

or profit accruing to or realized by that entity from the sale of an annuity contract under this section if that tax, fee, or payment is applicable to a broad range of business activity.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 546; amended Pub. L. 100-238, title I, § 129, Jan. 8, 1988, 101 Stat. 1759; Pub. L. 101-335, §§4(a), 5(b), July 17, 1990, 104 Stat. 321; Pub. L. 103-226, §9(c), (i)(8), Mar. 30, 1994, 108 Stat. 120, 122.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-226, §9(i)(8), substituted “section 8435(b)” for “section 8435(c)”.

Subsec. (c). Pub. L. 103-226, §9(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Notwithstanding an elimination of a method of payment by the Board—

“(1) an employee, Member, former employee, or former Member who is entitled under section 8412 of this title to an immediate annuity not reduced under section 8415(f) of this title may elect the eliminated method if the elimination of such method became effective less than 5 years before the date on which the annuity commences; and

“(2) any other employee, Member, former employee, or former Member may elect such method of payment for amounts contributed by or on behalf of the employee, Member, former employee, or former Member under section 8432 of this title before such effective date and for earnings attributable to such amounts.”

1990—Subsec. (b). Pub. L. 101-335, §5(b)(1), substituted “an annuity contract is purchased to provide for that annuity,” for “the annuity commences.”

Subsec. (d)(1). Pub. L. 101-335, §5(b)(2), substituted “Not earlier than 90 days (or such shorter period as the Executive Director may by regulation prescribe) before an annuity” for “At the time an annuity”.

Subsec. (e). Pub. L. 101-335, §4(a), added subsec. (e).

1988—Subsec. (a)(2)(C), (D). Pub. L. 100-238 amended subpars. (C) and (D) generally. Prior to amendment, subpars. (C) and (D) read as follows:

“(C) a method described in subparagraph (A) which provides annual increases in the amount of the annuity payable;

“(D) a method described in subparagraph (B) which provides annual increases in the amount of the annuity payable; and”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-335, §4(b), July 17, 1990, 104 Stat. 321, provided that: “The amendment made by subsection (a) [amending this section] shall take effect 30 days after the date of enactment of this Act [July 17, 1990].”

Amendment by section 5(b) of Pub. L. 101-335 effective Apr. 1, 1987, see section 5(d) of Pub. L. 101-335, set out as a note under section 8433 of this title.

§ 8435. Protections for spouses and former spouses

(a)(1)(A) A married employee or Member (or former employee or Member) 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) 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.

(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 a survivor annuity most closely approximating the annuity of a surviving spouse 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 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

(B) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described under subsection (a)(2)(A) or (B) make the requirement of a joint waiver inappropriate.

(c)(1) An election or change of election shall not be effective under this subchapter to the extent that the election, change, 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) and any former spouse of the employee or Member (or former employee or Member) or any court order or court-approved property settlement agreement 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, 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).

(d)(1) Subject to paragraphs (2) through (7), a former spouse 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 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) an election under section 8434(a)(2)(E) of this title, or

(B) any court decree, order, or agreement (described in subsection (c)(2), without regard to subparagraph (B) of such subsection) which relates to such deceased individual and such former spouse,

expressly provides for such survivor annuity.

(2) Paragraph (1) shall apply only to payments made by the Executive Director after the date on which the Executive Director receives written notice of the election, decree, order, or agreement, and such additional information and documentation as the Executive Director may require.

(3) The amount of the survivor annuity payable from the Thrift Savings Fund to a former spouse 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 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 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 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 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, to the extent that the election is inconsistent with any joint waiver previously executed with respect to such former spouse under subsection (a)(2) or (b)(2).

(7) Any payment under this subsection to any individual bars recovery by any other individual.

(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.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 547; amended Pub. L. 101-335, §§5(c), 6(a)(3), July 17, 1990, 104 Stat. 322, 323; Pub. L. 102-484, div. D, title XLIV, §4437(b), Oct. 23, 1992, 106 Stat. 2724; Pub. L. 103-226, §9(d), (i)(9)-(15), Mar. 30, 1994, 108 Stat. 120, 122; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §204]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-376.)

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §204(1)]], substituted "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” for “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” and inserted at end “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).”

Subsec. (c)(1). Pub. L. 104-208, §101(f) [title VI, § 659 [title II, §204(2)(A)]], substituted “An election or change of election” for “An election, change of election, or modification of the commencement date of a deferred annuity” and “or transfer” for “modification, or transfer”.

Subsec. (c)(2)(B). Pub. L. 104-208, §101(f) [title VI, § 659 [title II, §204(2)(B)]], struck out “modification,” after “change,” in closing provisions.

