

Calendar No. 412

104TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 104-274

THRIFT SAVINGS INVESTMENT FUNDS ACT OF 1996

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1080

TO AMEND CHAPTER 84 OF TITLE 5, UNITED STATES CODE, TO
PROVIDE ADDITIONAL INVESTMENT FUNDS FOR THE THRIFT
SAVINGS PLAN



MAY 16, 1996.—Ordered to be printed

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MAY 16, 1996.—Ordered to be printed

Mr. STEVENS, from the Committee on Governmental Affairs,
submitted the following

REPORT

[To accompany S. 1080]

The Committee on Governmental Affairs, to which was referred the bill (S. 1080) to authorize additional investment funds for the Thrift Savings Plan, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. SUMMARY AND PURPOSE

The Federal Employees Retirement System (FERS) covers federal workers entering permanent civil service and postal jobs in 1984 and thereafter. As part of the legislation establishing FERS, Congress created the federal Thrift Savings Plan, a tax-deferred savings plan patterned after plans widely available in the private sector. S. 1080 would expand the retirement investment options available to federal employees through this Thrift Savings Plan, with the addition of a Small Capitalization Stock Index Investment Fund and an International Investment Stock Index Fund. Increased investment options will give employees more opportunity to maximize the accumulation of savings for retirement.

S. 1080 is also intended to improve the liquidity of the accounts of those participating in the Thrift Savings Plan by expanding the existing loan program and creating two new withdrawal options. Increasing the liquidity of accounts in the Thrift Savings Plan will provide employees the flexibility they may need to increase their savings rate and encourage more employees to begin saving for retirement. Lastly, under S. 1080, participants in the Thrift Savings Plan will be able to tailor the manner in which they receive their

account upon retirement, allowing participants to design a retirement plan which most suits their financial needs.

II. BACKGROUND AND NEED FOR LEGISLATION

Earlier in this Congress, the Subcommittee on the Post Office and Civil Service undertook a review of Federal Pension issues. The Federal Employees Retirement System (FERS) that we created nearly ten years ago now provides retirement security to half of the Federal and Postal workforce. The voluntary Thrift Savings Plan (TSP) component has been embraced by FERS employees, and Federal employees as a group have accumulated more than \$35 billion in their thrift savings accounts.

Last year, the Federal Retirement Thrift Investment Board proposed that the Congress authorize new investment choices for participants in addition to the three that are currently available. The Plan has matured to the point where the additional investment options can be easily integrated by the Board. The addition of these two funds has the potential to help increase an employee's investment earnings for retirement.

As part of the Subcommittee's review, we also looked at how we might improve the liquidity and flexibility of the program, to improve participation in the program and to encourage employees to save. We looked at ways to allow employees to gain access to their savings without jeopardizing the primary purpose of providing retirement income security. We also looked at how we might modify the withdrawal options under the program so that upon retirement a participant could tailor a plan to meet their retirement needs, for example taking a portion of their account in a lump sum and a portion in the form of a retirement annuity.

Access to TSP funds before separation is currently limited by law to loans for specific purposes. This legislation would improve the liquidity of the TSP by authorizing withdrawals before separation in certain circumstances and by simplifying and expanding the existing TSP loan program. The changes are consistent with the practices of private sector 401(k) plans and would encourage greater voluntary participation in the TSP. While the overall participation in the TSP is now at approximately 79.5% of the total FERS population, there is still room for improvement. Some agencies, such as the State Department, the Department of defense and NASA, have participation rates at or above 90%. However, others such as the National Archives and the Department of Veterans Affairs, are at 69% and 72% respectively. FERS employees of the Architect of the Capitol have a participation rate of only 57%.

Under S. 1080, two new withdrawal options would be authorized. Participants in the Thrift Savings Plan who reach age 59½ while still in federal service would be eligible for a one-time withdrawal from their account. This is the age after which the early withdrawal penalty of the Internal Revenue Code no longer applies because individuals are deemed to have reached retirement age. Second, in limited circumstances, employees would be eligible for hardship withdrawals in amounts needed to relieve immediate and heavy financial need. The need would have to be documented and such withdrawals are discouraged by the fact that under the Internal Revenue Code such a withdrawal would be treated as a taxable

distribution and would be subject to an early withdrawal penalty. Nevertheless in some cases such withdrawals are necessary and would be authorized if justified.

