I. Lieberman for the Record of the 2009 Hearing, note 38 above, at page 98.

[109] Response from William H. Hendrix, Dow Chemical Company, to question #3, Post-Hearing Questions Submitted from Senator Joseph I. Lieberman for the Record of the 2009 Hearing, note 38 above, at page 105.

[110] DOMA was enacted by Public Law 104–199 (Sept. 21, 1996).

> In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as a husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife.

The provisions of S. 1102 do nothing to alter DOMA's effect. The bill includes no definition of either "marriage" or "spouse", nor does it authorize a change in how either of these terms may be interpreted in any other statute or regulation. Moreover, as noted earlier in this report,[111] nothing in S. 1102 would cause a same-sex marriage or a same-sex spouse recognized under law of any State, or a domestic partnership or a domestic partner recognized under S. 1102, to be deemed to be a "marriage" or a "spouse" within the meaning of any federal statute or regulation.

S. 1102 also does nothing to demean marriage. Marriage is established by religious or civil ceremonies recognized under State law, with broad and profound significance for the marriage partners, their families, and their communities. As Director Berry stated, S. 1102 would not change that situation in any way. Couples granted domestic partner benefits under this bill could in no way claim that the government is thereby considering them married. The bill instead leaves the governance of the institution of marriage to the States, and would define the distinct relationship of same-sex domestic partnership for limited purposes in the context of federal employment benefits and obligations only. Indeed, S. 1102 would neither enhance nor diminish the benefits, obligations, or other consequences that flow from either an opposite-sex or a same-sex couple entering into a marriage.

4. The costs of S. 1102 are justified by the benefits

Like many employers, the federal government covers part of the cost of its employees' benefits, including health insurance, survivor annuities, workers' compensation, and others. By enabling employees in same-sex partnerships to participate in benefit programs from which they are now excluded, S. 1102 would impose some costs upon the government. The Committee explored this issue in its hearings.

Employers that offer domestic partner benefits have generally found that the costs turn out to be surprisingly affordable. The Employee Benefit Research Institute reported, based on a study by Hewitt Associates, that most employers that offer domestic partner benefits to opposite-sex as well as same-sex couples found that fewer than one percent of all employees who were offered the benefit actually enrolled, and the percentage of employees who enroll is, of course, even lower for employers that allow only same-sex couples to enroll.[112] Also, employers have found that the financial risk of adding a domestic partner is no more than the risk of adding a spouse. In sum, "[e]xperience has shown that the costs of do-

[111] See the second paragraph, above, of part II .B of this report.

[112] Employee Benefit Research Institute, "Fundamentals of Employee Benefit Programs—6th Edition (2009), at page 401, http://www.ebri.org/pdf/publications/books/fundamentals/2009/40_DomsPrtnr_OTHER-BENS_Funds-2009_EBRI.pdf.

mestic partner coverage are lower than anticipated."[113] A survey of State governments that offer domestic partner benefits to their employees has likewise found that enrollment has been low and that the added costs have been minimal.[114] Dr. Burton of IBM supplied to the Committee additional studies involving employers in various sectors, showing similar findings.[115]

Witnesses at the Committee's 2008 and 2009 Hearings also testified about their own companies' experiences, concluding that domestic partner benefits impose minimal costs and provide the company with significantly greater benefits. Dr. Hendrix observed that Dow had been offering domestic partner benefits for seven years, and, based on that length of experience, he concluded, "I can tell you that this program DOES NOT add significantly to the bottom line."[116] Dr. Burton, offering a cost-benefit perspective, reported that IBM had found that the value to the company of offering domestic partner benefits significantly outweighs the costs to the company,[117] and, referring to the advantages in recruitment and in maintaining an open and productive workplace, she reported that studies spanning both the private and public sectors show "the benefits severely outweigh the costs."[118] The Chubb Corporation likewise told the Committee that offering domestic partner benefits "has not been a financial burden to Chubb. On the contrary, we believe that our approach actually strengthens our financial underpinnings, by enabling us to attract and retain a wide variety of talented employees at every level of the organization."[119]

Even in the current challenging economic environment, additional companies are choosing to offer domestic partner benefits, showing that these companies still view that adopting such programs is worth the cost. OPM Director Berry referred to the chart (*see* figure 1, above) showing that the numbers of large companies offering such benefits continues to rise:

> The information presented in the chart provides evidence that employers in the private sector continue to see adding domestic partnership benefits as a good business decision, even in these economic times. The chart indicates that the number of employers in the Fortune 500 and the Fortune 1000 that provide domestic partnership benefits increased in 2009. Where many employers are cutting costs and benefits, the number of Fortune-ranked companies offering domestic partner benefits has risen.[120]

To help ensure that the costs under S. 1102 are minimal and affordable, the bill contains two important limitations on coverage. The first limitation makes the legislation applicable only to same-

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[113] *Id.*

[114] Center for American Progress, "One Simple Step for Equality: States prove that the federal government can offer domestic partner benefits with ease," note 7 above, at pages 1–2.

[115] Response from Yvette C. Burton, IBM, to question #3, Post-Hearing Questions Submitted from Senator Joseph I. Lieberman for the Record of the 2008 Hearing, note 37 above, at pages 199–229.

[116] Statement of William H. Hendrix, Dow Chemical Company, note 42 above, 2009 Hearing at page 88 (emphasis in original).

[117] Oral testimony of Yvette C. Burton, IBM, at 2008 Hearing, note 37 above, at page 16.

[118] *Id.* at page 25.

[119] Statement of Kathleen Marvel, the Chubb Corporation, note 64 above, 2008 Hearing at pages 150–151.

[120] Response of OPM Director John Berry to question #2, Post-Hearing Questions Submitted from Senator Joseph I. Lieberman to the record of the 2009 Hearing, note 38 above, at page 96.

sex, not opposite-sex, partnerships, as discussed above.[121] Second, the bill covers federal employees and their partners only if the employees are employed by the federal government on or after the effective date of the bill (and will continue to cover the employees and their partners after the employees retire), but the bill does not cover former employees who have already retired when the bill goes into effect.[122]

To aid in consideration of the costs of the legislation, members of the Committee asked OPM to submit its estimate of the cost of the DPBO Act for the record of both the 2008 Hearing and the 2009 Hearing.[123] In addition, the cost estimate for the bill prepared by the Congressional Budget Office (CBO) is reproduced, below, in part V of this report.[124]

CBO based its estimate on changes in the cost of four benefit programs—health insurance (FEHB), survivor annuities (Federal Employees' Retirement System and Civil Service Retirement System), compensation for work-related injuries (FECA), and travel and relocation benefits—that would affect the federal budget. Some other benefit programs, such as life insurance (FEGLI) and vision and dental benefits, are fully paid for by the participants and therefore have no budgetary effect.

CBO's estimated cost of the bill over the next ten years, considered as a share of the federal government's total budget for employee and salary and benefits, would amount to only about two hundredths of one percent (0.0002).[125] In absolute terms, and broken down by program, domestic partner health-insurance benefits offered through the FEHB program would account for the largest increase in costs—a total of $649 million over 10 years. Taking all of the relevant benefit programs into consideration, enactment of the bill would cause spending for annuitants and for postal employees (*i.e.*, costs that cannot be controlled under the annual budget process) to rise by $310 million over the 10-year period through 2020, and implementation of the bill for federal employees while

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[121] Notes 103–104 above and accompanying text.

[122] Based on an estimate of the cost of the legislation submitted to the Committee by OPM Director Berry, excluding current retirees appears likely to save about 30 percent of what the bill would cost if current retirees were covered. Response of OPM Director John Berry to question #3, Post-Hearing Questions Submitted from Senator Tom Coburn for the record of the 2009 Hearing, note 38 above, at page, at page 102.

[123] Response from then-OPM Director Howard C. Weizmann to question #2, Post-Hearing Questions Submitted from Senator Joseph I. Lieberman for the record of the 2008 Hearing, note 37 above, at pages 189–191; Response from OPM Director John Berry to question #3, Post-Hearing Questions Submitted from Senator Tom Coburn for the record of the 2009 Hearing, note 38 above, at page 102.

[124] CBO, Cost Estimate, S. 1102, Domestic Partnership Benefits and Obligations Act of 2009, as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on December 16, 2009 (May 11, 2010), http://www.cbo.gov/ftpdocs/114xx/doc11494/s1102.pdf. The Committee also received into the record at the 2008 Hearing an estimate of the bill's cost prepared by an academic research institution. Williams Institute, UCLA School of Law, "The Fiscal Impact of Extending Federal Benefits to Same-Sex Domestic Partners," by Naomi G. Goldberg, Christopher Ramos, M.V. Lee Badgett (September 2008) (entered into the record of the 2008 Hearing, note 37 above, at page 157), http://www.law.ucla.edu/williamsinstitute/publications/S2521FiscalAnalysis_WilliamsInst.pdf.

[125] Total amounts paid for personnel compensation and benefits are described in the President's budget submission for FY 2011. OMB, Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2011, Table 10–3 Personnel Compensation and Benefits, at page 109, http://www.gpoaccess.gov/usbudget/fy11/pdf/spec.pdf. The table shows compensation and benefits for current personnel in 2010 and 2011 of approximately $300 billion, plus about $80 billion for retiree benefits. CBO's estimated costs of S. 1102 average about $70 million per year through 2020. This cost estimate by CBO is reproduced below in part V of this report.

they are still employed by the government would cost about $394 million over the same 10-year period.

These cost estimates for S. 1102—totaling a small fraction of the government's total personnel costs—are fully consistent with the experience of non-federal employers, who find, as discussed above,[126] that offering domestic partner benefits is very affordable and that offering such benefits is worth the price because of expected improvements in recruitment, retention, morale, and productivity.

Finally, in his testimony at the 2009 Hearing, OPM Director Berry promised to help further justify the costs of S. 1102 by "find[ing] efficiencies and improvements that . . . fully cover the cost of this program."[127] These offsets will make the cost of the bill all the more affordable.

D. SUBSTITUTE AMENDMENT TO S. 1102 IMPLEMENTING TECHNICAL RECOMMENDATIONS FROM OPM

Certain technical concerns about the drafting of the DPBO Act were raised by then-OPM Deputy Director Weizmann at the 2008 Hearing[128] and by OPM Director Berry at the 2009 Hearing.[129] As introduced, the legislation required that federal employees file affidavits pertaining to eligibility for domestic partner benefits with OPM. However, both Weizmann and Berry commented that it is not practicable for OPM to serve as a central repository for these documents. As Berry explained, "Each Federal agency carries out human resources management functions, including benefits enrollment and payroll deductions, for its own employees."[130] Then after an employee retires, documentation involving benefits is generally submitted to the employee's retirement system, which in many cases is administered by OPM.[131]

Also, as introduced, the bill provided benefits and imposed obligations in very general terms:

> (a) IN GENERAL.—An employee who has a domestic partner and the domestic partner of the employee shall be entitled to benefits available to, and shall be subject to obligations imposed upon, a married employee and the spouse of the employee.[132]

Likewise, with respect to survivor benefits, the bill, as introduced, stated—

> (2) DEATH OF AN EMPLOYEE.—In the case in which an employee dies, the domestic partner of the employee at the time of death shall receive under this Act such benefits as would be received by the widow or widower of an employee.[133]

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[126] Text accompanying notes 112–119 above.

[127] Oral testimony of John Berry at the 2009 Hearing, note 38 above, at page 21.

[128] Statement of then-OPM Deputy Director Howard C. Weizmann, note 85 above, 2008 Hearing at pages 32–33.

[129] Statement of OPM Director John Berry, note 53 above, 2009 Hearing at pages 37–38.

[130] *Id*. at page 37.

[131] For example, OPM recently issued regulations allowing the same-sex domestic partners of employees and annuitants to enroll under the Federal Long Term Care Insurance Program (FLTCIP), and OPM has instructed that, for employees and their partners, documentation showing that they meet the definition of "domestic partner" must be filed with the employee's agency, whereas for annuitants and their domestic partners, the documentation must be filed with the retirement system. *See* U.S. OPM, Benefits Administration Letter, "Federal Long Term Care Insurance Program (FLTCIP): Qualified Relatives now include Same-Sex Domestic Partners" (Number: 10–901, July 1, 2010), http://www.opm.gov/retire/pubs/bals/2010/10-901.pdf.

[132] Section 2(a) of S. 1102, 111th Cong., as introduced on May 20, 2009.

[133] Section 2(c)(2) of S. 1102, 111th Cong., as introduced on May 20, 2009.

Both Director Berry and then-Deputy Director Weizmann testified that this way of drafting the legislation was not sufficiently precise. As Weizmann said, referring to the provision on death of an employee as an example, "[t]his provision lacks the specificity needed to determine eligibility and amount of benefits for a separated domestic partner."[134] Berry expressed a similar concern and proposed that the legislation be recast to make specific amendments to applicable statutory provisions, explaining, "This would provide continuity and would resolve ambiguities . . . . It would also preserve the accuracy of title 5 [of the United States Code, where most civil service statutes are codified] for those who administer its provisions in the future."[135]

Responding to these concerns, Senator Lieberman and Senator Collins, in consultation with OPM, drafted an amendment in the nature of a substitute to S. 1102, and the amendment was agreed to when the bill was considered by the Committee on December 16, 2009. (The Committee also agreed to an amendment offered by Senator Burris to require that GAO prepare a report on how the legislation affects recruitment and retention in the government.)

Part IV, below, of this report offers an extensive section-by-section analysis of the bill, as amended; summarized here are some of S. 1102's most salient parts:

Establishment and dissolution of domestic partnerships

The bill defines a "domestic partnership" as a relationship between two individuals of the same sex, at least one of whom is a federal employee, former employee, or annuitant, that has been established and not dissolved under the new statutory program. To establish a domestic partnership, a federal employee, former employee, or annuitant and another individual must file an application and affidavit in which they certify that they are in a committed domestic-partnership relationship and intend to remain so indefinitely. They also must certify that they have a common residence and share responsibility for each other's welfare and financial obligations and that neither is married to or in a domestic partnership with anyone except each other. Willful falsification of the affidavit may lead to criminal or other penalties.

Termination of a domestic partnership occurs upon the death of either domestic partner or when one or both partners file a notification stating that a required condition for the continued existence of the partnership ceases to exist.

A member of the Armed Forces is not eligible to be a member of a domestic partnership.

Only an individual who is employed as a federal employee on or after the bill's effective date, and such an individual who subsequently retires or otherwise leaves federal employment, may establish a domestic partnership.

Benefits and obligations extended to federal employees in domestic partnerships and their domestic partners

S. 1102 establishes benefits for federal employees and their same-sex domestic partners parallel to the benefits under existing

[134] Statement of then-OPM Deputy Director Howard C. Weizmann, note 85 above, 2008 Hearing at page 32.
[135] Statement of OPM Director John Berry, note 53 above, 2009 Hearing at page 38.

law for married federal employees and their spouses. For example, employees could protect their partners and partners' children under FEHB health insurance coverage and with CSRS and FERS survivor annuity rights to the same extent as spouses and spouses' children. S. 1102 also imposes obligations and delimits benefits for employees in domestic partnerships parallel to the obligations and delimitation of benefits imposed on married employees under present law. So, for example, if employees must disclose financial information under the Ethics in Government Act,[136] they would be required to include information about their domestic partners, as married employees must do, and employees who establish a domestic partnership would subject themselves to criminal conflict-of-interest prohibitions against participating as a federal employee in any matter in which their domestic partner has a financial interest.[137] Moreover, employees in domestic partnerships will receive reduced annuities in order to fund their partners' survivor annuities to the same extent as married employees do,[138] and domestic partners will gain certain rights to consent or to notice before employees may take loans or withdrawals from their Thrift Savings Plan accounts.[139]

The section-by-section analysis in part IV, below, of this report provides a detailed accounting of all of the benefits offered and obligations imposed by the bill, but listed here are the key programs that the bill would extend to federal employees and their same-sex domestic partners:

- Civil Service Retirement System (CSRS)
- Federal Employees' Retirement System (FERS)
- Federal Employees' Group Life Insurance Program (FEGLI)
- Federal Employees Health Benefits Program (FEHBP)
- Federal Employees Dental and Vision Insurance Program (FEDVIP)
- Federal Long Term Care Insurance Program (FLTCIP)
- Travel, transportation, and subsistence payments
- Federal Employees' Compensation Act (FECA)
- Employee leave
- Death or captivity compensation
- Ethics in Government Act of 1978
- Conflicts of interest laws
- Restrictions on employment of relatives
- Receipt and disposition of foreign gifts and decorations
- Regulation of conduct regarding gifts

III. Legislative History

S. 1102 was introduced by Senator Lieberman and Senator Collins on May 20, 2009, and was referred to the Committee on Homeland Security and Governmental Affairs. Joining as additional co-

[136] Title I, Ethics in Government Act of 1978 (5 U.S.C. app. § 101 *et seq.*).

[137] 18 U.S.C. § 208.

[138] *See* 5 U.S.C. 8339, 8341, 8416, 8419; *see also* OPM; Retirement Information and Services; Survivor Benefit Elections, Court-Ordered Benefits, and Children's Benefits, http://www.opm.gov/retire/faq/post/faq2.asp (spouse is generally entitled to a survivor annuity, with commensurate reduction in the employee's annuity, unless the spouse consents to waive the right).

[139] *See* 8 U.S.C § 8435; Thrift Savings Plan, Changes in Your Family Status: Marriage, Spouse's Rights, https://www.tsp.gov/lifeevents/spouse/marriage.shtml#spouseRights.

sponsors are Senators Akaka, Boxer, Brown (OH), Burris,[140] Cantwell, Cardin, Casey, Dodd, Durbin, Feingold, Feinstein, Franken, Gillibrand, Kennedy,[141] Kerry, Kirk, Klobuchar, Landrieu, Lautenberg, Leahy, Levin, Menendez, Merkley, Mikulski, Murray, Sanders, Schumer, Specter, Whitehouse, and Wyden. Senator Lieberman introduced similar legislation in the 110th and 109th Congresses, and earlier Senate bills were introduced in the 108th and 107th Congresses.[142]

The Committee has held two hearings on S. 1102 and on an identical predecessor bill. The first hearing was on September 24, 2008, during the 110th Congress. Testimony was received from: The Honorable Howard C. Weizmann, Deputy Director, U.S. Office of Personnel Management; Yvette C. Burton, Ph.D., Global Business Development Executive for Gay, Lesbian, Bisexual, Transgender (GLBT) and Human Capital Market Segments, IBM Corporation; Colleen M. Kelley, National President, National Treasury Employees Union; Sherri Bracey, Program Manager, Women's and Fair Practices Departments, American Federation of Government Employees, AFL-CIO; and Frank Hartigan, Deputy Regional Director, San Francisco Office, Federal Deposit Insurance Corporation.

The Committee held a second hearing on October 15, 2009, during the first session of this 111th Congress. Testimony was received from: The Honorable Tammy Baldwin, Representative from the 2nd Congressional District of the State of Wisconsin, U.S. House of Representatives; The Honorable John Berry, Director, U.S. Office of Personnel Management; and William H. Hendrix, III, Ph.D., Global Leader, Gays, Lesbians and Allies at Dow, the Dow Chemical Company.

