

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III - EMPLOYEES

Subpart G - Insurance and Annuities

CHAPTER 83 - RETIREMENT

SUBCHAPTER III - CIVIL SERVICE RETIREMENT

§ 8351. Participation in the Thrift Savings Plan

- (a) (1) An employee or Member may elect to contribute to the Thrift Savings Fund established by section 8437 of this title.
- (2) An election may be made under paragraph (1) as provided under section 8432 (b) for individuals who are subject to chapter 84 of this title.
- (b) (1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to employees and Members making contributions to the Thrift Savings Fund under subsection (a) of this section.
- (2) (A) An employee or Member may contribute to the Thrift Savings Fund in any pay period any amount not exceeding the maximum percentage of such employee's or Member's basic pay for such pay period allowable under subparagraph (B).
- (B) The maximum percentage allowable under this subparagraph shall be determined in accordance with the following table:
- | In the case of a pay period beginning in fiscal year: | The maximum percent-age allowable is: |
|---|---------------------------------------|
| 2001 | 6 |
| 2002 | 7 |
| 2003 | 8 |
| 2004 | 9 |
| 2005 | 10 |
| 2006 or thereafter | 100. |
- (C) Notwithstanding any limitation under this paragraph, 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.
- (3) No contributions may be made by an employing agency for the benefit of an employee or Member under section 8432 (c) of this title.
- (4) Section 8433 (b) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment.
- (5) (A) The provisions of section 8435 of this title that require a waiver or consent by the spouse of an employee or Member (or former employee or Member) shall not apply with respect to sums in the Thrift Savings Fund contributed by the employee or Member (or former employee or Member) and earnings in the fund attributable to such sums.
- (B) An election or change of election authorized by subchapter III of chapter 84 of this title shall be effective in the case of a married employee or Member, and a loan or withdrawal may be approved under section 8433 (g) and (h) of this title in such case, only after the Executive Director notifies the employee's or Member's spouse that the election or change of election has been made or that the Executive Director has received an application for such loan or withdrawal, as the case may be.

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- (C) Subparagraph (B) may be waived with respect to a spouse if the employee or Member establishes to the satisfaction of the Executive Director of the Federal Retirement Thrift Investment Board that the whereabouts of such spouse cannot be determined.
- (D) Except with respect to the making of loans or withdrawals under section 8433 (g) or (h), none of the provisions of this paragraph requiring notification to a spouse or former spouse of an employee, Member, former employee, or former Member shall apply in any case in which the nonforfeitable account balance of the employee, Member, former employee, or former Member is \$3,500 or less.
- (6) Notwithstanding paragraph (4), 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.
- (7) For the purpose of this section, the term "nonforfeitable account balance" has the same meaning as under section 8401 (32).
- (8) In applying section 8432b to an employee contributing to the Thrift Savings Fund after being restored to or reemployed in a position subject to this subchapter, pursuant to chapter 43 of title 38—
- (A) any reference in such section to contributions under section 8432 (a) shall be considered a reference to employee contributions under this section, except that the reference in section 8432b (b)(2)(B) to employee contributions under section 8432 (a) shall be considered a reference to employee contributions under this subchapter and section 8440e;
- (B) the contribution rate under section 8432b (b)(2)(A) shall be the maximum percentage allowable under subsection (b)(2) of this section; and
- (C) subsections (c) and (d) of section 8432b shall be disregarded.
- (9) For the purpose of this section, separation from Government employment includes a transfer described in section 8431.
- (c) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 shall be ineligible to make any election under this section.
- (d) (1) A foreign national employee of the Central Intelligence Agency whose services are performed outside the United States shall be ineligible to make an election under this section.
- (2) (A) 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) 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.
- (B) Contributions under this paragraph are subject to section 8432 (d) of this title.
- (e) The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out this section.

(Added Pub. L. 99-335, title II, § 206(a)(1), June 6, 1986, 100 Stat. 593; amended Pub. L. 100-238, title I, § 111(a), Jan. 8, 1988, 101 Stat. 1750; Pub. L. 101-335, §§ 3(b)(1), 6 (b)(1), July 17, 1990, 104 Stat. 320, 323; Pub. L. 102-183, title III, § 308(a), Dec. 4, 1991, 105 Stat. 1265; Pub. L. 102-484, div. D, title XLIV, § 4437(c), Oct. 23, 1992, 106 Stat. 2724; Pub. L. 103-226, § 9(a), (i)(1), (2), Mar. 30, 1994, 108 Stat. 118, 121; Pub. L. 103-353, § 4(d), Oct. 13, 1994, 108 Stat. 3172; Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 202]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-374; Pub. L. 106-65, div. A, title VI, § 661(a)(3)(B), Oct. 5, 1999, 113 Stat. 671; Pub. L. 106-168, title II, § 203(b), Dec. 12, 1999, 113 Stat. 1820; Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 138(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-234; Pub. L. 107-304, § 1(a), Nov. 27, 2002, 116 Stat. 2363; Pub. L. 108-177, title

IV, § 405(b)(1), Dec. 13, 2003, 117 Stat. 2632; Pub. L. 108–469, § 1(d)(1), Dec. 21, 2004, 118 Stat. 3891.)