In a further effort to improve the liquidity of accounts in the Thrift Savings Plan and increase the savings rate for participants who are wary of locking up their income in the TSP, the existing loan program would be simplified and expanded by eliminating the purposes to which the loans are restricted. This is not intended to encourage unnecessary borrowing. Rather, the experience with the TSP loan program supports the idea that participants should be able to determine whether their current needs are appropriately met by borrowing from (and repaying) their own retirement savings account, just as is the case with 401(k) plans. As is the case under current law, a loan to a participant would be limited to an amount not exceeding the value of that portion of their account which is attributable to contributions made by the participant.

Loan repayment in the Thrift Savings Plan has proven to be simple and certain. As the loan is repaid, the account is replenished to later serve its primary role as income for retirement. Only about one percent of the TSP loans issued each year result in taxable distributions due to nonpayment by active employees. The fact that loans are being repaid, however, is due to the repayment structure (payroll allotment) rather than to the limited purposes for which loans are currently authorized.

When the TSP was under development in 1985, the Committee on Governmental Affairs first dealt with the issue of access to funds for retirement. In establishing the limited loan program we recognized that, absent some form of liquidity, employees might be simply unwilling to lock-up large amounts of retirement savings.

Voluntary TSP participation by FERS employees now stands at nearly 80% overall. While this rate is impressive, those who are not saving might be more inclined to start (and those who are saving might start saving more) upon the improvement of TSP liquidity contained in S. 1080 as amended.

III. LEGISLATIVE HISTORY

Beginning in May of 1995, the Subcommittee on the Post Office and Civil Service undertook a review of federal pension issues. During three days of hearings testimony was received from more than twenty witnesses presenting various opinions and perspectives. On July 27, 1995, Senator Stevens introduced S. 1080, to add two new investment options to the Federal Thrift Savings Plan, co-sponsored by Senators Pryor and Roth. On April 18, 1996, the Committee on Governmental Affairs adopted an amendment offered by Senator Stevens in the nature of a substitute to U.S. 1080, which included the liquidity provisions, and the Committee reported favorably on S. 1080 by voice vote.

IV. SECTION-BY-SECTION ANALYSIS

TITLE I—ADDITIONAL INVESTMENT FUNDS FOR THE TSP

Title I of the amendment would add two new investment funds to those currently offered by the Thrift Savings Fund: a Small Cap-

italization Stock Index Fund and an International Stock Index Investment Fund.

Section 101. Short title

This title may be cited as the “Thrift Savings Investment Funds Act of 1996”.

Section 102. Additional investment funds for the Thrift Savings Plan

Section 102 makes changes to section 8438 of Title 5, U.S.C., which are necessary to authorize the addition of the two new investment funds. The language is similar to that in section 8438 with respect to the Common Stock Index Investment Fund, to which the two new funds bear the greatest resemblance. Like that fund, the two new funds are required to be index funds which invest in indices that represent certain defined sectors in the equity markets.

Section 102 makes changes necessary to add the two new funds to the list of those the Federal Retirement Thrift Investment Board is authorized to establish by subsection (b)(1) of section 8438. This is consistent with the statutory treatment of the current investment funds. The Board is given the responsibility to choose indices and establish investment funds that fall within the parameters for each fund as set forth in the statute.

The section also adds two new paragraphs to section 8438(b) which describe the parameters of the two new investment funds. New paragraph (3) of section 8438(b) describes the requirements for the Small Capitalization Stock Index Investment Fund. The Board must choose a commonly recognized index that represents the market value of the United States equity markets, but excluding that portion of the equity markets represented by the common stocks included in the Common Stock Index Fund. It is intended, therefore, that the Small Capitalization Stock Index Investment Fund will be designed to replicate the performance of an index representing smaller capitalization stocks not held in the Common Stock Index Investment Fund.