The Committee considered S. 1102 on December 16, 2009. Chairman Lieberman and Ranking Minority Member Collins offered an amendment in the nature of a substitute. (The changes made by the substitute amendment are described in part II.D, below, of this report.) Senator Burris offered an amendment to require the Comptroller General to submit a report on the effect of this legislation on the federal government's recruitment and retention efforts. The Committee adopted the substitute and the Burris amendment, both by voice vote. Present for both votes were Senators Lieberman, Akaka, Carper, McCaskill, Tester, Burris, Kirk, Collins, and Bennett.

By a vote of 8 to 1 of Members present, the Committee then ordered that the bill, as amended by the Lieberman-Collins substitute and the Burris amendment, be reported favorably to the full Senate. Senators Lieberman, Akaka, Carper, McCaskill, Tester, Burris, Kirk, and Collins voted in favor of the bill, and Senator Bennett voted against it. In addition, Senators Levin and Landrieu cast proxy votes in favor of the bill, and Senators Pryor, Coburn, McCain, Voinovich, and Graham voted against the bill by proxy. Senator Ensign was absent and left no instructions. Taking into ac-

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[140] Senator Roland Burris's term ended on November 29, 2010.

[141] Senator Edward M. Kennedy died on August 25, 2009.

[142] S. 2521, 110th Cong. (Dec. 19, 2007); S. 3955, 109th Cong. (Sept. 27, 2006); S. 1252, 108th Cong. (June 12, 2003); S. 2874, 107th Cong. (Aug. 1, 2002). The DPBO bills in the House have been H.R. 2517, 111th Cong. (May 20, 2009); H.R. 4838, 110th Cong. (Dec. 19, 2007); H.R. 3267, 109th Cong. (July 13, 2005); H.R. 2426, 108th Cong. (July 11, 2003); H.R. 638, 107th Cong. (Feb. 14, 2001).

count proxies, which are for the record only, the total vote in favor of reporting the bill favorably was 10 to 6.

IV. SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title and table of contents

This section states that the legislation may be cited as the "Domestic Partnership Benefits and Obligations Act of 2009" and provides a table of contents of the bill.

This section also provides that, when the bill amends a provision of statute without saying which title of the United States Code or which other act the provision is in, the provision is assumed to be in title 5 of the United States Code.

Sec. 2. Purpose

This section says that the purpose of the legislation is to offer employment benefits to and impose corresponding obligations upon federal employees in same-sex domestic partnerships and their domestic partners that are the same as the employment benefits and obligations under existing statutes for married federal employees and their spouses.

TITLE I—ESTABLISHMENT AND DISSOLUTION OF DOMESTIC PARTNERSHIPS; OTHER GENERAL PROVISIONS

Sec. 101. Federal employees in domestic partnerships

This section adds a new chapter 25 (2501–2502) to title 5 of the United States Code. The new chapter will govern the establishment and dissolution of federal employee domestic partnerships.

New 5 U.S.C. § 2501—Definitions—as added by section 101 of the bill

Within new 5 U.S.C. §§ 2501–2502, which would be added by section 101 of the bill, § 2501 establishes necessary definitions for §§ 2501–2502:

An "annuitant" includes any individual who, on the basis of that individual's service, is entitled to an annuity under the Civil Service Retirement System (CSRS), the Federal Employee Retirement System (FERS), or any other retirement system for employees of the federal government. CSRS and FERS are the retirement systems that cover the great majority of federal employees.

The "Director" is the Director of the Office of Personnel Management (OPM).

A "domestic partner" is either of the individuals in a domestic partnership as defined in this section.

A "domestic partnership" is a relationship between two individuals of the same sex, at least one of whom is an employee (as defined in this section), that has been established under the provisions of new 5 U.S.C. § 2502(a) and has not been terminated under the provisions of new 5 U.S.C. § 2502(b).

The definition of an "employee" includes, among other things, employees as defined in 5 U.S.C. § 2105. That definition generally encompasses all individuals appointed to civilian positions in the executive, judicial, and legislative branches of the United States Government. It excludes those in the Armed Forces, in the commis-

sioned corps of the Public Health Service, or in the commissioned corps of the National Oceanic and Atmospheric Administration.

The term "employee" is further defined to include individuals referred to in 5 U.S.C. §§ 2105(c) and (d), which covers employees of the military exchanges and of the United States Postal Service and Postal Regulatory Commission. The definition under this paragraph also includes Members of Congress, the President, and any other individuals employed by the United States Government and included within the definition under regulations prescribed by the President or a designee.

New 5 U.S.C. § 2502—Establishment and dissolution of domestic partnerships—as added by section 608 of the bill

New § 2502 states the rules for establishing and dissolving the domestic partnerships that trigger eligibility for the benefits conferred and obligations imposed under the bill.

New § 2502(a)—Establishment of Domestic Partnership. This section provides that, to establish a domestic partnership, an employee, former employee, or annuitant and another individual (who may also be an employee, former employee, or annuitant) will sign an application and affidavit; and then the employee, former employee, or annuitant will file them in the manner prescribed by OPM.[143]

New § 2502(a) requires each of the individuals establishing the domestic partnership to attest in the affidavit to the following:

1. Both individuals are of the same sex.
2. The individual filing the documents is an employee, former employee or annuitant.
3. They are in a committed domestic-partnership relationship with each other and intend to remain so indefinitely and that—
   - they maintain a common residence (unless prevented from doing so by an assignment abroad or other such reason);
   - they share responsibility for each other's welfare and financial obligations; and
   - neither is married to, or in a domestic partnership with, anyone else.
4. Each is at least 18 years old and mentally competent to consent to a contract.
5. They are not related to each other by blood in a way that would prohibit legal marriage between individuals otherwise eligible to marry.
6. Each domestic partner understands—
   - the domestic partners take on obligations as well as benefits, and violation of those obligations may lead to disciplinary action and criminal penalties;

[143] This provision allows annuitants and other former federal employees to enter into domestic partnerships because they are, under various circumstances, entitled to benefits, and other sections of this bill will enable them to obtain those benefits for their domestic partners and partners' children, as married annuitants and other former employees can obtain those benefits for their spouses and stepchildren. For example, retirees with health benefits may wish to establish domestic partnerships in order to add their domestic partners and partners' dependent children to their policies. Former employees who have Thrift Savings Plan retirement accounts may also want to enter into domestic partnerships so that their surviving domestic partners can maintain the accounts after the employees die. Note that this section of the bill only defines those who are eligible to establish domestic partnerships; it does not address which, if any, benefits the individuals forming a partnership may seek. Also, under section 105(b) of the bill, discussed below, only an annuitant or other former employee who has served as an employee on or after the effective date of the legislation will be eligible to form a domestic partnership.

- one or both must file a notification dissolving the domestic partnership within 30 days after a condition attested to in the affidavit ceases to be satisfied or after one domestic partner dies; and
- willful falsification of the affidavit, or willful failure to file notification dissolving the domestic partnership when necessary, may lead to recovery of amounts wrongfully obtained, disciplinary action, and criminal penalties.

New § 2502(b)—Termination of Domestic Partnership. Under this subsection, a domestic partnership terminates when one domestic partner dies or when either or both domestic partners file a notification stating that a required condition for the continued existence of the domestic partnership ceases to exist. The Director may also, by regulation, establish additional conditions upon which a domestic partnership is terminated.

If the domestic partners cease having a common residence or cease sharing responsibility for each other's welfare and financial obligation, or if either partner enters into a domestic partnership or a marriage with anyone else, one or both of the domestic partners must file a notification terminating the domestic partnership within 30 days. If a domestic partner dies, the other domestic partner must file such a notification within 30 days. The subsection also requires the Director to establish, by regulation, criteria by which partners can determine whether they have ceased having a common residence or have ceased sharing responsibility for each other's welfare and financial obligation for the purposes of this requirement.

New § 2502(c)—Effectiveness of Application. This subsection clarifies that an application to form a domestic partnership is not effective unless the filer is an employee, former employee, or annuitant at the time of filing. Also, no individual is treated as being a domestic partner unless an application filed in accordance with regulations of the Director is in effect, and an application remains in effect until either individual dies or the domestic partnership is otherwise terminated under those regulations.

New § 2502(d)—Additional Notifications to Employing Agencies. Under this subsection, regulations by the Director may require a domestic partner who is employed by an entity of the United States to provide additional notifications to the employing entity. For example, if two federal employees wish to establish a domestic partnership, one employee will file the required application and affidavit with that employee's agency and the other employee might be required to file additional notifications with that other employee's agency.

New § 2502(e)—Members of the Armed Forces Not Eligible. Under this subsection, a member of the Armed Forces or of the Reserve Officers' Training Corps is not eligible to be a member of a domestic partnership established under this legislation.

New § 2502(f)—Applicability. This subsection clarifies that the process for establishing and terminating domestic partnerships under 5 U.S.C. § 2502 does not apply for purposes of 5 U.S.C. chapter 81 (the Federal Employees Compensation Act, or FECA). As described below, domestic partnerships will be established and terminated for purposes of FECA under separate authorities added by title VI of the bill.

New § 2502(g)—Regulations. Under this subsection, the Director will issue regulations to carry out new 5 U.S.C. § 2502.

Sec. 102. Guidance documentation

Under this section, the Director of OPM will compile and publish guidance on the benefits and obligations established by the legislation to help inform federal employees and their domestic partners about their new rights and duties.

Subsection (a)—In General. Under this subsection, the agencies that have the authority to issue guidance with respect to benefits and obligations established under the bill will, under the coordination of the Director, issue such guidance.

Subsection (b)—Office of Personnel Management. This subsection requires the Director to compile the guidance prepared by all agencies, prepare guidance with respect to benefits and obligations available to domestic partners of certain Secret Service and Park Police officers who are covered under the DC Police Officers' and Firefighters' Retirement Plan, and ensure that all of the guidance is readily available, both in print and on-line.

Subsection (c)—Timeliness. Under this subsection, the guidance must be prepared and made readily available not later than 30 days before the effective date of the bulk of the legislation's provisions, to the extent practicable, and updated as necessary. (As noted below, section 105(a) of the bill states that the legislation will generally go into effect 180 days after enactment.)

Sec. 103. Review of programs under which employment benefits and obligations are established

This section will require the President (or designees), at least once every two years, to review employment benefits and obligations for federal employees across the executive branch, report to Congress on the extent to which these benefits and obligations are, or can be, extended to employees in domestic partnerships and their domestic partners, and recommend any necessary legislation. Although the amendments in this bill will authorize domestic partner benefits under the major statutory benefits programs for federal employees, additional kinds of family benefits are provided for classes of federal employees that the bill does not modify. For example, some individual agencies have used their discretionary authority to establish family benefit programs for certain employees of the agency.

The principal goal of this section is therefore to establish a mechanism by which domestic partner benefits will be granted under programs that are not covered under the specific amendments made by the bill. The President must compile an inventory of such programs, and then, if existing legal authority is sufficient, the President must make any modifications necessary to cover employees in domestic partnerships and their partners. The inventory under this section must also include the family benefit programs that are covered under the amendments made by this bill, so that the President can identify and fill any gaps in the domestic partner benefits made available under those programs. If existing statutes do not provide sufficient authority to fill any gaps in domestic partner benefits under programs on the inventory, this section of the bill further calls upon the President to develop any legislative rec-

ommendations to correct the insufficiencies. Finally, the President must submit reports to Congress summarizing the actions taken and the legislative recommendations developed under this section.

Subsection (a)—Definitions. The definitions under this subsection establish the scope of the review of federal programs mandated by section 103. The term "employee" is defined broadly, so that it includes not only an employee who can form a domestic partnership under 5 U.S.C. § 2502 (which would be added by section 101 of the bill, as discussed above), but also members of the commissioned corps of the Public Health Service (PHS) or of the National Oceanographic and Atmospheric Administration (NOAA) and any other individual performing personal services to the United States, including employees of any federal entity and volunteers. (Federal volunteers are included because they may be eligible for certain benefits, such as workers' compensation under FECA. However, employees of contractors and members of the Armed Forces or the Reserve Officer Training Corps are not included in the definition.)

The terms "domestic partner" and "domestic partnership" are defined for purposes of section 103 to include same-sex individuals in a domestic partnership relationship if at least one of the individuals meets the broad definition of "employee" under in this section, regardless of whether either individual is an "employee" within the narrower definition in 5 U.S.C. § 2501. In other words, the term encompasses individuals who might not be entitled to form a domestic partnership under the bill's initial provisions.

Subsection (b)—Reviews, Additional Measures, Recommendations, Reports to Congress. This subsection will require the President (or designees of the President) to review the employment benefits and obligations applicable to married employees and their spouses, to determine what authority exists to apply such benefits and obligations to employees of executive agencies who are in domestic partnerships and to their domestic partners. The President (or designees) will then take any additional measures, consistent with law, to cover those employees and domestic partners. The President (or designee) will then develop recommendations for any legislation to further extend employment benefits and obligations to employees and their domestic partners and will submit a report to Congress summarizing the review, determinations, and recommendations.

Sec. 104. Study on recruitment and retention

Section 104 of the bill requires the Comptroller General to submit to this Committee and to the House Committee on Oversight and Government Reform a report regarding the effect that providing benefits for domestic partners under this Act has on federal recruitment and retention efforts.

Sec. 105. Effective date

Subsection (a)—In General. Under this subsection, the legislation and amendments will generally take effect 180 days after the date of enactment. This general effective date will apply except as otherwise provided with respect to particular parts of the bill.

Exceptions to the general effective date under subsection (a) are included in sections 102 and 103 of the bill, making those sections go into effect on the day the bill is enacted. The early effective date

is needed because those sections require that tasks be undertaken before the general effective date. (As discussed above, section 102 will require the OPM Director to compile and publish guidance on the benefits and obligations established by the legislation, and section 103 will require the President, or designees, to review benefits and obligations for federal employees across the executive branch and to report to Congress.)

Also, several sections of the bill that modify particular benefit programs include exceptions that establish effective dates appropriate for the particular program. For example, sections 401 through 405 of the bill, which modify insurance benefit programs like group health insurance, group life insurance, and long-term care insurance, will apply with respect to the calendar year that begins after the end of the 6-month period starting on the date of enactment of the legislation. This starting date will give enough time after the bill is enacted for OPM to require the various insurance carriers to modify the insurance plans that they offer to federal employees.

Subsection (b)—Application to Current and Future Employees. This subsection states that any employee who is employed by the federal government on or after the general effective date of the legislation (which is established under subsection (a)) will be eligible to form a domestic partnership. Also, an employee who is employed by the government on or after the general effective date of the bill and subsequently leaves federal service will remain eligible to form a domestic partnership.

However, an annuitant or other former employee who has left federal service before the general effective date of the bill will not be eligible to form a domestic partnership. (Of course, nothing would prevent an individual who works for the federal government on or after the effective date from establishing a domestic partner with another individual who left federal service before that date.)

TITLE II—CIVIL SERVICE RETIREMENT SYSTEM

Title II of the bill establishes domestic partnership benefits under the Civil Service Retirement System (CSRS), which is the defined-benefit retirement program that covers most federal employees who began service before 1987. The CSRS not only provides retirement security for covered employees, but also enables them to provide retirement security for their spouses and children, including stepchildren. The CSRS is authorized by 5 U.S.C. chapter 83, subchapter III (§§ 8331–8351). Title II of the bill amends those provisions to enable federal employees covered by CSRS who are in domestic partnerships to likewise provide retirement security for their domestic partners and children, including children of their domestic partners.

Sec. 201. Definitions

Section 201 of the bill amends 5 U.S.C. § 8331 (the definitions section for provisions authorizing the CSRS) by adding a definition of "former domestic partner." The term is defined to parallel the definition of "former spouse" now in § 8331 (i.e., at least 18 months of covered service by the employee, and at least 9 months of marriage or domestic partnership). These definitions are significant because amendments made by other provisions of the bill make a

former domestic partner eligible for a CSRS survivor annuity under the same conditions as those that apply to former spouses. Section 201 of the bill also adds definitions of "domestic partner" and "domestic partnership" by cross referencing the definitions in 5 U.S.C. § 2501, which is added by section 101 of the bill. (Section 201 also adds a definition of "Federal employee" to make clear that only federal employees covered by CSRS, and not the small portion of CSRS participants who are not federal employees, are entitled to the benefits conferred by this bill.)

Sec. 202. Creditable service

Under current law (5 U.S.C. § 8332), CSRS benefits for an employee's spouse or former spouse depend upon the amount of the employee's service that is creditable for purposes of the CSRS. Section 202 of the bill amends § 8332 by requiring OPM's rules to similarly determine the amount of CSRS benefits paid under those circumstances to an employee's domestic partner or former domestic partner.

Sec. 203. Computation of annuity

5 U.S.C. § 8339 establishes rules for computing the amount of an annuity, including the amount of and entitlement to a survivor annuity under certain circumstances. Among other things, § 8339 reduces the annuity of employees to fund a survivor annuity for current, former, or subsequent spouses and establishes various elections that can be exercised by employees and their current, former, and subsequent spouses under various circumstances.

Section 203 of the bill amends § 8339 to provide that employees who are or were in domestic partnerships and their domestic partners, former domestic partners, and subsequent domestic partners have the same rights that married and formerly married employees and their spouses, former spouses, and subsequent spouses have under § 8339 for purposes determining the entitlement to, and amount of, an annuity or a survivor annuity.

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

5 U.S.C. § 8340 authorizes cost-of-living adjustments for annuities under CSRS. Section 204 of the bill amends § 8340 to provide that entitlement to CSRS survivor annuities and cost-of-living increases will be determined for surviving partners under the same rules as for widows and widowers and will be determined for former domestic partners under the same rules as for former spouses. (The definition of "former domestic partner" is added by section 201 of the bill to 5 U.S.C. § 8331, as discussed above, and the definition of "surviving partner" is added by section 205 of this bill to 5 U.S.C. § 8341, as discussed below.)

Sec. 205. Survivor annuities

After the death of a federal employee or retiree, 5 U.S.C. § 8341 generally establishes the circumstances under which the employee's or retiree's surviving family member or another individual may become entitled under CSRS to an annuity, called a survivor annuity. § 8341 provides definitions of a "widow", "widower", and "child" who may be entitled to a survivor annuity under CSRS. (A "widow" or "widower" means a surviving spouse who was married to the

employee at least nine months immediately preceding the death or parented a child by the marriage. A "child" generally means an unmarried dependent child, including a stepchild living with the employee in a parent-child relationship.)

Section 205 of the bill adds a definition of "surviving partner" that parallels the definitions of "widow" and "widower", and amends the definition of "child" to include the child of an employee's domestic partner under the same conditions as those under which a stepchild is included.

Section 205 of the bill further amends § 8341 so that surviving partners are entitled to an annuity under the same conditions and in the same amounts as widows and widowers. Also, § 8341 establishes rules for determining whether surviving spouses—that is, those who do not meet the conditions in the definition to qualify as "widows" or "widowers"—are entitled to a survivor annuity. Under the amendment to § 8341, surviving domestic partners—that is, those who do not meet the conditions to qualify under the definition of "surviving partners"—are entitled to an annuity under the same conditions and in the same amounts as surviving spouses.