References in Text

Section 414(v) of the Internal Revenue Code of 1986, referred to in subsec. (b)(2)(C), is classified to section 414 (v) of Title 26, Internal Revenue Code.

Section 103(6) of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 3903 (6) of Title 22, Foreign Relations and Intercourse.

Amendments

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

2003—Subsec. (d). Pub. L. 108–177 designated existing provisions as par. (1) and added par. (2).

2002—Subsec. (b)(2)(C). Pub. L. 107–304 added subpar. (C).

2000—Subsec. (b)(2). Pub. L. 106–554 designated existing provisions as subpar. (A), substituted “the maximum percentage of such employee’s or Member’s basic pay for such pay period allowable under subparagraph (B).” for “5 percent of the amount of the employee’s or Member’s basic pay for such period.”, and added subpar. (B).

1999—Subsec. (b)(8)(A). Pub. L. 106–65, § 661(a)(3)(B)(ii), inserted before semicolon at end “, except that the reference in section 8432b (b)(2)(B) to employee contributions under section 8432 (a) shall be considered a reference to employee contributions under this subchapter and section 8440e”.

Pub. L. 106–65, § 661(a)(3)(B)(i), and Pub. L. 106–168, amended subsec. (b) identically, redesignating par. (11) as (8).

Subsec. (b)(9). Pub. L. 106–168 added par. (9).

Subsec. (b)(11). Pub. L. 106–65, § 661(a)(3)(B)(i), and Pub. L. 106–168, amended subsec. (b) identically, redesignating par. (11) as (8).

1996—Subsec. (b)(5)(B). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 202(1)(A)]], substituted “An election or change of election” for “An election, change of election, or modification (relating to the commencement date of a deferred annuity)”, inserted “or withdrawal” after “and a loan” and “and (h)” after “8433(g)”, substituted “the election or change of election” for “the election, change of election, or modification”, and inserted “or withdrawal” after “for such loan”.

Subsec. (b)(5)(D). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 202(1)(B)]], inserted “or withdrawals” after “of loans” and “or (h)” after “8433(g)”.

Subsec. (b)(6). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 202(2)]], substituted “less than an amount that the Executive Director prescribes by regulation” for “\$3,500 or less” and struck out “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)” before period at end.

1994—Subsec. (b)(4). Pub. L. 103–226, § 9(a)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Section 8433 (b) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment entitled to an immediate annuity under this subchapter (including a disability retirement annuity under section 8337 of this title), 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, or separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title.”

Subsec. (b)(5). Pub. L. 103–226, § 9(a)(2), (3), redesignated par. (7) as (5) and struck out former par. (5) which read as follows: “Section 8433 (c) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates entitled to a deferred annuity under this subchapter.”

Subsec. (b)(5)(B) to (D). Pub. L. 103–226, § 9(a)(4), (i)(1), (2), substituted “section 8433 (g)” for “section 8433 (i)” in subpars. (B) and (D) and struck out “or former spouse” after “spouse” in two places in subpar. (C).

Subsec. (b)(6). Pub. L. 103–226, § 9(a)(5), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “Notwithstanding paragraphs (4) and (5), if an employee or Member separates from Government employment under circumstances making such employee or Member eligible to make an election under subsection (b) or (c) of section 8433, 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,

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at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under such subsection (b) or (c), as applicable.”

Pub. L. 103–226, § 9(a)(2), (3), redesignated par. (9) as (6) and struck out former par. (6) which read as follows: “Section 8433 (d) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from the service before becoming entitled to an immediate or deferred annuity under this subchapter.”

Subsec. (b)(7). Pub. L. 103–226, § 9(a)(6), which directed substitution of “nonforfeitable” for “nonforfeiture”, could not be executed because the term “nonforfeiture” does not appear in text.

Pub. L. 103–226, § 9(a)(3), redesignated par. (10) as (7). Former par. (7) redesignated (5).

Subsec. (b)(8). Pub. L. 103–226, § 9(a)(2), struck out par. (8) which read as follows: “Notwithstanding paragraph (6), if an employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) separates from Government employment before becoming entitled to a deferred or immediate annuity under this subchapter, 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 section 8433 (e).”

Subsec. (b)(9), (10). Pub. L. 103–226, § 9(a)(3), redesignated pars. (9) and (10) as (6) and (7), respectively.

Subsec. (b)(11). Pub. L. 103–353 added par. (11).

1992—Subsec. (b)(4). Pub. L. 102–484 inserted “, 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 “section 8337 of this title”).

1991—Subsecs. (d), (e). Pub. L. 102–183 added subsec. (d) and redesignated former subsec. (d) as (e).