New paragraph (4) describes the requirements for the International Stock Index Investment fund. The Board must choose a commonly recognized index that is a reasonably complete representation of the international equity markets. The term “international equity markets” excludes the United States equity markets, which are represented by the other funds.

Section 103. Acknowledgment of investment risk

Section 103 amends section 8439(d) of Title 5, U.S.C., to add a reference to the two new investment funds in the section requiring each Thrift Savings Plan participant who invests in one of the enumerated funds sign an acknowledgment stating that he understands that the investment is made at the participant’s own risk, that the Government will not protect the participant against any loss on such investment, and that a return on the investment is not guaranteed by the Government. As is the case with the Common Stock Index Investment Fund and the Fixed Income Investment Fund, the Small Capitalization Stock Index Investment Fund and

the International Stock Index Investment Fund each carry the risk that an investment may lose value. Therefore, it is appropriate to require the participant to sign the same acknowledgment of risk statement prior to investing in either of these funds.

Section 104. Effective date

Sectin 104 provides that the new funds will be offered at the earliest date practicable as determined by the Executive Director. By law, election periods are conducted every six months. The Board is in the process of implementing a new computer software system. The new system's development will dictate the time frame for the offering of the new funds.

TITLE II—THRIFT SAVINGS ACCOUNTS LIQUIDITY

Title II improves the liquidity of TSP accounts during employment and gives Federal employees greater flexibility with their account upon separation. The amendment gives the Executive Director discretion to determine which accounts are so small that they should automatically be paid out upon separation. Finally, the proposed legislation would eliminate any need for and the existence of deferred TSP benefits, eliminating the current requirement that participants make an election as to how they wish to receive their account earlier than is required for all other retirement accounts under the Internal Revenue Code. Funds will simply remain on account until payment is requested by a participant (or beneficiary), required by law, or ordered by a court.

Section 201. Short title

This title may be cited as the "Thrift Savings Plan Act of 1996"

Section 202. Notice to spouses for in-service withdrawals; de minimus accounts; Civil Service Retirement System participants

Section 202 (1)(A) eliminates provisions allowing a modification of the date of a withdrawal election after separation. Under Title II elections for deferred payments are rendered unnecessary and eliminated. Consequently, the need to be able to modify the date of an election is no longer necessary. Funds will simply remain on account to be paid promptly upon request or to satisfy court-ordered or age-related payment requirements.

Section 202 includes technical amendments expanding the notice available to spouses of CSRS employees to apply to the new in-service withdrawals in the same manner it currently applies to loans.

Subsection 2(A) would eliminate the requirement that the Executive Director automatically pay, upon separation, a non-forfeitable account balance of \$3,500 or less where a CSRS employee fails to make a valid withdrawal election. This change would permit the Executive Director to determine a de minimis amount below which the account will automatically be disbursed.

Section 203. In-service withdrawals; withdrawal elections; Federal Employees Retirement System participants

Section 203 allows TSP participants additional access to their TSP accounts at separation by permitting more than one type of

withdrawal election and prior to separation by adding two inservice withdrawal features. Access to TSP funds upon separation is currently limited to one of three options; the legislation would permit mixed withdrawal elections. Similarly, access to TSP funds before separation is currently limited by law to loans. Such loans are further limited by the requirement that they be approved only for the specific purposes enumerated in the statute. The legislation would remove these purpose tests. Further, it eliminates elections for deferred withdrawal payments.

Section 203 would eliminate the present statutory restriction which permits participants to select only one method of withdrawal payment upon separation. Subsection (a) would allow the Executive Director to offer, by regulation, a separated employee the opportunity to select one or more of the presently approved withdrawal options. It would add the option to a separated employee to make a one-time withdrawal or transfer of any or all of an account in addition to the options provided in subsection (a).

Subsection (a)(3) would eliminate the requirement that the Executive Director automatically pay, upon separation, a nonforfeitable account balance of \$3,500 or less, as was done for CSRS employees in section 1(c).