As noted above, section 205 amends the definition of "child" in § 8341 to include the children of domestic partners, and therefore the children of domestic partners may qualify for an annuity under § 8341. Also, § 8341 terminates the right to benefits if children marry and generally terminates the right to benefits if widows or widowers or surviving spouses remarry before age 55. Section 205 of the bill amends § 8341 to also terminate the right to benefits if children enter into a domestic partnership and if widows or widowers or surviving spouses enter into a domestic partnership before age 55 or if surviving partners or surviving domestic partners enter into a subsequent domestic partnership or marry before age 55. (The term "domestic partnership" is defined under 5 U.S.C. § 2501–2502, as added by section 101 of the bill, to mean a domestic partnership established under those provisions, and that definition applies to the CSRS under the bill's amendment to 5 U.S.C. § 8331, as noted above. Therefore, entering into a domestic partnership can terminate any benefit rights under 5 U.S.C. § 8341, as amended, only if the domestic partnership is established under §§ 2501–2502.)

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

5 U.S.C. § 8342 authorizes the payment of a lump-sum amount, in lieu of an annuity, under certain circumstances and includes a list of beneficiaries, in order of precedence, who are entitled to the lump sum benefits if an employee dies. Generally, if the deceased employee did not designate beneficiaries, the widow or widower is first in line, and if there is no widow or widower, the child or children are next in line.

Section 206 of the bill amends this list by adding surviving partners with the same order of precedence as widows and widowers. 5 U.S.C. § 8342 excludes the employee's stepchildren from the definition of "child" for purposes of this order of precedence, and section 206 of the bill would likewise amend the provision to exclude children of the employee's domestic partner (if they are not otherwise the children of the employee). Section 206 further amends

§ 8342 by requiring that domestic partners and former domestic partners be notified of their rights, as spouses or former spouses are notified, when an employee applies for a lump sum payment.

Sec. 207. Alternative forms of annuities

5 U.S.C. § 8343a allows employees with critical medical conditions to elect an alternative form of annuity, and the section includes options and restrictions to protect the interests of employees' spouses and former spouses. Section 207 of the bill amends § 8343a to provide analogous options and restrictions to protect the interests of employees' domestic partners and former domestic partners.

Sec. 208. Administration; regulations

5 U.S.C. § 8347(n) requires the Director of the Central Intelligence Agency (CIA) to take certain actions to administer CSRS for CIA employees, including the collection of deposits made by CIA employees' spouses and former spouses. Section 208 of the bill amends § 8347(n) to require the Director to likewise collect deposits made by CIA employees' domestic partners and former domestic partners.

Sec. 209. Participation in the Thrift Savings Plan

5 U.S.C. § 8351 authorizes employees who are covered by the CSRS to contribute to the Thrift Savings Plan and includes provisions to accommodate the respective rights of married and formerly married employees and their spouses and former spouses. Section 209 of the bill amends § 8351 to accommodate, in the same way, the respective rights of employees who are or were in domestic partnerships and their domestic partners and former domestic partners.

TITLE III—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Title III of the bill establishes domestic partnership benefits under the Federal Employees' Retirement System (FERS), which is the retirement program that covers most federal employees who began service during 1987 or later. FERS establishes both a defined benefit plan for covered employees and the Thrift Savings Plan (TSP), which is a defined-contribution program, in which employees covered by CSRS and some other retirement systems, as well as those covered by FERS, may participate.

FERS not only contributes to the retirement security of covered employees, but also enables these employees to contribute to the retirement security of their spouses and children, including stepchildren. Title III of the bill amends FERS's authorizing provisions (5 U.S.C. §§ 8401–8479) to enable federal employees who are in domestic partnerships to likewise contribute to the retirement security of their domestic partners and children, including children of their domestic partners.

Subtitle A—General Provisions

Sec. 301. Definitions

Section 301 of the bill adds a definition of "former domestic partner" to FERS's current definition section, 5 U.S.C. § 8401. It parallels the definition of "former spouse" in § 8401 (*i.e.,* at least 18

months of covered service by the employee, and at least 9 months of marriage or domestic partnership). These definitions are significant because amendments made by other sections of the bill make former domestic partners eligible for a FERS survivor annuity under the same conditions as apply to former spouses.

Section 301 of the bill also adds definitions of "domestic partner" and "domestic partnership" by cross referencing the definitions in 5 U.S.C. § 2501 (which is added by section 101(a) of the bill). (The section also adds a definition of "Federal employee" to make clear that only federal employees covered by FERS—and not the small portion of FERS participants who are not federal employees—are entitled to the benefits conferred by this bill.)

Subtitle B—Basic Annuity

Sec. 311. Creditable service

5 U.S.C. § 8411 requires OPM to prescribe rules for determining the amount of FERS benefits paid to employees' spouses and former spouses based on the amount of employees' service that is creditable for purposes of the FERS and on other factors. Section 311 of the bill amends § 8411 by requiring that OPM apply these same rules to determining the amount paid to employees' domestic partners and former domestic partners.

Sec. 312. Survivor reduction for a current spouse or a current domestic partner

Under 5 U.S.C. § 8416, married employees generally see their annuities reduced at retirement, in order to fund survivor annuities for their spouses, unless they and their spouses jointly elect otherwise. Section 312 of the bill amends § 8416 to apply these provisions to employees in domestic partnerships.

Sec. 313. Survivor reduction for a former spouse or former domestic partner

5 U.S.C. § 8417 reduces employees' annuities in order to fund survivor annuities for their former spouses, and the section establishes elections that can be exercised by employees and their former and subsequent spouses. Section 313 of the bill amends § 8417 to apply these provisions to employees with former domestic partners and to former and subsequent domestic partners.

Sec. 314. Survivor elections; deposit; offsets

For certain retired employees who become entitled after retirement to elect to fund survivor annuities for former or subsequent spouses, 5 U.S.C. § 8418 establishes rules under which the employees (or their survivors) deposit required amounts into the Civil Service Retirement and Disability Fund. Section 314 of the bill amends § 8418 to apply the same rules to employees with former or subsequent domestic partners and to those domestic partners.

Sec. 315. Survivor reductions, computation

5 U.S.C. § 8419 governs the amount by which employees see their annuities reduced in order to fund survivor annuities for their spouses or former spouses. Section 315 of the bill amends § 8419 to

apply these rules to annuitants with domestic partners and former domestic partners.

Sec. 316. Insurable interest reductions

5 U.S.C. § 8420 allows employees to take reduced annuities in order to provide annuities for individuals who have an insurable interest in the employees, but this option is generally only available to married employees if their spouses' annuity rights are waived. Section 316 amends § 8420 to apply this provision to employees in domestic partnerships and their domestic partners.

Sec. 317. Alternative forms of annuities

5 U.S.C. § 8420a authorizes an alternative form of annuity for employees who have critical medical conditions at the time of retiring. It includes an option to provide an annuity for surviving spouses, as well as provisions to preserve annuity rights of current spouses and former spouses. Section 317 of the bill amends § 8420a to provide the same option and protections for employees and their domestic partners or former domestic partners.

Sec. 318. Lump-sum benefits; designation of beneficiary; order of precedence

Under 5 U.S.C. § 8424, an employee under certain circumstances may apply to receive a lump sum credit in lieu of an annuity, but subject to certain rights of a spouse or former spouse to receive notice and to withhold consent. Section 318 of the bill amends § 8424 to provide the same notification and consent rights to a domestic partner or former domestic partner.

5 U.S.C. § 8424 also requires payment of a lump sum under certain conditions when an employee or annuitant dies, and sets an order of precedence for determining which survivors are entitled to the payment. If the employee did not designate beneficiaries, the widow or widower is first in line under the order of precedence, and if there is no widow or widower, the child or children are next in line. Section 318 of the bill would amend § 8424 so that a surviving partner has the same position in the order of precedence as a widow or widower. 5 U.S.C. § 8424 excludes the employee's stepchildren from the definition of "child" for purposes of the order of precedence, and section 318 of the bill would amend § 8424 to likewise exclude children of the employee's domestic partner (if they are not also the children of the employee).

Subtitle C—Thrift Savings Plan

Sec. 321. Benefits and election of benefits

If an employee dies having designated his or her surviving spouse as beneficiary or having designated no beneficiary, 5 U.S.C. § 8433 allows the surviving spouse to maintain the employee's Thrift Savings Plan (TSP) account for the spouse's lifetime. Section 321 of the bill amends § 8433 to give that same right to a surviving domestic partner.

Sec. 322. Annuities: methods of payment; election; purchase

5 U.S.C. § 8433 authorizes employees who separate from federal government employment to, under certain conditions, convert their

TSP balance into an annuity, and § 8434 directs the Federal Retirement Thrift Investment Board (which governs the TSP) to specify methods of payment from which employees may choose, including options that include an annuity for the spouse or former spouse of the employee. Section 322 of the bill amends § 8434 to give employees with domestic partners or former domestic partners the same options.

Sec. 323. Protections for spouses, domestic partners, former spouses, and former domestic partners

5 U.S.C. § 8435 protects the interests of spouses, former spouses, and surviving spouses by providing the right to consent before an employee can withdraw TSP funds or convert them into an annuity. Section 323 of the bill amends § 8435 to likewise protect the interests of domestic partners, former domestic partners, and surviving domestic partners.

Sec. 324. Justices and judges

5 U.S.C. § 8440a authorizes justices and judges to contribute to the TSP and specifies that their spouses' rights will be governed by 5 U.S.C. § 8351(b)(5), which specifies the respective rights of married and formerly married employees and their spouses and former spouses with respect to the employees' TSP accounts. Section 324 of the bill would amend § 8440a so that the rights of justices and judges and their domestic partners will likewise be governed by § 8351(b)(5).

Subtitle D—Survivor Annuities

Sec. 331. Definitions

For establishing who may be entitled to a survivor annuity under FERS, 5 U.S.C. § 8441 defines terms including "widow", "widower", and "child". Section 331 of the bill amends § 8441 to add a definition of "surviving partner" that includes the same conditions as are in the definitions of "widow" and "widower", and amends the definition of "child" to include the child of an employee's domestic partner under the same conditions as those under which a stepchild is included. Also, building on § 8441's exclusion of married children from the definition of "child", section 331 adds an exclusion of children who are in domestic partnerships.

Sec. 332. Rights of a widow, widower, or surviving partner

Section 332 amends 5 U.S.C. § 8442, which sets forth the annuity rights of widows and widowers, to give surviving domestic partners those same rights. Also, a widow's or widower's right to benefits generally terminates under § 8442 if the widow or widower remarries before age 55, and section 332 of the bill amends the provision to likewise generally terminate the rights to benefits if a widow or widower enters into a domestic partnership before age 55, or if a surviving partner enters into a subsequent domestic partnership or marries before age 55.

Sec. 333. Rights of a child

Under 5 U.S.C. § 8443, children may be entitled to an annuity under certain circumstances, but the right terminates if the chil-

dren marry. Section 333 of the bill amends § 8443 to likewise terminate children's right to an annuity if they enter into a domestic partnership. Also, as noted above, section 331 of the bill amends the definition of "child" under 5 U.S.C. § 8441 so that domestic partners' children are included in the definition under the same conditions as stepchildren; accordingly, the children of domestic partners may qualify for an annuity under the same conditions as stepchildren under § 8443.

Sec. 334. Rights of a former spouse or former domestic partner

5 U.S.C. § 8445 provides that former spouses may have a right to an annuity under certain circumstances, and section 317 of the bill amends § 8445 to provide that former domestic partners may likewise have a right to an annuity under the same circumstances. Also, under § 8445 the right to an annuity may terminate under certain conditions if former spouses remarry, and section 334 amends § 8445 to likewise terminate former spouses' right to an annuity if they subsequently enter into a domestic partnership or if former domestic partners subsequently enter into other domestic partnerships or marry.

Subtitle E—General and Administrative Provisions

Sec. 341. Authority of the Office of Personnel Management

5 U.S.C. § 8461 authorizes the Director of Central Intelligence to collect deposits to the Thrift Savings Fund from employees of the Central Intelligence Agency (CIA) and their spouses, former spouses, and survivors. Section 341 of the bill authorizes the Director to likewise collect deposits to the Fund from CIA employees' domestic partners and former domestic partners.

Sec. 342. Cost-of-living adjustments

Section 342 amends 5 U.S.C. § 8462 to provide that cost-of-living adjustments to surviving partners' annuities are calculated the same way as cost-of-living adjustments to widows' and widowers' annuities are calculated.

Subtitle F—Federal Retirement Thrift Investment Management System

Sec. 351. Fiduciary responsibilities; liability and penalties

5 U.S.C. § 8477 states the fiduciary duties of members of the Federal Investment Retirement Thrift Investment Board, the Executive Director of the Board, and certain other managers of the Thrift Savings Fund. Among other things, fiduciaries must prohibit certain transactions between the Fund and a "party of interest," which term is defined in § 8477 to include a fiduciary's spouse or other listed relatives or the relatives' spouses. Section 351 amends § 8477 to likewise prohibit transactions with a fiduciary's domestic partner by adding a fiduciary's domestic partner and listed relatives' domestic partners to the definition of "party in interest."

TITLE IV—INSURANCE BENEFITS

Sec. 401. Life insurance

Section 401 of the bill amends the provisions that authorize the Federal Employees' Group Life Insurance (FEGLI) Program, which provides life insurance options to federal employees, including "Basic Insurance" on the life of an employee, additional "Optional Insurance" on the life of an employee, and "Optional Life Insurance on Family Members" of an employee. All employees are automatically enrolled in the Basic Insurance unless they elect not to be, whereas employees must elect if they wish to be covered under the Optional insurance programs.

FEGLI is authorized under 5 U.S.C. chapter 87 (§§ 8701–8716). If an employee does not designate a beneficiary under FEGLI, § 8705(a) establishes an order of precedence of who will collect the proceeds upon the employee's death. Under that order of precedence, the widow or widower is first in line. Section 401(a)(2) of the bill amends § 8705(a) to afford a surviving domestic partner the same status as a widow or widower.

Under 5 U.S.C. § 8714c, employees may elect to purchase life insurance on the lives of the employee's family members, and § 8701(d) defines "family members" to include an employee's spouse and dependent children, including stepchildren, but excluding married children. Sections 401(a)(1) and (3) of the bill amend 5 U.S.C. § 8701(d) and § 8714c so that insurance on family members under FEGLI also covers the lives of federal employees' domestic partners and partners' children and does not cover the lives of children who enter into domestic partnerships.

Sec. 402. Health insurance

The Federal Employee Health Benefits (FEHB) Program provides health benefits to federal employees and gives them the option of obtaining health coverage not only for themselves, but also for their spouses and children, including stepchildren. The FEHB program is authorized under 5 U.S.C. chapter 89 (§§ 8901–8914), and section 402 of the bill would amend those provisions to enable federal employees to provide similar family coverage to their domestic partners and children of domestic partners. Also, surviving spouses and former spouses of federal employees may gain their own eligibility to enroll in a health benefits plan under FEHB under certain conditions, and the amendments under section 402 of the bill would extend similar eligibility to surviving domestic partners and former domestic partners.

Subsection (a)—Definitions. 5 U.S.C. § 8901 contains definitions for the provisions authorizing FEHB, including a definition of "member of family" that means the spouse and a child, including a stepchild if applicable conditions are satisfied. Section 401(a) of the bill would amend the definition to include the domestic partner and a child of the domestic partner. This definition is significant because, under other provisions of the statute, it determines what individuals are covered under family FEHB plans and what individuals, if they become survivor annuitants, may be eligible to enroll in an FEHB plan.

Section 402(a) of the bill also adds a new definition of "former domestic partner", which includes the same conditions that are now

in the definition of "former spouse" in 5 U.S.C. § 8901. The definition of "former spouse" in § 8901 excludes any individual who remarries before age 55, and, accordingly, section 402(a) of the bill amends that definition to also exclude any individual who enters a domestic partnership before age 55. Likewise, the new definition of "former domestic partner", which is added by section 402(a) of the bill, excludes any individual who, before age 55, enters into another domestic partnership or marries. These definitions are significant because a former spouse may be eligible to enroll in an FEHB plan, and, under amendments made by other subsections of the bill, a former domestic partner may be eligible to enroll in an FEHB plan under the same conditions as a former spouse.

Also, 5 U.S.C. § 8901 excludes any married children from the definition of "member of family", and the amendments likewise exclude children in domestic partnerships from the definition. Section 402(a) of the bill also adds definitions of "domestic partner" and "domestic partnership" by cross reference to 5 U.S.C. § 2501, which would be added by section 101 of the bill. (Section 402(a) also adds definitions of "Federal employee" and "Federal annuitant" to make clear that only federal employees and former federal employees, and not the small portion of FEHB participants who are neither, are entitled to the benefits conferred by this bill.)

Subsection (b)—Contracting Authority. 5 U.S.C. § 8902 authorizes OPM to contract with qualified insurance carriers and sets eligibility criteria for carriers and minimum requirements for contracts. Section 402(b) of the bill amends § 8902 by requiring contracts for group insurance to meet the same coverage requirements for former domestic partners as the statute now provides for former spouses.

Subsection (c)—Debarment and Other Sanctions. In describing the criteria for debarring or otherwise sanctioning providers, 5 U.S.C. § 8902a defines and uses the terms "individual covered under this chapter" and "covered individual". Those definitions include a former spouse, and section 402(c) of the bill would amend the definitions to likewise include a former domestic partner.

Subsection (d)—Health Benefits Plan. Under 5 U.S.C. § 8903, OPM may contract for a number of different kinds of plans, including a single government-wide preferred-provider plan offering a complete range of health benefits, called the Service Benefit Plan. § 8903 lists the classes of individuals, including former spouses, who must be covered under this plan, and section 402(d) of the bill amends § 8903 by adding former domestic partners to the list.

Subsection (e)—Election of Coverage. After the termination of an employee's marriage, 5 U.S.C. § 8905(c) entitles the employee's former spouse to enroll in an FEHB plan and to elect coverage that may include a child of the employee and the former spouse under certain conditions. Section 402(e)(1) of the bill adds a paragraph to § 8905(c) directing OPM to prescribe regulations to ensure parity of treatment between former spouses and former domestic partners and between children of a dissolved marriage and children of a terminated domestic partnership.

Also, 5 U.S.C. § 8905(e) specifies that two married federal employees who are each eligible to enroll under FEHB may not both enroll in family coverage. Section 402(e)(2) of the bill amends that provision so that two such employees who are domestic partners

may not both enroll in family coverage. Provisions in §§ 8905(f)–(g) that entitle enrollees, including former spouses, to change their enrollment are amended to apply likewise to former domestic partners.

Subsection (f)—Continued Coverage. 5 U.S.C. § 8905a establishes individuals' rights to continue FEHB coverage if such coverage would otherwise terminate for various reasons, including divorce, annulment, or legal separation. Section 402(f) of the bill amends § 8905a to direct OPM to prescribe regulations ensuring parity of treatment between former spouses and former domestic partners and between children of a dissolved marriage and children of a terminated domestic partnership.

Subsection (g)—Coverage of Restored Employees and Survivor or Disability Annuitants. For surviving spouses whose survivor annuity was terminated because of remarriage but was later restored, 5 U.S.C. § 8908 includes rules under which the surviving spouses can restore their coverage under FEHB plans. Section 402(g) of the bill amends § 8908 so that it would apply in the same way where a surviving spouse's annuity terminated because of entry into a domestic partnership, and where a former domestic partner's annuity terminated because of entry into another domestic partnership or a marriage.