1990—Subsec. (b)(7)(D). Pub. L. 101–335, § 6(b)(1)(B), added subpar. (D).

Subsec. (b)(8). Pub. L. 101–335, § 6(b)(1)(A), added par. (8).

Pub. L. 101–335, § 3(b)(1), struck out par. (8) 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)(9), (10). Pub. L. 101–335, § 6(b)(1)(A), added pars. (9) and (10).

1988—Subsecs. (c), (d). Pub. L. 100–238 added subsec. (c) and redesignated former subsec. (c) as (d).

Effective Date of 2002 Amendment

Pub. L. 107–304, § 1(c), Nov. 27, 2002, 116 Stat. 2363, provided that: “The amendments made by this section [amending this section and sections 8432 and 8440f of this title] shall take effect as of the earliest practicable date, as determined by the Executive Director (appointed under section 8474 (a) of title 5, United States Code) in regulations.”

Effective Date of 2000 Amendment

Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–234, provided that:

“(1) In general.—The amendments made by this section [enacting section 8440f of this title and amending this section and sections 8432 and 8440a to 8440e of this title] shall take effect on the date of enactment of this Act [Dec. 21, 2000].

“(2) Coordination with election periods.—The Executive Director shall by regulation determine the first election period in which elections may be made consistent with the amendments made by this section.

“(3) Definitions.—For purposes of this section—

“(A) the term ‘election period’ means a period afforded under section 8432 (b) of title 5, United States Code; and

“(B) the term ‘Executive Director’ has the meaning given such term by section 8401 (13) of title 5, United States Code.”

Effective Date of 1999 Amendments

Amendment by Pub. L. 106–168 applicable with respect to transfers occurring before, on, or after Dec. 12, 1999, with special rule for applying amendment with respect to transfers occurring before Dec. 12, 1999, see section 203(c) of Pub. L. 106–168, set out as an Effective Date note under section 8431 of this title.

Amendment by section 661(a)(3)(B)(ii) of 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 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.

Section 9(j) of Pub. L. 103–226 provided that: “This section [amending this section and sections 8433 to 8435, 8437, and 8440a to 8440d of this title] shall take effect 1 year after the date of the enactment of this Act [Mar. 30, 1994] or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation.” [Implementing regulations were published in the Federal Register Feb. 21, 1995, 60 F.R. 9595, effective Mar. 10, 1995.]

Effective Date of 1992 Amendment

Section 4437(d) of Pub. L. 102–484 provided that: “The amendments made by this section [amending this section and sections 8433 and 8435 of this title] shall apply with respect to separations occurring after December 31, 1993, or such earlier date as the Executive Director (appointed under section 8474 of title 5, United States Code) may by regulation prescribe.”

Effective Date of 1991 Amendment

Section 308(b) of Pub. L. 102–183 provided that:

“(1) The amendment made by subsection (a) [amending this section] shall take effect as of January 1, 1987.

“(2) Any refund which becomes payable as a result of the effective date specified in paragraph (1) shall, to the extent that that refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.”

Effective Date of 1990 Amendment

Section 3(c) of Pub. L. 101–335 provided that: “Subsections (a) and (b), and the amendments made by such subsections [amending this section and sections 8438, 8440a, and 8440b of this title and enacting provisions set out as a note under section 8438 of this title], shall be effective as of the second election period described in section 8432 (b) of title 5, United States Code, beginning after the date of enactment of this Act [July 17, 1990], or as of such earlier date as the Executive Director may by regulation prescribe.”

Section 6(c) of Pub. L. 101–335 provided that: “This section, and the amendments made by this section [amending this section and sections 8401, 8433, 8435, 8440a, and 8440b of this title and enacting provisions set out as a note under section 8433 of this title], shall be effective as of the second election period described in section 8432 (b) of title 5, United States Code, beginning after the date of enactment of this Act [July 17, 1990] (or as of such earlier date as the Executive Director may by regulation prescribe), and shall apply with respect to separations occurring before, on, or after that effective date.”

Effective Date of 1988 Amendment

Section 111(b) of Pub. L. 100–238 provided that: “The amendments made by subsection (a) [amending this section] shall be effective as of March 31, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.”

Effective Date

Section effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as a note under section 8401 of this title.

Period When Election May First Be Made

Section 206(b) of Pub. L. 99–335, as amended by Pub. L. 99–509, title VI, § 6001(b), Oct. 21, 1986, 100 Stat. 1930, provided that an election could first be made by a Federal employee or a Member of Congress under 5 U.S.C. 8351 (a)(2) during an election period prescribed by Executive Director of Federal Retirement Thrift Investment Board to

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begin on Apr. 1, 1987, with such election to take effect on first day of employee's or Member's first pay period which began on or after the date of the election. The maximum amount that an employee or Member could elect to contribute during any pay period which began on or after Apr. 1, 1987, and before Oct. 1, 1987, was an amount equal to 7.5 percent of the individual's basic pay for that period.