Subsection (a)(3) would also change the date by which a separated participant must make a withdrawal election. Employees who separate from service have a number of withdrawal options. Currently, the statute provides that the TSP must purchase an annuity if the participant has not made a valid withdrawal election by February 1 of the year following the latest of (1) the year in which the participant turns age 65, (2) the tenth anniversary of the year in which the employee became subject to the provisions of FERSA, or (3) the employee's separation from service. Because the ten year anniversary of the Plan occurs in 1997, this provision would first take effect next year.

The purpose of the current provision is not clear, but it may already have caused many participants to become confused regarding TSP withdrawals. The change made by this subsection will eliminate this arbitrary deadline and simply require that annuity payments be made by April 1 of the year following the later of the year in which the employee turns age 70½ or the employee's separation from service, unless a withdrawal election is made before that time.

Subsection (a)(5) simplifies and expands the current TSP loan program by eliminating the present "purpose" restrictions on loans. Currently, loan applicants must show that they qualify for a loan under one of four purposes enumerated in the law. The proposed change would remove this restriction and authorize certain withdrawals.

Subsection (a)(6) would allow employees the option to withdraw all or a portion of their vested funds prior to separation provided they have attained age 59½. Employees are generally considered to be of retirement age when they reach age 59½. Consequently, they are permitted to withdraw retirement funds without the early withdrawal penalty imposed on other inservice withdrawals by the Internal Revenue Code.

Subsection (a)(6) would also allow participants of any age to withdraw their own contributions and associated earnings prior to

separation if they are able to demonstrate a financial hardship. Such a withdrawal is a taxable distribution subject to an early withdrawal penalty under the Internal Revenue Code for those persons under age 59½. Thus, such withdrawals are clearly discouraged but would not be prohibited where there is a clear and demonstrable need.

Subsection (b) would invalidate elections with deferred payment dates that have not been executed once participants are eligible to submit an election at any time for immediate payment.

Section 204. Survivor annuities for former spouses; notice to federal employees retirement system spouses for in-service withdrawals

Section 204 contains technical amendments eliminating references to changes of a withdrawal election and expanding the notice and consent portions of the statute available to spouses of FERS employees to apply to the new in-service withdrawals in the same manner they currently apply to loans.

Section 205. De minimus accounts relating to the judiciary

Section 205 would eliminate the requirement that the Executive Director automatically pay, upon separation, a nonforfeitable account balance of \$3,500 or less where FERS employees who are justices or judges as defined by section 451 of title 28, bankruptcy judges and magistrates, or Court of Federal Claims judges, fail to make a valid withdrawal election, as was done for CSRS and other FERS employees.

Section 206. Definition of basic pay

Eliminating the special definition of basic pay would have the effect of applying to the TSP the same basic pay calculation as applies to amounts contributed to the FERS and CSRS defined benefit programs. The current definition of basic pay for TSP purposes found at 5 U.S.C. section 8431 authorizes the use of the “uncapped” rate of pay as it relates to Federal Wage System employees. This unique definition has caused unnecessary confusion and errors in calculations by employing agencies. Each year since 1988 Congress has approved legislative language requiring that the actual rate of basic pay be substituted for the special definition. The elimination of the special definition of basic pay for TSP purposes makes this change permanent.

Section 207. Effective date

Section 207 establishes that this title will take effect upon date of enactment and that the changes in the withdrawals and elections as provided under the amendments will be made at the earliest practicable date as determined by the Executive Director.

V. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 1, 1996.

Hon. TED STEVENS,
*Chairman, Committee on Governmental Affairs, U.S. Senate, Wash-
ington, DC.*

DEAR MR. CHAIRMAN. The Congressional Budget Office has reviewed S. 1080, the Thrift Savings Investment Funds Act of 1996, as ordered by the Committee on Governmental Affairs on April 18, 1996. The bill would add two new investment funds to those currently offered by the Thrift Savings Fund: a Small Capitalization Stock Index Fund and an International Stock Index fund. Further, the bill would provide current and former federal employees greater flexibility with their Thrift Savings Plan (TSP) accounts and would expand the options for withdrawals.