Subsection (h)—Employees Health Benefits Fund. 5 U.S.C. § 8909(d) addresses how the merger of employee organizations that sponsor an FEHB plan can affect who may remain enrolled in the plan, including former spouses. Section 402(h) of the bill amends the provision to refer likewise to former domestic partners.

Subsection (i)—Regulations. 5 U.S.C. § 8913(c) requires OPM to prescribe regulations providing for the beginning and ending dates of coverage under various circumstances, and in that context refers to former spouses. Section 402(i) of the bill amends the provision to refer likewise to former domestic partners.

Subsection (j)—Effective Date. Section 402(j) provides that the amendments made by section 402 apply with respect to calendar years beginning after the end of the 6-month period beginning on the date of the enactment of the legislation.

Sec. 403. Enhanced dental benefits

Supplemental dental coverage under the Federal Employees Dental and Vision Insurance Program (FEDVIP) is authorized under 5 U.S.C. chapter 89A (§§ 8951–8962). 5 U.S.C. § 8956(a) specifies that two married federal employees who are each eligible to enroll for enhanced dental coverage may not both enroll in family coverage, and section 403(a)(1) of the bill amends that provision so that two such employees who are domestic partners may likewise not both enroll in family coverage. Also, for a surviving spouse whose survivor annuity is terminated and is later restored, 5 U.S.C. § 8957 includes rules under which the surviving spouse may continue enrollment in dental benefits. Section 403 amends the provision so that those rules likewise apply where a surviving domestic partner's annuity terminated and is later restored.

Sec. 404. Enhanced vision benefits

Supplemental vision coverage under FEDVIP is authorized under 5 U.S.C. chapter 89B (§§ 8981–8992). 5 U.S.C. § 8986(a) specifies

that two married federal employees who are each eligible to enroll for enhanced vision benefits may not both enroll in family coverage, and section 404(a)(1) of the bill amends that provision so that two such employees who are domestic partners may likewise not both enroll in family coverage. Also, for a surviving spouse whose survivor annuity is terminated and is later restored, 5 U.S.C. § 8987 includes rules under which the surviving spouse may continue enrollment in vision benefits. Section 404 amends the provision so that those rules likewise apply where a surviving domestic partner's annuity is terminated and is later restored.

Sec. 405. Long-term care insurance

The Federal Long Term Care Insurance Program (FLTCIP), which provides group long-term care insurance for federal employees and annuitants, members and retired members of the uniformed services, and qualified relatives, is authorized under 5 U.S.C. chapter 90 (§§ 9001–9009). The definition of "qualified relative" under 5 U.S.C. § 9001(5) includes, among others, a spouse, parent-in-law, and stepchild, subject to specified conditions. Section 405(a)(1) of the bill would amend the definition of "qualified relative" to add a domestic partner of a federal employee, a child of a domestic partner, and a parent of a domestic partner, under those same conditions. (The definition also cross references the definition of "domestic partner" in 5 U.S.C. § 2501 and the definition of federal employee in 5 U.S.C. § 8901, both of which are added by other sections of the bill.)

5 U.S.C. § 9002 imposes upon insurance carriers seeking to participate in the federal long-term care program certain conditions, including that underwriting standards should treat the spouse of an employee as much like the employee as practicable. Section 405(a)(2) of the bill amends that provision to apply likewise to the domestic partner of an employee. Also, section 405(b) of the bill provides that the amendments to the long-term care provisions shall apply with respect to calendar years beginning after the end of the 6-month period beginning on the date of enactment of the legislation.

TITLE V—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

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

When an agency reimburses an employee's travel expenses, the head of the agency is authorized under 5 U.S.C. § 5706c to also reimburse Federal, State, and local income taxes incurred by the employee or, if filing jointly, by the employee and the employee's spouse on account of the reimbursement. Section 502 of the bill amends § 5706c so that, in jurisdictions where the employee and the domestic partner can file jointly, the agency head may reimburse the employee's and the domestic partner's taxes. Section 501 also specifies that these amendments to § 5706c will apply for the taxable year beginning after the end of the 6 month period beginning on the date of enactment of the Act.

Sec. 502. Definitions

5 U.S.C. chapter 57, subchapter II, (§§ 5721–5739) provides general authority to reimburse employees' travel and transportation expenses. Sections 501 through 505 of the bill make amendments to these provisions. Section 502 of the bill adds to the definitions section (5 U.S.C. § 5721) the term "domestic partner" and gives it the meaning given in 5 U.S.C. § 2501 (which would be added under section 101 of the bill).

Sec. 503. Relocation expenses of employees transferred or reemployed

When an employee transfers in the interest of the Government between official stations within the United States, 5 U.S.C. § 5724a authorizes the agency to pay certain relocation expenses, including the transportation expenses of the employee and spouse for travel to seek a permanent residence at the new official station. Section 503 of the bill amends § 5724a to likewise authorize transportation expenses for an employee and domestic partner. Section 503 also specifies that the amendment applies with respect to expenses incurred after the 6 month period beginning on the date of enactment.

Sec. 504. Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred

When the government covers an employee's moving or storage expenses or other relocation expenses, 5 U.S.C. § 5724b authorizes the agency to reimburse any resulting federal, State, and local income taxes incurred by the employee or, if filing jointly, by the employee and the employee's spouse. Section 504 of the bill amends § 5724b so that, in jurisdictions where an employee and a domestic partner can file jointly, the agency may also reimburse the employee's and domestic partner's taxes. Section 504 also provides that the amendments apply with respect to taxable years beginning after the end of the 6 month period beginning on the date of enactment.

Sec. 505. Relocation expenses of an employee who is performing an extended assignment

When an employee is given an extended assignment, 5 U.S.C. § 5737 authorizes the agency to pay certain relocation expenses, including travel and transportation expenses of the employee and spouse to seek a new residence at the assignment location. Section 505 of the bill amends the provision to likewise authorize travel and transportation expenses for an employee and domestic partner. Section 505 also provides that the amendment shall apply with respect to expenses incurred after the end of the 6 month period beginning on the date of enactment.

TITLE VI—COMPENSATION FOR WORK INJURIES

Title VI of the bill makes amendments to provisions that authorize the Federal Employees' Compensation Act (FECA), which is the workers' compensation program for federal employees. FECA, which is authorized under 5 U.S.C. chapter 81 (§§ 8101–8193), provides compensation for disability or death of an employee resulting

from injury sustained while in the performance of the employee's duty. In case of death, FECA provides benefits to widows and widowers, children, including stepchildren, and certain other survivors. The bill amends FECA to extend its coverage to surviving domestic partners and their children.

Sec. 601. Definitions

5 U.S.C. § 8101 establishes definitions for the relevant portions of FECA. Section 601 of the bill would add to § 8101 new definitions of "domestic partner" and "domestic partnership", including criteria for establishing and terminating domestic partnerships, that are similar to, but not identical to, those in the general domestic partnership program under 5 U.S.C. §§ 2501–2502, as added by section 101 of the bill. These new FECA definitions and criteria are needed because FECA covers broader groups of individuals than other federal civil service laws, including unpaid federal volunteers, additional groups of volunteers and trainees (for example, Peace Corps volunteers, and Job Corps enrollees), and others. Under the new definitions, any domestic partnership established under 5 U.S.C. §§ 2501–2502 would qualify as a domestic partnership under FECA. But, in addition, for same-sex relationships where neither individual is a federal employee covered under §§ 2501–2502, but one or both are federal employees or volunteers covered under FECA, the Secretary of Labor is authorized to exercise the OPM Director's authorities under § 2502 to establish the process by which domestic partnerships are formed and terminated. (Section 601 of the bill also adds a definition of "Federal employee" to make clear that only federal employees or federal volunteers, and not employees of contractors or of other non-federal employers, are entitled to benefits conferred by the bill.)

For purposes of establishing who may be eligible to receive FECA benefits as a survivor, section 601 of the bill also adds a definition of "surviving partner" and gives it a meaning parallel to the current definitions of "widow" and "widower" in 5 U.S.C. § 8101. The definition of "child" in § 8101 includes stepchildren, and section 601 would amend that definition to likewise include children of a federal employee's domestic partner. The definitions of "child", "brother", and "sister" in § 8101 exclude children, brothers, and sisters who are married, and section 601 of the bill would amend these definition to likewise exclude children, brothers, and sisters who are in domestic partnerships.

Sec. 602. Death gratuity for injuries in connection with employee's service with an Armed Force

For federal employees who die in connection with service as civilians with the Armed Forces in qualifying military operations ("contingency operations"), 5 U.S.C. § 8102a authorizes death gratuities for prescribed survivors and establishes an order of precedence for payment of benefits, under which surviving spouses come first, and, if none, children, including stepchildren, come next. Section 602 of the bill would amend § 8102a to give domestic partners the same rank as surviving spouses and to give children of domestic partners the same rank as stepchildren.

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

For employees who are eligible for FECA compensation due to injury, and then die of other causes while still owed benefits, 5 U.S.C. § 8109 provides an order of precedence for the payment of unpaid compensation. Generally, children and widows and widowers get equal rank: if there is no child, the widow or widower comes first; if there is no widow or widower, the child or children come first; and if there are both, one half goes to the widow or widower, and one half goes to the child or children. Section 603 of the bill amends § 8109 so that surviving partners receive the same rank as widows and widowers. Also, as noted above, section 601 of the bill amends the applicable definition of "child" in 5 U.S.C. § 8101; consequently, children of domestic partners are treated the same as stepchildren.

Sec. 604. Augmented compensation for dependents

5 U.S.C. § 8110 increases the FECA compensation of employees who have one or more dependents and defines the term "dependent" for purposes of the section. Section 604 of the bill amends the definition to include domestic partners under the same conditions as wives and husbands. Also, section 604 amends the definition to exclude children who are in domestic partnerships under the same conditions as married children are excluded.

Sec. 605. Limitations on right to receive compensation

5 U.S.C. § 8116(c) provides that, for the injury or death of an employee, liability under FECA is the only liability of the United States to the employee or any other person entitled to recover, including the employee's spouse. Section 605 of the bill amends § 8116(c) to clarify that FECA is likewise the exclusive liability to the employee's domestic partner.

Sec. 606. Compensation in case of death

In a case where an employee dies from injury sustained in the performance of duty, 5 U.S.C. § 8133 establishes which survivors are entitled to monthly compensation. Section 606 of the bill amends this provision so that a surviving partner is treated in the same manner as a widow or widower. Also, § 8133 provides that monthly compensation terminates if a widow or widower remarries before age 55, and section 606 of the bill amends § 8133 to likewise terminate benefits if a widow or widower enters a domestic partnership before age 55 or if a surviving partner enters into another domestic partnership or marries before age 55. Also under § 8133, if other surviving relatives marry while receiving benefits, those benefits terminate, and the amendments to § 8133 would likewise terminate benefits if those surviving relatives enter into domestic partnerships. Finally, just as § 8133 now provides that a widow or widower cannot collect FECA benefits on account of more than one spouse, the amendments clarify that neither a widow or widower nor a surviving partner may collect FECA benefits on account of more than one spouse or domestic partner.

Sec. 607. Lump-sum payment

5 U.S.C. § 8135(a) provides that the Government's FECA liability may be discharged by a lump-sum payment under certain circumstances, and it caps the payment to a widow or widower. Section 607 of the bill amends the provision to apply these provisions to a surviving partner.

Also, 5 U.S.C. § 8135(b) authorizes a lump-sum payment to a widow or widower who remarries before age 55 (and therefore loses the right to receive monthly compensation under 5 U.S.C. § 8133). Section 607 of the bill amends this provision to likewise provide lump-sum payment to a widow or widower who enters into a domestic partnership before age 55 and to a surviving partner who, before age 55, enters into another domestic partnership or marries.

Sec. 608. Employees of nonappropriated fund instrumentalities

Subsection (a)—In General. Employees paid from nonappropriated funds of the military exchanges and similar instrumentalities of the Armed Forces (nonappropriated fund employees) are not covered by FECA. Instead, 5 U.S.C. §§ 8171–8173 puts these employees under the Longshore and Harbor Workers' Compensation Act (Longshore Act), which is a federal workers' compensation statute that generally applies to specified groups of nonfederal employees.

The Longshore Act provides compensation for injury or death arising out of and in the course of employment. Section 608(a) of the bill does not amend the Longshore Act itself, but instead adds a new subsection (e) to 5 U.S.C. § 8101, establishing that, for nonappropriated fund employees in domestic partnerships who suffer compensable injuries and die, the Longshore Act will be applied in a manner to make the employees' surviving domestic partners and surviving children of domestic partners eligible for compensation to the same extent as surviving spouses, children and stepchildren.

New 5 U.S.C. §§ 8171(e)—as added by section 608 of the bill

New §§ 8171(e)(1)–(3). These paragraphs include the definitions for the terms "domestic partner", "domestic partnership", and "surviving partner" for purposes of extending the Longshore Act to nonappropriated fund employees. These three definitions are substantially the same as the corresponding definitions that section 601 of the bill adds to 5 U.S.C. § 8101 for FECA.

New § 8171(e)(4)(A). Section 2(14) of the Longshore Act (33 U.S.C. § 902(14)) defines the term "child" to include a stepchild under certain conditions and defines the terms "children", "brothers", and "sisters" to exclude those who are married unless wholly dependent on the employee. For purposes of making this section applicable to nonappropriated fund employees, new 5 U.S.C. § 8171(e)(4)(A) makes the child of a domestic partner eligible for benefits under the same conditions as a stepchild, and makes children, brothers, and sisters who are in domestic partnerships ineligible for benefits under the same conditions as those who are married are ineligible.

New § 8171(e)(4)(B). When employees receiving benefits under the Longshore Act die of causes other than the compensable injury, section § 8(d) of the Longshore Act (33 U.S.C. § 908(d)) provides an order of precedence for payment to survivors, under which the widow or widower and the child or children are generally granted

equal rank. For applying this section to nonappropriated fund employees, new 5 U.S.C. § 8171(e)(4)(C) would give a surviving partner the same rank as a widow or widower (and, as noted above, the child of a domestic partner would have the status of a "child" under new § 8171(e)(4)(A) under the same conditions as would a stepchild under existing Longshore Act provisions.)

New § 8171(e)(4)(C). When the compensable injury causes death, section 9 of the Longshore Act (33 U.S.C. § 909) establishes the amount of death benefit paid to survivors, including a widow or widower and any surviving child or children, under various circumstances. For applying this section to nonappropriated fund employees, new 5 U.S.C. § 8171(e)(4)(D) causes surviving partners to be treated the same as widows and widowers. (Also, as noted above, new § 8171(e)(4)(A) causes the child of a domestic partner to have the status of a "child" under the same conditions as a stepchild.) For widows and widowers who remarry, section 9 of the Longshore Act provides for a lump sum payment in lieu of monthly benefits. New § 8171(e)(4)(D) of the bill treats widows and widowers the same if they enter into domestic partnerships, and treats surviving partners the same if they enter into subsequent domestic partnerships or marry.

Subsection (b)—Exclusive Liability. 5 U.S.C. § 8173 provides that, for the injury or death of a nonappropriated fund employee, liability under § 8171–8172 is the only liability of the United States to the employee or any other person entitled to recover, including the employee's spouse. Section 608(b) of the bill amends § 8173 to clarify that liability under §§ 8171–8172 is likewise the exclusive liability to the employee's domestic partner.

Sec. 609. Effective date

Section 609 of the bill establishes several rules about how the amendments to FECA and to the provisions that apply the Longshore Act to nonappropriated fund employees will go into effect.

Subsection (a)—In General. Section 608(a) of the bill states that the amendments to FECA and to the provisions applying the Longshore Act will take effect on the date of enactment of the bill and will apply with respect to any injury or death, regardless of whether it occurs before, on, or after that date.

Subsection (b)—Timely Claim Required; Limitation on Payments. Under section 608(b), no compensation is payable unless a timely claim for that compensation is filed, and no compensation is payable with respect to any period commencing before the date of enactment of the legislation.

Subsection (c)—Allowability of Claims. Section 608(c) of the bill establishes two rules governing whether an original claim for a disability or death that occurred before the date of enactment (and that would not otherwise be payable but for the enactment of the amendments to FECA and to the provisions applying the Longshore Act) may be allowed:

- First, such claim will not be allowed if, as of the date of enactment, a claim based on that disability or death would no longer be timely because of the lapse of time since the disability or death occurred.
- Second, if the claim is not time-barred under the first rule as of the date of enactment, the time for filing the claim will be ex-

tended, to allow time to establish a domestic partnership. Specifically, if the claim is not time-barred as of the date of enactment, the timeliness of the claim will be determined as though the applicable time limitations do not begin to run until the date on which the provisions of 5 U.S.C. § 2502(a) (which are added by section 101 of this bill), under which domestic partnerships can be established, become effective.

Subsection (d)—Payments for Prior Periods Not Affected. Finally, section 609(d) states that, if compensation has already been paid to any individual whose entitlement to compensation is terminated or reduced as a result of the enactment of this title, that compensation may not be recovered.

TITLE VII—EMPLOYEE LEAVE; DEATH OR CAPTIVITY COMPENSATION; OTHER EMPLOYEE BENEFITS

Sec. 701. Voluntary transfers of leave; voluntary leave bank program

Subsection (a)—Voluntary Transfers of Leave. 5 U.S.C. chapter 63, subchapter III (§§ 6331–6340) requires OPM to establish a program under which employees may voluntarily transfer leave from their accounts to the account of particular other employees who need leave because of medical emergencies involving them or their family members. Section 701(a) of the bill amends 5 U.S.C. § 6333 to require OPM's regulations to afford domestic partners the same status as spouses.

Subsection (b)—Voluntary Leave Bank Program. 5 U.S.C. chapter 63, subchapter IV (§§ 6361–6373) requires OPM to establish a program under which employees may voluntarily contribute their leave to a bank established by their employing agencies, so that the banked leave may be made available to other employees who need it because of medical emergencies involving them or their family members. Section 701(b) of the bill amends 5 U.S.C. § 6362 to require that OPM's regulations on the administration of the voluntary leave bank program ensure that a domestic partner is afforded the same status as a spouse.

Sec. 702. Family and medical leave

The Family and Medical Leave Act of 1993 (FMLA) is a national labor law under which employees are entitled to up to 12 weeks of unpaid leave during any 12-month period for the following purposes: the birth and care of a child; the placement of a child with the employee for adoption or foster care; the care of a spouse, child, or parent who has a serious health condition; or a serious health condition of the employee.

Section 702 of the bill modifies FMLA rights for federal employees under OPM's government-wide leave program, as well as those in congressional offices, in Presidential offices, and at the Government Accountability Office, to enable employees who are in domestic partnerships to take FMLA leave to care for domestic partners with serious health conditions to the same extent that married employees may take FMLA leave to care for spouses with serious health conditions; and to care for domestic partners' children with serious health conditions to the same extent as married employees may take FMLA leave to care for stepchildren with serious health

conditions. The bill does not affect FMLA coverage for any employees other than the federal employees specified in the bill.

