

Public Law 101-335  
101st Congress

An Act

Amending subchapter III of chapter 84 of title 5, United States Code.

July 17, 1990

[H.R. 2514]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Thrift Savings Plan Technical Amendments Act of 1990".

Thrift  
Savings Plan  
Technical  
Amendments  
Act of 1990.  
Government  
organization and  
employees.  
Retirement.  
5 USC 8401 note.

**SEC. 2. CORRECTION OF EMPLOYING AGENCY ERRORS RELATING TO THE THRIFT SAVINGS PLAN.**

(a) **IN GENERAL.**—

(1) **AMENDMENT TO CHAPTER 84.**—Chapter 84 of title 5, United States Code, is amended by inserting after section 8432 the following:

**"§ 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).

Regulations.

"(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 Clerk of the House of Representatives, the Clerk may pay from the contingent fund 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."

(2) **CONFORMING AMENDMENT.**—The table of sections for chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8432 the following:

"8432a. Payment of lost earnings."

5 USC 8432a  
note.

(b) **APPLICABILITY.**—The amendments made by this section shall apply with respect to lost earnings attributable to errors made before, on, or after the date of enactment of this Act.

**SEC. 3. REMOVAL OF RESTRICTIONS RELATING TO THE INVESTMENT OF AMOUNTS IN THE THRIFT SAVINGS FUND.**

(a) **IN GENERAL.**—Section 8438 of title 5, United States Code, is amended—

(1) by striking subsection (e) and redesignating subsections (f) through (i) as subsections (e) through (h), respectively;

(2) in subsection (b)(1)(A), by striking "subsection (f)" and inserting "subsection (e)";

(3) in subsection (c)(1), by striking "Subject to subsection (e), the" and inserting "The";

(4) in subsection (d)(1), by striking "and not subject to subsection (e)";

(5) in paragraphs (1) and (2) of subsection (g) (as so redesignated by paragraph (1)), by striking "subsection (f)" and inserting "subsection (e)", and in paragraph (3) of subsection (g) (as so redesignated), by striking "subsection (f)(2)" and inserting "subsection (e)(2)";

(6) in subsection (g)(6) (as so redesignated by paragraph (1)), by striking "subsection (i)" and inserting "subsection (h)"; and

(7) in paragraph (1) of subsection (h) (as so redesignated by paragraph (1)), by striking "subsection (h)" and inserting "subsection (g)", and in paragraph (2) of subsection (h) (as so redesignated), by striking "subsection (f)" and inserting "subsection (e)".

(b) **REMOVAL OF INVESTMENT RESTRICTIONS AFFECTING CSRS PARTICIPANTS AND OTHERS.**—

(1) **CSRS PARTICIPANTS.**—Section 8351(b)(8) of title 5, United States Code, is repealed.

(2) **JUSTICES AND JUDGES.**—Subsection (b) of the first section 8440a of title 5, United States Code, is amended by striking paragraph (6) and redesignating paragraph (7) as paragraph (6).

(3) **BANKRUPTCY JUDGES AND MAGISTRATES.**—Section 8440b(b) of title 5, United States Code (as so redesignated by section 9) is amended by striking paragraph (7) and redesignating paragraph (8) as paragraph (7).

5 USC 8438 note.

(4) **OTHERS.**—Any other provision of law, in effect on the date of enactment of this Act, 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.

(c) **EFFECTIVE DATE.**—Subsections (a) and (b), and the amendments made by such subsections, 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, or as of such earlier date as the Executive Director may by regulation prescribe. 5 USC 8351 note.

**SEC. 4. EXEMPTION OF THRIFT SAVINGS PLAN ANNUITIES FROM STATE AND LOCAL PREMIUM TAXES.**

(a) **IN GENERAL.**—Section 8434 of title 5, United States Code, is amended by adding at the end the following:

“(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.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect 30 days after the date of enactment of this Act. 5 USC 8434 note.

**SEC. 5. CLARIFYING AMENDMENTS RELATING TO AN ANNUITY'S COMMENCEMENT DATE.**

(a) **AMENDMENTS TO SECTION 8433.**—

(1) **RELATING TO DEADLINE FOR CHANGING AN ELECTION.**—Section 8433(f)(3)(A) of title 5, United States Code, is amended by striking “an annuity elected by the former employee or Member commences.” and inserting “an annuity contract is purchased to provide for the annuity elected by the former employee or Member.”

(2) **RELATING TO RESTRICTIONS CONCERNING DEFERRED ANNUITIES.**—Section 8433(f)(3)(B) of title 5, United States Code, is amended to read as follows:

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

(b) **AMENDMENTS TO SECTION 8434.**—

(1) **RELATING TO DEADLINE FOR CHANGING AN ELECTION.**—Section 8434(b) of title 5, United States Code, is amended by striking “the annuity commences,” and inserting “an annuity contract is purchased to provide for that annuity,”.

(2) **RELATING TO THE PURCHASE OF ANNUITY CONTRACTS.**—Section 8434(d)(1) of title 5, United States Code, is amended by striking “At the time an annuity is to commence under this subchapter,” and inserting “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,”.

## (c) AMENDMENTS TO SECTION 8435.—

(1) DETERMINATION OF MARITAL STATUS.—Section 8435(c)(1) of title 5, United States Code, is amended—

(A) by inserting “an annuity contract is purchased to provide for” after “the date on which”; and

(B) by striking “commences”.

(2) DEADLINE FOR RECEIPT OF NOTIFICATION.—Section 8435(d)(2)(B)(ii) of title 5, United States Code, is amended by striking “the annuity commences,” and inserting “an annuity contract is purchased to provide for the annuity,”.