These provisions would make TSP more attractive to federal employees and would tend to increase participation in the plan. Increased participation in TSP would reduce federal income tax revenues, because federal employees contribute portions of their salaries to TSP on a pre-tax basis. On the other hand, the bill would increase tax revenues by accelerating taxable disbursements from TSP. Discretionary costs also would increase, because agencies provided a limited match to employee contributions. For each 1 percent increase in agency matching contributions, the cost to the government would be about \$15 million in 1997 and about \$30 million by 2002. CBO estimates that the bill would increase participation in TSP only modestly, and that the resulting effects on the federal budget would be small, but we cannot provide a precise estimate.

The bill contains no intergovernmental or private sector mandates as defined in Public Law 104-4, and would impose no direct costs on state, local, or tribal governments.

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

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

VI. REGULATORY IMPACT OF LEGISLATION

Pursuant to the requirements of paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of S. 1080.

S. 1080 will have minimal regulatory impact, generally limited to the operating procedures of the Federal Retirement Thrift Investment Board and the administration of the Thrift Savings Plan. The Federal Employees' Retirement System Act already provides the Executive Director with the authority to prescribe regulations to carry out the functions of the TSP. Under S. 1080, the Executive Director of the Board is given additional authority to prescribe the regulations necessary for the addition and implementation of the two new investment funds to the Thrift Savings Plan and the new in-service withdrawal, loan and mixed election options.

VII. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1080, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE: GOVERNMENT ORGANIZATION AND EMPLOYEES

Subchapter III—Civil Service Retirement

§ 8351. Participation in the Thrift Savings Plan

* * * * *

(b)(5)(B) [An election, change of election, or modification (relating to the commencement date of a deferred annuity)] *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, 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 that [the election, change of election, or modification] *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 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 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 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.

(6) Notwithstanding subsection (4), if an employee or Member separates from Government employment, and such employee's or Member's nonforfeitable account balance is [\$3,400 or less] *less than an amount that the Executive Director prescribes by regulation*, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment [unless the employee or Member elects, at such time and otherwise in such manner as the executive Director prescribes, one of the options available under subsection (b)].

* * * * *

§ 8401. Definitions

* * * * *

(4) **[except as provided in subchapter III of this chapter,]** the term “basic pay” has the meaning given such term by section 8331(3);

* * * * *

Subchapter III—Thrift Savings Plan

§ 8431. Definition

Notwithstanding section 8401 of this title, for the purpose of this subchapter, the term “basic pay”, when used with respect to an employee or Member, means the basic pay of the employee or Member established pursuant to law, without regard to any provision of law (existing sections 5303(e), 5304(g), and 5382(b) of this title) limiting the rate of pay actually payable in any pay period (including any provision of law restricting the use of appropriated funds).]

§ 8433. Benefits and election of benefits

* * * * *

[(b) Subject to section 8435 of this title, any employee or Member who separates for Government employment is entitled and may elect—

[(1) to receive an immediate annuity from the Thrift Savings Fund;

{(2) to defer the commencement of the payment of an annuity from the Thrift Savings Fund until such date as the employee or Member specifies, but not later than April 1 of the year following the year in which the employee or Member becomes 70½ years of age;

[(3) to withdraw the amount of the balance in the employee’s or Member’s account in the Thrift Savings Fund in one or more substantially equal payments to be made not less frequently than annually and to commence before April 1 of the year following the year in which the employee or Member becomes 70½ years of age; or

[(4) to transfer the amount of the balance in the employee’s or Member’s account to an eligible retirement plan as provided in subsection (c).

[(c)(1) The Executive Director shall make each transfer elected under subsection (b)(4) directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

[(2) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (1) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.]

(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect to withdraw from the Thrift Savings Fund the balance of the employee’s or Member’s account as—

(1) an annuity;

(2) a single payment;

(3) 2 or more substantially equal payments to be made not less frequently than annually; or

(4) any combination of payments as provided under paragraphs (1) through (3) as the Executive Director may prescribe by regulation.