Subsection (a)—In General. 5 U.S.C. chapter 63, subchapter V, (§§ 6381–6387) incorporates Family and Medical Leave rights into the leave program that covers most federal employees. 5 U.S.C. § 6382 now entitles federal employees to take FMLA leave to care for their spouses who have serious health conditions, and bill section 702(a) amends this provision to grant employees the right to take FMLA leave to care for their domestic partners who have serious health conditions. Also, an employee can take leave to care for a son or daughter who has a serious health condition, and 5 U.S.C. § 6381 defines "son or daughter" to include a biological, adopted, or foster child of an employee's spouse. The bill amends that definition to include a biological, adopted, or foster child of an employee's domestic partner. Finally, 5 U.S.C. § 6383 requires employees to provide certifications for purposes of FMLA leave, and that provision is amended so that employees with domestic partners have the same obligation provide certifications as married employees.

Subsection (b)—Congressional Accountability. The Congressional Accountability Act of 1995 (CAA) applies the rights and protections of several employment and other laws, including the FMLA, to congressional offices and to certain congressional instrumentalities and their employees. Section 702(b) of the bill amends section 202 of the CAA (2 U.S.C. § 1312) by adding a new subsection (f), under which employees of congressional offices and of the General Accountability Office may take FMLA leave to take care of their domestic partners with serious health conditions and their domestic partners' children with serious health conditions.

Subsection (c)—Presidential and Executive Office Accountability. 3 U.S.C. chapter 5 (§§ 401–471) makes several employment and other laws, including the FMLA, applicable to Presidential and Vice Presidential offices and offices within the Executive Office of the President and to their employees. Section 702(c) of the bill amends 3 U.S.C. § 412 by adding a new subsection (e), under which employees in those offices may take FMLA leave to take care of their domestic partners with serious health conditions and their domestic partners' children with serious health conditions.

Sec. 703. Settlement of accounts

The rules for settling accounts between employees and their employing agencies are codified in 5 U.S.C. chapter 55, subchapter VIII (§§ 5581–5584). When an employee dies without having specified a beneficiary, § 5582 provides that any money due the employee is paid to the widow or widower in precedence over other survivors. Section 703(b) of the bill amends the order of precedence under § 5582 so that a surviving domestic partner has the same status as a widow or widower. Also, § 5581 provides definitions for purposes of the provisions on settlement of accounts, and section 703(a) of the bill adds a definition of "domestic partner", having the meaning given in § 2501 (which is added by section 101 of the bill).

Sec. 704. Benefits for captives

When a federal employee is in captive or missing status due to hostile action, 5 U.S.C. § 5569 provides that the agency will pay certain expenses of family members under regulations prescribed

by the President. Section 704 of the bill adds a provision to § 5569 requiring the President to prescribe regulations that ensure domestic partners are afforded the same rights as spouses.

Sec. 705. Compensation for disability or death

When an employee or family member suffers death or disability caused by hostile action, 5 U.S.C. § 5570 authorizes the payment of compensation, under regulations prescribed by the President. Section 705 of the bill adds a provision to § 5570 requiring the President to prescribe regulations that ensure domestic partners are afforded the same rights as spouses.

Sec. 706. Annuity of the comptroller general

Under 31 U.S.C. chapter 7, subchapter V (§§ 771–779), the Comptroller General (CG) may become entitled to an annuity after having served more than 10 years or by meeting certain other conditions, and the CG's spouse and children, including stepchildren, may also become eligible for an annuity or other benefits under certain circumstances. Section 706 of the bill amends these provisions to enable a CG who has a domestic partner to likewise provide for the CG's domestic partner and children, including any children of the domestic partner.

Subsection (a)—Definitions. 31 U.S.C. § 771 contains definitions for the sections establishing an annuity for the CG, and section 706(a) of the bill adds a definition of "surviving partner", which includes the same conditions that are now in the definition of "surviving spouse" in § 771. Also, section 706(a) amends the definition of "dependent child" to treat the child of a domestic partner of a CG in the same manner as a stepchild.

Subsection (b)—Election of survivor benefits. Under 31 U.S.C. § 773, a CG may elect to take a reduction in pay and annuity in order to provide survivor benefits, which, under 31 U.S.C. § 774, may be available to a surviving spouse or a dependent child. Section 706(b) of the bill makes conforming amendments to § 773 so that a CG in a domestic partnership and the CG's domestic partner are treated the same way.

Subsection (c)—Survivor annuities. Under 31 U.S.C. § 774, a CG's surviving spouse or dependent child may become entitled to a survivor annuity if the CG dies in office or while receiving an annuity and if other conditions are met. Section 706(c) of the bill amends § 774 to treat a surviving domestic partner the same as a surviving spouse. Also, the child of a domestic partner might qualify for a survivor annuity under § 774 under the same conditions as a stepchild, because, as noted above, section 706(a) of the bill would amend the definition of "dependent child" in 31 U.S.C. § 771 so that the child of a domestic partner would come within that definition under the same conditions as a stepchild.

Subsection (d)—Refunds. Under various circumstances, such as if a CG leaves office without having served over 10 years or meeting other conditions for receiving an annuity, 31 U.S.C. § 775 provides for a lump-sum refund to the CG of the amounts contributed towards the annuity by the CG or by deductions from the CG's pay, plus interest. In situations where the CG has died before the refund is made, § 775 also provides the order of precedence for who is entitled to receive it. Under this order of precedence, a surviving

spouse is first in line, and, if there is none, the children are second. Section 706(d) of the bill amends § 775 so that a surviving domestic partner has the same rights as a surviving spouse under the order of precedence. (The term "child" is not defined for purposes of § 775, and the bill makes no amendment with respect to the meaning of that term.)

Subsection (e)—Payment of survivor benefits. 31 U.S.C. § 776 provides that the annuity rights of a CG's surviving spouse terminate if the individual remarries before age 55, and provide that the annuity rights of a dependent child terminate if the individual marries. Section 706(e) of the bill amends these provisions to likewise terminate the rights of a surviving spouse who enters into a domestic partnership before age 55, of a surviving partner who enters into a subsequent domestic partnership or marries before age 55, or of a dependent child who enters into domestic partnership. Section 706(e) of the bill further amends 31 U.S.C. § 776 to require that, if a domestic partner dies and a dependent child survives, the annuity of the dependent child is to be recomputed under the same terms as are now required under § 776 if a surviving spouse dies and a dependent child survives. (Also, the child of a domestic partner might qualify for a survivor benefit as a dependent child, because, as noted above, section 706(a) of the bill amends the definition of "dependent child" in 31 U.S.C. § 771 so that the child of a domestic partner comes within that definition under the same conditions as a stepchild.)

Subsection (f)—Annuity increases. 31 U.S.C. § 777 establishes the rules for increasing the amounts of annuities, and section 706(f) of the bill amends this provision so that a surviving domestic partner's annuity will increase under the same terms as a surviving spouse's annuity.

TITLE VII—ETHICS IN GOVERNMENT, CONFLICTS OF INTEREST, EMPLOYMENT OF RELATIVES, GIFTS AND EMPLOYEE CONDUCT

Sec. 801. Ethics in Government Act of 1978

The Ethics in Government Act of 1978 (EGA) (5 U.S.C. app.) establishes financial disclosure requirements for high-level officials and employees in all three branches of the federal government and imposes limits on the amount of outside income that certain officials and employees are permitted to earn. Section 801 of the bill makes several amendments to the EGA, described below.

Subsection (a)—Contents of Reports. Section 102 of the EGA, which prescribes the contents of financial disclosure reports, mandates the reporting of certain financial information about the individual's spouse. Section 801(a) of the bill amends section 102 of the EGA to require covered government officials and employees who are in domestic partnerships to disclose the same information about their domestic partners. Section 102 of the EGA does not require the disclosure of transactions between the reporting individual and the individual's spouse, and the amendments to section 102 likewise do not require disclosure of transactions between the reporting individual and the reporting individual's domestic partner.

Moreover, section 102 of the EGA generally requires the disclosure of gifts, but excludes disclosure of gifts from certain relatives, as that term is defined in section 109(16) of the EGA. The amendments to section 102 would likewise exempt from disclosure any gifts from domestic partners or from parents, children, and siblings of domestic partners.

Subsection (b)—Definitions Relating to Financial Disclosure. Subsection 801(b) of the bill makes several amendments to the definition of "dependent child" in section 109 of the EGA. Section 109 of the EGA currently defines the term to include a stepson or stepdaughter. The amendments add to the definition a son or daughter of the reporting individual's domestic partner. Also, the existing definition excludes any child who is married, unless the child is actually a dependent, and the amendments made by the bill likewise exclude any child who is in a domestic partnership and is not actually dependent. Finally, the existing definition provides that a child's dependency is determined by reference to section 152 of the Internal Revenue Code (IRC). Under the amendments, whether a domestic partner's child is a dependent is determined under section 152 the IRC, but disregarding the requirement there that dependents must be relatives.

Subsection (c)—Outside Earned Income Limitation. Section 501(c) of the EGA generally forbids certain federal officers and employees from receiving honoraria. However, it is permissible for an honorarium up to $2000 to be paid to a charitable organization, provided no financial benefit from the organization is derived by the officer or employee or by any of several kinds of relatives, including a spouse or a dependent relative of the officer or employee. Section 801(c) of the bill amends section 501(c) of the EGA to likewise forbid the payment of an honorarium to a charitable organization if a financial benefit from the organization is derived by the domestic partner of the officer or employee or by an individual who is the domestic partner's child, sibling, or parent and is a dependent of the officer or employee.

Subsection (d)—Definitions Relating to Outside Earned Income and Employment. For purposes of the ban on receiving an honorarium mentioned in the preceding discussion, section 505 of the EGA contains a definition of the term "honorarium", but excludes from that definition travel expenses incurred by the officer or employee or by one relative, including the spouse or a relative of the spouse. Section 801(d) of the bill amends section 505 to allow the domestic partner of the officer or employee or a parent, child, or sibling of the domestic partner to count as the one relative whose travel expenses are excluded from the honorarium ban.

Sec. 802. Conflicts in interest

Section 802 of the bill makes amendments to various provisions in the criminal conflict-of-interest statutes to treat employees with domestic partners the same as married employees.

Subsection (a)—Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government. Under 18 U.S.C. § 203, it is a crime for a federal officer or employee to provide representational services for compensation in a case where the United States is a party or has a substantial interest. However, there is generally an exception under § 203(d) for representing one's imme-

diate family member including a spouse. Section 802(a) of the bill amends § 203(d) to likewise provide an exception for representing one's domestic partner.

Subsection (b)—Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government. Under 18 U.S.C. § 205, it is generally a crime for a federal officer or employee to act as an agent or attorney (with or without compensation) to prosecute a claim against the United States or to receive payment for assisting on the claim. However, there is generally an exception under § 205(e) for representing one's immediate family members, including a spouse. Section 802(b) of the bill amends § 203(d) to likewise provide an exception for representing one's domestic partner.

Subsection (c)—Acts Affecting a Personal Financial Interest. 18 U.S.C. § 208 generally makes it a crime to participate personally as an executive-branch officer or employee in a determination affecting the financial interest of the officer or employee or his or her spouse, minor child, or an organization with which he or she has a close connection. Section 802(c) amends § 208 to likewise make it a crime to participate in such a determination affecting the financial interest of one's domestic partner.

Sec. 803. Employment of relatives, restrictions

5 U.S.C. § 3110 establishes restrictions on the hiring of relatives applicable in all three branches of government and the government of the District of Columbia, forbidding both a public official to hire a relative and a relative to be hired by a public official. Section 803 of the bill amends § 3110 to impose those prohibitions on a public official and the official's domestic partner or the parents, siblings or children of the partner.

Sec. 804. Receipt and disposition of foreign gifts and decoration

5 U.S.C. § 7342 generally forbids the receipt by federal employees of gifts and decorations from foreign governments except with the consent of Congress, and the section defines "employee" to include an employee's spouse. Section 804 of the bill would amend § 7342 to likewise include within the definition of "employee" the employee's domestic partner.

Sec. 805. Regulations of conduct, gifts

5 U.S.C. §§ 7301, 7351, and 7353 authorize regulations to govern executive branch employees' conduct generally, and to ban giving gifts to supervisors, receiving gifts from subordinates, and receiving gifts from people having business before an employee's agency. Under authority of these three Code sections, the Office of Government Ethics (OGE) promulgates the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635). The gift rules under the Standards include several restrictions involving gifts to and from employees' spouses.

For example, just as an employee may not receive a gift from someone doing business before the employee's agency or from a subordinate, the employee may not acquiesce in the receipt of a gift from such a source by the employee's spouse. *See* 5 C.F.R. §§ 2635.203(f)(1), 2635.303(b)(1). The standards also specify that an appearance of loss of impartiality may arise when an employee's

work may affect an entity with which the employee's spouse is connected. *See* 5 C.F.R. § 2635.502(b)(1)(iii). On the other hand, as an exception to the gift ban, an employee may accept transportation and other benefits resulting solely because of the employee's spouse's business or employment activities. *See* 5 C.F.R. § 2635.204(e)(1).

Section 805 of the bill would direct that the Standards be revised so that these and other provisions that apply to married employees and their spouses would apply likewise to employees in domestic partnerships and their domestic partners.

V. Estimated Cost of Legislation

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1102—Domestic Partnership Benefits and Obligations Act of 2009

Summary: S. 1102 would make same-sex domestic partners of certain federal employees 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 S. 1102 would increase direct spending by $101 million over the 2010–2015 period and $310 million through 2020.[1] We estimate 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 $394 million, assuming appropriation of the necessary funds. Providing additional health insurance benefits through the Federal Employees Health Benefits (FEHB) program would account for the largest increase in both mandatory and discretionary spending—$294 million and $355 million, respectively.

Some of the costs of S. 1102 would derive from providing health benefits to the domestic partners of active workers 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 $197 million between 2011 and 2020.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending. (Under the Statutory Pay-As-You-Go Act of 2010, only the on-budget effects are subject to those procedures.)

S. 1102 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 S. 1102 is shown in the following table. The costs of this legislation fall within budget functions 550 (health) and 600 (income security).

[1] Different time periods apply for the Senate's pay-as-you-go rules. CBO estimates that enacting S. 1102 would increase on-budget direct spending by $20 million over the 2010–2014 period and by $91 million over the 2010–2019 period.

	By fiscal year in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
CHANGES IN DIRECT SPENDING													
Federal Employees Health Benefits (FEHB) Program:													
On-Budget (non-postal)	0	1	3	4	6	8	10	12	15	18	21	21	97
Off-Budget (postal)	0	9	13	15	16	18	20	22	25	28	30	71	197
Federal Employment Compensation Act (FECA) Benefits	0	2	3	3	3	4	4	4	4	4	4	15	35
Survivor Annuities	0	0	−1	−1	−2	−2	−2	−2	−3	−3	−3	−6	−19
Total Changes	0	11	18	21	24	28	32	36	41	46	52	101	310
On-Budget	0	2	5	6	7	10	12	14	16	19	22	30	113
Off-Budget	0	9	13	15	16	18	20	22	25	28	30	71	197
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
FEHB Program Costs for Active Employees:													
Estimated Authorization Level	0	19	28	30	32	34	37	39	42	45	48	144	355
Estimated Outlays	0	19	28	30	32	34	37	39	42	45	48	144	355
FECA Agency Costs:													
Estimated Authorization Level	0	2	3	3	3	4	4	4	4	4	4	15	35
Estimated Outlays	0	1	2	3	3	4	4	4	4	4	4	13	33
Travel and Relocation Benefits:													
Estimated Authorization Level	0	1	1	1	1	1	1	1	1	1	1	3	6
Estimated Outlays	0	1	1	1	1	1	1	1	1	1	1	3	6
Total Changes:													
Estimated Authorization Level	0	22	32	34	37	39	41	44	47	50	53	163	397
Estimated Outlays	0	21	31	34	36	39	41	44	47	50	53	160	394

Basis of estimate: For this estimate, CBO assumes that S. 1102 will be enacted late in calendar year 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 more recent research on the experience of 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. S. 1102 applies to eligible current federal employees, other than members of the armed services.

Direct spending

Federal Employees Health Benefits Program. S. 1102 would extend eligibility for health benefits to the same-sex domestic partners of 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 2011–2020 period, CBO projects that approximately 200 additional family coverage policies would be added to the FEHB program by future non-Postal Service retirees choosing to cover same-sex domestic partners. As a result, direct spending would increase by $97 million from 2011 to 2020.

Postal Service employees also would be eligible for same-sex domestic partner coverage under S. 1102. CBO estimates that providing health benefits to the domestic partners of active postal workers would result in about 2,000 Postal Service employees mov-

ing from individual to family coverage plans. Additionally, CBO anticipates that approximately 100 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 $197 million through 2020.

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 S. 1102, if enacted, would extend additional FECA benefits to roughly 1,000 federal employees each year. Over the 2011–2020 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 S. 1102, 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 2020) would add survivor benefits for their domestic partners. 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 $19 million over the 2011–2020 period.

Spending subject to appropriation

In total, CBO estimates that implementing S. 1102 would increase discretionary spending by $394 million over the 2011–2020 period, assuming the appropriation of the necessary amounts.

FEHB Program Costs for Active Federal Employees. S. 1102 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 2011, family coverage

policies for active workers are projected to cost the federal government approximately $6,000 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 $355 million over the 2011–2020 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 enacting S. 1102 thus would increase the need for appropriations to agencies' salaries and expense accounts, with increased outlays totaling $33 million through 2020.

Travel and Relocation Benefits. S. 1102 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 2011–2020 period.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in on-budget outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1102, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS ON DECEMBER 16, 2009

	By fiscal year, in millions of dollars—												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
NET INCREASE OR DECREASE (—) IN THE ON-BUDGET DEFICIT													
Statutory Pay-As-You-Go Impact	0	2	5	6	7	10	12	14	16	19	22	30	113

Intergovernmental and private-sector impact: S. 1102 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no cost on state, local, or tribal governments.

Previous CBO estimate: On December 17, 2009, CBO transmitted a cost estimate for H.R. 2517, the Domestic Partnership Benefits and Obligations Act of 2009, as ordered reported by the House Committee on Oversight and Government Reform on November 18, 2009. That bill would provide the same benefits to domestic partners of eligible federal employees as S. 1102, but would extend those benefits to the domestic partners of eligible current federal retirees in addition to current employees. As a result, H.R. 2517 would have higher direct spending costs than S. 1102: about $600 million over 10 years, as compared to $310 million for 10 years under the Senate bill.

Estimate prepared by: Federal Spending: Retirement—Amber G. Marcellino, FEHB—Kirstin Nelson, FECA—Christina 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.

VI. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Congressional Budget Office (CBO) states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.

VII. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following 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):

THE CODE OF LAWS OF THE UNITED STATES OF AMERICA

* * * * * * *

TITLE 2—THE CONGRESS

* * * * * * *

CHAPTER 24—CONGRESSIONAL ACCOUNTABILITY

* * * * * * *

Subchapter II—Extension of Rights and Protections

* * * * * * *

PART A—EMPLOYMENT DISCRIMINATION, FAMILY AND MEDICAL LEAVE, FAIR LABOR STANDARDS, EMPLOYEE POLYGRAPH PROTECTION, WORKER ADJUSTMENT AND RETRAINING, EMPLOYMENT AND REEMPLOYMENT OF VETERANS, AND INTIMIDATION

* * * * * * *

§ 1312. Rights and protections under Family and Medical Leave Act of 1993 *

(a) * * *

* * * * * * *

* As amended by bill section 702(b).

