

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 2022 AMENDMENT**

Amendment by Pub. L. 117-225 effective Dec. 9, 2022, and applicable to an individual who suffers an illness or injury described in certain Code provisions on or after the date that is 2 years after Dec. 9, 2022, see section 3(f) of Pub. L. 117-225, set out as a note under section 8336 of this title.

**EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES**

Amendment by Pub. L. 110-161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110-161, set out as a note under section 3307 of this title.

**EFFECTIVE DATE OF 2003 AMENDMENT**

Amendment by Pub. L. 108-176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108-176, set out as a note under section 8401 of this title.

**EFFECTIVE DATE OF 2000 AMENDMENT**

Amendment by Pub. L. 106-553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106-553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-261 effective 1 year after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105-261, set out as a note under section 8331 of this title.

**EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102-378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as a note under section 6303 of this title.

**EXCEPTION TO AUTOMATIC SEPARATION OF MEMBERS OF CAPITOL POLICE**

Pub. L. 101-428, § 3(b)(1)(B), Oct. 15, 1990, 104 Stat. 929, provided that: "Nothing in section 8425(b) of title 5, United States Code, as amended by subparagraph (A), shall require the automatic separation of any member of the Capitol Police before the end of the 2-year period beginning on the date of enactment of this Act [Oct. 15, 1990]."

**SUBCHAPTER III—THRIFT SAVINGS PLAN****§ 8431. Certain transfers to be treated as a separation**

(a) For purposes of this subchapter, separation from Government employment includes a transfer from a position that is subject to one of the retirement systems described in subsection (b) to a position that is not subject to any of them.

(b) The retirement systems described in this subsection are—

- (1) the retirement system under this chapter;
- (2) the retirement system under subchapter III of chapter 83; and

(3) any other retirement system under which individuals may contribute to the Thrift Savings Fund through withholdings from pay.

(Added Pub. L. 106-168, title II, § 203(a)(1), Dec. 12, 1999, 113 Stat. 1820.)

**Editorial Notes****PRIOR PROVISIONS**

A prior section 8431, added Pub. L. 99-335, title I, § 101(a), June 6, 1986, 100 Stat. 541; amended Pub. L. 101-509, title V, § 529 [title I, § 101(b)(6)(B)], Nov. 5, 1990, 104 Stat. 1427, 1440, provided a definition of "basic pay" for this subchapter, prior to repeal by Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 659 [title II, §§ 206(a)(2), 207]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-378, effective Sept. 30, 1996.

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE**

Pub. L. 106-168, title II, § 203(c), Dec. 12, 1999, 113 Stat. 1820, provided that: "The amendments made by this section [enacting this section and amending section 8351 of this title] shall apply with respect to transfers occurring before, on, or after the date of the enactment of this Act [Dec. 12, 1999], except that, for purposes of applying such amendments with respect to any transfer occurring before such date of enactment, the date of such transfer shall be considered to be the date of the enactment of this Act. The Executive Director (within the meaning of section 8401(13) of title 5, United States Code) may prescribe any regulations necessary to carry out this subsection."

**§ 8432. Contributions**

(a)(1) An employee or Member may contribute to the Thrift Savings Fund in any pay period, pursuant to an election under subsection (b), an amount not to exceed the maximum percentage of such employee's or Member's basic pay for such pay period allowable under paragraph (2). Contributions under this subsection pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions provided in regulations prescribed by the Executive Director.

(2) The maximum percentage allowable under this paragraph shall be determined in accordance with the following table:

<b>In the case of a pay period beginning in fiscal year:</b>	<b>The maximum percentage allowable is:</b>
2001 .....	11
2002 .....	12
2003 .....	13
2004 .....	14
2005 .....	15
2006 or thereafter .....	100.

(3) Notwithstanding any limitation under this subsection, an eligible participant (as defined by section 414(v) of the Internal Revenue Code of 1986) may make such additional contributions to the Thrift Savings Fund as are permitted by such section 414(v) and regulations of the Executive Director consistent therewith.

(b)(1)(A)(i) The Executive Director shall prescribe regulations under which employees and Members may make contributions under subsection (a), to modify the amount to be contributed under such subsection, or to terminate such contributions.

(ii) An election to make contributions under this paragraph—

(I) may be made at any time;

(II) shall take effect on the earliest date after the election that is administratively feasible; and

(III) shall remain in effect until modified or terminated.

(B) The amount to be contributed pursuant to an election under subparagraph (A) shall be the percentage of basic pay or amount designated by the employee or Member.

(2)(A) The Executive Director shall by regulation provide for an eligible individual to be automatically enrolled to make contributions under subsection (a) at the default percentage of basic pay.

(B) For purposes of this paragraph, the default percentage shall be equal to 3 percent or such other percentage, not less than 2 percent nor more than 5 percent, as the Board may prescribe.

(C) The regulations shall include provisions under which any individual who would otherwise be automatically enrolled in accordance with subparagraph (A) may—

(i) modify the percentage or amount to be contributed pursuant to automatic enrollment, effective not later than the first full pay period following receipt of the election by the appropriate processing entity; or

(ii) decline automatic enrollment altogether.

(D)(i) Except as provided in clause (ii), for purposes of this paragraph, the term “eligible individual” means any individual who, after any regulations under subparagraph (A) first take effect, is appointed, transferred, or reappointed to a position in which that individual becomes eligible to contribute to the Thrift Savings Fund.

(ii) (i)<sup>1</sup> Except in the case of a full TSP member (as defined in section 8440e(a)), members of the uniformed services shall not be eligible individuals for purposes of this paragraph.

(E) Sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1), 8440c(a)(1), 8440d(a)(1), and 8440e(b)(1) shall be applied in a manner consistent with the purposes of this paragraph.

(F) Notwithstanding any other provision of this paragraph, if a full TSP member (as defined in section 8440e(a)) has declined automatic enrollment into the Thrift Savings Plan for a year, the full TSP member shall be automatically re-enrolled on January 1 of the succeeding year, with contributions under subsection (a) at the default percentage of basic pay.

(c)(1)(A) At the time prescribed by the Executive Director, but no later than 12 days after the end of the pay period that includes the first date on which an employee or Member may make contributions under subsection (a) (without regard to whether the employee or Member has elected to make such contributions during such pay period), and within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay period), the employing agency shall contribute to the Thrift

Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the basic pay of such employee or Member for such pay period.

(B) In the case of each employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for that period of service.

(C) If an employee or Member—

(i) is an employee or Member on January 1, 1987;

(ii) separates from Government employment before April 1, 1987; and

(iii) before separation, completes the number of years of civilian service applicable to such employee or Member under subparagraph (A) or (B) of subsection (g)(2),

the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for service performed on or after January 1, 1987, and before the date of the separation.

(2)(A) In addition to contributions made under paragraph (1), the employing agency of an employee or Member who contributes to the Thrift Savings Fund under subsection (a) for any pay period shall make a contribution to the Thrift Savings Fund for the benefit of such employee or Member. The employing agency's contribution shall be made within such time as the Executive Director may prescribe, but no later than 12 days after the end of each such pay period.

(B) The amount contributed under subparagraph (A) by an employing agency with respect to a contribution of an employee or Member during any pay period shall be the amount equal to the sum of—

(i) such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such period; and

(ii) one-half of such portion of the amount of the employee's or Member's contribution as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.

(C) Notwithstanding subparagraph (B), the amount contributed under subparagraph (A) by an employing agency with respect to any contribution made by an employee or Member during any pay period which begins after the date on which such employee or Member makes an election under subsection (b)(4)<sup>2</sup> and before July 1, 1987, shall be the amount equal to the sum of—

(i) two times such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such pay period; and

(ii) such portion of the total amount of the employee's or Member's contributions as ex-

<sup>1</sup> So in original.

<sup>2</sup> See References in Text note below.

ceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.

(3)(A) There shall be contributed to the Thrift Savings Fund on behalf of each employee or Member described in subparagraph (B) the amount determined under subparagraph (C).

(B) An employee or Member referred to in subparagraph (A) is an employee or Member who—

(i) is an employee or Member on January 1, 1987;

(ii) has creditable service described in section 8411(b)(2) of this title; and

(iii) has not received a refund of the amount of the retirement deductions made with respect to such service under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983.

(C) The amount referred to in subparagraph (A) in the case of an employee or Member is equal to the sum of—

(i) 1 percent of the total basic pay paid to such employee or Member for service described in section 8411(b)(2) of this title; and

(ii) interest on such amount computed with respect to such service in the manner provided in paragraphs (2) and (3) of section 8334(e) of this title.

(D) The Secretary of the Treasury shall credit to the Thrift Savings Fund, out of any sums in the Treasury not otherwise appropriated, the amounts determined by the Director to be necessary to carry out this paragraph.

(d) Notwithstanding any other provision of this section, no contribution may be made under this section for any year to the extent that such contribution, when added to prior contributions for such year, exceeds any limitation under section 415 of the Internal Revenue Code of 1986. However, no contribution made under subsection (c)(3) shall be subject to, or taken into account, for purposes of the preceding sentence.

(e) The sums required to be contributed to the Thrift Savings Fund by an employing agency under subsection (c) for the benefit of an employee or Member shall be paid from the appropriation or fund available to such agency for payment of salaries of the employee's or Member's office or establishment. When an employee or Member in the legislative branch is paid by the Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee or Member.

(f) Amounts contributed by an employee or Member under subsection (a) and amounts contributed with respect to such employee or Member under subsection (c) shall be deposited in the Thrift Savings Fund to the credit of that employee's or Member's account in accordance with such procedures as the Secretary of the Treasury may, in consultation with the Executive Director, prescribe in regulations.

(g)(1) Except as otherwise provided in this subsection, all contributions made under this section shall be fully nonforfeitable when made.

(2) Contributions made for the benefit of an employee under subsection (c)(1) and all earn-

ings attributable to such contributions shall be forfeited if the employee separates from Government employment before completing—

(A) 2 years of civilian service in the case of an employee who, at the time of separation, is serving in—

(i) a position in the Senior Executive Service as a noncareer appointee (as defined in section 3132(a)(7) of this title);

(ii) a position listed in section 5312, 5313, 5314, 5315, or 5316 of this title or a position placed in level IV or V of the Executive Schedule under section 5317 of this title; or

(iii) a position in the Executive branch which is excepted from the competitive service by the Office by reason of the confidential and policy-determining character of the position;

(B) 3 years of civilian service in the case of an employee who is not serving in a position described in subparagraph (A) at the time of separation; or

(C) 2 years of service in the case of a member of the uniformed services.

(3) Contributions made for the benefit of a Member or Congressional employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the Member or Congressional employee separates from Government employment before completing 2 years of civilian service.

(4) Nothing in paragraph (2) or (3) shall cause the forfeiture of any contributions made for the benefit of an employee, Member, or Congressional employee under subsection (c)(1), or any earnings attributable thereto, if such employee, Member, or Congressional employee is not separated from Government employment as of date of death.

(5) Notwithstanding any other provision of law, contributions made by the Government for the benefit of an employee or Member under subsection (c), and all earnings attributable to such contributions, shall be forfeited if the annuity of the employee or Member, or that of a survivor or beneficiary, is forfeited under subchapter II of chapter 83.

(h) No transfers or contributions may be made to the Thrift Savings Fund except as provided in this chapter or section 8351 of this title.

(i)(1) This subsection applies to any employee—

(A) to whom section 8432b applies; and

(B) who, during the period of such employee's absence from civilian service (as referred to in section 8432b(b)(2)(B))—

(i) is eligible to make an election described in subsection (b)(1); or

(ii) would be so eligible but for having either elected to terminate individual contributions to the Thrift Savings Fund within 2 months before commencing military service or separated in order to perform military service.

(2) The Executive Director shall prescribe regulations to ensure that any employee to whom this subsection applies shall, within a reasonable time after being restored or reemployed (in the manner described in section 8432b(a)(2)), be afforded the opportunity to make, for purposes

of this section, any election which would be allowable during a period described in subsection (b)(1)(A).

(j)(1) For the purpose of this subsection—

(A) the term “eligible rollover distribution” has the meaning given such term by section 402(c)(4) of the Internal Revenue Code of 1986; and

(B) the term “qualified trust” has the meaning given such term by section 402(c)(8) of the Internal Revenue Code of 1986.

(2) An employee or Member may contribute to the Thrift Savings Fund an eligible rollover that a qualified trust could accept under the Internal Revenue Code of 1986. A contribution made under this subsection shall be made in the form described in section 401(a)(31) of the Internal Revenue Code of 1986. In the case of an eligible rollover distribution, the maximum amount transferred to the Thrift Savings Fund shall not exceed the amount which would otherwise have been included in the employee's or Member's gross income for Federal income tax purposes.

(3) The Executive Director shall prescribe regulations to carry out this subsection.

(k)(1) Only those employees of the Central Intelligence Agency participating in the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306; 50 U.S.C. 403-4 note)<sup>2</sup> and making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project.

(2) Contributions under this subsection are subject to subsection (d).

(3) For purposes of subsection (c), basic pay of an employee of the Central Intelligence Agency participating in the pilot project referred to in paragraph (1) shall include bonus pay received by the employee as part of the pilot project.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 541; amended Pub. L. 99-509, title VI, §6001(a)(1), (2), Oct. 21, 1986, 100 Stat. 1929, 1930; Pub. L. 100-20, §1(b), Apr. 7, 1987, 101 Stat. 265; Pub. L. 100-238, title I, §§114, 115, 121, Jan. 8, 1988, 101 Stat. 1751, 1752; Pub. L. 103-353, §§4(c), 5(e)(3), Oct. 13, 1994, 108 Stat. 3172, 3174; Pub. L. 104-93, title III, §304(a), Jan. 6, 1996, 109 Stat. 965; Pub. L. 104-186, title II, §215(16), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104-316, title I, §103(g), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 106-361, §§1(a), 2(a), (b)(1)–(3), Oct. 27, 2000, 114 Stat. 1400, 1401; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 107-304, §1(b)(1), Nov. 27, 2002, 116 Stat. 2363; Pub. L. 108-177, title IV, §405(b)(2), Dec. 13, 2003, 117 Stat. 2632; Pub. L. 108-469, §1(b), (c), (d)(2), Dec. 21, 2004, 118 Stat. 3891; Pub. L. 111-31, div. B, title I, §102, June 22, 2009, 123 Stat. 1853; Pub. L. 114-92, div. A, title VI, §632(b), (c), Nov. 25, 2015, 129 Stat. 847; Pub. L. 114-328, div. A, title VI, §632, Dec. 23, 2016, 130 Stat. 2162.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(3), (d), and (j), is classified generally to Title 26, Internal Revenue Code.