(c)(1) In addition to the right provided under subsection (b) to withdraw the balance of the account, an employee or Member who separates from Government service and who has not made a withdrawal under subsection (h)(1)(A) may make one withdrawal of any amount as a single payment in accordance with subsection (b)(2) from the employee's or Member's account.

(2) An employee or Member may request that the amount withdrawn from the Thrift Savings Fund in accordance with subsections (b)(2) be transferred to an eligible retirement plan.

(3) The Executive Director shall make each transfer elected under paragraph (2) directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

(4) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (2) until the Executive Director receives from that individual with the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.

(d)(1) **Subject to paragraph (3)(A)** Subject to paragraph (3) and subsections (a) and (c) of section 8435 of this title, an employee or Member may change an election previously made under this subchapter.

[(2) Subject to paragraph (3)(B) and section 8435(c) of this title, a former employee or Member who has made an election pursuant to subsection (b)(2) may modify the date specified in such election or in a previous modification under this paragraph.]

(2) **[(A)]** A former employee or Member may not change an election under this section on or after the date on which a payment is made in accordance with such election or, in the case of an election to receive an annuity, the date on which an annuity contract is purchased to provide for the annuity elected by the former employee or Member.

[(B) A modification of a date may not be made under paragraph (2) on or after the date on which an annuity contract is purchased to provide for the annuity involved, and may not specify a date for the commencement of an annuity earlier than 90 days after the date on which the modification is submitted to the Executive Director (or such period shorter than 90 days as the Executive Director may by regulation prescribe).]

(e) If an employee or Member (or former employee or Member) dies without having made an election under this section or after having elected an annuity under this section but before making an election under section 8434 of this title, an amount equal to the value of that individual's account (as of death) shall, subject to any decree, order, or agreement referred to in section 8435(c)(2) of this title be paid in a manner consistent with section 8424(d) of this title.

(f)(1) Notwithstanding subsection (b), if an employee or Member separates from Government employment, and such employee's or Member's nonforfeitable account balance is **[\$3,500 or less]** *less than an amount that the Executive Director prescribes by regulation*, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment **[unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b), or]**, unless an election under section 8435(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.

(2) Unless otherwise elected under this section, and subject to paragraph (1), benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on **[February 1]** *April 1* of the year following the latest of the year in which—

(A) the employee, Member, former employee, or former Member becomes **[65]** *70½* years of age; or

[(B) occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member became subject to this subchapter; or]

(B) the employee, Member, former employee, or former Member separates from Government employment.

(g)(1) At any time **[after December 31, 1987, and]** before separation, an employee or Member may apply to the Board for permission to borrow from the employee's or Member's account an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member under section 8432(a) of this title.

[(2) An application under this subsection may be approved only for—

[(A) the purchase of a primary residence;

[(B) educational expenses;

[(C) medical expenses; or

[(D) financial hardship.]

(2) Loans under this subsection shall be available to all employees and Members on a reasonably equivalent basis, and shall be subject to such other conditions as the Board may by regulation prescribe. The restrictions of section 8477(c)(1) of this title shall not apply to loans made under this subsection.

(3) A loan may not be made under this subsection to the extent that the loan would be treated as a taxable distribution under section 72(p) of the Internal Revenue Code of 1986.

(4) A loan may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.

(h)(1) *An employee or Member may apply, before separation, to the Board for permission to withdraw an amount from the employee's or Member's account based upon—*

(A) the employee or Member having attained age 59½; or

(B) financial hardship.

(2) A withdrawal under paragraph (1)(A) shall be available to each eligible participant one time only.

(3) A withdrawal under paragraph (1)(B) shall be available only for an amount not exceeding the value of that portion of such ac-

count which is attributable to contributions made by the employee or Member under section 8432(a) of this title.

(4) A withdrawals under paragraph (1) shall be subjection to such other conditions as the Executive Director may prescribe by regulation.

(5) A withdrawal may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.