(f) COVERAGE OF EMPLOYEES WITH DOMESTIC PARTNERS.—

(1) DEFINITION OF DOMESTIC PARTNER.—In this subsection, the term "domestic partner" has the meaning given under section 2501 of title 5, United States Code.

(2) APPLICATION TO COVERED EMPLOYEES.—In the case of a covered employee who has a domestic partner—

(A) for purposes of the application described in subsection (a)(1)—

(i) the term "domestic partner" shall be deemed inserted after "spouse" each place it appears in sections 102 through 105 of the Family and Medical Leave Act of 1993; and

(ii) a child of the domestic partner of a covered employee, which child meets the conditions of subparagraphs (A) and (B) of section 101(12) of that Act, shall be deemed to be included in the term "son or daughter" as defined in that section 101(12); and

(B) if the covered employee and the domestic partner of the covered employee are employed by the same employing office, the limit on the aggregate number of workweeks of leave to which both may be entitled, as stated in section 102(f) of the Family and Medical Leave Act of 1993, shall apply.

(3) APPLICATION TO EMPLOYEES OF THE GOVERNMENT ACCOUNTABILITY OFFICE.—In the case of an employee of the Government Accountability Office who has a domestic partner—

(A) the term "domestic partner" shall be deemed inserted after "spouse" each place it appears in sections 102 through 105 of the Family and Medical Leave Act of 1993;

(B) a child of the domestic partner of the employee, which child meets the conditions of subparagraphs (A) and (B) of section 101(12) of that Act, shall be deemed to be included in the term "son or daughter" as defined in that section 101(12); and

(C) in any case in which the employee and the domestic partner of the employee are both employed by the Government Accountability Office or are both employed by the Library of Congress, the limit on the aggregate number of workweeks of leave to which both may be entitled, as stated in section 102(f) of the Family and Medical Leave Act of 1993, shall apply.

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CHAPTER 26—DISCLOSURE OF LOBBYING ACTIVITIES

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§ 1602. Definitions *

As used in this chapter:

(1) * * *

* * * * * * *

(4) COVERED LEGISLATIVE BRANCH OFFICIAL.—The term "covered legislative branch official" means—

*As amended by bill section 801(b)(2)(B)(i).

(A) * * *

* * * * * * *

(D) any other legislative branch employee serving in a position described under [section 109(13)] *section 109(14)* of the Ethics in Government Act of 1978 (5 U.S.C. App.)

* * * * * * *

TITLE 3—THE PRESIDENT

* * * * * * *

CHAPTER 5—EXTENSION OF CERTAIN RIGHTS AND PROTECTIONS TO PRESIDENTIAL OFFICES

* * * * * * *

Subchapter II—Extension of Rights and Protections

PART A—EMPLOYMENT DISCRIMINATION, FAMILY AND MEDICAL LEAVE, FAIR LABOR STANDARDS, EMPLOYEE POLYGRAPH PROTECTION, WORKER ADJUSTMENT AND RETRAINING, EMPLOYMENT AND REEMPLOYMENT OF VETERANS, AND INTIMIDATION

* * * * * * *

§ 412. Rights and protections under the Family and Medical Leave Act of 1993 *

(a) * * *

* * * * * * *

(e) COVERAGE OF EMPLOYEES WITH DOMESTIC PARTNERS.—

(1) DEFINITION OF DOMESTIC PARTNER.—In this subsection, the term "domestic partner" has the meaning given under section 2501 of title 5.

(2) APPLICATION TO COVERED EMPLOYEES.—In the case of a covered employee who has a domestic partner—

(A) for purposes of the application described in subsection (a)(1)—

(i) the term "domestic partner" shall be deemed inserted after "spouse" each place it appears in sections 102 through 105 of the Family and Medical Leave Act of 1993; and

(ii) a child of the domestic partner of a covered employee, which child meets the conditions of subparagraphs (A) and (B) of section 101(12) of that Act, shall be deemed to be included in the term 'son or daughter' as defined in that section 101(12); and

(B) if the covered employee and the domestic partner of the covered employee are employed by the same employing office, the limit on the aggregate number of workweeks of leave to which both may be entitled, as stated in section

* As amended by bill section 702(c).

102(f) of the Family and Medical Leave Act of 1993, shall apply.

* * * * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * * * *

PART III—EMPLOYEES

Subpart A—General Provisions

Chap.		Sec.
21.	Definitions	2101
23.	Merit System Principles	2301
25.	*Federal Employees in Domestic Partnerships*	*2501*

* * * * * * *

CHAPTER 25—FEDERAL EMPLOYEES IN DOMESTIC PARTNERSHIPS †

"Sec.
"2501. Definitions.
"2502. Establishment and termination of domestic partnerships

§ 2501. Definitions ‡

In this chapter—

(1) the term "annuitant" means—

(A) an annuitant as defined under section 8331 or 8401; and

(B) 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;

(2) the term "Director" means the Director of the Office of Personnel Management;

(3) the term "domestic partner" means either of the individuals in a domestic partnership;

(4) the term "domestic partnership" means a relationship between 2 individuals of the same sex, at least 1 of whom is an employee, former employee, or annuitant, that has been established under section 2502(a) and not dissolved under section 2502(b); and

(5) the term "employee" means—

(A) an employee as defined under section 2105, including an employee referred to in subsection (c) or (e) of that section;

(B) a Member of Congress;

(C) the President; or

(D) any other individual who is employed by the Government and is included within this definition under regulations prescribed by the President or a designee of the President.

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† As added by bill section 101(a).
‡ As added by bill section 101(a).

§ 2502. Establishment and termination of domestic partnerships *

(a) ESTABLISHMENT OF DOMESTIC PARTNERSHIP.—

(1) An employee, former employee, or annuitant and another individual (who may also be an employee, former employee, or annuitant) may establish a domestic partnership as provided in this section for the purposes of the provisions of law to which this chapter applies.

(2) To establish a domestic partnership, the 2 individuals referred to in paragraph (1) shall jointly execute, and the employee, former employee, or annuitant shall file, an application accompanied by an affidavit, the application and affidavit being in such form and filed in such manner as the Director shall by regulation prescribe.

(3) By the affidavit referred to in paragraph (2), each of the individuals shall attest to the following:

(A)(i) The individuals are of the same sex; and

(ii) the individual who files the application and affidavit is an employee, former employee, or annuitant.

(B)(i) The individuals are in a committed domestic-partnership relationship with each other satisfying the conditions in clauses (ii), (iii), and (iv) and intend to remain so indefinitely.

(ii) The individuals have a common residence and intend to continue to do so (or would have a common residence, but are prevented from doing so because of an assignment abroad or other employment-related, financial, or other reasons identified in the affidavit).

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

(iv) Neither individual is married to or in a domestic partnership with anyone except each other.

(C) Each individual is at least 18 years of age and mentally competent to consent to a contract.

(D) The individuals are not related to each other by blood in a way that would prohibit legal marriage between individuals otherwise eligible to marry in the jurisdiction (or, if applicable, in any jurisdiction) in which the individuals have a common residence.

(E) Each of the individuals understands that—

(i) as a domestic partner, each individual not only gains certain benefits, but also assumes certain obligations, as set forth in the provision of law to which this chapter applies, the violation of which may lead to disciplinary action against an employee and to criminal and other penalties;

(ii) either or both of the domestic partners are required to file notification under subsection (b)(2) dissolving the domestic partnership within 30 days after any condition under clause (ii), (iii), or (iv) of subparagraph (B) ceases to be satisfied, and, if 1 domestic partner dies, the other is required to file a notification

* As added by bill section 101(a).

under subsection (b)(3) within 30 days after the death; and

(iii) willful falsification of information in the affidavit, or willful failure to file notification as required under subsection (b)(2) or (3), may lead to recovery of amounts obtained as a result of such falsification or failure, disciplinary action against an employee, and criminal or other penalties.

(b) TERMINATION OF DOMESTIC PARTNERSHIP.—

(1) A domestic partnership is terminated upon—

(A) the death of either domestic partner;

(B) the filing of a notification under paragraph (2) by either or both domestic partners; or

(C) the satisfaction of such other conditions as the Director may by regulation prescribe.

(2)(A) If any condition referred to under clause (ii), (iii), or (iv) of subsection (a)(3)(B) ceases to be satisfied, either or both of the domestic partners shall, within 30 days after the condition ceases to be satisfied, execute and file a notification, in such form and in such manner as prescribed by the Director in regulation, stating that the condition is no longer satisfied and that the domestic partnership is terminated.

(B) Each domestic partner has a duty that the notification under subparagraph (A) be timely filed, but the duty of 1 domestic partner shall be satisfied if the other domestic partner timely executes and files the required notification.

(C) The Director shall promulgate regulations establishing the criteria for determining when any condition referred to under clause (ii), (iii), or (iv) of subsection (a)(2)(B) ceases to be satisfied.

(3) When one domestic partner dies, the other domestic partner shall, within 30 days after the death, execute and file a notification of the death, in such form and in such manner as prescribed by the Director in regulation.

(c) EFFECTIVENESS OF APPLICATION.—

(1) An application 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 the filing.

(2) No individual shall, for purposes of the provisions of law to which this chapter applies, be treated as being in a domestic partnership unless there is in effect, in accordance with regulations prescribed by the Director, an application filed in accordance with this section.

(3) An application so filed shall remain in effect until the earlier of—

(A) the death of either individual; or

(B) the date as of which the domestic partnership is otherwise terminated, as determined under such regulations.

(d) ADDITIONAL NOTIFICATIONS TO EMPLOYING AGENCIES.—A domestic partner employed by an entity of the United States shall provide such notifications to the employing entity of the formation, existence, or termination of the domestic partnership, in addition to the filings required under subsections (a) and (b), as may be required, and in such form and in such manner as prescribed, by the Director in regulation.

(e) MEMBERS OF THE ARMED FORCES NOT ELIGIBLE.—Notwithstanding any provision of the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. 4301 et seq.), a member of the Armed Forces or of the Reserve Officers' Training Corps may not be either of the individuals who establish a domestic partnership under this section.

(f) APPLICABILITY.—This section applies for purposes of the provisions of this title (excluding chapter 81).

(g) REGULATIONS.—The Director shall issue regulations to carry out this section.

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Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

Subchapter I—Employment Authorities

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§ 3110. Employment of relatives; restrictions *

(a) For the purpose of this section—

(1) * * *

(2) "public official" means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency; **[**and**]**

(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, 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**[**.**]***; and*

(4) "domestic partner" has the meaning given under section 2501.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual. *The restrictions in this subsection shall apply also to a public official with respect to any individual, and to any individual with respect to a public official, if the individual is the public official's domestic partner; is a parent, child, or sibling of the*

* As amended by bill section 803.

public official's domestic partner; or is the domestic partner of a child, parent, or sibling of the public official.

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Subpart D—Pay and Allowances

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CHAPTER 55—PAY ADMINISTRATION

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Subchapter VII—Payments to Missing Employees

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§ 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 (as that term is defined in section 2501) 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 (as that term is defined in section 2501) 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 Govern-

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* As amended by bill section 704.
* As amended by bill section 705.
† As amended by bill section 703(a), (c).

ment 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) "domestic partner" has the meaning given it by section 2501.

* * * * * * *

§ 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 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 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,

* As amended by bill section 703(b).
† As amended by bill section 501.

and local income taxes incurred by an employee of the agency or by an employee and such employee's spouse [(if filing jointly),] *(if filing jointly) (or by an employee and such employee's domestic partner (as that term is defined under section 2501), if joint filing is allowed and they file 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

§ 5721. Definitions*

For the purpose of this subchapter—

(1) * * *

* * * * * * *

(6) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the territories and possessions of the United States, and the areas and installations in the Republic of Panama that are made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979); [and]

(7) "Foreign Service of the United States" means the Foreign Service as constituted under the Foreign Service Act of 1980[.]*; and*

(8) "domestic partner" has the meaning given under section 2501.

* * * * * * *

§ 5724a. Relocation expenses of employees transferred or reemployed†

(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

* As amended by bill section 502.
† As amended by bill section 503.

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),] *(if filing jointly) (or by an employee and such employee's domestic partner (if joint filing is allowed and they file 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.

* * * * * * *

Subpart E—Attendance and Leave

* * * * * * *

CHAPTER 63—LEAVE

* * * * * * *

Subchapter III—Voluntary Transfers of Leave

* * * * * * *

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* As amended by bill section 504.
† As amended by bill section 505.

§ 6333. Receipt and use of transferred leave *

(a) * * *

* * * * * * *

(d) Regulations to carry out this section shall include provisions to ensure that, in the administration of this section, a domestic partner (as that term is defined in section 2501) shall be afforded the same status as a spouse.

* * * * * * *

Subchapter IV—Voluntary Leave Bank Program

* * * * * * *

§ 6362. General authority †

(a) Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which—

(1) * * *

* * * * * * *

(b) The established program under this section shall include provisions to ensure that, in the administration of this section, a domestic partner (as that term is defined in section 2501) shall be afforded the same status as a spouse.

* * * * * * *

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,] *parentis (or a biological, adopted, or foster child of the domestic partner of the employee),* who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability;

* * * * * * *

§ 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

---

* As amended by bill section 701(a).
† As amended by bill section 701(b).
‡ As amended by bill section 702(a)(1).
* As amended by bill section 702(a)(2).

[spouse,] *spouse (or domestic partner),* 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),* or parent 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

(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and

* * * * * * *

Subpart F—Labor-Management and Employee Relations

* * * * * * *

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * * * *

Subchapter IV—Foreign Gifts and Decorations

* * * * * * *

† As amended by bill section 702(a)(3).

§ 7342. Receipt and disposition of foreign gifts and decorations *

(a) For the purpose of this section—

(1) "employee" means—

(A) * * *

* * * * * * *

(G) the spouse *(or domestic partner)* of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse *(or domestic partner)* are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of such an individual, other than a spouse *(or domestic partner)* or dependent who is an employee under subparagraphs (A) through (F);

* * * * * * *

(5) "minimal value" means a retail value in the United States at the time of acceptance of $100 or less, except that—

(A) * * *

(B) regulations of an employing agency may define "minimal value" for its employees to be less than the value established under this paragraph; **[**and**]**

(6) "employing agency" means—

(A) * * *

* * * * * * *

(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees**[**.**]***; and*

(7) "domestic partner" has the meaning given under section 2501.

* * * * * * *

Subpart G—Insurance and Annuities

CHAPTER 81—COMPENSATION FOR WORK INJURIES

* * * * * * *

Subchapter I—Generally

§ 8101. Definitions †

For the purpose of this subchapter—

(1) * * *

* * * * * * *

(8) "brother" and "sister" mean 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 include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include **[**married brothers or mar-

* As amended by bill section 804.
† As amended by bill section 601.

ried sisters;] *any brother or sister who is married (or is in a domestic partnership)*;

(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 *(or children of the employee's domestic partner, if the employee was a Federal employee),* adopted children, and posthumous children, but does not include [married children] *any child who is married (or in a domestic partnership)*;

* * * * * * *

(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) the term "domestic partner" means either of the individuals in a domestic partnership;

(22) the term "domestic partnership" means a relationship between 2 individuals of the same sex that meets the conditions of subparagraphs (A) and (B)—

(A) except as provided in subparagraph (B), the term means a relationship established under section 2502 and not dissolved under that section;

(B) if neither of the 2 individuals is an employee within the meaning of section 2501, but if at least 1 of them is a covered Federal employee, the term means a relationship established under section 2502 and not dissolved under that section, except that—

(i) notwithstanding the requirement in section 2502(a)(2)(A)(ii), each of the individuals shall attest that the individual who files the application and affidavit is a covered Federal employee; and

(ii) the Secretary of Labor shall exercise the authorities of the Director under section 2502 with respect to the domestic partnership, and shall do so under any applicable regulations issued by the Director (except insofar as may be necessitated by different circumstances);

(23) the term "Federal employee"—

(A) means—

(i) an individual referred to in subparagraph (A) or (B) of paragraph (1) (subject to the exclusions following subparagraph (E) of that paragraph); or

(ii) any other individual who is eligible for coverage under this subchapter based on such individual's employment with or other service to the United States; and

(B) shall not include any individual who is eligible for coverage under this subchapter based on the individual's service performed as the employee of any employer other than an entity of the United States; and

(24) the term "surviving partner" means the domestic partner in a domestic partnership with the decedent at the time of his or her death if the decedent was a Federal employee.

* * * * * * *

§ 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 *(or children of the employee's domestic partner, if the employee was a covered Federal employee)* 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 domestic 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.

* * * * * * *

* As amended by bill section 602.
† As amended by bill section 603.

§ 8110. Augmented compensation for dependents *

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

(1) * * *

* * * * * * *

(3) [an unmarried child] *a child who is unmarried (and not in a domestic partnership)*, 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 a 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.

Notwithstanding paragraph (3) of this subsection, compensation payable for a child that would otherwise end because the child 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] *he marries (or enters into a domestic partnership)*.

* * * * * * *

§ 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

---

* As amended by bill section 604.
* As amended by bill section 605.
† As amended by bill section 606.

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,] *widower (or surviving partner)*, or child, as follows—

(A) * * *

* * * * * * *

If there is a widow, [widower,] *widower (or surviving partner),* or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, [widower,] *widower (or 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,] *widower (or surviving partner*), child, or dependent parent, as follows—

(A) * * *

* * * * * * *

If there is a widow, [widower,] *widower (or 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,] *widower (or 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 enters into a domestic partnership) (or a surviving partner dies or enters into a subsequent domestic partnership or marries) before reaching age 55;

(2) a child, a brother, a sister, or a grandchild dies, [marries,] *marries (or enters into a domestic partnership),* or becomes 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support; or

(3) a parent or grandparent dies, [marries,] *marries (or enters into a domestic partnership),* or ceases to be dependent.

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.] *marries (or enters into a domestic partnership).*

A widow or widower who has entitlements to benefits under this title derived from more than one husband or wife *(or domestic partner) (or a surviving partner who has entitlements to benefits under this title derived from more than one domestic partner or spouse)* shall elect one entitlement to be utilized.

* * * * * * *

§ 8135. Lump-sum payment *

(a) The liability of the United States for compensation to a beneficiary in the case of death or of permanent total or permanent partial disability may be discharged by a lump-sum payment equal to the present value of all future payments of compensation computed at 4 percent true discount compounded annually if—

(1) * * *

* * * * * * *

The probability of the death of the beneficiary before the expiration of the period during which he is entitled to compensation shall be determined according to the most current United States Life Tables, as developed by the United States Department of Health, Education, and Welfare, which shall be updated from time to time, but the lump-sum payment to a widow or widower *(or surviving partner)* of the deceased employee may not exceed 60 months' compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

[(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) A widow or widower on remarriage (or on entry into a domestic partnership) before reaching age 55 (or a surviving partner on entry into a subsequent domestic partnership or on marriage before age 55) who is entitled to compensation under section 8133 of this title, shall be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation on account of another individual) to which that individual was entitled immediately before the remarriage (or marriage or entry into a domestic partnership).

* * * * * * *

Subchapter II—Employees of Nonappropriated Fund Instrumentalities

* * * * * * *

§ 8171. Compensation for work injuries; generally *

(a) * * *

* * * * * * *

* As amended by bill section 607.
* As amended by bill section 608(a).