Subsection (b)(4), referred to in subsec. (c)(2)(C), was repealed by section 102(a) of Pub. L. 111-31. See 2009 Amendment note below.

Section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98-168], referred to in subsec. (c)(3)(B)(iii), is set out as a note under section 8331 of this title.

The Intelligence Authorization Act for Fiscal Year 2003, referred to in subsec. (k)(1), is Pub. L. 107-306, Nov. 27, 2002, 116 Stat. 2383. Section 402 of the Act was formerly set out as a note under section 403-4 of Title 50, War and National Defense, and was editorially reclassified as a note under section 3505 of Title 50.

##### AMENDMENTS

2016—Subsec. (g)(6). Pub. L. 114-328, §632, repealed Pub. L. 114-92, §632(c)(2). See 2015 Amendment note below.

2015—Subsec. (b)(2)(D)(ii). Pub. L. 114-92, §632(b)(1), substituted “(ii) Except in the case of a full TSP member (as defined in section 8440e(a)), members” for “Members”.

Subsec. (b)(2)(E). Pub. L. 114-92, §632(b)(2), substituted “8440e(b)(1)” for “8440e(a)(1)”.

Subsec. (b)(2)(F). Pub. L. 114-92, §632(b)(3), added subpar. (F).

Subsec. (g)(2)(C). Pub. L. 114-92, §632(c)(1), added subpar. (C).

Subsec. (g)(6). Pub. L. 114-92, §632(c)(2), which directed the amendment of subsec. (g) by adding at the end “(6) For purposes of this subsection, a member of the uniformed services shall be considered to have separated from Government employment if the member is discharged or released from service in the uniformed services.”, was repealed by Pub. L. 114-328, §632.

2009—Subsec. (b)(1)(B). Pub. L. 111-31, §102(b), which directed the amendment of par. (1) by “striking the parenthetical matter in subparagraph (B)” was executed by striking out “(or any election allowable by virtue of paragraph (4))” before “shall be the percentage”, but not striking out “(A)” after “subparagraph”, to reflect the probable intent of Congress.

Subsec. (b)(2) to (4). Pub. L. 111-31, §102(a), added par. (2) and struck out former pars. (2) to (4) which related to eligibility to make an election regarding contributions.

2004—Subsec. (b)(1)(A). Pub. L. 108-469, §1(b), designated existing provisions as cl. (i), substituted “may” for “shall be afforded a reasonable period every 6 months to elect to”, struck out second sentence which read “An election to make such contributions shall remain in effect until modified or terminated.”, and added cl. (ii).

Subsec. (b)(2)(A), (C). Pub. L. 108-469, §1(d)(2)(A), (B), substituted “until the date” for “until the second period”.

Subsec. (b)(2)(D). Pub. L. 108-469, §1(d)(2)(C), substituted “as provided” for “other than during a period afforded”.

Subsec. (b)(4)(C). Pub. L. 108-469, §1(c), designated existing provisions as cl. (i) and added cl. (ii).

2003—Subsec. (k). Pub. L. 108-177 added subsec. (k).

2002—Subsec. (a)(3). Pub. L. 107-304 added par. (3).

2000—Subsec. (a). Pub. L. 106-554 designated existing provisions as par. (1), substituted “the maximum percentage of such employee's or Member's basic pay for such pay period allowable under paragraph (2).” for “10 percent of such individual's basic pay for such period.”, and added par. (2).

Pub. L. 106-361, §2(b)(1), substituted “(b)” for “(b)(1)” and “Contributions under this subsection pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions provided in regulations prescribed by the Executive Director” for “Contributions made under this subsection during any 6-month period for which an election period is provided under subsection (b)(1) shall be made each pay period during such 6-month period pursuant to a program of regular contributions provided in regulations prescribed by the Executive Director”.

Subsec. (b)(1)(B). Pub. L. 106-361, §2(b)(2), inserted “(or any election allowable by virtue of paragraph (4))” after “subparagraph (A)”.

Subsec. (b)(3). Pub. L. 106-361, §2(b)(3), substituted “An” for “Notwithstanding paragraph (2)(A), an”.

Subsec. (b)(4). Pub. L. 106-361, §2(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

“(A) Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director. The Executive Director shall prescribe an election period for such purpose which shall commence on April 1, 1987. An election by such an employee or Member during that election period shall be effective on the first day of the employee’s or Member’s first pay period which begins after the date on which the employee or Member makes that election.

“(B) Notwithstanding subsection (a), the maximum amount that an employee or Member may contribute during any pay period which begins on or after April 1, 1987, and before October 1, 1987, pursuant to an election made during the election period provided under subparagraph (A) is the amount equal to 15 percent of such individual’s basic pay for such pay period.”

Subsec. (j). Pub. L. 106-361, §1(a), added subsec. (j).

1996—Subsec. (e). Pub. L. 104-186 substituted “Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts” for “Clerk of the House of Representatives, the Clerk may pay from the contingent fund”.

Subsec. (f). Pub. L. 104-316 substituted “Secretary of the Treasury” for “Comptroller General of the United States”.

Subsec. (g)(5). Pub. L. 104-93 added par. (5).

1994—Subsec. (d). Pub. L. 103-353, §5(e)(3), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (i). Pub. L. 103-353, §4(c), added subsec. (i).

1988—Subsec. (c)(1)(A). Pub. L. 100-238, §121(a), substituted “At the time prescribed by the Executive Director, but no later than 12 days after the end of” for “At the end of” and “within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay period)” for “at the end of each succeeding pay period”.

Subsec. (c)(2)(A). Pub. L. 100-238, §121(b), substituted “within such time as the Executive Director may prescribe, but no later than 12 days after the end of each such pay period” for “at the end of such pay period”.

Subsec. (d). Pub. L. 100-238, §114, inserted at end “However, no contribution made under subsection (c)(3) shall be subject to, or taken into account, for purposes of the preceding sentence.”

Subsec. (g)(1). Pub. L. 100-238, §115(1), substituted “Except as otherwise provided in this subsection” for “Except as provided in paragraphs (2) and (3)”.

Subsec. (g)(4). Pub. L. 100-238, §115(2), added par. (4).

1987—Subsec. (b)(4)(A). Pub. L. 100-20 substituted “Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director” for “Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, continues as an employee or Member without a break in service through April 1, 1987, and has creditable service described in section 8411(b)(2) of this title may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director”.

1986—Subsec. (b)(4). Pub. L. 99-509, §6001(a)(1), designated existing provisions as subpar. (A), inserted “continues as an employee or Member without a break

in service through April 1, 1987,” substituted “April 1, 1987” for “January 1, 1987”, substituted “the date on which the employee or Member makes that election” for “the last day of that election period”, and added subpar. (B).

Subsec. (c)(1). Pub. L. 99-509, §6001(a)(2)(A), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (c)(2)(C). Pub. L. 99-509, §6001(a)(2)(B), added subpar. (C).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-328, div. A, title VI, §632, Dec. 23, 2016, 130 Stat. 2162, provided that, effective Dec. 23, 2016, paragraph (2) of section 632(c) of Pub. L. 114-92 (amending this section) is repealed, and the amendment proposed to be made by that paragraph shall not be made or go into effect.

#### EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Pub. L. 114-92, div. A, title VI, §635, Nov. 25, 2015, 129 Stat. 851, provided that:

“(a) EFFECTIVE DATE.—The amendments made by this part [part I (§§ 631–635) of subtitle D of title VI of Pub. L. 114-92, enacting section 1415 of Title 10, Armed Forces, and section 356 of Title 37, Pay and Allowances of the Uniformed Services, and amending this section and sections 8432b, 8438, and 8440e of this title, sections 1401, 1401a, 1409, 1410, 1413a, 1414, 1463, and 12739 of Title 10, section 3045 of Title 33, Navigation and Navigable Waters, sections 211 and 354 of Title 37, section 5304 of Title 38, Veterans’ Benefits, and section 212 of Title 42, The Public Health and Welfare] shall take effect on January 1, 2018.

#### “(b) IMPLEMENTATION.—

“(1) IN GENERAL.—The Secretaries concerned, the Director of the Office of Personnel Management, and the Federal Retirement Thrift Investment Board shall each and jointly take appropriate actions to ensure the full and effective implementation of the amendments made by this part in order to ensure that members of the uniformed services will be able to participate in the modernized retirement plan provided by this part commencing on the date specified in subsection (a).

“(2) IMPLEMENTATION PLAN.—Not later than March 1, 2016, the Secretaries concerned shall submit to the appropriate committees of Congress a report containing a plan to ensure the full and effective commencement and operational implementation of the amendments made by this part in accordance with paragraph (1).

“(c) ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.—The report required by subsection (b) shall contain a draft of such legislation as may be necessary to make any additional technical and conforming changes to titles 10 and 37, United States Code, and other provisions of law that are required or should be made by reason of the amendments made by this part.

#### “(d) DEFINITIONS.—In this section:

“(1) The term ‘appropriate committees of Congress’ means—

“(A) the Committee on Armed Services, the Committee on Energy and Commerce, the Committee on Natural Resources, the Committee on Oversight and Government Reform [now Committee on Oversight and Accountability], and the Committee on Transportation and Infrastructure of the House of Representatives; and

“(B) the Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Homeland Security and Governmental Affairs, and the Committee on Health, Education, Labor, and Pensions of the Senate.

“(2) The term ‘Secretary concerned’ has the meaning given that term in section 101 of title 37, United States Code.”

## EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-304 effective as of the earliest practicable date determined by the Executive Director in regulations, see section 1(c) of Pub. L. 107-304, set out as a note under section 8351 of this title.

## EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-361, §1(b), Oct. 27, 2000, 114 Stat. 1400, provided that: "The amendment made by this section [amending this section] shall take effect at the earliest practicable date after September 30, 2000, as determined by the Executive Director in regulations." [Final regulations implementing the amendments became effective May 2, 2001. See 66 F.R. 22088.]

Pub. L. 106-361, §2(c)(1), Oct. 27, 2000, 114 Stat. 1401, provided that: "The amendments made by this section [amending this section and sections 8439, 8440a, and 8440d of this title] shall take effect at the earliest practicable date after September 30, 2000, as determined by the Executive Director in regulations." [Final regulations implementing the amendments became effective May 2, 2001. See 66 F.R. 22088.]

## EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-93, title III, §304(b), Jan. 6, 1996, 109 Stat. 965, provided that: "The amendment made by subsection (a) [amending this section] shall apply to offenses upon which the requisite annuity forfeitures are based occurring on or after the date of the enactment of this Act [Jan. 6, 1996]."

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 4(c) of Pub. L. 103-353 effective Oct. 13, 1994, and applicable to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of Title 38, Veterans' Benefits, occurs on or after Aug. 2, 1990, with special rules for applying amendment to employees restored or reemployed before effective date, see section 4(e), (f) of Pub. L. 103-353, set out as an Effective Date note under section 8432b of this title.

Amendment by section 5(e)(3) of Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38.

## EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-509, title VI, §6001(f), Oct. 21, 1986, 100 Stat. 1931, provided that: "This section [amending this section and section 8472 of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 8351 of this title], other than subsection (d) [set out below], and the amendments made by this section shall take effect on January 1, 1987."

## REGULATIONS

Pub. L. 99-509, title VI, §6001(d), Oct. 21, 1986, 100 Stat. 1931, provided that: "The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out subsections (a), (b), and (c) [amending this section, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 8351 of this title] and the amendments made by subsections (a) and (b)."

## SAVINGS PROVISIONS

Pub. L. 106-361, §2(c)(2), Oct. 27, 2000, 114 Stat. 1401, provided that: "Notwithstanding any other provision of this section [amending this section and sections 8439, 8440a, and 8440d of this title and enacting provisions set out as a note under this section], until the amendments made by this section take effect [see Effective Date of 2000 Amendment note above], title 5, United States Code, shall be applied as if this section had not been enacted."

## ELIGIBILITY OF CERTAIN INDIVIDUALS TO PARTICIPATE IN THRIFT SAVINGS PLAN

Pub. L. 100-238, title I, §125, Jan. 8, 1988, 101 Stat. 1756, as amended by Pub. L. 107-347, title II, §209(g)(3), Dec. 17, 2002, 116 Stat. 2932; Pub. L. 110-234, title VII, §7101(b)(6), May 22, 2008, 122 Stat. 1214; Pub. L. 110-246, §4(a), title VII, §7101(b)(6), June 18, 2008, 122 Stat. 1664, 1975, provided that:

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'Executive Director' means the Executive Director under section 8474 of title 5, United States Code; and

"(2) the term 'Thrift Savings Plan' refers to the program under subchapter III of chapter 84 of title 5, United States Code.

"(b) REGULATIONS.—

"(1) IN GENERAL.—The Executive Director shall prescribe regulations relating to participation in the Thrift Savings Plan by an individual described in subsection (c).

"(2) SPECIFIC MATTERS TO BE INCLUDED.—Under the regulations—

"(A) in computing a percentage of basic pay to determine an amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used shall be the same as that used in computing any amount which the individual involved is otherwise required, as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System (as the case may be), to contribute to the Civil Service Retirement and Disability Fund; and

"(B) an employing authority which would not otherwise make contributions to the Thrift Savings Fund shall be allowed, with respect to any individual under subsection (c) who is serving under such authority, and at the sole discretion of such authority, to make any contributions on behalf of such individual which would be permitted or required under the provisions of section 8432(c) of title 5, United States Code, if such authority were the individual's employing agency under such provisions.

"(c) APPLICABILITY.—This section applies with respect to—

"(1) any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System as—

"(A) an individual who has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11) of title 5, United States Code);

"(B) an individual assigned from a Federal agency to a State or local government under subchapter VI of chapter 33 of title 5, United States Code;

"(C) an individual appointed or otherwise assigned to one of the cooperative extension services, as defined by section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103); or

"(D) an individual assigned from a Federal agency to a private sector organization under chapter 37 of title 5, United States Code; and

"(2) any individual who is participating in the Civil Service Retirement System as a result of a provision of law described in section 8347(o).

"(d) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the regulations prescribed under this section shall become effective in accordance with the provisions of such regulations.

"(2) EXCEPTION.—The regulations prescribed under this section shall, with respect to individuals under subsection (c)(1)(C), be effective as of January 1, 1987."

## CONTRIBUTIONS TO THRIFT SAVINGS FUND

Pub. L. 99-509, title VI, §6001(a)(3), Oct. 21, 1986, 100 Stat. 1930, directed that contributions made to Thrift

Savings Fund under 5 U.S.C. 8432(c)(1)(B), (C) and (3) be made as soon as practicable during the 15-day period which began on Apr. 1, 1987.