§ 8435. Protections for spouses and former spouses

(a)(1)(A) A married employee or Member (or former employee or Member) **may make an election under subsection (b)(3) or (b)(4) of section 8433 of this title or change an election previously made under subsection (b)(1) or (b)(2) of such section** *may withdraw all or part of a Thrift Savings Fund Account under subsection (b)(2), (b)(3) or (b)(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) may make a withdrawal from a Thrift Savings Fund account under subsection (c)(1) of section 8433 of this title only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).*

(B) An employee or Member (or former employee or Member) may make an election or change referred to in subparagraph (A) if the employee or Member and the employee's or Member's spouse (or the former employee or Member and the former employee's or Member's spouse) jointly waive, by written election, any right which the spouse 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 whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the spouse's waiver would otherwise be inappropriate.

* * * * *

(c)(1) **An election, change of election, or modification of the commencement date of a deferred annuity** *An election or change of election* shall not be effective under this subchapter to the extent that the election, change, **modification, or transfer** *or transfer* conflicts with any court decree, order, or agreement described in paragraph (2).

(2) A court decree, order, or agreement referred to in paragraph (1) is, with respect to an employee or Member (or former employee or Member), a court decree of divorce, annulment, or legal separation issued in the case of such employee or Member (or former employee or Member) or any court order or court-approved property settlement incident to such decree if—

(A) the decree, order, or agreement, expressly relates to any portion of the balance in the employee's or Member's (or former employee's or Member's) account; and

(B) notice of the decree, order, or agreement was received by the Executive Director before—

(i) the date on which payment is made, or

(ii) in the case of an annuity, the date on which an annuity contract is purchased to provide for the annuity, in accordance with the election, change, [modification,] or contribution referred to in paragraph (1).

(3) The Executive Director shall prescribe regulations under which this subsection shall be applied in any case in which the Executive Director receives two or more decrees, orders, or agreements referred to in paragraph (1).

* * * * *

(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.

(B) A consent under subparagraph (A) shall be irrevocable with respect to the loan *or withdrawal* to which the consent relates.

(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 whereabouts cannot be determined; or

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

(2) An application for a loan *or withdrawal* under section 8433(g) *and (h)* of this title shall not be approved if approval would have the result described under subsection (c)(1).

(f) Waivers and notifications required by this section and waivers of the requirements for such waivers and notifications (as authorized by this section) may be made only in accordance with procedures prescribed by the Executive Director.

(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 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.

(h) The protections provided by this section are in addition to the protections provided by section 8467 of this title.

§ 8438. Investment of Thrift Savings Fund

(a) For the purposes of this section—

(1) the term "Common Stock Index Investment Fund" means the Common Stock Index Investment Fund established under subsection (b)(1)(C);

(2) the term “equity capital” means common and preferred stock, surplus, undivided profits, contingency reserves, and other capital reserves;

(3) the term “Fixed Income Investment Fund” means the Fixed Income Investment Fund established under subsection (b)(1)(B);

(4) the term “Government Securities Investment Fund” means the Government Securities Investment Fund established under subsection (b)(10)(A);

(5) the term “*International Stock Index Investment Fund*” means the *International Stock Index Investment Fund* established under subsection (b)(1)(E);

(7) the term “plan” means an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));

(8) the term “qualified professional asset manager” means—

(A) a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2)) which—

(i) has the power to manage, acquire, or dispose of assets of a plan; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of \$1,000,000;

(B) a savings and loan association, the accounts of which are insured by the Federal Deposit Insurance Corporation, which—

(i) has applied for and been granted trust powers to manage, acquire, or dispose of assets of a plan by a State or Government authority having supervision over savings and loan associations; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of \$1,000,000;

(C) an insurance company which—

(i) is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan;

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of \$1,000,000; and

(iii) is subject to supervision and examination by a State authority having supervision over insurance companies; or

(D) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) if the investment adviser has, on the last day of its latest fiscal year ending before the date of a determination for the purpose of this subparagraph, total client assets under its management and control in excess of 450,000,000, and—

(i) the investment adviser has, on such day, shareholder's or partner's equity in excess of \$750,000; or

(ii) payment of all of the investment adviser's liabilities, including any liabilities which may arise by reason of a breach or violation of a duty described in section 8477 of this title, is unconditionally guaranteed by—