(e) For the purpose of this subchapter—

(1) the term "domestic partner" means either of the individuals in a domestic partnership;

(2) the term "domestic partnership" means a relationship between 2 individuals of the same sex that meets the conditions of subparagraphs (A) and (B)—

(A) except as provided in subparagraph (B), the term means a relationship established under section 2502 and not dissolved under that section; and

(B) if neither of the 2 individuals is an employee described in subsection (a), but if at least 1 of them is a volunteer described in subsection (a), the term means a relationship established under section 2502 and not dissolved under that section, except that—

(i) the Secretary of Labor shall exercise the authorities of the Director under that section with respect to the domestic partnership; and

(ii) notwithstanding the requirement in section 2502(a)(2)(A)(ii), each of the individuals shall attest that the individual who files the application and affidavit is such a volunteer;

(3) the term "surviving partner" means the decedent's domestic partner at the time of his or her death;

(4) in the Longshore and Harbor Workers' Compensation Act—

(A) section 2(14) shall apply as though—

(i) the term "(or child of the domestic partner of an employee or volunteer referred to in section 8171(a) of title 5, United States Code)" were inserted after "stepchild"; and

(ii) the term "(or children in domestic partnerships)" were inserted after "married children", "(or brothers in domestic partnerships)" were inserted after "married brothers", and "(or sisters in domestic partnerships)" were inserted after "married sister";

(B) in section 8(d)(1)—

(i) subparagraphs (A), (C), and (D) shall apply as though the term "(or surviving partner)" were inserted after "widow or widower" each time it appears; and

(ii) subparagraph (D) shall apply as though the term "wife, husband," were struck and "wife or husband (or domestic partner)" were inserted; and

(C) in section 9—

(i) subsection (b) shall apply as though the portion of the first sentence up to and including the sixth comma reads as follows: "If there be a widow or widower (or surviving partner) and no child of the deceased, to such widow or widower (or surviving partner) 50 per centum of the average wages of the deceased, during widowhood, or dependent widowerhood (or during the existence of the domestic partnership, as the case may be), with 2 years' compensation in 1 sum upon remarriage (or entry into a domestic partnership) of such widow or widower (or entry into another domestic partnership or marriage of such surviving partner); and if

there be a surviving child or children of the deceased, the additional amount of 16 2/3 per centum of such wages for each such child; in case of the death or remarriage (or entry into a domestic partnership) of such widow or widower (or entry into another domestic partnership or a marriage of such surviving partner),";

(ii) subsection (c) shall apply as though the portion of the subsection up to and including the fourth comma reads as follows: "If there be 1 surviving child of the deceased, but no widow or widower (or surviving partner), then for the support of such child 50 per centum of the wages of the deceased; and if there be more than 1 surviving child of the deceased, but no widow or dependent husband (or surviving partner),";

(iii) subsection (d) shall apply as though—

(I) the portion of the first sentence up through the word "children" reads as follows: "If there be no surviving wife or husband (or surviving domestic partner) or child, or if the amount payable to a surviving wife or husband (or surviving domestic partner) and to children"; and

(II) the second sentence reads as follows: "But in no case shall the aggregate amount payable under this subsection exceed the difference between 66⅔ per centum of such wages and the amount payable as hereinbefore provided to widow or widower (or surviving partner) and for the support of surviving child or children.";

(iv) subsection (g) shall apply as though the term "(or surviving domestic partner)" were inserted after "surviving wife" each time it appears; and

(v) section 31(b)(2)(C) shall apply as though the term "(or domestic partner)" were inserted after "spouse".

* * * * * * *

§ 8173. Liability under this subchapter exclusive *

The liability of the United States or of a nonappropriated fund instrumentality described by section 2105(c) of this title, with respect to the disability or death resulting from injury, as defined by section 2(2) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(2)), of an employee referred to by sections 8171 and 8172 of this title, shall be determined as provided by this subchapter. This liability 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 disability 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.

* * * * * * *

* As amended by bill section 608(b).

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 **[**.**]***;*

(32) "domestic partner" and "domestic partnership" have the meanings given under section 2501;

(33) "Federal employee"' means an elected official of the United States or an employee of any entity of the United States; and

(34) "former domestic partner" means a former domestic partner of an individual—

(A) if such individual performed at least 18 months of civilian service as a Federal employee; 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) * * *

* * * * * * *

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† As amended by bill section 201.

* As amended by bill section 202.

(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 (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 to the [spouse] *spouse (or 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 (or domestic partner)* or children, whether the [spouse] *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.

* * * * * * *

§ 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 Member 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

* As amended by bill section 203.

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 annuity 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 unaf-

fected 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 enters into a domestic partnership) (or the former domestic partner enters into a subsequent domestic partnership or marries) 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 entry into a subsequent marriage (or 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 entry into a subsequent marriage (or domestic partnership), or

(II) if later, within 2 years after—

(aa) the death of or entry into a subsequent marriage (or domestic partnership) by any former spouse (or 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 of or entry into a subsequent marriage (or domestic partnership) by the last such surviving former spouse (or 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 subsequent marriage (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 of or entry into a subsequent marriage (or domestic partnership) by any former spouse (or 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 of or entry into a subsequent marriage (or 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.] *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.] *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,

*As amended by bill section 204.

since the annuity was first payable to the deceased annuitant.

* * * * * * *

§ 8341. Survivor annuities*

(a) For the purpose of this section—

(1) * * *

* * * * * * *

(3) "surviving partner"—

(A) means the surviving domestic partner of an employee or Member who—

(i) 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

(ii) satisfies such other requirements, related to parenthood and the domestic partnership, as the Director of the Office of Personnel Management shall by regulation prescribe based on the definition of a widow or widower under paragraphs (1)(B) and (2)(B) of this section; and

(B) notwithstanding subparagraph (A), includes a surviving domestic partner described under that subparagraph only if the employee or Member performed at least 18 months of service as a Federal employee;

[(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**]** *a dependent child who is unmarried (and not in a domestic partnership) and* 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, *and (v) a child of the domestic partner of an employee or Member (not adopted by the employee or Member), but only if—*

(I) the child lived with the employee or Member in a regular parent-child relationship; and

(II) the employee or Member performed at least 18 months of service as a Federal employee;

(B) such **[**unmarried dependent child**]** *dependent child who is unmarried (and not in a domestic partnership)* regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

* As amended by bill section 205.

(C) such [unmarried dependent child] *dependent child who is unmarried (and not in a domestic partnership)* between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

* * * * * * *

(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—

* * * * * * *

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, in the case of a widow or widower, enters into a domestic partnership) (or, in the case of a surviving partner, enters into a subsequent domestic partnership or marries)* 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 waiv-

er 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, in the case of a widow or widower, enters into a domestic partnership) (or, in the case of a surviving partner 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 a Federal employee or Member for less than 9 months and a former domestic partner of a Federal 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 re-

tiring 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) * * *

* * * * * * *

subject to section 8340 of this title.

(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 or 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.]

(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 enters into a domestic partnership) (or the surviving domestic partner dies or enters into a subsequent domestic partnership or marries); 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 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.]

(g) In the case of a surviving spouse (or surviving domestic partner) whose annuity under this section is terminated because of a subsequent entry into a marriage (or 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 subsequent entry into a marriage (or 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) 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.]

(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 enters into a domestic partnership) (or former domestic partner enters into a subsequent domestic partnership or marries) 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 enters into a domestic partnership) or dies (or the former domestic partner enters into a subsequent domestic partnership or marries 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) 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.]

(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.

[(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.]

(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 subsequent entry into a marriage (or 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 subsequent entry into a marriage (or 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 des-

*As amended by bill section 206.

ignation, 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.⟧ *stepchild (or a child of a domestic partner which child is not otherwise a child of the employee or Member).*

* * * * * * *

(j)(1)(A) Payment of the lump-sum credit under subsection (a) may be made only if the spouse *(or domestic partner)*, if any *(or the domestic partner, if any)*, and any former spouse *(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 domestic partner)* or former spouse *(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 domestic partner)* or former spouse *(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 domestic partner)* or former spouse *(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 domestic partner)* or former spouse *(or former domestic partner)* if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse *(or domestic partner)* or former spouse *(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) * * *

*As amended by bill section 207.

(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)*.

(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 8339(j)(1) of this title; or

(2) has a [former spouse,] *former spouse (or former domestic partner),* shall be ineligible to make an election under this section if the [former spouse,] *former spouse (or former domestic partner),* is entitled to benefits under section 8341(h) or 8345(j) of this title (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 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 (and domestic partners), and their 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 em-

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* As amended by bill section 208.

† As amended by bill section 209.

ployee 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.] *
8416. Survivor reduction for a current spouse (or domestic partner).
[8417. Survivor reduction for a former spouse.] †
8417. Survivor reduction for a former spouse (or former domestic partner).

* * * * * * *

[8435. Protections for spouses and former spouses.] *
8435. Protection for spouses and former spouses (and domestic partners and former domestic partners).

* * * * * * *

[8442. Rights of a widow or widower.] †
8442. Rights of a widow or widower (or surviving partner).

* * * * * * *

[8445. Rights of a former spouse.] ‡
8445. Rights of a former spouse (or former domestic partner).

* * * * * * *

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*As amended by bill section 312(b).
†As amended by bill section 313(b).
*As amended by bill section 323(b).
†As amended by bill section 332(b).
‡As amended by bill section 334(b).

Subchapter I—General Provisions

§ 8401. Definitions [§]

For the purposes 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**[**.**]***;*

(37) "domestic partner" and "domestic partnership" have the meanings given under section 2501;

(38) "Federal employee" means an elected official of the United States or an employee of any entity of the United States; and

(39) "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 a Federal employee; and

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

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Subchapter II—Basic Annuity

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§ 8411. Creditable service [*]

(a) * * *

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(c)(1) * * *

* * * * * * *

(4)(A) * * *

* * * * * * *

[§] As amended by bill section 311.

[*] As amended by bill section 302.

(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).*

* * * * * * *

(l)(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 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

* As amended by bill section 312.

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).]

(b)(1) Upon entry into a subsequent marriage (or 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 entry into a subsequent marriage (or domestic partnership), or

(B) if later, within 2 years after—

(i) the death of or entry into a subsequent marriage (or domestic partnership) by any former spouse (or former do-

mestic 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 of or entry into a subsequent marriage (or domestic partnership) by the last such surviving former spouse (or 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 subsequent marriage (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 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).**]**

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

(ii) if more than 1, the death of or entry into a subsequent marriage (or domestic partnership) by the last such surviving former spouse (or 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 former domestic partner)* *

(a) If an employee or Member has a former spouse *(or 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 *(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 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 *(or in a domestic partnership)*, unless it is made with the spouse's *(or domestic partner's)* written consent.

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* As amended by bill section 313.

The Office shall by regulation provide that subparagraph (B) may be waived for either of the reasons set forth in section 8416(a)(2).

§ 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

† As amended by bill section 314.
* As amended by bill section 315.

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 enters into a domestic partnership) (or the former domestic partner enters into a subsequent domestic partnership or marries) 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 provided for under section 8416(d), subject to the deposit requirement thereunder.

* * * * * * *

*As amended by bill section 316.
†As amended by bill section 317.

§ 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—

* * * * * * *

(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.

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* As amended by bill section 318.

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.] *stepchild (or a child of a domestic partner which child is not otherwise a child of the employee or Member).*

* * * * * * *

Subchapter III—Thrift Savings Plan

§ 8433. Benefits and election of benefits*

(a) * * *

* * * * * * *

(e)(1) * * *

[(2) Notwithstanding section 8424(d), if an employee, Member, former employee, or former Member dies and has designated as sole or partial beneficiary his or her spouse at the time of death, or, if an employee, Member, former employee, or former Member, dies with no designated beneficiary and is survived by a spouse, the spouse may maintain the portion of the employee's or Member's account to which the spouse is entitled in accordance with the following terms:

[(A) Subject to the limitations of subparagraph (B), the spouse shall have the same withdrawal options under subsection (b) as the employee or Member were the employee or Member living.

[(B) The spouse may not make withdrawals under subsection (g) or (h).

[(C) The spouse may not make contributions or transfers to the account.

[(D) The account shall be disbursed upon the death of the surviving spouse. A beneficiary or surviving spouse of a deceased spouse who has inherited an account is ineligible to maintain the inherited spousal account.]

(2) Notwithstanding section 8424(d), if an employee, Member, former employee, or former Member dies and has designated as sole or partial beneficiary his or her spouse (or domestic partner) at the time of death, or, if an employee, Member, former employee, or former Member, dies with no designated beneficiary and is survived by a spouse (or domestic partner), the spouse (or domestic partner) may maintain the portion of the employee's or Member's account to which the spouse (or domestic partner) is entitled in accordance with the following terms:

(A) Subject to the limitations of subparagraph (B), the spouse (or domestic partner) shall have the same withdrawal options under subsection (b) as the employee or Member were the employee or Member living.

---

*As amended by bill section 321.

(B) The spouse (or domestic partner) may not make withdrawals under subsection (g) or (h).

(C) The spouse (or domestic partner) may not make contributions or transfers to the account.

(D) The account shall be disbursed upon the death of the surviving spouse (or surviving domestic partner). A beneficiary or surviving spouse (or surviving domestic partner) of a deceased spouse (or domestic partner) who has inherited an account is ineligible to maintain the inherited spousal account.

* * * * * * *

§ 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 *(and domestic partners 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

* As amended by bill section 322.
† As amended by bill section 323.

(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"—

(A) means the surviving domestic partner of an employee, Member, or annuitant, or of a former employee or Member, who—

(i) 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

(ii) satisfies such other requirements, based on parenthood and the domestic partnership, as the Director of the Office of Personnel Management shall by regulation prescribe based on the definition of a widow or widower under paragraphs (1)(B) and (2)(B) of this section; and

(B) notwithstanding subparagraph (A), includes a surviving domestic partner described under that subparagraph only if the employee, Member, annuitant, or former employee or Member performed at least 18 months of service as a Federal employee;

[(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**]** *a dependent child who is unmarried (and not in a domestic partnership)* 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)*

* As amended by bill section 324.
† As amended by bill section 331.

of the employee, Member, or annuitant after the death of such employee, Member, or annuitant, *and (v) a child of a domestic partner of an employee, Member, or annuitant (not adopted by the employee, Member, or annuitant), but only if—*

(I) the child lived with the employee, Member, or annuitant in a regular parent-child relationship; and

(II) the employee, Member, or annuitant performed at least 18 months of service as a Federal employee;

(B) such [unmarried dependent child] *dependent child who is unmarried (and not in a domestic partnership)* regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such [unmarried dependent child] *dependent child who is unmarried (and not in a domestic partnership)* between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

* * * * * * *

§ 8442. Rights of a widow or 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—

* As amended by bill section 332.

(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 a 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, in the case of a widow or widower, enters into a domestic partnership) (or, in the case of a surviving partner, enters into a subsequent domestic partnership or marries)* 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⟧ *subsequent entry into a marriage (or 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,⟧ *subsequently entered marriage is dissolved by death, divorce, annulment (or subsequently entered 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;⟧ subsequently entered marriage (or domestic partnership); and

* * * * * * *

(3) Paragraph (1)(B) (relating to termination of a survivor annuity because of a ⟦remarriage⟧ *subsequent entry into a marriage (or 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 Member, 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.

§8443. Rights of a child *

(a) * * *

* * * * * * *

(b) The annuity of a child under this subchapter—

(1) * * *

* * * * * * *

This annuity and the right thereto terminate on the last day of the month before the child—

---

*As amended by bill section 333.

(A) * * *

* * * * * * *

[(E) dies or marries;

whichever occurs first. On the death of the surviving wife or husband, or former wife or husband, or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the wife or husband, former wife or husband, or child had not survived the annuitant, employee, or Member. If the annuity of a child under this subchapter terminates under subparagraph (E) because of marriage, then, if such marriage ends, such annuity shall resume on the first day of the month in which it ends, but only if any lump sum paid is returned to the Fund, and that individual is not otherwise ineligible for such annuity.]

(E) dies or marries (or enters into a domestic partnership);

whichever occurs first. On the death of the surviving wife or husband (or surviving domestic partner), or former wife or husband (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 wife or husband (or domestic partner), former wife or husband (or former domestic partner), or child had not survived the annuitant, employee, or Member. If the annuity of a child under this subchapter terminates under subparagraph (E) because of marriage (or domestic partnership), then, if such marriage (or domestic partnership) ends, such annuity shall resume on the first day of the month in which it ends, but only if any lump sum paid is returned to the Fund, and that individual is not otherwise ineligible for such annuity.

* * * * * * *

§ 8445. Rights of a 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 case of a former spouse, 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 Mem-

* As amended by bill section 334.

ber, 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 enters into a domestic partnership) (or the former domestic partner enters into a subsequent domestic partnership or marries)* 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 subsequent entry into a marriage (or 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 subsequent entry into a marriage (or 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 (and domestic partners), former spouses (and 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

* * * * * * *

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* As amended by bill § 341.
† As amended by bill § 342.

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

(B) an unmarried dependent child of the individual (other than a stillborn child), including an adopted child, stepchild *(or child of the individual's domestic partner)* or foster child (but only if the stepchild *(or child of the individual's domestic partner)* or foster child lived with the individual in a regular parent-child relationship), or recognized natural child—

(i) * * *

* * * * * * *

(3) For the purpose of this subsection, "domestic partner" has the meaning given under section 2501.

* * * * * * *

§ 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

---

* As amended by bill section 351.

* As amended by bill section 401(a)(1).

† As amended by bill section 401(a)(2).

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 of an employee or annuitant *(or the domestic partner of a Federal employee or of a Federal annuitant)* and an unmarried dependent child under 22 years of age, including—

(A) an adopted child or recognized natural child; [and]

(B) a stepchild or foster child but only if the child lives with the employee or annuitant in a regular parent-child relationship; *and*

(C) a child of the domestic partner of a Federal employee or of a Federal annuitant, unless adopted by such individual, but only if the child lives with the Federal employee or Federal annuitant in a regular parent-child relationship;

* * * * * * *

(8) "employee organization" means—

* As amended by bill section 401(a)(3).
† As amended by bill section 402(a).

(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) who has not remarried *(or entered into a domestic partnership)* before age 55 after the marriage to the employee, former employee, or annuitant was dissolved,

* * * * * * *

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 Federal annuitant has terminated,

(B) who has not entered into another domestic partnership (or married) 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);

[(11)]*(12)* "qualified clinical social worker" means an individual—

(A) * * *

(B) who, if such State does not provide for the licensing or certification of clinical social workers—

(i) * * *

(ii) meets equivalent requirements (as prescribed by the Office)[.]*; and*

(13) "domestic partner" and "domestic partnership" have the meanings given under section 2501;

(14) "Federal employee" means an elected official of the United States or an employee of any entity of the United States; and

(15) "Federal annuitant" means an annuitant whose service consists of at least 18 months as a Federal employee.

* * * * * * *

§ 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 spouse (or 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 spouse (or 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 spouse (or 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 spouse (or 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 practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed.

* * * * * * *

* As amended by bill section 402(b).

§ 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 *(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 spouses (or 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 spouse (or 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 either domestic partner, as the case may be),* 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 spouse (or former domestic partner),* or person having continued coverage

† As amended by bill section 402(c).
* As amended by bill section 402(d).
† As amended by bill section 402(e).