5 USC 8433 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective as of April 1, 1987.

SEC. 6. PROVISIONS RELATING TO ACCOUNTS HAVING A FINAL BALANCE OF \$3,500 OR LESS.

(a) IN GENERAL.—

(1) DEFINITION.—Section 8401 of title 5, United States Code, is amended—

(A) in paragraph (30), by striking the final “and”;

(B) in paragraph (31), by striking “States.” and inserting “States; and”; and

(C) by adding at the end the following:

“(32) the term ‘nonforfeitable account balance’ means any amounts in an account, established and maintained under subchapter III, which are nonforfeitable (as determined under section 8432(g)).”

(2) PAYMENT OF NONFORFEITABLE ACCOUNT BALANCE IN CASE OF NONELECTION.—Section 8433(h) of title 5, United States Code, is amended to read as follows:

“(h)(1) 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).

“(2) 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 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, one of the options available under subsection (b) or (c), as applicable.

“(3) Unless otherwise elected under this section, and subject to paragraphs (1) and (2), 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—

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

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

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

(3) **WAIVER OF NOTIFICATION REQUIREMENTS.**—Section 8435 of title 5, United States Code, is amended by redesignating subsection (h) as subsection (i), and by inserting after subsection (g) the following:

“(h) Except with respect to the making of loans under section 8433(i), 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.”

(b) **CONFORMING AMENDMENTS.**—

(1) **CSRS.**—Section 8351(b) of title 5, United States Code, as amended by section 3(b)(1), is further amended—

(A) by adding after paragraph (7) the following:

“(8) 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).

“(9) 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, 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.

“(10) For the purpose of this section, the term ‘nonforfeitable account balance’ has the same meaning as under section 8401(32).”; and

(B) by inserting after paragraph (7)(C) the following:

“(D) Except with respect to the making of loans under section 8433(i), 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.”

(2) **JUSTICES AND JUDGES.**—Subsection (b) of the first section 8440a of title 5, United States Code, as amended by section 3(b)(2), is further amended by adding at the end the following:

“(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)."

(3) **BANKRUPTCY JUDGES AND MAGISTRATES.**—Subsection (b) of section 8440b of title 5, United States Code (as so redesignated by section 9, and as amended by section 3(b)(3)) is further amended by adding at the end the following:

"(8) 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).

"(9) 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) of section 8433, 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, one of the options available under such subsection (b) or (c), as applicable."

Regulations.

5 USC 8433 note.

(4) **OTHERS.**—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 shall be carried out with respect to any individuals participating in the Thrift Savings Plan who would not otherwise be affected by this section.

5 USC 8351 note.

(c) **EFFECTIVE DATE.**—This section, and the amendments made by this section, 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 (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.

**SEC. 7. ELECTION TO REMAIN SUBJECT TO CERTAIN PROVISIONS RELATING TO CAREER APPOINTEES.**

(a) **IN GENERAL.**—Section 3392(c) of title 5, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by redesignating subsection (c) as subsection (c)(1); and

(3) by adding at the end the following:

“(2) An election under paragraph (1) may also be made by any career appointee who is appointed to a civilian position in the executive branch—

“(A) which is not in the Senior Executive Service; and

“(B) which is covered by the Executive Schedule, or the rate of basic pay for which is fixed by statute at a rate equal to 1 of the levels of the Executive Schedule.

An election under this paragraph shall remain effective so long as the appointee continues to serve in the same position.”

(b) **EFFECTIVE DATE; ELECTION BY PERSONS PREVIOUSLY APPOINTED.**— 5 USC 3392 note.

(1) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of enactment of this Act.

(2) **ELECTION BY PERSONS PREVIOUSLY APPOINTED.**—The Office of Personnel Management shall prescribe regulations (including procedures and deadlines) under which an election under section 3392(c)(2) of title 5, United States Code (as amended by this section) may be made by any individual who— Regulations.

(A) on the date of enactment of this Act, is serving in a civilian position in the executive branch which—

(i) is not in the Senior Executive Service; and

(ii) satisfies section 3392(c)(2)(B) of such title 5 (as so amended);

(B) was appointed to that position on or after November 1, 1986, and has served continuously in such position since then;

(C) was a career appointee (within the meaning of section 3132(a)(4) of such title 5) immediately before having been so appointed; and

(D) was not, based on such individual's appointment to the position described in subparagraph (A), eligible to make an election under section 3392(c) of such title 5 (as then in effect).

An election under this paragraph shall be effective as of the date of appointment to the position described in subparagraph (A).

**SEC. 8. REPEAL.**

Subsection (c) of section 133 of Public Law 100-238 (5 U.S.C. 8477 note) is repealed.

**SEC. 9. TECHNICAL CORRECTION.**

(a) **SECTION REDESIGNATION.**—Chapter 84 of title 5, United States Code, is amended by redesignating the second section 8440a thereof (relating to bankruptcy judges and magistrates) as section 8440b.

(b) **TABLE OF SECTIONS.**—The table of sections for chapter 84 of title 5, United States Code, is amended by striking the item relating to the second section 8440a and inserting the following:

“8440b. Bankruptcy judges and magistrates.”

Approved July 17, 1990.

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**LEGISLATIVE HISTORY—H.R. 2514:**

**HOUSE REPORTS:** No. 101-452 (Comm. on Post Office and Civil Service).

**CONGRESSIONAL RECORD,** Vol. 136 (1990):

Apr. 24, considered and passed House.

June 27, considered and passed Senate.