INAPPLICABILITY OF LIMITATION ON NUMBER OF  
ELECTIONS WITHIN A SIX-MONTH PERIOD

Pub. L. 99-509, title VI, §6001(c), Oct. 21, 1986, 100 Stat. 1931, provided that the requirement that contributions be made for a 6-month period after an election, as provided in 5 U.S.C. 8432(a), did not apply to contributions made pursuant to an election made during the period provided in former 5 U.S.C. 8432(b)(4) or section 206(b) of Pub. L. 99-335, formerly set out as a note under section 8351 of this title; that the first election period prescribed under 5 U.S.C. 8432(b)(1) commence on July 1, 1987; and that each employee or Member who made such an election could make an election under 5 U.S.C. 8432(b)(1) during the election period that began on July 1, 1987.

PLAN FOR DELAYED CONTRIBUTIONS TO THRIFT SAVINGS  
FUND

Pub. L. 99-335, title III, §312, June 6, 1986, 100 Stat. 608, directed Executive Director of Federal Retirement Thrift Investment Board to transmit to Congress, not later than Jan. 1, 1988, a plan to afford Federal employees and Members of Congress who make less than maximum amount of authorized contributions to Thrift Savings Fund in any period an opportunity to contribute to such Fund, in a later period, the excess of such amount over the amount contributed during such period, with plan to include such recommendations for legislation as Executive Director considered appropriate.

**§ 8432a. Payment of lost earnings**

(a)(1) The Executive Director shall prescribe regulations under which an employing agency shall be required to pay to the Thrift Savings Fund amounts representing lost earnings resulting from errors (including errors of omission) made by such agency in carrying out this subchapter, subject to paragraph (2).

(2) If the error involves an employing agency's failure to deduct from basic pay contributions (in whole or in part) on behalf of an individual in accordance with section 8432(a), the regulations shall not provide for the payment of any lost earnings which would be attributable to—

(A) the contributions that the agency failed to deduct from basic pay in accordance with section 8432(a); or

(B) any related contributions under section 8432(c)(2) that the employing agency is not required (by statute or otherwise) to make up.

(b) The regulations—

(1) shall include—

(A) procedures for computing lost earnings; and

(B) procedures under which amounts paid to the Thrift Savings Fund under this section shall be credited to appropriate accounts;

(2) may provide for exceptions from the requirements of this section to the extent that correction of an error is not administratively feasible;

(3) may require an employing agency to reimburse the Thrift Savings Fund for costs incurred by the Thrift Savings Fund in implementing corrections of employing agency errors under this section; and

(4) may include such other provisions as the Executive Director determines appropriate to carry out this section.

(c) Any amounts required to be paid by an employing agency under this section shall be paid from the appropriation or fund available to the employing agency for payment of salaries of the participant's office or establishment. If a participant in the legislative branch is paid by the Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives the amount required to be paid to correct errors relating to the Thrift Savings Fund that otherwise would be paid from the appropriation or fund used to pay the participant.

(Added Pub. L. 101-335, §2(a)(1), July 17, 1990, 104 Stat. 319; amended Pub. L. 104-186, title II, §215(17), Aug. 20, 1996, 110 Stat. 1746.)

**Editorial Notes**

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-186 substituted “Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts” for “Clerk of the House of Representatives, the Clerk may pay from the contingent fund”.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE

Pub. L. 101-335, §2(b), July 17, 1990, 104 Stat. 320, provided that: “The amendments made by this section [enacting this section] shall apply with respect to lost earnings attributable to errors made before, on, or after the date of enactment of this Act [July 17, 1990].”

**§ 8432b. Contributions of persons who perform military service**

(a) This section applies to any employee who—

(1) separates or enters leave-without-pay status in order to perform military service; and

(2) is subsequently restored to or reemployed in a position which is subject to this chapter, pursuant to chapter 43 of title 38.

(b)(1) Each employee to whom this section applies may contribute to the Thrift Savings Fund, in accordance with this subsection, an amount not to exceed the amount described in paragraph (2).

(2) The maximum amount which an employee may contribute under this subsection is equal to—

(A) the contributions under section 8432(a) which would have been made, over the period beginning on date of separation or commencement of leave-without-pay status (as applicable) and ending on the day before the date of restoration or reemployment (as applicable); reduced by

(B) any contributions under section 8432(a) or 8440e actually made by such employee over the period described in subparagraph (A).

(3) Contributions under this subsection—

(A) shall be made at the same time and in the same manner as would any contributions under section 8432(a);

(B) shall be made over the period of time specified by the employee under paragraph (4)(B); and

(C) shall be in addition to any contributions then actually being made under section 8432(a).

(4) The Executive Director shall prescribe the time, form, and manner in which an employee may specify—

(A) the total amount such employee wishes to contribute under this subsection with respect to any particular period referred to in paragraph (2)(B); and

(B) the period of time over which the employee wishes to make contributions under this subsection.

The employing agency may place a maximum limit on the period of time referred to in subparagraph (B), which cannot be shorter than two times the period referred to in paragraph (2)(B) and not longer than four times such period.

(c)(1) If an employee makes contributions under subsection (b), the employing agency shall make contributions to the Thrift Savings Fund on such employee's behalf—

(A) in the same manner as would be required under section 8432(c)(2) if the employee contributions were being made under section 8432(a); and

(B) disregarding any contributions then actually being made under section 8432(a) and any agency contributions relating thereto.

(2) An employee to whom this section applies is entitled to have contributed to the Thrift Savings Fund on such employee's behalf an amount equal to—

(A) the total contributions to which that individual would have been entitled under section 8432(c)(2), based on the amounts contributed by such individual under section 8440e (other than under subsection (d)(2) thereof) with respect to the period referred to in subsection (b)(2)(B), if those amounts had been contributed by such individual under section 8432(a); reduced by

(B) any contributions actually made on such employee's behalf under section 8432(c)(2) with respect to the period referred to in subsection (b)(2)(B).

(d) An employee to whom this section applies is entitled to have contributed to the Thrift Savings Fund on such employee's behalf an amount equal to—

(1) 1 percent of such employee's basic pay (as determined under subsection (e)) for the period referred to in subsection (b)(2)(B); reduced by

(2) any contributions actually made on such employee's behalf under section 8432(c)(1) with respect to the period referred to in subsection (b)(2)(B).

(e) For purposes of any computation under this section, an employee shall, with respect to the period referred to in subsection (b)(2)(B), be considered to have been paid at the rate which would have been payable over such period had such employee remained continuously employed in the position which such employee last held before separating or entering leave-without-pay status to perform military service.

(f)(1) The employing agency may be required to pay lost earnings on contributions made pursuant to subsections (c) and (d). Such earnings,

if required, shall be calculated retroactively to the date the contribution would have been made had the employee not separated or entered leave without pay status to perform military service.

(2) Procedures for calculating and crediting the earnings payable pursuant to paragraph (1) shall be prescribed by the Executive Director.

(g) Amounts paid under subsection (c), (d), or (f) shall be paid—

(1) by the agency to which the employee is restored or in which such employee is reemployed;

(2) from the same source as would be the case under section 8432(e) with respect to sums required under section 8432(c); and

(3) within the time prescribed by the Executive Director.

(h)(1) For purposes of section 8432(g), in the case of an employee to whom this section applies—

(A) a separation from civilian service in order to perform the military service on which the employee's restoration or reemployment rights are based shall be disregarded; and

(B) such employee shall be credited with a period of civilian service equal to the period referred to in subsection (b)(2)(B).

(2)(A) An employee to whom this section applies may elect, for purposes of subsection (d) or (f) of section 8433, as the case may be, to have such employee's separation (described in subsection (a)(1)) treated as if it had never occurred.

(B) An election under this paragraph shall be made within such period of time after restoration or reemployment (as the case may be) and otherwise in such manner as the Executive Director prescribes.

(i) The Executive Director shall prescribe regulations to carry out this section.

(Added Pub. L. 103-353, § 4(a)(1), Oct. 13, 1994, 108 Stat. 3170; amended Pub. L. 106-65, div. A, title VI, § 661(a)(3)(A), (C), Oct. 5, 1999, 113 Stat. 671; Pub. L. 114-92, div. A, title VI, § 632(e)(2), Nov. 25, 2015, 129 Stat. 847; Pub. L. 115-84, § 2(e), Nov. 17, 2017, 131 Stat. 1273.)

## Editorial Notes

### AMENDMENTS

2017—Subsec. (h)(2)(A). Pub. L. 115-84 substituted “subsection (d) or (f) of section 8433” for “section 8433(d), or paragraph (1) or (2) of section 8433(h)”.

2015—Subsec. (c)(2)(B). Pub. L. 114-92 struck out “(including pursuant to an agreement under section 211(d) of title 37)” before “with respect to the period”.

1999—Subsec. (b)(2)(B). Pub. L. 106-65, § 661(a)(3)(A), inserted “or 8440e” after “section 8432(a)”.

Subsec. (c). Pub. L. 106-65, § 661(a)(3)(C), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-84, § 2(g), Nov. 17, 2017, 131 Stat. 1273, provided that: “The amendments made by this section [amending this section and section 8433 of this title] shall take effect on the date on which the regulations prescribed under subsection (f) [section 2(f) of Pub. L. 115-84, set out as a Regulations note under section 8433

of this title] take effect [Sept. 15, 2019; see 84 F.R. 46419].”

#### EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 114-92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114-92, set out as a note under section 8432 of this title.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106-65, as amended, set out as an Effective Date note under section 8440e of this title.

#### EFFECTIVE DATE

Pub. L. 103-353, §4(e), (f), Oct. 13, 1994, 108 Stat. 3172, 3173, provided that:

“(e) EFFECTIVE DATE; APPLICABILITY.—This section [enacting this section and amending sections 8351, 8432, and 8433 of this title] and the amendments made by this section—

“(1) shall take effect on the date of enactment of this Act [Oct. 13, 1994]; and

“(2) shall apply to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of title 38, United States Code, occurs on or after August 2, 1990.

“(f) RULES FOR APPLYING AMENDMENTS TO EMPLOYEES RESTORED OR REEMPLOYED BEFORE EFFECTIVE DATE.—In the case of any employee (described in subsection (e)(2)) who is reemployed or restored (in the circumstances described in section 8432b(a) of title 5, United States Code, as amended by this section) before the date of enactment of this Act [Oct. 13, 1994], the amendments made by this section [enacting this section and amending sections 8351, 8432, and 8433 of this title] shall apply to such employee, in accordance with their terms, subject to the following:

“(1) The employee shall be deemed not to have been reemployed or restored until—

“(A) the date of enactment of this Act, or

“(B) the first day following such employee’s reemployment or restoration on which such employee is or was eligible to make an election relating to contributions to the Thrift Savings Fund, whichever occurs or occurred first.

“(2) If the employee changed agencies during the period between the date of actual reemployment or restoration and the date of enactment of this Act, the employing agency as of such date of enactment shall be considered the reemploying or restoring agency.

“(3)(A) For purposes of any computation under section 8432b of such title, pay shall be determined in accordance with subsection (e) of such section, except that, with respect to the period described in subparagraph (B), actual pay attributable to such period shall be used.

“(B) The period described in this subparagraph is the period beginning on the first day of the first applicable pay period beginning on or after the date of the employee’s actual reemployment or restoration and ending on the day before the date determined under paragraph (1).

“(4) Deem section 8432b(b)(2)(A) of such title to be amended by striking ‘ending on the day before the date of restoration or reemployment (as applicable)’ and inserting ‘ending on the date determined under section 4(f)(1) of the Uniformed Services Employment and Reemployment Rights Act of 1994’.”

#### § 8432c. Contributions of certain persons reemployed after service with international organizations

(a) In this section, the term “covered person” means any person who—

(1) transfers from a position of employment covered by chapter 83 or 84 or subchapter I or II of chapter 8<sup>1</sup> of the Foreign Service Act of 1980 to a position of employment with an international organization pursuant to section 3582;

(2) pursuant to section 3582 elects to retain coverage, rights, and benefits under any system established by law for the retirement of persons during the period of employment with the international organization and currently deposits the necessary deductions in payment for such coverage, rights, and benefits in the system’s fund; and

(3) is reemployed pursuant to section 3582(b) to a position covered by chapter 83 or 84 or subchapter I or II of chapter 8<sup>1</sup> of the Foreign Service Act of 1980 after separation from the international organization.

(b)(1) Each covered person may contribute to the Thrift Savings Fund, in accordance with this subsection, an amount not to exceed the amount described in paragraph (2).

(2) The maximum amount which a covered person may contribute under paragraph (1) is equal to—

(A) the total amount of all contributions under section 8351(b)(2) or 8432(a), as applicable, which the person would have made over the period beginning on the date of transfer of the person (as described in subsection (a)(1)) and ending on the day before the date of reemployment of the person (as described in subsection (a)(3)), minus

(B) the total amount of all contributions, if any, under section 8351(b)(2) or 8432(a), as applicable, actually made by the person over the period described in subparagraph (A).

(3) Contributions under paragraph (1)—

(A) shall be made at the same time and in the same manner as would any contributions under section 8351(b)(2) or 8432(a), as applicable;

(B) shall be made over the period of time specified by the person under paragraph (4)(B); and

(C) shall be in addition to any contributions actually being made by the person during that period under section 8351(b)(2) or 8432(a), as applicable.

(4) The Executive Director shall prescribe the time, form, and manner in which a covered person may specify—

(A) the total amount the person wishes to contribute with respect to any period described in paragraph (2)(A); and

(B) the period of time over which the covered person wishes to make contributions under this subsection.

(c) If a covered person who makes contributions under section 8432(a) makes contributions under subsection (b), the agency employing the person shall make those contributions to the Thrift Savings Fund on the person’s behalf in the same manner as contributions are made for an employee described in section 8432b(a) under sections 8432b(c), 8432b(d), and 8432b(f). Amounts

<sup>1</sup> See References in Text note below.

paid under this subsection shall be paid in the same manner as amounts are paid under section 8432b(g).

(d) For purposes of any computation under this section, a covered person shall, with respect to the period described in subsection (b)(2)(A), be considered to have been paid at the rate which would have been payable over such period had the person remained continuously employed in the position that the person last held before transferring to the international organization.

(e) For purposes of section 8432(g), a covered person shall be credited with a period of civilian service equal to the period beginning on the date of transfer of the person (as described in subsection (a)(1)) and ending on the day before the date of reemployment of the person (as described in subsection (a)(3)).