Subsec. (e)(1). Pub. L. 104-208, §101(f) [title VI, § 659 [title II, §204(3)(A)]], in subpar. (A) inserted “or withdrawal” after “A loan”, “and (h)” after “8433(g)”, and “or withdrawal” after “such loan”, in subpar. (B) inserted “or withdrawal” after “loan”, and in subpar. (C) inserted “or withdrawal” after “to a loan” and after “for such loan”.

Subsec. (e)(2). Pub. L. 104-208, §101(f) [title VI, § 659 [title II, §204(3)(B)(i)]], inserted “or withdrawal” after “loan”.

Pub. L. 104-208, §101(f) [title VI, § 659 [title II, §204(3)(B)(ii)]], which directed insertion of “and (h)” after “8344(g)”, was executed by making the insertion after “8433(g)” to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 104-208, §101(f) [title VI, § 659 [title II, §204(4)(A)]], inserted “or withdrawals” after “loans”.

Pub. L. 104-208, §101(f) [title VI, § 659 [title II, §204(4)(B)]], which directed insertion of “and (h)” after “8344(g)”, was executed by making the insertion after “8433(g)” to reflect the probable intent of Congress.

1994—Subsec. (a)(1)(A). Pub. L. 103-226, §9(d)(1), substituted “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)” for “subsection (b)(3), (b)(4), (c)(3), or (c)(4) of section 8433 of this title or change an election previously made under subsection (b)(1), (b)(2), (c)(1), or (c)(2)”.

Subsec. (a)(1)(B). Pub. L. 103-226, §9(i)(9), substituted “subsection (b)” for “subsection (c)”.

Subsec. (b). Pub. L. 103-226, §9(d)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Paragraph (1) shall not apply—

“(A) in the case of an employee or Member retiring under section 8412, 8413, 8414, or 8451 of this title, or who separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force, if—

“(i) a joint waiver of such method is made, in writing, by the employee or Member and the spouse; or

“(ii) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described in subsection (a)(2)(A) or (a)(2)(B) make the requirement of a joint waiver inappropriate; or

“(B) in the case of an employee or Member not covered by subparagraph (A), if the employee or Member waives such method after—

“(i) having provided notification to the spouse of intent to waive; or

“(ii) establishing to the satisfaction of the Executive Director that the whereabouts of such spouse cannot be determined.”

Pub. L. 103-226, §9(d)(2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “(b)(1) Except as provided in paragraph (2), a transfer may be made by an employee or Member (or former em-

ployee or Member) under section 8433(d) of this title only after the Executive Director notifies any current spouse and each former spouse of the employee or Member (or former employee or Member), if any, that the transfer is to be made.

“(2) Paragraph (1) may be waived with respect to a spouse or former spouse if the employee or Member (or former employee or Member) establishes to the satisfaction of the Executive Director that the whereabouts of such spouse or former spouse cannot be determined.”

Subsec. (c). Pub. L. 103-226, §9(d)(3), (5), redesignated subsec. (d) as (c) and, in par. (1), struck out “and a transfer may not be made under section 8433(d) of this title” after “effective under this subchapter”. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103-226, §9(d)(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1)(B). Pub. L. 103-226, §9(i)(10), substituted “subsection (c)(2)” for “subsection (d)(2)”.

Subsec. (d)(3)(A). Pub. L. 103-226, §9(i)(11), substituted “subsection (b)(1)” for “subsection (c)(1)”.

Subsec. (d)(6). Pub. L. 103-226, §9(i)(12), substituted “or (b)(2)” for “or (c)(2)”.

Subsec. (e). Pub. L. 103-226, §9(d)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(1)(A). Pub. L. 103-226, §9(i)(13), substituted “section 8433(g)” for “section 8433(i)”.

Subsec. (e)(2). Pub. L. 103-226, §9(i)(14), substituted “section 8433(g) of this title shall not be approved if approval would have the result described under subsection (c)(1)” for “section 8433(i) of this title shall not be approved if approval would have the result described in subsection (d)(1)”.

Subsec. (f). Pub. L. 103-226, §9(d)(3), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103-226, §9(d)(3), (i)(15), redesignated subsec. (h) as (g) and substituted “section 8433(g)” for “section 8433(i)”. Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 103-226, §9(d)(3), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

1992—Subsec. (c)(2)(A). Pub. L. 102-484 inserted “, or who separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force,” after “8451 of this title”.

1990—Subsec. (c)(1). Pub. L. 101-335, §5(c)(1), inserted “an annuity contract is purchased to provide for” after “the date on which” and struck out “commences” after “former Member’s annuity”.

Subsec. (d)(2)(B)(ii). Pub. L. 101-335, §5(c)(2), substituted “an annuity contract is purchased to provide for the annuity” for “the annuity commences”.