(I) a person (as defined in section 8471(4) of this title) who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the investment adviser and who has, on the last day of the person's latest fiscal year ending before the date of a determination for the purpose of this clause, shareholder's or partner's equity in an amount which, when added to the amount of the shareholder's or partner's equity of the investment adviser on such day, exceeds \$750,000;

(II) a qualified professional asset manager described in subparagraph (A), (B) or (C); or

(III) a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 70e) that has, on the last day of the broker's or dealer's latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of \$750,000; [and]

(9) the term "shareholder's or partner's equity", as used in paragraph (8)(D) with respect to an investment adviser or a person (as defined in section 8471(4) of this title) who is affiliated with the investment adviser in a manner described in clause (ii)(I) of such paragraph (8)(D), means the equity shown in the most recent balance sheet prepared for such investment adviser or affiliated person, in accordance with generally accepted accounting principles, within 2 years before the date on which the investment adviser's status as a qualified professional asset manager is determined for the purpose of this section; and

(10) the term "*Small Capitalization Stock Index Investment Fund*" means the *Small Capitalization Stock Index Investment Fund* established under subsection (b)(1)(D).

(b)(1) The Board shall establish—

(A) a Government Securities Investment Fund under which sums in the Thrift Savings Fund are invested in securities of the United States Government issued as provided in subsection (e);

(B) a Fixed Income Investment Fund under which sums in the Thrift Savings Fund are invested in—

(i) insurance contracts;

(ii) certificates of deposits; or

(iii) other instruments or obligations selected by qualified professional asset managers, which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time; [and]

(C) a Common Stock Index Investment Fund as provided in paragraph (2);

(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3); and

(E) an International Stock Index Investment Fund as provided in paragraph (4).

* * * * *

(3)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets excluding the common stocks included in the Common Stock Index Investment Fund.

(B) The Small Capitalization Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Small Capitalization Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(4)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the international equity markets excluding the United States equity markets.

(B) The International Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the International Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

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§ 8439. Accounting and information

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(d) [Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund or the Fixed Income Investment Fund described in paragraphs (1) and (3),] *Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund, the Fixed Income Investment Fund, the International Stock Index Investment Fund, or the Small Capitalization Stock Index Investment Fund, defined in paragraphs (1), (3), (5), and (10), respectively, of section 8438(a) of this title shall sign an acknowledgment prescribed by the Executive Director which states that the employee, Member, former employee, or former Member understands that an investment in [either] such Funds is made at the employee's, Member's, former employee's, or former Member's risk, that the employee, Member, former employee, or former Member is not protected by the Government against any loss on such*

investment, and that a return on such investment is not guaranteed by the Government.

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§ 8440a. Justices and judges

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(b)(7) Notwithstanding paragraphs (4) and (5), if any justice or judge retires under subsection (a) or resigns without having met the age and service requirements set forth under section 371(c) of title 28, and such justice's or judge's nonforfeitable account balance is **[\$3,500 or less]** *less than an amount that the Executive Director prescribes by regulation*, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment **[unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)]**.

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§ 8440b. Bankruptcy judges and magistrates

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(b)(7) In the case of a bankruptcy judge or magistrate who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 377 of title 28, that annuity shall be offset by an amount equal to the amount *of the distribution* which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

(b)(8) Notwithstanding paragraph (4), if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b) of section 8433, and such bankruptcy judge's or magistrate's nonforfeitable account balance is **[\$3,500 or less]** *less than an amount that the Executive Director prescribes by regulation*, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment **[unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)]**.

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§ 8440c. Court of Federal Claims judges

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(b)(7) In the case of a Court of Federal Claims judge who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 178 of title 28, such annuity shall be offset by an amount equal to the amount *of the distribution* which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annu-

ity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

(8) Notwithstanding paragraph (4), if any Court of Federal Claims judge retires under circumstances making such judge eligible to make an election under section 8433(b), and such judge's nonforfeitable account balance is **【\$3,500 or less】** *less than an amount that the Executive Director prescribes by regulation*. The Executive Director shall pay the nonforfeitable account balance to the participant in a single payment **【unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)】**

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