(f) The Executive Director shall prescribe regulations to carry out this section.

(Added Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title III, §334(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–440.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (a)(1), (3), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071. Subchapters I and II of chapter 8 of the Act probably mean subchapters I and II of chapter 8 of title I of the Act which are classified generally to parts I (§4041 et seq.) and II (§4071 et seq.), respectively, of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title III, §334(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–441, provided that: “The amendment made by subsection (a) [enacting this section] shall apply to persons reemployed on or after the date of enactment of this Act [Nov. 29, 1999].”

#### § 8432d. Qualified Roth contribution program

(a) DEFINITIONS.—For purposes of this section—

(1) the term “qualified Roth contribution program” means a program described in paragraph (1) of section 402A(b) of the Internal Revenue Code of 1986 which meets the requirements of paragraph (2) of such section; and

(2) the terms “designated Roth contribution” and “elective deferral” have the meanings given such terms in section 402A of the Internal Revenue Code of 1986.

(b) AUTHORITY TO ESTABLISH.—The Executive Director shall by regulation provide for the inclusion in the Thrift Savings Plan of a qualified Roth contribution program, under such terms and conditions as the Board may prescribe.

(c) REQUIRED PROVISIONS.—The regulations under subsection (b) shall include—

(1) provisions under which an election to make designated Roth contributions may be made—

(A) by any individual who is eligible to make contributions under section 8351, 8432(a), 8440a, 8440b, 8440c, 8440d, or 8440e; and

(B) by any individual, not described in subparagraph (A), who is otherwise eligible to make elective deferrals under the Thrift Savings Plan;

(2) any provisions which may, as a result of enactment of this section, be necessary in order to clarify the meaning of any reference to an “account” made in section 8432(f), 8433, 8434(d), 8435, 8437, or any other provision of law; and

(3) any other provisions which may be necessary to carry out this section.

(Added Pub. L. 111–31, div. B, title I, §103(a), June 22, 2009, 123 Stat. 1853.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 402A of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 402A of Title 26, Internal Revenue Code.

#### § 8433. Benefits and election of benefits

(a) An employee or Member who separates from Government employment is entitled to the amount of the balance in the employee’s or Member’s account (except for the portion of such amount forfeited under section 8432(g) of this title, if any) as provided in this section.

(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 may make one or more withdrawals of any amount in the same manner as a single payment is made 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 subsection (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 the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.

(5) Withdrawals under this subsection shall be subject to such other limitations or conditions

as the Executive Director may prescribe by regulation.

(d)(1) Subject to paragraph (2) and subsections (a) and (c) of section 8435 of this title, an employee or Member may change an election previously made under this subchapter, except that in the case of an election to receive an annuity, a former employee or Member may not change an election under this section on or after the date on which an annuity contract is purchased to provide for the annuity elected by the former employee or Member.

(2) A former employee or Member may not return a payment that was made pursuant to an election under this section.

(e)(1) 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.

(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.

(3) The Executive Director shall prescribe regulations to carry out this subsection.

(f) Notwithstanding subsection (b), if an employee or Member separates from Government employment, and such employee's or Member's nonforfeitable account balance is 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 an election under section 8432b(h)(2) is made to treat such separation for purposes of this subsection as if it had never occurred.

(g)(1) At any time 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. Before a loan is issued, the Executive Director shall provide in writing the

employee or Member with appropriate information concerning the cost of the loan relative to other sources of financing, as well as the lifetime cost of the loan, including the difference in interest rates between the funds offered by the Thrift Savings Fund, and any other effect of such loan on the employee's or Member's final account balance.

(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)(B) shall be available only for an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member.

(3) Withdrawals under paragraph (1) shall be subject to such other limitations or conditions as the Executive Director may prescribe by regulation.

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

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 544; amended Pub. L. 100-238, title I, §132, Jan. 8, 1988, 101 Stat. 1760; Pub. L. 101-335, §§5(a), 6(a)(2), July 17, 1990, 104 Stat. 321, 322; Pub. L. 102-484, div. D, title XLIV, §4437(a), Oct. 23, 1992, 106 Stat. 2724; Pub. L. 103-226, §9(b), (i)(3)-(7), Mar. 30, 1994, 108 Stat. 119, 121, 122; Pub. L. 103-353, §§4(b), 5(e)(4), Oct. 13, 1994, 108 Stat. 3172, 3174; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §203(a)]]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-374; Pub. L. 106-65, div. A, title VI, §661(a)(4), Oct. 5, 1999, 113 Stat. 672; Pub. L. 108-469, §3(1), Dec. 21, 2004, 118 Stat. 3893; Pub. L. 111-31, div. B, title I, §109, June 22, 2009, 123 Stat. 1856; Pub. L. 115-84, §2(a)-(d), Nov. 17, 2017, 131 Stat. 1272, 1273.)

#### Editorial Notes

##### REFERENCES IN TEXT

Sections 72(p) and 402(c)(8) of the Internal Revenue Code of 1986, referred to in subsecs. (c)(3) and (g)(3), are classified to sections 72(p) and 402(c)(8), respectively, of Title 26, Internal Revenue Code.

##### AMENDMENTS

2017—Subsec. (c)(1). Pub. L. 115-84, §2(a)(1), substituted “may make one or more withdrawals” for “and who has not made a withdrawal under subsection (h)(1)(A) may make one withdrawal” and “in the same

manner as a single payment is made” for “as a single payment”.

Subsec. (c)(5). Pub. L. 115-84, §2(a)(2), added par. (5).

Subsec. (d)(1). Pub. L. 115-84, §2(b)(1), inserted “, except that in the case of an election to receive an annuity, a former employee or Member may not change an election under this section on or after the date on which an annuity contract is purchased to provide for the annuity elected by the former employee or Member” after “this subchapter”.

Subsec. (d)(2). Pub. L. 115-84, §2(b)(2), substituted “return a payment that was made pursuant to an” for “change an” and struck out before period at end “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”.

Subsec. (f). Pub. L. 115-84, §2(c), struck out par. (1) designation before “Notwithstanding”, substituted “this subsection” for “this paragraph”, and struck out par. (2) which read as follows: “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 April 1 of the year following the latest of the year in which—

“(A) the employee, Member, former employee, or former Member becomes 70½ years of age; or

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

Subsec. (h)(2). Pub. L. 115-84, §2(d)(1), (2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “A withdrawal under paragraph (1)(A) shall be available to each eligible participant one time only.”

Subsec. (h)(3). Pub. L. 115-84, §2(d)(2), (3), redesignated par. (4) as (3) and inserted “limitations or” before “conditions”. Former par. (3) redesignated (2).

Subsec. (h)(4), (5). Pub. L. 115-84, §2(d)(2), redesignated pars. (4) and (5) as (3) and (4), respectively.

2009—Subsec. (e). Pub. L. 111-31 designated existing provisions as par. (1) and added pars. (2) and (3).

2004—Subsec. (d)(1). Pub. L. 108-469 substituted “paragraph (2)” for “paragraph (3)”.

1999—Subsecs. (g)(1), (h)(3). Pub. L. 106-65 struck out “under section 8432(a) of this title” after “by the employee or Member”.

1996—Subsec. (b). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(1)]]], added subsec. (b) and struck out former subsec. (b) which read as follows: “Subject to section 8435 of this title, any employee or Member who separates from 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).”

Subsec. (c). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(1)]]], added subsec. (c) and struck out former subsec. (c) which read as follows:

“(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.”

Subsec. (d)(1). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(2)(A)]]], substituted “(3)” for “(3)(A)” after “Subject to paragraph”.

Subsec. (d)(2). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(2)(C)]]], struck out subpar. (A) designation before “A former employee” and struck out subpar. (B) which read as follows: “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).”

Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(2)(B)]]], redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “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.”

Subsec. (d)(3). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(2)(B)]]], redesignated par. (3) as (2).

Subsec. (f)(1). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(3)]]], substituted “less than an amount that the Executive Director prescribes by regulation” for “\$3,500 or less” and substituted a comma for “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”.

Subsec. (f)(2). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(4)]]], in introductory provisions substituted “April 1” for “February 1”, in subpar. (A) substituted “70½” for “65” and inserted “or” after semicolon, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member became subject to this subchapter; or”.

Subsec. (g)(1). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(5)(A)]]], struck out “after December 31, 1987, and” after “At any time”, and inserted at end “Before a loan is issued, the Executive Director shall provide in writing the employee or Member with appropriate information concerning the cost of the loan relative to other sources of financing, as well as the lifetime cost of the loan, including the difference in interest rates between the funds offered by the Thrift Savings Fund, and any other effect of such loan on the employee’s or Member’s final account balance.”

Subsec. (g)(2) to (5). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(5)(B)]]], redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: “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.”

Subsec. (h). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §203(a)(6)]]], added subsec. (h).

1994—Subsec. (b). Pub. L. 103-226, §9(b)(1), amended introductory provisions generally, substituting “Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect—” for “Subject to section 8435 of this title, any employee or Member who separates from Government employment entitled to an immediate an-

nunity under subchapter II of this chapter, any employee or Member who separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title, any employee 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, and any employee or Member who is entitled to receive disability benefits under subchapter V of this chapter is entitled and may elect—”.

Subsec. (b)(4). Pub. L. 103-226, §9(i)(3), substituted “subsection (c)” for “subsection (e)”.

Subsec. (c). Pub. L. 103-226, §9(b)(2), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to permissible elections by employees separating from Government who are entitled to a deferred annuity.

Subsec. (c)(1). Pub. L. 103-226, §9(b)(3), substituted “directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986)” for “or (c)(4) or required under subsection (d) directly to an eligible retirement plan or plans (as defined in section 402(a)(5)(E) of the Internal Revenue Code of 1954)”.

Subsec. (d). Pub. L. 103-353, §4(b)(1), inserted before period at end “, unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this subsection as if it had never occurred”.

Pub. L. 103-226, §9(b)(2), redesignated subsec. (f) as (d) and struck out former subsec. (d) which read as follows: “Subject to section 8435 of this title, any employee or Member who separates from Government employment before becoming entitled to a deferred annuity under subchapter II of this chapter shall transfer the amount of the balance in the employee’s or Member’s account to an eligible retirement plan as provided in subsection (e), unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this subsection as if it had never occurred.”

Subsec. (d)(1). Pub. L. 103-226, §9(i)(4), substituted “(c) of section 8435” for “(d) of section 8435”.

Subsec. (d)(2). Pub. L. 103-226, §9(b)(4), (i)(5), substituted “section 8435(c)” for “section 8435(d)” and struck out “or (c)(2)” after “subsection (b)(2)”.

Subsec. (e). Pub. L. 103-226, §9(b)(2), (i)(6), redesignated subsec. (g) as (e) and substituted “section 8435(c)(2)” for “section 8435(d)(2)”. Former subsec. (e) redesignated (c).

Subsec. (f). Pub. L. 103-226, §9(b)(2), redesignated subsec. (h) as (f). Former subsec. (f) redesignated (d).

Subsec. (f)(1). Pub. L. 103-226, §9(b)(5)(A), (B), redesignated par. (2) as (1), substituted “Notwithstanding subsection (b), if an employee or Member separates from Government employment, and such employee’s or Member’s” for “Notwithstanding subsections (b) and (c), if an employee or Member separates from Government employment under circumstances making such employee or Member eligible to make an election under either of those subsections, and such employee’s or Member’s”, struck out “or (c), as applicable” before period at end, and struck out former par. (1) which read as follows: “Notwithstanding subsection (d), if an employee or Member separates from Government employment before becoming entitled to a deferred annuity under subchapter II, and such employee’s or Member’s nonforfeitable account balance is \$3,500 or less, 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, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in subsection (e), or unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.”

Subsec. (f)(2). Pub. L. 103-226, §9(b)(5)(A), (C), redesignated par. (3) as (2) and substituted “paragraph (1)” for “paragraphs (1) and (2)” before “, benefits under this chapter”. Former par. (2) redesignated (1).

Subsec. (f)(3). Pub. L. 103-226, §9(b)(5)(A), redesignated par. (3) as (2).

Subsec. (g). Pub. L. 103-226, §9(b)(2), redesignated subsec. (i) as (g). Former subsec. (g) redesignated (e).

Subsec. (g)(5). Pub. L. 103-226, §9(i)(7), substituted “section 8435(e)” for “section 8435(f)”.

Subsec. (h). Pub. L. 103-226, §9(b)(2), redesignated subsec. (h) as (f).

Subsec. (h)(1), (2). Pub. L. 103-353, §4(b)(2), inserted before period at end “, or unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred”.

Subsec. (i). Pub. L. 103-226, §9(b)(2), redesignated subsec. (i) as (g).

Subsec. (i)(4). Pub. L. 103-353, §5(e)(4), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1992—Subsec. (b). Pub. L. 102-484 inserted “any employee 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 “chapter 81 of this title,”.

1990—Subsec. (f)(3)(A). Pub. L. 101-335, §5(a)(1), substituted “an annuity contract is purchased to provide for the annuity elected by the former employee or Member” for “an annuity elected by the former employee or Member commences”.

Subsec. (f)(3)(B). Pub. L. 101-335, §5(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “A modification of a date may not be made under paragraph (2) on or after such date and may not specify a date for the commencement of an annuity earlier than 1 month after the date on which the modification is submitted to the Executive Director.”

Subsec. (h). Pub. L. 101-335, §6(a)(2), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “Unless otherwise elected under this section, benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on February 1 of the year following the latest of the year in which—

“(1) the employee, Member, former employee, or former Member becomes 65 years of age;

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

“(3) the employee, Member, former employee, or former Member separates from Government employment.”

1988—Subsec. (i)(3). Pub. L. 100-238 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Loans under this subsection shall be subject to such conditions as the Board may prescribe consistent with section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)). The conditions shall be included in regulations issued by the Executive Director.”

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-84 effective on the date on which the regulations prescribed under subsection (f) (section 2(f) of Pub. L. 115-84, set out as a Regulations note below) take effect, see section 2(g) of Pub. L. 115-84, set out as a note under section 8432b of this title.

### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106-65, as amended, set out as an Effective Date note under section 8440e of this title.

### 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 AMENDMENTS

Amendment by section 4(b) of Pub. L. 103-353 effective Oct. 13, 1994, and applicable to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of Title 38, Veterans' Benefits, occurs on or after Aug. 2, 1990, with special rules for applying amendment to employees restored or reemployed before effective date, see section 4(e), (f) of Pub. L. 103-353, set out as an Effective Date note under section 8432b of this title.

Amendment by section 5(e)(4) of Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38.

