

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.)

#### 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 exe-

cuted 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),”.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-255 effective on the date that the Executive Director issues guidance under section 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 nondiscrimination 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, §1011A(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.)

#### REFERENCES IN TEXT

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

Section 209 of the Social Security Act, referred to in subsec. (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.

#### 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.