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—

* * * * * * *

provide a period of not less than 3 weeks during which any employee, annuitant, **[**former spouse,**]** *former spouse (or 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 spouse (or 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 whose survivor annuity under this title was terminated because of **[**remarriage and is later restored**]** *having entered into a subsequent marriage (or domestic partnership) and is later restored (or a surviving domestic partner whose survivor annuity under this title was terminated because of having entered into a subsequent domestic partnership or a marriage 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.

* * * * * * *

*As amended by bill section 402(f).
*As amended by bill section 402(g).

§ 8909. Employees Health Benefits Fund †

(a) * * *

* * * * * * *

(d) When the assets, liabilities, and membership of employee organizations sponsoring or underwriting plans approved under section 8903(3) or 8903a of this title are merged, the assets (including contingency reserves) and liabilities of the plans sponsored or underwritten by the merged organizations shall be transferred at the beginning of the contract term next following the date of the merger to the plan sponsored or underwritten by the successor organization. Each employee, annuitant, [former spouse,] *former spouse (or former domestic partner),* or person having continued coverage under section 8905a of this title affected by a merger shall be transferred to the plan sponsored or underwritten by the successor organization unless he enrolls in another plan under this chapter. If the successor organization is an organization described in section 8901(8)(B) of this title, any employee, annuitant, [former spouse,] *former spouse (or former domestic partner),* or person having continued coverage under section 8905a of this title so transferred may not remain enrolled in the plan after the end of the contract term in which the merger occurs unless that individual is a full member of such organization (as determined under section 8903a(d) of this title).

* * * * * * *

§ 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 *(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 *(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 en-

† As amended by bill section 402(h).
‡ As amended by bill section 402(i).
* As amended by bill section 403(a)(1).

roll, [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 spouse (or 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 spouse (or 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:

† As amended by bill section 403(a)(2).
‡ As amended by bill section 404(a)(1).
* As amended by bill section 404(a)(2).
† As amended by bill section 405(a)(1).

(A) * * *

* * * * * * *

(D)(i) a domestic partner (as that term is defined in section 2501) of a Federal employee (as that term is defined in section 8901), of an individual described in subparagraph (B), (C), or (D) of paragraph (1), or of an annuitant whose service (as that term is defined in section 8901) consists of at least 18 months as a Federal employee;

(ii) a child of a domestic partner referred to in clause (i), if such child is at least 18 years of age; and

(iii) a parent of a domestic partner referred to in clause (i).

[(D)**]** *(E)* An individual having such other relationship to an individual described in paragraph (1), (2), (3), or (4) as the Office may by regulation prescribe.

* * * * * * *

§ 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.

* * * * * * *

TITLE 5—APPENDIX

* * * * * * *

ETHICS IN GOVERNMENT ACT OF 1978

* * * * * * *

TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

§ 101. Persons required to file †

(a) * * *

* * * * * * *

(f) The officers and employees referred to in subsections (a), (d), and (e) are—

(1) * * *

* * * * * * *

---

* As amended by bill section 405(a)(2).

† As amended by bill section 801(b)(2)(A)(i).

(9) a Member of Congress as defined under [section 109(12)] *section 109(13)*;

(10) an officer or employee of the Congress as defined under [section 109(13)] *section 109(14)*;

(11) a judicial officer as defined under [section 109(10)] *section 109(11)*; and

(12) a judicial employee as defined under [section 109(8)] *section 109(9).*

* * * * * * *

§ 102. Contents of reports *

(a) Each report filed pursuant to section 101(d) and (e) shall include a full and complete statement with respect to the following:

(1) * * *

(2)(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, received from any source other than a relative *(or the domestic partner or a parent, child, or sibling of the domestic partner)* of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

* * * * * * *

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a [spouse, or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse,] *spouse (or domestic partner), or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse (or of the reporting individual's domestic partner),* or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a [spouse, or a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse] *spouse (or domestic partner), or a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse (or of the reporting individual's domestic partner),* which exceed $10,000 at any time during the preceding calendar year, excluding—

* As amended by bill section 801(a).

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse *(or domestic partner)*; and

* * * * * * *

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale or exchange during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse *(or domestic partner)*; or

* * * * * * *

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse *(or domestic partner)*, or dependent children.

* * * * * * *

(e)(1) Except as provided in the last sentence of this paragraph, each report required by section 101 shall also contain information listed in paragraphs (1) through (5) of subsection (a) of this section respecting the spouse *(or domestic partner)* or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse *(or domestic partner)* from any person which exceed $1,000 and the source and amount of any honoraria received by a spouse *(or domestic partner)*, except that, with respect to earned income (other than honoraria), if the spouse *(or domestic partner)* is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) All information required to be reported in subsection (a)(1)(B) with respect to income derived by a spouse *(or domestic partner)* or dependent child from any asset held by the spouse *(or domestic partner)* or dependent child and reported pursuant to subsection (a)(3).

(C) In the case of any gifts received by a spouse *(or domestic partner)* or dependent child which are not received totally independent of the relationship of the spouse *(or domestic partner)* or dependent child to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

(D) In the case of any reimbursements received by a spouse *(or domestic partner)* or dependent child which are not received totally independent of the relationship of the spouse *(or domestic partner)* or dependent child to the reporting individual, the identity of the source and a brief description of each such reimbursement.

(E) In the case of items described in paragraphs (3) through (5) of subsection (a), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's *(or domestic partner's)* or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the

income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

(F) For purposes of this section, categories with amounts or values greater than $1,000,000 set forth in sections 102(a)(1)(B) and 102(d)(1) shall apply to the income, assets, or liabilities of spouses *(and domestic partners)* and dependent children only if the income, assets, or liabilities are held jointly with the reporting individual. All other income, assets, or liabilities of the spouse *(or domestic partner)* or dependent children required to be reported under this section in an amount or value greater than $1,000,000 shall be categorized only as an amount or value greater than $1,000,000.

Reports required by subsections (a), (b), and (c) of section 101 shall, with respect to the spouse *(or domestic partner)* and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse *(or the termination of the reporting individual's domestic partnership).*

(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse *(or domestic partner),* or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) * * *

(B) a trust—

(i) which was not created directly by such individual, his spouse *(or domestic partner),* or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse *(or domestic partner),* and any dependent child have no knowledge of; or

* * * * * * *

but such individual shall report the category of the amount of income received by him, his spouse *(or domestic partner),* or any dependent child from the trust or other entity under subsection (a)(1)(B) of this section.

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse *(or domestic partner)*, or any minor or dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A) * * *

* * * * * * *

(E) For purposes of this subsection, "interested party" means a reporting individual, his spouse *(or domestic partner)*, and any minor or dependent child; "broker" has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); and "investment adviser" includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts.

* * * * * * *

(4)(A) * * *

(B)(i) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual, or the spouse *(or domestic partner)*, dependent child, or minor child of such a person, if the supervising ethics office for such reporting individual finds that—

* * * * * * *

§ 105. Custody of and public access to reports *

(a) * * *

(b)(1) * * *

* * * * * * *

(3)(A) This section does not require the immediate and unconditional availability of reports filed by an individual described in ⟦section 109(8) or 109(10)⟧ *section 109(9) or (11)* of this Act if a finding is made by the Judicial Conference, in consultation with United States Marshal Service, that revealing personal and sensitive information could endanger that individual or a family member of that individual.

* * * * * * *

§ 109. Definitions †

For the purposes of this title, the term—

(1) * * *

(2) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter *(or who is a son or daughter of the reporting individual's domestic partner)* and who—

(A) is ⟦unmarried⟧ *not married (and not in a domestic partnership)* and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986 ⟦26 U.S.C. 152⟧ *(or, in the case of a son or daughter of the reporting individual's domestic partner, would be a dependent within the meaning of such section if the requirements of subsections (c)(1)(A) and (d)(1)(A) of such section were disregarded)*;

(3) * * *

* As amended by bill section 801(b)(2)(A)(ii).

† As amended by bill section 801(b)(1).

(4) "domestic partner" and "domestic partnership" have the meanings given under section 2501 of title 5, United States Code.

[(4)]*(5)* "executive branch" includes each Executive agency (as defined in section 105 of title 5, United States Code), other than the Government Accountability Office, and any other entity or administrative unit in the executive branch;

[(5)]*(6)* "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) * * *

* * * * * * *

[(6)]*(7)* "honoraria" has the meaning given such term in section 505 of this Act;

[(7)]*(8)* "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

[(8)]*(9)* "judicial employee" means any employee of the judicial branch of the Government, of the United States Sentencing Commission, of the Tax Court, of the Court of Federal Claims, of the Court of Appeals for Veterans Claims, or of the United States Court of Appeals for the Armed Forces, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

[(9)]*(10)* "Judicial Conference" means the Judicial Conference of the United States;

[(10)]*(11)* "judicial officer" means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior;

[(11)]*(12)* "legislative branch" includes—

(A) * * *

* * * * * * *

[(12)]*(13)* "Member of Congress" means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

[(13)]*(14)* "officer or employee of the Congress" means—

(A) * * *

* * * * * * *

[(14)]*(15)* "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

[(15)]*(16)* "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) * * *

* * * * * * *

[(16)]*(17)* "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, 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, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

[(17)]*(18)* "Secretary concerned" has the meaning set forth in section 101(a)(9) of title 10, United States Code, and, in addition, means—

(A) * * *

* * * * * * *

[(18)]*(19)* "supervising ethics office" means—

(A) * * *

* * * * * * *

[(19)]*(20)* "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

* * * * * * *

TITLE V—GOVERNMENT-WIDE LIMITATIONS ON OUTSIDE EARNED INCOME AND EMPLOYMENT

§ 501. Outside earned income limitation*

(a) * * *

* * * * * * *

(c) TREATMENT OF CHARITABLE CONTRIBUTIONS.—Any honorarium which, except for subsection (b), might be paid to a Member, officer or employee, but which is paid instead on behalf of such Member, officer or employee to a charitable organization, shall be deemed not to be received by such Member, officer or employee. No such payment shall exceed $2,000 or be made to a charitable orga-

*As amended by bill section 801(c).

nization from which such individual or a parent, sibling, [spouse, child, or dependent relative of such individual] *spouse (or domestic partner), child, or dependent relative of such individual (or child, sibling, or parent of such individual's domestic partner, which child, sibling, or parent is a dependent of such individual)* derives any financial benefit.

* * * * * * *

§ 505. Definitions †

For purposes of this title:

(1) * * *

* * * * * * *

(3) The term "honorarium" means a payment of money or any thing of value for an appearance, speech or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government) by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative *(or the individual's domestic partner, or a parent, child, or sibling of the individual's domestic partner)*) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed.

(4) The term "travel expenses" means, with respect to a Member, officer or employee, or a relative *(or the domestic partner, or a parent, child, or sibling of the domestic partner)* of any such individual, the cost of transportation, and the cost of lodging and meals while away from his or her residence or principal place of employment.

* * * * * * *

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * * * *

PART I—CRIMES

* * * * * * *

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

* * * * * * *

§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government *

(a) * * *

* * * * * * *

† As amended by bill sections 801(d).
* As amended by bill section 802(a).

(d) Nothing in this section prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise representing his parents, spouse *(or domestic partner, as that term is defined in section 2501 of title 5)*, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

(1) * * *

* * * * * * *

§ 205. Activities of officers and employees in claims against and other matters affecting the Government *

(a) * * *

* * * * * * *

(e) Nothing in subsection (a) or (b) prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for, or otherwise representing, his parents, spouse *(or domestic partner, as that term is defined in section 2501 of title 5)*, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

(1) * * *

* * * * * * *

§ 208. Acts affecting a personal financial interest †

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse *(or domestic partner, as that term is defined in section 2501 of title 5)*, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be subject to the penalties set forth in section 216 of this title.

* * * * * * *

TITLE 31—MONEY AND FINANCE

* * * * * * *

* As amended by bill section 802(b).
† As amended by bill section 802(c).

Subtitle I—General

* * * * * * *

CHAPTER 7—GOVERNMENT ACCOUNTABILITY OFFICE

* * * * * * *

Subchapter V—Annuities

§ 771. Definitions *

In this [subchapter—] *subchapter:*

(1) *The term* "dependent child" means an unmarried dependent child (including a stepchild *(or the child of a reporting Comptroller General's domestic partner)* or adopted child) who is—

[(2) "surviving spouse" means a surviving spouse of an individual who was a Comptroller General or retired Comptroller General and the spouse—

[(A) was married to the individual for at least 1 year immediately before the individual died; or

[(B) has not remarried before age 55 and is the parent of issue by the marriage.

[(3) service as a Comptroller General equals the number of years and complete months an individual is Comptroller General.]

(2) The terms "domestic partner" and "domestic partnership" have the meanings given under section 2501 of title 5.

(3) The term "surviving spouse" means a surviving spouse of an individual who was a Comptroller General or retired Comptroller General and the spouse—

(A) was married to the individual for at least 1 year immediately before the individual died; or

(B) has not remarried (or entered into a domestic partnership) before age 55 and is the parent of issue by the marriage.

(4) The term "surviving partner" means a surviving domestic partner of an individual who was a Comptroller General or retired Comptroller General and the domestic partner—

(A) was in a domestic partnership for at least 1 year immediately before the individual died; or

(B)(i) has not entered into a subsequent domestic partnership or married before age 55; and

(ii) satisfies other requirements, related to parenthood and the domestic partnership, prescribed by the Director of the Office of Personnel Management by regulation under sections 8341(3)(b) and 8441(3)(B) of title 5, as determined and applied by the General Counsel of the Government Accountability Office on the basis of those regulations.

(5) Service as a Comptroller General equals the number of years and complete months an individual is Comptroller General.

* * * * * * *

§ 773. Election of survivor benefits *

(a) * * *

(b) A Comptroller General electing to provide survivor benefits shall—

---

* As amended by bill section 706(a)

* As amended by bill section 706(b).

(1) * * *

(2) deposit with the Government Accountability Office for redeposit in the Treasury as miscellaneous receipts—

(A) * * *

(B) 4.5 percent of basic pay received as a member of Congress or for other civilian service on which a surviving spouse's *(or domestic partner's) annuity is computed under section 774(d) of this title; and*

* * * * * * *

(c) This subchapter does not prevent a surviving spouse *(or domestic partner)* or dependent child from receiving another annuity while receiving an annuity under section 774 of this title. However, service used in computing an annuity under section 774 may not be used in computing the other annuity.

(d) The reduction in the Comptroller General's annuity under subsection (b)(1) for the purpose of providing survivor benefits shall be terminated for each full month after the death of the spouse *(or domestic partner)*.

* * * * * * *

§ 774. Survivor annuities †

(a) * * *

* * * * * * *

(c) If the Comptroller General or retired Comptroller General is survived—

[(1) only by a spouse, the surviving spouse shall receive an annuity computed under subsection (d) of this section beginning on the death of the Comptroller General or retired Comptroller General or when the spouse is 50 years of age, whichever is later;]

(1) only by a spouse (or domestic partner), the surviving spouse (or surviving domestic partner) shall receive an annuity computed under subsection (d) of this section beginning on the death of the Comptroller General or retired Comptroller General or when the spouse (or domestic partner) is 50 years of age, whichever is later;

(2) [by a spouse and a dependent child, the surviving spouse] *by a spouse (or domestic partner) and a dependent child, the surviving spouse (or surviving domestic partner)* shall receive an immediate annuity computed under subsection (d) of this section and each dependent child shall receive an immediate annuity equal to the smaller of—

(A) * * *

* * * * * * *

(3) only by a dependent child, each dependent child shall receive an immediate annuity equal to the smaller of—

(A) the annuity a surviving spouse *(or surviving domestic partner)* would be entitled to receive under clause (2) of this subsection, divided by the number of dependent children;

* * * * * * *

† As amended by bill section 706(c).

(d) The annuity of a surviving spouse *(or surviving domestic partner)* is equal to—

(1) * * *

* * * * * * *

(e) A surviving spouse's *(or surviving domestic partner's)* annuity may not be more than 50 percent nor less than 25 percent of the average annual pay computed under subsection (d)(1) of this section. If a Comptroller General does not make the deposit under section 773(b) of this title, a surviving spouse's *(or surviving domestic partner's)* annuity shall be credited with the service during which a deposit was not made, unless the spouse *(or domestic partner)* elects not to have the service credited. However, the annuity shall be reduced by 10 percent of the amount of the unpaid deposit, computed on the date the Comptroller General or retired Comptroller General dies.

* * * * * * *

§ 775. Refunds *

(a) * * *

* * * * * * *

(d) If a Comptroller General or retired Comptroller General dies before a refund is made under this section, the refund shall be paid in the following order of precedence:

(1) * * *

(2) to a surviving spouse *(or surviving domestic partner)*.

* * * * * * *

(e) The General Counsel is not subject to section 771(1) and (2) of this title when making a decision about a surviving spouse *(or surviving domestic partner)* or child under subsection (c) or (d) of this section.

* * * * * * *

§ 776. Payment of survivor benefits †

(a) * * *

(b)(1) **[**A surviving spouse's annuity ends when the spouse remarries**]** *A surviving spouse's (or surviving domestic partner's) annuity ends when the spouse remarries (or enters into a domestic partnership) (or when the surviving domestic partner enters into another domestic partnership or marries)* before age 55 or dies.

(2) A dependent child's annuity ends when the child becomes 18 years of age (unless the child is then a student as described in section 771(1)(C) of this title), **[**marries, or dies, whichever is earliest. However, if a child is not self-supporting because of a physical or mental disability, an annuity ends when the child recovers, marries**]** *marries (or enters into a domestic partnership), or dies, whichever is earliest. However, if a child is not self-supporting because of a physical or mental disability, an annuity ends when the child recovers, marries (or enters into a domestic partnership)*, or dies.

---

* As amended by bill section 706(d).

† As amended by bill section 706(e).

(3) If a surviving spouse *(or surviving domestic partner)* dies and a dependent child survives, the child's annuity is recomputed under section 774(c)(3) of this title.

* * * * * * *

§ 777. Annuity increases *

(a) * * *

(b) An annuity under section 772 of this title may not be more than the basic pay of the Comptroller General. A surviving spouse's *(or surviving domestic partner's)* annuity may be increased under this section without regard to any limitation set forth in section 774(e) of this title.

* * * * * * *

TITLE 42—THE PUBLIC HEALTH AND WELFARE

* * * * * * *

CHAPTER 6A—PUBLIC HEALTH SERVICE

* * * * * * *

Subchapter III—National Research Institutes

* * * * * * *

PART I—FOUNDATION FOR THE NATIONAL INSTITUTES OF HEALTH

§ 290b. Establishment and duties of Foundation. †

(a) * * *

* * * * * * *

(j) GENERAL PROVISIONS.—

(1) * * *

(2) FINANCIAL CONFLICTS OF INTEREST.—Any individual who is an officer, employee, or member of the Board of the Foundation may not (in accordance with policies and requirements developed under subsection (d)(6)) personally or substantially participate in the consideration or determination by the Foundation of any matter that would directly or predictably affect any financial interest of the individual or a relative (as such term is defined in **[**section 109(16)**]** *section 109*(17) of the Ethics in Government Act of 1978) of the individual, of any business organization or other entity, or of which the individual is an officer or employee, or is negotiating for employment, or in which the individual has any other financial interest.

* * * * * * *

○

* As amended by bill section 706(f).

† As amended by bill § 801(b)(2)(B)(ii).