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

Pub. L. 101-335, §5(d), July 17, 1990, 104 Stat. 322, provided that: "The amendments made by this section [amending this section and sections 8434, and 8435 of this title] shall be effective as of April 1, 1987."

Amendment by section 6(a)(2) 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.

## REGULATIONS

Pub. L. 115-84, §2(f), Nov. 17, 2017, 131 Stat. 1273, provided that: "As soon as is practicable, as determined by the Executive Director of the Federal Retirement Thrift Investment Board, but not later than 2 years after the date of enactment of this Act [Nov. 17, 2017], the Executive Director shall prescribe such regulations as are necessary to carry out the amendments made by this section [amending this section and section 8432b of this title]."

[Regulations referred to by section 2(f) of Pub. L. 115-84, set out above, effective Sept. 15, 2019; see section 2(g) of Pub. L. 115-84, set out as an Effective Date of 2017 Amendment note under section 8432b of this title.]

Pub. L. 101-335, §6(b)(4), July 17, 1990, 104 Stat. 324, provided that: "The Executive Director (as appointed under section 8474(a) of title 5, United States Code) shall prescribe regulations under which the purposes of the amendments made by this section [amending this section and sections 8351, 8401, 8435, 8440a, and 8440b of this title] shall be carried out with respect to any individuals participating in the Thrift Savings Plan who would not otherwise be affected by this section."

## INVALIDITY OF CERTAIN PRIOR ELECTIONS

Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §203(b)]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-376, provided that: "Any election made under section 8433(b)(2) of title 5, United States Code (as in effect before the effective date of this title [Sept. 30, 1996]), with respect to an annuity which has not commenced before the implementation date of this title as provided by regulation by the Executive Director in accordance with section 207 of this title [5 U.S.C. 5545a note], shall be invalid."

**§ 8434. Annuities: methods of payment; election; purchase**

(a)(1) The Board shall prescribe methods of payment of annuities under this subchapter.

(2) The methods of payment prescribed under paragraph (1) shall include, but not be limited to—

(A) a method which provides for the payment of a monthly annuity only to an annuitant during the life of the annuitant;

(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 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;

(C) a method described in subparagraph (A) which provides for automatic adjustments in the amount of the annuity payable so long as the amount of the annuity payable in any one year shall not be less than the amount payable in the previous year;

(D) a method described in subparagraph (B) which provides for automatic adjustments in the amount of the annuity payable so long as the amount of the annuity payable in any one year shall not be less than the amount payable in the previous year; and

(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 of the annuitant, or (II) has an insurable interest in the annuitant; and

(ii) to the one of them who survives the other of them for the life of the survivor.

(b) Subject to section 8435(b) of this title, under such regulations as the Executive Director shall prescribe, an employee, Member, former employee, or former Member who elects under section 8433 of this title to receive an annuity under this subchapter shall elect, on or before the date on which an annuity contract is purchased to provide for that annuity, one of the methods of payment prescribed under subsection (a).

(c) Notwithstanding the elimination of a method of payment by the Board, an employee, Member, former employee, or former Member may elect the eliminated method if the elimination of such method becomes effective less than 5 years before the date on which that individual's annuity commences.

(d)(1) Not earlier than 90 days (or such shorter period as the Executive Director may by regulation prescribe) before an annuity is to commence under this subchapter, the Executive Director shall expend the balance in the annuitant's account to purchase an annuity contract from any entity which, in the normal course of its business, sells and provides annuities.

(2) The Executive Director shall assure, by contract entered into with each entity from which an annuity contract is purchased under paragraph (1), that the annuity shall be provided in accordance with the provisions of this subchapter and subchapter VII of this chapter.

(3) An annuity contract purchased under paragraph (1) shall include such terms and conditions as the Executive Director requires for the protection of the annuitant.

(4) The Executive Director shall require, from each entity from which an annuity contract is purchased under paragraph (1), a bond or proof of financial responsibility sufficient to protect the annuitant.

(e)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, on, or with respect to, any amount paid to purchase an annuity contract under this section.

(2) Paragraph (1) shall not be construed to exempt any company or other entity issuing an annuity contract under this section from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income 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.)

#### Editorial Notes

##### 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”.

#### Statutory Notes and Related Subsidiaries

##### 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.)

### Editorial Notes

#### 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 employee 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).

#### Statutory Notes and Related Subsidiaries

##### 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.)

### Editorial Notes

#### 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.

2009—Subsec. (e)(3). Pub. L. 111-31 which directed substitution of “the enforcement of an order for restitution under section 3663A of title 18, forfeiture under section 8432(g)(5) of this title, or an obligation of the Executive Director to make a payment to another person under section 8467 of this title” for “or relating to the enforcement of a judgment for the physically, sexually, or emotionally abusing a child as provided under section 8467(a)” in the first sentence, was executed by making the substitution for “or relating to the enforcement of a judgment for physically, sexually, or emotionally abusing a child as provided under section 8467(a)”, to reflect the probable intent of Congress.

1994—Subsec. (c)(5). Pub. L. 103-226 substituted “section 8433(g)” for “section 8433(i)”.

Subsec. (e)(3). Pub. L. 103-358 substituted “or relating to the enforcement of a judgment for physically, sexually, or emotionally abusing a child as provided under section 8467(a).” for period at end of first sentence.

1988—Subsec. (d). Pub. L. 100-238, §117(a)(1), struck out “attributable to sums contributed to such Fund under section 8432(c) of this title” after “such Fund”.

Subsec. (e)(1). Pub. L. 100-238, §117(a)(2), inserted “subsection (d) and” after “Subject to”.

Subsec. (e)(3). Pub. L. 100-238, §116, inserted at end “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).”

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-397 applicable with respect to claims made on or after Dec. 21, 2018, see section 111(c) of Pub. L. 115-397, set out as a note under section 1415 of Title 2, The Congress.

#### EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-358 effective Oct. 14, 1994, and applicable with respect to any decree, order, or other legal process, or notice of agreement received by Office of Personnel Management or Executive Director of Federal Retirement Thrift Investment Board on or after Oct. 14, 1994, see section 3 of Pub. L. 103-358, set out as a note under section 8345 of this title.

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 1988 AMENDMENT

Pub. L. 100-238, title I, §117(b), Jan. 8, 1988, 101 Stat. 1751, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act [Jan. 8, 1988].”

#### DISPOSITION OF AMOUNTS

Pub. L. 112-267, §2, Jan. 14, 2013, 126 Stat. 2440, provided that: “Any potential revenue gain attributable to the enactment of this Act [amending this section], as determined by the Director of the Congressional Budget Office—

“(1) shall be deposited in the general fund of the Treasury of the United States; and

“(2) shall be used solely for purposes of deficit reduction.”

### § 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)(1)(A);

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

(6) the term “net worth” means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves;

(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 or net worth 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, net worth 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 \$50,000,000, 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. 78o) 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;

(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 purposes 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;

(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);

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

(F) a service that enables participants to invest in mutual funds, if the Board authorizes the mutual fund window under paragraph (5).

(2)(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 United States equity markets.

(B) The Common Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index selected under subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Common 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.

(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 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.

(5)(A) The Board may authorize the addition of a mutual fund window under the Thrift Savings Plan if the Board determines that such addition would be in the best interests of participants.

(B) The Board shall ensure that any expenses charged for use of the mutual fund window are borne solely by the participants who use such window.

(C) The Board may establish such other terms and conditions for the mutual fund window as the Board considers appropriate to protect the interests of participants, including requirements relating to risk disclosure.

(D) The Board shall consult with the Employee Thrift Advisory Council (established under section 8473) before authorizing the addition of a mutual fund window or establishing a service that enables participants to invest in mutual funds.

(c)(1) The Executive Director shall invest the sums available in the Thrift Savings Fund for investment as provided in elections made under subsection (d).

(2) If an election has not been made with respect to any sums available for investment in the Thrift Savings Fund, the Executive Director shall invest such sums in an age-appropriate target date asset allocation investment fund, as determined by the Executive Director. Such investment fund shall consist of any of the funds described in subsection (b).

(d)(1) At least twice each year, an employee or Member (or former employee or Member) may elect the investment funds and options referred to in subsection (b) into which the sums in the Thrift Savings Fund credited to such individual's account are to be invested or reinvested.

(2) An election may be made under paragraph (1) only in accordance with regulations prescribed by the Executive Director and within such period as the Executive Director shall provide in such regulations.

(e)(1) The Secretary of the Treasury is authorized to issue special interest-bearing obligations of the United States for purchase by the Thrift Savings Fund for the Government Securities Investment Fund.

(2)(A) Obligations issued for the purpose of this subsection shall have maturities fixed with due regard to the needs of such Fund as determined by the Executive Director, and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the

end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month.

(B) Any average market yield computed under subparagraph (A) which is not a multiple of one-eighth of 1 percent, shall be rounded to the nearest multiple of one-eighth of 1 percent.

(f) The Board, other Government agencies, the Executive Director, an employee, a Member, a former employee, and a former Member may not exercise voting rights associated with the ownership of securities by the Thrift Savings Fund.

(g)(1) Notwithstanding subsection (e) of this section, the Secretary of the Treasury may suspend the issuance of additional amounts of obligations of the United States, if such issuances could not be made without causing the public debt of the United States to exceed the public debt limit, as determined by the Secretary of the Treasury.

(2) Any issuances of obligations to the Government Securities Investment Fund which, solely by reason of the public debt limit are not issued, shall be issued under subsection (e) by the Secretary of the Treasury as soon as such issuances can be issued without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Government Securities Investment Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (e)(2) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of obligations of the United States by the Government Securities Investment Fund will replicate the obligations that would then be held by the Government Securities Investment Fund under the procedure set forth in paragraph (5), if the suspension of issuances under paragraph (1) of this subsection had not occurred.

(4) On the first business day after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Government Securities Investment Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount equal to the excess of the net amount of interest that would have been earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period if—

(A) amounts in the Government Securities Investment Fund that were available for investment in obligations of the United States and were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested under the procedure set forth in paragraph (5), over

(B) the net amount of interest actually earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period.

(5) On each business day during the debt limit suspension period, the Executive Director shall notify the Secretary of the Treasury of the

amounts, by maturity, that would have been invested or redeemed each day had the debt issuance suspension period not occurred.

(6) For purposes of this subsection and subsection (h) of this section—

(A) the term “public debt limit” means the limitation imposed by section 3101(b) of title 31; and

(B) the term “debt issuance suspension period” means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(h)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Thrift Savings Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (g) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than 30 days after the first business day after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Executive Director.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (e) of this section, the Secretary shall immediately notify Congress and the Executive Director of the determination. The notification shall be made in writing.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 551; amended Pub. L. 100-43, §2, May 22, 1987, 101 Stat. 315; Pub. L. 100-366, §2(a), July 13, 1988, 102 Stat. 826; Pub. L. 101-335, §3(a), July 17, 1990, 104 Stat. 320; Pub. L. 102-378, §2(68), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title I, §102]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372; Pub. L. 104-316, title I, §103(i), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 111-31, div. B, title I, §104, June 22, 2009, 123 Stat. 1854; Pub. L. 113-255, §2(a), Dec. 18, 2014, 128 Stat. 2920; Pub. L. 114-92, div. A, title VI, §632(d), Nov. 25, 2015, 129 Stat. 847.)

## Editorial Notes

### AMENDMENTS

2015—Subsec. (c)(2). Pub. L. 114-92 substituted “If an” for “(A) Consistent with the requirements of subparagraph (B), if an” and struck out subpar. (B) which read as follows: “If an election has not been made by an eligible member under section 8440e with respect to any sums available for investment in such member’s Thrift Savings Fund account, the Executive Director shall invest such sums in the Government Securities Investment Fund.”

2014—Subsec. (c)(2). Pub. L. 113-255 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “If an election has not been made with respect to any sums in the Thrift Savings Fund available for investment, the Executive Director shall invest such sums in the Government Securities Investment Fund.”

2009—Subsec. (b)(1)(F). Pub. L. 111-31, §104(a), added subpar. (F).

Subsec. (b)(5). Pub. L. 111-31, §104(b), added par. (5).

Subsec. (d)(1). Pub. L. 111-31, §104(c), inserted “and options” after “investment funds”.

1996—Subsec. (a). Pub. L. 104-208, §101(f) [title VI, §659 [title I, §102(1)]], added par. (5), redesignated former

pars. (5) to (8) as (6) to (9), respectively, in par. (9) substituted “paragraph (8)(D)” for “paragraph (7)(D)” in two places, and added par. (10).

Subsec. (b). Pub. L. 104-208, §101(f) [title VI, §659 [title I, §102(2)]], in par. (1) added subpars. (D) and (E) and added pars. (3) and (4).

Subsec. (h)(1). Pub. L. 104-316 struck out “and the Comptroller General of the United States” before period at end.

1992—Subsec. (a)(7)(B). Pub. L. 102-378 substituted “Deposit” for “Savings and Loan”.

1990—Subsec. (b)(1)(A). Pub. L. 101-335, §3(a)(2), substituted “subsection (e)” for “subsection (f)”.

Subsec. (c)(1). Pub. L. 101-335, §3(a)(3), substituted “The” for “Subject to subsection (e), the”.

Subsec. (d)(1). Pub. L. 101-335, §3(a)(4), struck out “and not subject to subsection (e)” after “individual’s account”.

Subsec. (e). Pub. L. 101-335, §3(a)(1), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to minimum percentages to be invested in Government Securities Investment Fund and limitations on reinvestment of sums invested in Government Securities Investment Fund prior to years 1992 and 1997.

Subsec. (f). Pub. L. 101-335, §3(a)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 101-335, §3(a)(1), (5), (6), redesignated subsec. (h) as (g) and substituted “subsection (e)” for “subsection (f)” in pars. (1) and (2), “subsection (e)(2)” for “subsection (f)(2)” in par. (3), and “subsection (h)” for “subsection (i)” in par. (6). Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 101-335, §3(a)(1), (7), redesignated subsec. (i) as (h) and substituted “subsection (g)” for “subsection (h)” in par. (1) and “subsection (e)” for “subsection (f)” in par. (2). Former subsec. (h) redesignated (g).

1988—Subsec. (e)(3)(A). Pub. L. 100-366 struck out “and the earnings attributable to the investment of such sums” after “paragraph (1)”.

1987—Subsecs. (h), (i). Pub. L. 100-43 added subsecs. (h) and (i).

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION

Amendment by Pub. L. 114-92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114-92, set out as a note under section 8432 of this title.

### EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-255, §2(e), Dec. 18, 2014, 128 Stat. 2920, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 8439 of this title] shall—

“(1) take effect on the date that the Executive Director issues guidance under subsection (d) [guidance published Aug. 28, 2015, effective Sept. 5, 2015, see section 2(d) of Pub. L. 113-255, set out as a Guidance note below]; and

“(2) apply to individuals enrolled in the Thrift Savings Plan on or after such date.”

### EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(f) [title VI, §659 [title I, §104]] provided that: “This title [title I (§§101-104) of section 659 of section 101(f) of Pub. L. 104-208, amending this section and section 8439 of this title and enacting provisions set out as a note under section 8401 of this title] shall take effect on the date of enactment of this Act [Sept. 30, 1996], and the Funds established under this title shall be offered for investment at the earliest practicable election period (described in section 8432(b) of title 5, United States Code) as determined by the Executive Director in regulations.”

### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title

beginning after July 17, 1990, or as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-366, §2(b), July 13, 1988, 102 Stat. 826, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to earnings attributable to contributions made to the Thrift Savings Fund on or after April 1, 1987.”

#### GUIDANCE

Pub. L. 113-255, §2(d), Dec. 18, 2014, 128 Stat. 2920, provided that: “Not later than 9 months after the date of enactment of this Act [Dec. 18, 2014], the Executive Director (as that term is defined under section 8401(13) of title 5, United States Code) shall develop and issue guidance implementing the requirements of this Act [see section 1 of Pub. L. 113-255, set out as a Short Title of 2014 Amendment note under section 101 of this title].”

[Guidance issued in the form of a final rule published Aug. 28, 2015, effective Sept. 5, 2015, see 80 F.R. 52173.]

#### REMOVAL OF INVESTMENT RESTRICTIONS

Pub. L. 101-335, §3(b)(4), July 17, 1990, 104 Stat. 320, provided that: “Any other provision of law, in effect on the date of enactment of this Act [July 17, 1990], which provides that any amounts contributed to the Thrift Savings Fund, or earnings thereon, may be invested or reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of title 5, United States Code, shall cease to be effective.”

### § 8439. Accounting and information

(a)(1) The Executive Director shall establish and maintain an account for each individual who makes contributions or for whom contributions are made under section 8432 of this title or who makes contributions to the Thrift Savings Fund.

(2) The balance in an individual's account at any time is the excess of—

(A) the sum of—

(i) all contributions made to the Thrift Savings Fund by the individual;

(ii) all contributions made to such Fund for the benefit of the individual; and

(iii) the total amount of the allocations made to and reductions made in the account pursuant to paragraph (3), over

(B) the amounts paid out of the Thrift Savings Fund with respect to such individual under this subchapter.

(3) Pursuant to regulations prescribed by the Executive Director, the Executive Director shall allocate to each account an amount equal to a pro rata share of the net earnings and net losses from each investment of sums in the Thrift Savings Fund attributable to sums credited to such account, reduced by an appropriate share of the administrative expenses paid out of the net earnings under section 8437(d) of this title, as determined by the Executive Director.

(b)(1) For the purposes of this subsection, the term “qualified public accountant” shall have the same meaning as provided in section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(D)).

(2) The Executive Director shall annually engage, on behalf of all individuals for whom an account is maintained, an independent qualified

public accountant, who shall conduct an examination of all accounts and other books and records maintained in the administration of this subchapter and subchapter VII as the public accountant considers necessary to enable the public accountant to make the determination required by paragraph (3). The examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the accounts, books, and records as the public accountant considers necessary.

(3) The public accountant conducting an examination under paragraph (2) shall determine whether the accounts, books, and records referred to in such paragraph have been maintained in conformity with generally accepted accounting principles applied on a basis consistent with the manner in which such principles were applied during the examination conducted under such paragraph during the preceding year. The public accountant shall transmit to the Board a report on his examination, including his determination under this paragraph.

(4) In making a determination under paragraph (3), a public accountant may rely on the correctness of any actuarial matter certified by an enrolled actuary if the public accountant states his reliance in the report transmitted to the Board under such paragraph.

(c)(1) The Board shall prescribe regulations under which each individual for whom an account is maintained shall be furnished with—

(A) a periodic statement relating to the individual's account; and

(B) a summary description of the investment options under section 8438 of this title covering, and an evaluation of, each such option the 5-year period preceding the date as of which such evaluation is made.

(2) Information under this subsection shall be provided on a regular basis, and in a manner designed to facilitate informed decisionmaking with respect to elections under sections 8432 and 8438 of this title. Nothing in this paragraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence.

(d)(1) Each employee, Member, former employee, or former Member who elects to invest in any investment fund or option under this chapter, other than the Government Securities Investment Fund, 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 any such fund or option 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.

(2) Prior to enrollment in the Thrift Savings Fund, or as soon as practicable thereafter, an individual who is automatically enrolled pursuant to section 8432(b)(2) shall receive the risk acknowledgment information described under paragraph (1).

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 555; amended Pub. L. 104-208, div.

A, title I, § 101(f) [title VI, § 659 [title I, § 103]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-373; Pub. L. 104-316, title I, § 103(j), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 106-65, div. A, title VI, § 661(a)(5), Oct. 5, 1999, 113 Stat. 672; Pub. L. 106-361, § 2(b)(4), (5), Oct. 27, 2000, 114 Stat. 1401; Pub. L. 108-469, § 1(d)(3), Dec. 21, 2004, 118 Stat. 3892; Pub. L. 111-31, div. B, title I, § 106(a), June 22, 2009, 123 Stat. 1855; Pub. L. 113-255, § 2(b), Dec. 18, 2014, 128 Stat. 2920.)

### Editorial Notes

#### AMENDMENTS

2014—Subsec. (d). Pub. L. 113-255 designated existing provisions as par. (1) and added par. (2).

2009—Subsec. (d). Pub. L. 111-31, § 106(a)(2), substituted “any such fund or option” for “either such Fund”.

Pub. L. 111-31, § 106(a)(1), which directed substitution of “any investment fund or option under this chapter, other than the Government Securities Investment Fund,” for “the matter after ‘who elects to invest in’ and before ‘shall sign an acknowledgment’”, was executed by making the substitution for “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”, before “shall sign an acknowledgment”, to reflect the probable intent of Congress.

2004—Subsec. (c)(2). Pub. L. 108-469 substituted “on a regular basis” for “at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title”.

2000—Subsec. (a)(1). Pub. L. 106-361, § 2(b)(4), inserted “who makes contributions or” after “for each individual” and substituted “section 8432” for “section 8432(c)(1)”.

Subsec. (c)(2). Pub. L. 106-361, § 2(b)(5), inserted at end “Nothing in this paragraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence.”

1999—Subsec. (a)(1). Pub. L. 106-65, § 661(a)(5)(A), in so far as it directed amendment of par. (1) by striking out “under section 8432(c)(1) of this title”, could not be executed because the words “under section 8432(c)(1) of this title” did not appear subsequent to amendment by Pub. L. 106-361, § 2(b)(4). See 2000 Amendment note above.

Pub. L. 106-65, § 661(a)(5)(A), struck out “under section 8351 of this title” after “Thrift Savings Fund”.

Subsec. (a)(2)(A)(i). Pub. L. 106-65, § 661(a)(5)(B), struck out “under section 8432(a) or 8351 of this title” after “individual”.

Subsec. (a)(2)(A)(ii). Pub. L. 106-65, § 661(a)(5)(C), struck out “under section 8432(c) of this title” after “individual”.

1996—Subsec. (b)(3). Pub. L. 104-316 struck out “and the Comptroller General of the United States” after “to the Board”.

Subsec. (d). Pub. L. 104-208 substituted “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),” for “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),”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-255 effective on the date that the Executive Director issues guidance under sec-

tion 2(d) Pub. L. 113-255, set out as a Guidance note under section 8438 of this title [guidance published Aug. 28, 2015, effective Sept. 5, 2015], and applicable to individuals enrolled in the Thrift Savings Plan on or after such date, see section 2(e) of Pub. L. 113-255, set out as a note under section 8438 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-361 effective at the earliest practicable date after Sept. 30, 2000, as determined by the Executive Director in regulations, see section 2(c)(1) of Pub. L. 106-361, set out as a note under section 8432 of this title.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106-65, as amended, set out as an Effective Date note under section 8440e of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, with provisions for certain funds to be offered for investment at earliest practicable election period, see section 101(f) [title VI, § 659 [title I, § 104]] of Pub. L. 104-208, set out as a note under section 8438 of this title.

#### REPORTING REQUIREMENTS

Pub. L. 111-31, div. B, title I, § 105, June 22, 2009, 123 Stat. 1855, provided that:

“(a) ANNUAL REPORT.—The Board shall, not later than June 30 of each year, submit to Congress an annual report on the operations of the Thrift Savings Plan. Such report shall include, for the prior calendar year, information on the number of participants as of the last day of such prior calendar year, the median balance in participants’ accounts as of such last day, demographic information on participants, the percentage allocation of amounts among investment funds or options, the status of the development and implementation of the mutual fund window, the diversity demographics of any company, investment adviser, or other entity retained to invest and manage the assets of the Thrift Savings Fund, and such other information as the Board considers appropriate. A copy of each annual report under this subsection shall be made available to the public through an Internet website.

“(b) REPORTING OF FEES AND OTHER INFORMATION.—

“(1) IN GENERAL.—The Board shall include in the periodic statements provided to participants under section 8439(c) of title 5, United States Code, the amount of the investment management fees, administrative expenses, and any other fees or expenses paid with respect to each investment fund and option under the Thrift Savings Plan. Any such statement shall also provide a statement notifying participants as to how they may access the annual report described in subsection (a), as well as any other information concerning the Thrift Savings Plan that might be useful.

“(2) USE OF ESTIMATES.—For purposes of providing the information required under this subsection, the Board may provide a reasonable and representative estimate of any fees or expenses described in paragraph (1) and shall indicate any such estimate as being such an estimate. Any such estimate shall be based on the previous year’s experience.

“(c) DEFINITIONS.—For purposes of this section—

“(1) the term ‘Board’ has the meaning given such term by 8401(5) of title 5, United States Code;

“(2) the term ‘participant’ has the meaning given such term by section 8471(3) of title 5, United States Code; and

“(3) the term ‘account’ means an account established under section 8439 of title 5, United States Code.”

### § 8440. Tax treatment of the Thrift Savings Fund

(a) For purposes of the Internal Revenue Code of 1986—

(1) the Thrift Savings Fund shall be treated as a trust described in section 401(a) of such Code which is exempt from taxation under section 501(a) of such Code;

(2) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(3) subject to section 401(k)(4)(B) of such Code and any dollar limitation on the application of section 402(a)(8) of such Code, contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of this subchapter and section 8351 of this title, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(b) **NONDISCRIMINATION REQUIREMENTS.**—Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the non-discrimination requirements applicable to arrangements described in section 401(k) of title 26, United States Code, or to matching contributions (as described in section 401(m) of title 26, United States Code), so long as it meets the requirements of this section.

(c) Subsection (a) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term "wages" for the purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1986.

(Added Pub. L. 99-335, title I, §101(a), June 6, 1986, 100 Stat. 557; amended Pub. L. 100-202, §101(m) [title VI, §624(b)], Dec. 22, 1987, 101 Stat. 1329-390, 1329-430; Pub. L. 100-647, title I, §101A(m)(2), Nov. 10, 1988, 102 Stat. 3483; Pub. L. 102-378, §2(69), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103-353, §5(e)(5), Oct. 13, 1994, 108 Stat. 3174.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsections (a) and (c), is classified generally to Title 26, Internal Revenue Code.

Section 209 of the Social Security Act, referred to in subsection (c), is classified to section 409 of Title 42, The Public Health and Welfare.

##### AMENDMENTS

1994—Subsecs. (a), (c). Pub. L. 103-353 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1992—Subsec. (a)(3). Pub. L. 102-378 inserted "section 401(k)(4)(B) of such Code and" after "subject to".

1988—Subsec. (a)(3). Pub. L. 100-647, which directed the insertion of ", 401(k)(4)(B) of such Code," after "subsection (b)", could not be executed because of previous amendment by Pub. L. 100-202, §101(m) [title VI, §624(b)(1)] which struck out "subsection (b)". See 1987 Amendment note below.

1987—Subsec. (a)(3). Pub. L. 100-202, §101(m) [title VI, §624(b)(1)], struck out "the provisions of subsection (b) and" after "subject to".

Subsec. (b). Pub. L. 100-202, §101(m) [title VI, §624(b)(2)], added subsec. (b) and struck out former subsec. (b) which consisted of pars. (1) and (2) providing

that subsec. (a)(3) not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements applicable to arrangements described in section 401(k) of title 26 and to matching contributions.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

##### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective Nov. 10, 1988, see section 9(b)(8) of Pub. L. 102-378, set out as a note under section 6303 of this title.

##### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of Title 26, Internal Revenue Code.

#### § 8440a. Justices and judges

(a)(1) A justice or judge of the United States as defined by section 451 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund. Basic pay does not include an annuity or salary received by a justice or judge who has retired under section 371(a) or (b) or section 372(a) of title 28, United States Code.

(2) An election may be made under paragraph (1) as provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to justices and judges making contributions to the Thrift Savings Fund.

(2) The amount contributed by a justice or judge for any pay period shall not exceed the maximum percentage of such justice's or judge's basic pay for such pay period allowable under section 8440f.

(3) No contributions shall be made for the benefit of a justice or judge under section 8432(c) of this title.

(4) Section 8433(b) of this title applies with respect to elections available to any justice or judge who retires under section 371(a) or (b) or section 372(a) of title 28. Retirement under section 371(a) or (b) or section 372(a) of title 28 is a separation from service for the purposes of subchapters III and VII of chapter 84 of this title.

(5) Section 8433(b) of this title applies to any justice or judge who resigns without having met the age and service requirements set forth in section 371(c) of title 28.

(6) The provisions of section 8351(b)(5) of this title shall govern the rights of spouses of justices or judges contributing to the Thrift Savings Fund under this section.

(7) Notwithstanding paragraphs (4) and (5), if any justice or judge retires under subsection (a) or (b) of section 371 or section 372(a) of title 28, 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 nonforfeit-

able account balance is 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.

(Added Pub. L. 100-654, title IV, § 401(a), Nov. 14, 1988, 102 Stat. 3847; amended Pub. L. 101-335, §§ 3(b)(2), 6(b)(2), July 17, 1990, 104 Stat. 320, 323; Pub. L. 102-378, § 2(70), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103-226, § 9(e), (i)(17), Mar. 30, 1994, 108 Stat. 120, 122; Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 205(a)]]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-377; Pub. L. 106-361, § 2(b)(6), Oct. 27, 2000, 114 Stat. 1401; Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 138(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, § 1(d)(4), Dec. 21, 2004, 118 Stat. 3892.)