Subsecs. (h), (i). Pub. L. 101-335, §6(a)(3), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, §207]] of Pub. L. 104-208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-484 applicable with respect to separations occurring after Dec. 31, 1993, or such earlier date as Executive Director (appointed under section 8474 of this title) may by regulation prescribe, see section 4437(d) of Pub. L. 102-484, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5(c) of Pub. L. 101-335 effective Apr. 1, 1987, see section 5(d) of Pub. L. 101-335, set out as a note under section 8433 of this title.

Amendment by section 6(a)(3) of Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

§ 8436. Administrative provisions

(a) The Executive Director shall make or provide for payments and transfers in accordance with an election of an employee or Member under section 8433 or 8434(b) of this title or, if applicable, in accordance with section 8435 of this title.

(b) Any election, change of election, or modification of a deferred annuity commencement date made under this subchapter shall be in writing and shall be filed with the Executive Director in accordance with regulations prescribed by the Executive Director.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 550.)

§ 8437. Thrift Savings Fund

(a) There is established in the Treasury of the United States a Thrift Savings Fund.

(b) The Thrift Savings Fund consists of the sum of all amounts contributed under section 8432 of this title and all amounts deposited under section 8479(b) of this title, increased by the total net earnings from investments of sums in the Thrift Savings Fund or reduced by the total net losses from investments of the Thrift Savings Fund, and reduced by the total amount of payments made from the Thrift Savings Fund (including payments for administrative expenses).

(c) The sums in the Thrift Savings Fund are appropriated and shall remain available without fiscal year limitation—

(1) to invest under section 8438 of this title;

(2) to pay benefits or purchase annuity contracts under this subchapter;

(3) to pay the administrative expenses of the Federal Retirement Thrift Investment Management System prescribed in subchapter VII of this chapter;

(4) to make distributions for the purposes of section 8440(b) of this title;

(5) to make loans to employees and Members as authorized under section 8433(g) of this title; and

(6) to purchase insurance as provided in section 8479(b)(2) of this title.

(d) Administrative expenses incurred to carry out this subchapter and subchapter VII of this chapter shall be paid first out of any sums in the Thrift Savings Fund forfeited under section 8432(g) of this title and then out of net earnings in such Fund.

(e)(1) Subject to subsection (d) and paragraphs (2) and (3), sums in the Thrift Savings Fund credited to the account of an employee, Member, former employee, or former Member may not be used for, or diverted to, purposes other than for the exclusive benefit of the employee, Member, former employee, or former Member or his beneficiaries under this subchapter.

(2) Except as provided in paragraph (3), sums in the Thrift Savings Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process. For the purposes of this paragraph, a loan made from such Fund to an employee or Member shall not be considered to be an assignment or alienation.

(3) Moneys due or payable from the Thrift Savings Fund to any individual and, in the case of an individual who is an employee or Member (or former employee or Member), the balance in the account of the employee or Member (or former employee or Member) shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659), the enforcement of an order for restitution under section 3663A of title 18, forfeiture under section 8432(g)(5) of this title, an obligation of the Executive Director to make a transfer under section 415(d)(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1415(d)(3)), or an obligation of the Executive Director to make a payment to another person under section 8467 of this title, and shall be subject to a Federal tax levy under section 6331 of the Internal Revenue Code of 1986. For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be considered part of the balance in such individual's account unless such amount is nonforfeitable, as determined under applicable provisions of section 8432(g).

(f) The sums in the Thrift Savings Fund shall not be appropriated for any purpose other than the purposes specified in this section and may not be used for any other purpose.

(g) All sums contributed to the Thrift Savings Fund by an employee or Member or by an employing agency for the benefit of such employee or Member and all net earnings in such Fund attributable to investment of such sums are held in such Fund in trust for such employee or Member.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 550; amended Pub. L. 100-238, title I, §§116, 117(a), Jan. 8, 1988, 101 Stat. 1751; Pub. L. 103-226, §9(i)(16), Mar. 30, 1994, 108 Stat. 122; Pub. L. 103-358, §2(b)(4), Oct. 14, 1994, 108 Stat. 3421; Pub. L. 111-31, div. B, title I, §108, June 22, 2009, 123 Stat. 1856; Pub. L. 112-267, §1, Jan. 14, 2013, 126 Stat. 2440; Pub. L. 115-397, title I, §111(b), Dec. 21, 2018, 132 Stat. 5311.)

REFERENCES IN TEXT

Section 6331 of the Internal Revenue Code of 1986, referred to in subsec. (e)(3), is classified to section 6331 of Title 26, Internal Revenue Code.

AMENDMENTS

2018—Subsec. (e)(3). Pub. L. 115-397 inserted “an obligation of the Executive Director to make a transfer under section 415(d)(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1415(d)(3)),” before “or an obligation”.

2013—Subsec. (e)(3). Pub. L. 112-267, in first sentence, substituted “659,” for “659” and inserted “, and shall be subject to a Federal tax levy under section 6331 of the Internal Revenue Code of 1986” before period.