### Editorial Notes

#### CODIFICATION

Another section 8440a was renumbered section 8440b of this title.

#### AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-469 substituted “as” for “only during a period”.

2000—Subsec. (a)(2). Pub. L. 106-361 substituted “this chapter” for “chapter 84 of this title: *Provided, however*, That a justice or judge may make the first such election within 60 days of the effective date of this section”.

Subsec. (b)(2). Pub. L. 106-554 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The amount contributed by a justice or judge shall not exceed 5 percent of basic pay.”

1996—Subsec. (b)(7). Pub. L. 104-208 substituted “less than an amount that the Executive Director prescribes by regulation” for “\$3,500 or less” and struck out “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)” before period at end.

1994—Subsec. (b)(5). Pub. L. 103-226, § 9(e)(1), substituted “Section 8433(b)” for “Section 8433(d)”.

Subsec. (b)(6). Pub. L. 103-226, § 9(i)(17), substituted “section 8351(b)(5)” for “section 8351(b)(7)”.

Subsec. (b)(7), (8). Pub. L. 103-226, § 9(e)(2), added par. (7) and struck out former pars. (7) and (8) which read as follows:

“(7) Notwithstanding paragraph (5), if any justice or judge who elects to make contributions to the Thrift Savings Fund under subsection (a) resigns without having met the age and service requirements set forth in section 371(c) of title 28, and such justice’s or judge’s nonforfeitable account balance is \$3,500 or less, 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, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).

“(8) Notwithstanding paragraph (4), if any justice or judge retires under subsection (a) or (b) of section 371 or section 372(a) of title 28, and such justice’s or judge’s nonforfeitable account balance is \$3,500 or less, 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).”

1992—Subsec. (b)(1). Pub. L. 102-378 substituted “this subchapter and subchapter VII” for “subchapters III and VII of chapter 84 of this title”.

1990—Subsec. (b)(6). Pub. L. 101-335, § 3(b)(2), redesignated par. (7) as (6) and struck out former par. (6) which

read as follows: “Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.”

Subsec. (b)(7), (8). Pub. L. 101-335, § 6(b)(2), added pars. (7) and (8). Former par. (7) redesignated (6).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-361 effective at the earliest practicable date after Sept. 30, 2000, as determined by the Executive Director in regulations, see section 2(c)(1) of Pub. L. 106-361, set out as a note under section 8432 of this title.

#### 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 1990 AMENDMENT

Amendment by section 3(b)(2) 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 as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

Amendment by section 6(b)(2) 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.

### § 8440b. Bankruptcy judges and magistrate judges

(a)(1) A bankruptcy judge or magistrate judge who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988 may elect to contribute an amount of such individual’s basic pay to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) as provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to bankruptcy judges and magistrate judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) The amount contributed by a bankruptcy judge or magistrate judge for any pay period shall not exceed the maximum percentage of such bankruptcy judge’s or magistrate judge’s basic pay for such pay period allowable under section 8440f.

(3) No contributions shall be made under section 8432(c) of this title for the benefit of a bankruptcy judge or magistrate judge making contributions under subsection (a) of this section.

(4)(A) Section 8433(b) of this title applies to a bankruptcy judge or magistrate judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an immediate annuity under section 377 of title 28 (including a disability annuity under subsection (d) of such section) or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(B) Section 8433(b) of this title applies to any bankruptcy judge or magistrate judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(C) Section 8433(b) of this title applies to any bankruptcy judge or magistrate judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(5) With respect to bankruptcy judges and magistrate judges to whom this section applies, any of the actions described under paragraph (4)(A), (B), or (C) shall be considered a separation from service for purposes of this subchapter and subchapter VII.

(6) For purposes of this section, the terms "retirement" and "retire" include removal from office under section 377(d) of title 28 on the sole ground of mental or physical disability.

(7) In the case of a bankruptcy judge or magistrate judge 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.

(8) Notwithstanding paragraph (4), if any bankruptcy judge or magistrate judge retires under circumstances making such bankruptcy judge or magistrate judge eligible to make an election under subsection (b) of section 8433, and such bankruptcy judge's or magistrate judge's nonforfeitable account balance is 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.

(Added Pub. L. 100-659, §7(a), Nov. 15, 1988, 102 Stat. 3919, §8440a; renumbered §8440b and amended Pub. L. 101-335, §§3(b)(3), 6(b)(3), 9(a), July 17, 1990, 104 Stat. 320, 324, 326; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103-226, §9(f), Mar. 30, 1994, 108 Stat. 120; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §205(b)]]], Sept. 30, 1996, 110 Stat. 3009-314,

3009-372, 3009-377; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, §§1(d)(5), 3(2), Dec. 21, 2004, 118 Stat. 3892, 3893.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsecs. (a)(1) and (b)(4), is section 2(c) of Pub. L. 100-659, which is set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

#### CODIFICATION

Another section 8440b was renumbered section 8440c of this title.

#### AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-469, §1(d)(5), substituted "as" for "only during a period".

Subsec. (b)(2). Pub. L. 108-469, §3(2)(A), substituted "bankruptcy judge's or magistrate judge's" for "bankruptcy judge's or magistrate's".

Subsec. (b)(4)(B). Pub. L. 108-469, §3(2)(B), substituted "bankruptcy judge or magistrate judge" for "bankruptcy judge or magistrate".

Subsec. (b)(8). Pub. L. 108-469, §3(2)(B), substituted "bankruptcy judge or magistrate judge" for "bankruptcy judge or magistrate" in two places.

2000—Subsec. (b)(2). Pub. L. 106-554 substituted "the maximum percentage of such bankruptcy judge's or magistrate's basic pay for such pay period allowable under section 8440f." for "5 percent of basic pay for such pay period."

1996—Subsec. (b)(7). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §205(b)(1)]]], inserted "of the distribution" after "equal to the amount" in first sentence.

Subsec. (b)(8). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §205(b)(2)(A)]]], substituted "less than an amount that the Executive Director prescribes by regulation" for "\$3,500 or less".

Pub. L. 104-208, §101(f) [title VI, §659 [title II, §205(b)(2)(B)]]], which directed that par. (8) be amended by striking out "unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b)", was executed by striking out "unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under such subsection (b)" before period at end, to reflect the probable intent of Congress.

1994—Subsec. (b)(4)(B). Pub. L. 103-226, §9(f)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Section 8433(c) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988; except that the period described in paragraph (3) of section 8433(c) commences on or after the date on which payment of the bankruptcy judge's or magistrate's annuity under section 377 of title 28 commences."

Subsec. (b)(4)(C). Pub. L. 103-226, §9(f)(2), substituted "Section 8433(b)" for "Section 8433(d)".

Subsec. (b)(5). Pub. L. 103-226, §9(f)(3), substituted "any of the actions described under paragraph (4)(A), (B), or (C) shall be considered" for "retirement under section 377 of title 28 is".

Subsec. (b)(8). Pub. L. 103-226, §9(f)(5)(B), which directed striking out "and (c), as applicable", was executed by striking out "or (c), as applicable" before period at end to reflect the probable intent of Congress.

Pub. L. 103-226, §9(f)(5)(A), substituted “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)” for “Notwithstanding subparagraphs (A) and (B) of 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) or (c)”.

Pub. L. 103-226, §9(f)(4), redesignated par. (9) as (8) and struck out former par. (8) which read as follows: “Notwithstanding paragraph (4)(C), if any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988, and such bankruptcy judge’s or magistrate’s nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).”

Subsec. (b)(9). Pub. L. 103-226, §9(f)(4), redesignated par. (9) as (8).

1990—Pub. L. 101-335, §9(a), renumbered section 8440a of this title as this section.

Subsec. (b)(7). Pub. L. 101-335, §3(b)(3), redesignated par. (8) as (7) and struck out former par. (7) which read as follows: “Sums contributed pursuant to this section by bankruptcy judges or magistrates, as well as all previous contributions to the Thrift Savings Fund by those bankruptcy judges and magistrates, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.”

Subsec. (b)(8), (9). Pub. L. 101-335, §6(b)(3), added pars. (8) and (9). Former par. (8) redesignated (7).

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Words “magistrate judge”, “magistrate judges”, and “magistrate judge’s” substituted for “magistrate”, “magistrates”, and “magistrate’s”, respectively, in section catchline and in subsecs. (a)(1) and (b)(1)–(3), (4)(A), (C), (5), (7), and (8), pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

##### 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 1990 AMENDMENT

Amendment by section 3(b)(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 as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

Amendment by section 6(b)(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.

##### EFFECTIVE DATE

Section effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100-659, as amended, set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

#### § 8440c. Court of Federal Claims judges

(a)(1) A judge of the United States Court of Federal Claims who is covered by section 178 of title 28 may elect to contribute an amount of such individual’s basic pay to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) as provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to Court of Federal Claims judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) The amount contributed by a Court of Federal Claims judge for any pay period shall not exceed the maximum percentage of such judge’s basic pay for such pay period allowable under section 8440f.

(3) No contributions shall be made under section 8432(c) of this title for the benefit of a Court of Federal Claims judge making contributions under subsection (a) of this section.

(4)(A) Section 8433(b) of this title applies to a Court of Federal Claims judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an annuity under section 178 of title 28 (including a disability annuity under subsection (c) of such section).

(B) Section 8433(b) of this title applies to any Court of Federal Claims judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an annuity under section 178 of title 28.

(5) With respect to Court of Federal Claims judges to whom this section applies, any of the actions described in paragraph (4)(A) or (B) shall be considered a separation from service for purposes of this subchapter and subchapter VII.

(6) For purposes of this section, the terms “retirement” and “retire” include removal from office under section 178(c) of title 28 on the sole ground of mental or physical disability.

(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 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.

(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 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.

(Added Pub. L. 101-650, title III, §306(d)(1), Dec. 1, 1990, 104 Stat. 5110, §8440b; renumbered §8440c and amended Pub. L. 102-198, §7(c)(1), Dec. 9, 1991, 105 Stat. 1624; Pub. L. 102-572, title IX, §902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-226, §9(g), Mar. 30, 1994, 108 Stat. 121; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §659 [title II, §205(c)]]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-378; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, §1(d)(6), Dec. 21, 2004, 118 Stat. 3892.)

#### Editorial Notes

##### CODIFICATION

Another section 8440c was renumbered section 8440d of this title.

##### AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-469 substituted “as” for “only during a period”.

2000—Subsec. (b)(2). Pub. L. 106-554 substituted “the maximum percentage of such judge's basic pay for such pay period allowable under section 8440f.” for “5 percent of basic pay for such pay period.”

1996—Subsec. (b)(7). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §205(c)(1)]]], inserted “of the distribution” after “equal to the amount”.

Subsec. (b)(8). Pub. L. 104-208, §101(f) [title VI, §659 [title II, §205(c)(2)]]], substituted “less than an amount that the Executive Director prescribes by regulation” for “\$3,500 or less” and struck out “unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)” before period at end.

1994—Subsec. (b)(4)(B). Pub. L. 103-226, §9(g)(1), substituted “Section 8433(b)” for “Section 8433(d)”.

Subsec. (b)(5). Pub. L. 103-226, §9(g)(2), substituted “any of the actions described in paragraph (4)(A) or (B) shall be considered” for “retirement under section 178 of title 28 is”.

Subsec. (b)(8), (9). Pub. L. 103-226, §9(g)(3), (4), redesignated par. (9) as (8), substituted “Notwithstanding paragraph (4)” for “Notwithstanding paragraph (4)(A)”, and struck out former par. (8) which read as follows: “Notwithstanding paragraph (4)(B), if any Court of Federal Claims judge who elects to make contributions to the Thrift Savings Fund under subsection (a) retires before becoming entitled to an annuity under section 178 of title 28, and such judge's nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).”

1992—Pub. L. 102-572, §902(b)(2), substituted “Court of Federal Claims” for “Claims Court” in section catchline.

Subsec. (a)(1). Pub. L. 102-572, §902(b)(1), substituted “United States Court of Federal Claims” for “United States Claims Court”.

Subsec. (b)(1) to (5), (7) to (9). Pub. L. 102-572, §902(b)(2), substituted “Court of Federal Claims” for “Claims Court” wherever appearing.

1991—Pub. L. 102-198, §7(c)(1)(A), renumbered section 8440b of this title as this section.

Subsec. (b)(4)(A). Pub. L. 102-198, §7(c)(1)(B)(i), substituted “subsection (c)” for “subsection (d)”.

Subsec. (b)(7). Pub. L. 102-198, §7(c)(1)(B)(ii), redesignated par. (8) as (7) and struck out former par. (7) which read as follows: “Sums contributed pursuant to this section by Claims Court judges, as well as all previous contributions to the Thrift Savings Fund by those judges, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.”

Subsec. (b)(8). Pub. L. 102-198, §7(c)(1)(B)(ii), (iii) added par. (8) and redesignated former par. (8) as (7).

Subsec. (b)(9). Pub. L. 102-198, §7(c)(1)(B)(iii), added par. (9).

#### Statutory Notes and Related Subsidiaries

##### 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. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

##### EFFECTIVE DATE OF 1991 AMENDMENT

Section 7(c)(3) of Pub. L. 102-198, as amended by Pub. L. 102-572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516, provided that: “Paragraphs (8) and (9) of section 8440c(b) of title 5, United States Code (as added by paragraph (1)) shall be effective as of January 1, 1991, and shall apply to any Court of Federal Claims judge retiring on or after such date.”

##### EFFECTIVE DATE

Section applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101-650, set out as an Effective Date of 1990 Amendment note under section 8331 of this title.

#### § 8440d. Judges of the United States Court of Appeals for Veterans Claims

(a)(1) A judge of the United States Court of Appeals for Veterans Claims may elect to contribute to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) as provided under section 8432(b) of this title for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII of this chapter shall apply with respect to a judge making contributions to the Thrift Savings Fund.

(2) The amount contributed by a judge of the United States Court of Appeals for Veterans Claims for any pay period may not exceed the maximum percentage of such judge's basic pay for such pay period allowable under section 8440f. Basic pay does not include any retired pay paid pursuant to section 7296 of title 38.

(3) No contributions may be made for the benefit of a judge under section 8432(c) of this title.

(4) Section 8433(b) of this title applies with respect to a judge who elects to make contributions to the Thrift Savings Fund and retires under section 7296(b) of title 38.

(5) Section 8433(b) of this title applies in the case of a judge who elects to make contributions to the Thrift Savings Fund and thereafter ceases to serve as a judge of the United States Court of Appeals for Veterans Claims but does not retire under section 7296(b) of title 38.

(6) The provisions of section 8351(b)(7)<sup>1</sup> of this title shall apply with respect to a judge who has elected to contribute to the Thrift Savings Fund under this section.

(Added Pub. L. 102-82, §5(a)(1), Aug. 6, 1991, 105 Stat. 376, §8440c; renumbered §8440d, Pub. L. 102-198, §7(c)(4)(A), Dec. 9, 1991, 105 Stat. 1625, as amended by Pub. L. 102-378, §5(d)(1), Oct. 2, 1992, 106 Stat. 1358; amended Pub. L. 103-226, §9(h), Mar. 30, 1994, 108 Stat. 121; Pub. L. 105-368, title V, §512(b)(1)(A), (2)(A), Nov. 11, 1998, 112 Stat. 3342; Pub. L. 106-361, §2(b)(6), Oct. 27, 2000, 114 Stat. 1401; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, §1(d)(7), Dec. 21, 2004, 118 Stat. 3892.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 8351(b)(7) of this title, referred to in subsec. (b)(6), was redesignated section 8351(b)(5) of this title by Pub. L. 103-226, §9(a)(3), Mar. 30, 1994, 108 Stat. 119.

##### AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-469 substituted “as” for “only during a period”.

2000—Subsec. (a)(2). Pub. L. 106-361 substituted “this chapter” for “chapter 84 of this title”.

Subsec. (b)(2). Pub. L. 106-554 amended first sentence generally. Prior to amendment, first sentence read as follows: “The amount contributed by a judge may not exceed 5 percent of the amount of the judge’s basic pay.”

1998—Pub. L. 105-368, §512(b)(2)(A), substituted “Judges of the United States Court of Appeals for Veterans Claims” for “Judges of the United States Court of Veterans Appeals” in section catchline.

Subsecs. (a)(1), (b)(5). Pub. L. 105-368, §512(b)(1)(A), substituted “Court of Appeals for Veterans Claims” for “Court of Veterans Appeals”.

1994—Subsec. (b)(5). Pub. L. 103-226 substituted “Section 8433(b) of this title applies” for “A transfer shall be made as provided in section 8433(d) of this title”.

1992—Pub. L. 102-378 amended Pub. L. 102-198. See 1991 Amendment note below.

1991—Pub. L. 102-198, as amended by Pub. L. 102-378, renumbered section 8440c of this title as this section.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-361 effective at the earliest practicable date after Sept. 30, 2000, as determined by the Executive Director in regulations, see section 2(c)(1) of Pub. L. 106-361, set out as a note under section 8432 of this title.

##### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-368 effective on first day of first month beginning more than 90 days after Nov.

11, 1998, see section 513 of Pub. L. 105-368, set out as a note under section 7251 of Title 38, Veterans’ Benefits.

##### 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. 102-378 effective Dec. 9, 1991, see section 9(b)(2) of Pub. L. 102-378, set out as a note under section 6303 of this title.

##### FIRST ELECTION

Section 5(b) of Pub. L. 102-82, as amended by Pub. L. 102-198, §7(c)(4)(C), Dec. 9, 1991, 105 Stat. 1625, provided that: “A judge of the United States Court of Veterans Appeals on the date of the enactment of this Act [Aug. 6, 1991] may make an election under section 8440d(a) of title 5, United States Code, within 60 days after the date of the enactment of this Act.”

#### § 8440e. Members of the uniformed services

(a) For purposes of this section—

(1) the term “basic pay” means basic pay payable under section 204 of title 37;

(2) the term “full TSP member” means a member described in subsection (e)(1);

(3) the term “member” has the meaning given the term in section 211 of title 37; and

(4) the term “Secretary concerned” has the meaning given the term in section 101 of title 37.

(b)(1) Any member eligible to participate in the Thrift Savings Plan by virtue of section 211(b) of title 37 may contribute to the Thrift Savings Fund.

(2)(A) Except as provided in subparagraph (B), an election to contribute to the Thrift Savings Fund under this section may be made as provided under section 8432(b).

(B)(i) Notwithstanding subparagraph (A), any individual who is a member as of the effective date that applies with respect to such individual under section 663 of the National Defense Authorization Act for Fiscal Year 2000 may make the first such election during the 60-day period beginning on such effective date.

(ii) An election made under this subparagraph shall take effect on the first day of the first applicable pay period beginning after the close of the 60-day period referred to in clause (i).

(c) Except as otherwise provided in this section, the provisions of this subchapter and subchapter VII shall apply with respect to members making contributions to the Thrift Savings Fund, and such members shall, for purposes of this subchapter and subchapter VII, be considered employees within the meaning of section 8401(11).

(d)(1)(A) The amount contributed by a member described in section 211(a)(1) of title 37 for any pay period out of basic pay may not exceed the maximum percentage of such member’s basic pay for such pay period allowable under section 8440f.

(B) The amount contributed by a member described in section 211(a)(2) of title 37 for any pay period out of any compensation received under section 206 of title 37 may not exceed the maximum percentage of such member’s compensation for such pay period (received under such section 206) allowable under section 8440f.

<sup>1</sup> See References in Text note below.

(2) A member making contributions to the Thrift Savings Fund out of basic pay, or out of compensation under section 206 of title 37, may also contribute (by direct transfer to the Fund) any part of any special or incentive pay that such member receives under chapter 5 of title 37.

(3) Nothing in this section or section 211 of title 37 shall be considered to waive any dollar limitation under the Internal Revenue Code of 1986 which otherwise applies with respect to the Thrift Savings Fund.

(e) MODERNIZED RETIREMENT SYSTEM.—

(1) TSP CONTRIBUTIONS.—Notwithstanding any other provision of law, the Secretary concerned shall make contributions to the Thrift Savings Fund, in accordance with section 8432 (except to the extent the requirements under such section are modified by this subsection), for the benefit of a member—

(A) who first enters a uniformed service on or after January 1, 2018; or

(B) who—

(i) first entered a uniformed service before January 1, 2018;

(ii) has completed fewer than 12 years of service in the uniformed services as of December 31, 2017; and

(iii) makes the election described in section 1409(b)(4)(B) or 12729(f)(2) of title 10 to receive Thrift Savings Plan contributions under this subsection in exchange for the reduced multipliers described in section 1409(b)(4)(A) or 12739(f)(1) of title 10, as applicable, for purposes of calculating the retired pay of the member.

(2) MAXIMUM AMOUNT.—The amount contributed under this subsection by the Secretary concerned for the benefit of a full TSP member for any pay period shall not be more than 5 percent of the member's basic pay for such pay period. Any such contribution under this subsection, though in accordance with section 8432 as provided in paragraph (1), is instead of, and not in addition to, amounts contributable under section 8432 as provided in section 8432(c).

(3) TIMING AND DURATION OF CONTRIBUTIONS.—

(A) AUTOMATIC CONTRIBUTIONS.—The Secretary concerned shall make a contribution described in section 8432(c)(1) under this subsection for the benefit of a member described in paragraph (1) for any pay period during the period that—

(i) begins—

(I) on or after the day that is 60 days after the date the member first enters a uniformed service, in the case of a member described in paragraph (1)(A); or

(II) on or after the date the member makes the election described in paragraph (1)(B), in the case of a member making such an election; and

(ii) ends on the day such member completes 26 years of service as a member of the uniformed services.

(B) MATCHING CONTRIBUTIONS.—The Secretary concerned shall make a contribution described in section 8432(c)(2) under this subsection for the benefit of a member described in paragraph (1) for any pay period during the period that—

(i) begins—

(I) on or after the day that is 2 years and 1 day after the date the member first enters a uniformed service, in the case of a member described in paragraph (1)(A); or

(II) on or after the date the member makes the election described in paragraph (1)(B), in the case of a member making such an election; and

(ii) ends on the day such member completes 26 years of service as a member of the uniformed services.

(4) PROTECTIONS FOR SPOUSES AND FORMER SPOUSES.—Section 8435 shall apply to a full TSP member in the same manner as such section is applied to an employee or Member under such section.

(Added Pub. L. 106-65, div. A, title VI, §661(a)(2)(A), Oct. 5, 1999, 113 Stat. 670; amended Pub. L. 106-398, §1 [[div. A], title VI, §661(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-167; Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, §1(d)(8), Dec. 21, 2004, 118 Stat. 3892; Pub. L. 114-92, div. A, title VI, §632(a), Nov. 25, 2015, 129 Stat. 845.)

## Editorial Notes

### REFERENCES IN TEXT

Section 663 of the National Defense Authorization Act for Fiscal Year 2000, referred to in subsec. (b)(2)(B)(i), is section 663 of Pub. L. 106-65, which is set out as an Effective Date note below.

The Internal Revenue Code of 1986, referred to in subsec. (d)(3), is classified generally to Title 26, Internal Revenue Code.

### AMENDMENTS

2015—Subsec. (a). Pub. L. 114-92, §632(a)(1), added pars. (1) to (4) and struck out former pars. (1) and (2) which defined “member” and “basic pay”, respectively.

Subsec. (e). Pub. L. 114-92, §632(a)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Except as provided in section 211(d) of title 37, no contribution under section 8432(c) of this title may be made for the benefit of a member making contributions to the Thrift Savings Fund under this section.”

2004—Subsec. (b)(2)(A). Pub. L. 108-469 substituted “as provided under section 8432(b)” for “only during a period provided under section 8432(b), subject to the same conditions as prescribed under paragraph (2) (A)–(D) thereof”.

2000—Subsec. (b)(2)(B)(i). Pub. L. 106-398 substituted “as of the effective date that applies with respect to such individual under section 663 of the National Defense Authorization Act for Fiscal Year 2000” for “as of the effective date described in paragraph (1) of section 663(a) of the National Defense Authorization Act for Fiscal Year 2000 (or, if applicable, paragraph (2) thereof)”.

Subsec. (d)(1)(A). Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(6)(A)], substituted “the maximum percentage of such member's basic pay for such pay period allowable under section 8440f.” for “5 percent of such member's basic pay for such pay period.”

Subsec. (d)(1)(B). Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(6)(B)], substituted “the maximum percentage of such member's compensation for such pay period (received under such section 206) allowable under section 8440f.” for “5 percent of such compensation, payable to such member for such pay period.”

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 2015 AMENDMENT; IMPLEMENTATION**

Amendment by Pub. L. 114-92 effective Jan. 1, 2018, with certain implementation requirements, see section 635 of Pub. L. 114-92, set out as a note under section 8432 of this title.

**EFFECTIVE DATE**

Pub. L. 106-65, div. A, title VI, §663, Oct. 5, 1999, 113 Stat. 673, as amended by Pub. L. 106-398, §1 [[div. A], title VI, §661(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-167, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle F (§§661-663) of title VI of div. A of Pub. L. 106-65, enacting this section and section 211 of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 8351, 8432b, 8433, 8439, and 8473 of this title and section 211 of Title 37] shall take effect 180 days after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000].

“(b) POSTPONEMENT AUTHORITY.—(1) The Secretary of Defense may postpone by up to 180 days after the date that would otherwise apply under subsection (a)—

“(A) the date as of which the amendments made by this subtitle shall take effect; or

“(B) the date as of which section 211(a)(2) of title 37, United States Code (as added by this subtitle) shall take effect.

“(2) Postponement authority under this subsection may be exercised only to the extent that the failure to do so would prevent the Federal Retirement Thrift Investment Board from being able to provide timely and accurate services to investors or would place an excessive burden on the administrative capacity of the Board to accommodate participants in the Thrift Savings Plan, as determined by the Secretary of Defense after consultation with the Executive Director (appointed by the Board).

“(3) Paragraph (1) includes the authority to postpone the effective date of the amendments made by this subtitle (apart from section 211(a)(2) of title 37, United States Code), and the effective date of such section 211(a)(2), by different lengths of time.

“(4) The Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Government Reform [now Committee on Oversight and Accountability] of the House of Representatives, and the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate of any determination made under this subsection.”

**REGULATIONS**

Pub. L. 106-65, div. A, title VI, §661(b), Oct. 5, 1999, 113 Stat. 672, as amended by Pub. L. 106-398, §1 [[div. A], title VI, §661(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-167, provided that: “Not later than the 180th day after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000], the Executive Director (appointed by the Federal Retirement Thrift Investment Board) shall issue regulations to implement the amendments made by this subtitle [subtitle F (§§661-663) of title VI of div. A of Pub. L. 106-65, enacting this section and section 211 of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 8351, 8432b, 8433, 8439, and 8473 of this title and section 211 of Title 37].”

**§ 8440f. Maximum percentage allowable for certain participants**

(a) The maximum percentage allowable under this section shall be determined in accordance with the following table:

**In the case of a pay period beginning in fiscal year:****The maximum percentage allowable is:**

2001 .....	6
2002 .....	7
2003 .....	8
2004 .....	9
2005 .....	10
2006 or thereafter .....	100.

(b) Notwithstanding any limitation under this section, an eligible participant (as defined by section 414(v) of the Internal Revenue Code of 1986) may make such additional contributions to the Thrift Savings Fund as are permitted by such section 414(v) and regulations of the Executive Director consistent therewith.

(Added Pub. L. 106-554, §1(a)(4) [div. B, title I, §138(a)(7)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A-234; amended Pub. L. 107-304, §1(b)(2), Nov. 27, 2002, 116 Stat. 2363.)

**Editorial Notes****REFERENCES IN TEXT**

Section 414(v) of the Internal Revenue Code of 1986, referred to in subsec. (b), is classified to section 414(v) of Title 26, Internal Revenue Code.

**AMENDMENTS**

2002—Pub. L. 107-304 designated existing provisions as subsec. (a) and added subsec. (b).

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107-304 effective as of the earliest practicable date determined by the Executive Director in regulations, see section 1(c) of Pub. L. 107-304, set out as a note under section 8351 of this title.

**SUBCHAPTER IV—SURVIVOR ANNUITIES****§ 8441. Definitions**

For the purpose of this subchapter—

(1) the term “widow” means the surviving wife of an employee, Member, or annuitant, or of a former employee or Member, who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) the term “widower” means the surviving husband of an employee, Member, or annuitant, or of a former employee or Member, who—

(A) was married to her for at least 9 months immediately before her death; or

(B) is the father of issue by that marriage;

(3) 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) the term “child” means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child,

(ii) a stepchild but only if the stepchild lived