

MODIFIED LIMITATIONS ON INDIVIDUAL CONTRIBUTIONS  
TO THE THRIFT SAVING PLAN

OCTOBER 10, 1998.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed.

Mr. BURTON of Indiana, from the Committee on Government  
Reform and Oversight, submitted the following

REPORT

[To accompany H.R. 2526]

The Committee on Government Reform and Oversight, to whom  
was referred the bill (H.R. 2526) to amend title 5, United States  
Code, to make the percentage limitations on individual contribu-  
tions to the Thrift Savings Plan more consistent with the dollar  
amount limitation on elective deferrals, and for other purposes,  
having considered the same, report favorably thereon without  
amendment and recommend that the bill do pass.

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I. SHORT SUMMARY OF LEGISLATION

This bill authorizes federal employees to begin participation in  
the Thrift Savings Plan (TSP) immediately upon being hired rather  
than waiting a year as is required by current law. This legislation  
also authorizes new federal hires to contribute eligible rollover dis-

tributions from qualified trusts, including private sector 401(k) accounts, to the Thrift Savings Fund. Finally, this bill allows employees to contribute to the TSP up to the current IRS limit (now \$10,000 per year), regardless of income level.

## II. BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 2526 would bolster a critical component of Federal employee retirement benefits, TSP. The TSP is a retirement saving and investment plan for Federal and postal employees. The TSP is a critical part of the Federal employee benefits package, and is particularly important for those employees hired in the last decade who, under the Federal Employees Retirement System (FERS), receive smaller civil service benefits and need to invest greater amounts in order to enhance their retirement income. Yet while the TSP offers the same type of savings and tax benefits that many private employers offer their employees under 401(k) plans, Federal employees may not contribute up to the IRS maximum. This limitation makes it more difficult for the Federal government to recruit and retain outstanding employees.

Individuals who have accumulated assets in a 401(k) plan while working for a private employer are not now allowed to roll those assets into the TSP if they begin working for the federal government. As a result, highly qualified private sector employees are probably discouraged from considering job opportunities in the federal government. It is not clear why Congress did not permit such rollovers. Perhaps Congress wanted to insulate the TSP from defects which may be found in other qualified plans. For example, prior to 1992 it was unclear whether the joint and survivor annuity rules would apply to a transfer of funds from a transferror plan. Recent changes in the tax law, i.e., the Unemployment Compensation Act of 1992, Pub. L. 102-318, 106 Stat. 209 (1992), and final regulations issued by the IRS interpreting it, have clarified the rules applicable to transfers and rollovers. Under those regulations, the TSP will not be subject to rules which are applicable to the transferror plan or IRA. It now appears that the provisions of the Internal Revenue Code (and IRS regulations) encourage the type of transaction contemplated by this section.

Under current law, participants in FERS can invest up to 10 percent of their salary with a government match of up to 5 percent. Participants in the Civil Service Retirement System (CSRS) can invest up to 5 percent of their salary. These current limits have proven overly restrictive, as Federal employees have become increasingly insecure about their retirement incomes. Employees face uncertainty due to factors such as the downsizing of the Federal workforce. In addition, half of all family heads in their late fifties possess less than \$10,000 in net financial assets. With the retirement of America's baby-boomers approaching, a sensible way to encourage Federal employees to take personal responsibility and increase their savings for retirement is clearly needed.

H.R. 2526 addresses the above-mentioned problems. This legislation would allow employees to invest up to the IRS limit of \$10,000 to the TSP without changing the government contribution. Employees entering the Federal workforce would be permitted, under this legislation, to "roll" money from a private sector 401(k) into the

TSP. This bill would also allow new Federal hires to begin contributing to the TSP immediately instead of waiting 6 to 12 months to start saving for their retirement. As under Federal law, the government's contribution would not begin until the second open season.

### III. LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

The Committee held no legislative hearings on H.R. 2526. Rep. Constance A. Morella (MD) introduced H.R. 2526 on September 23, 1997. The bill was referred to the Committee on Government Reform and Oversight. On September 29, 1997, the bill was referred to the Subcommittee on Civil Service. On July 21, 1998, the Subcommittee considered the bill, and forwarded the bill to the Committee on Government Reform and Oversight by voice vote. On July 23, 1998, the Committee on Government Reform and Oversight considered the bill, and ordered the bill to be reported to the House by voice vote.

### IV. COMMITTEE HEARINGS AND WRITTEN TESTIMONY

The Committee did not hold any hearings related to this legislation.

### V. EXPLANATION OF THE BILL AS REPORTED: SECTION-BY-SECTION

#### *Section 1. Percentage limitations on contributions*

Under current law, those who participate in the TSP may not contribute more than a fixed percentage of their basic pay. The caps are either 10% or 5%, depending upon their positions or whether they are in the FERS or CSRS retirement plans. This section eliminates those caps, which would permit individuals to contribute up to the limit established by the Internal Revenue Service. This section shall take effect 6 months after enactment or at such earlier date the Executive Director of the Federal Retirement Thrift Investment Board may prescribe by regulation.

#### *Section 2. Eligible rollover distributions*

This section amends 5 U.S.C. 8432 to permit employees and members to transfer to the TSP his or her account balance from a plan qualified under section 401(a) or 408(b) of the Internal Revenue Code or an Individual Retirement Arrangement (IRA) qualified under sections 408(a) or 408(b) to the TSP.

#### *Section 3. Immediate participation in the Thrift Savings Plan*

This section amends 5 U.S.C. 8432(b) to eliminate statutorily required waiting periods before employees and Members may contribute to the TSP. Under this section, such individuals shall be eligible to contribute on the day they began service or, if that is not administratively feasible, on the earliest date thereafter that the Executive Director determines to be feasible.

### VI. COMPLIANCE WITH RULE XI

Pursuant to rule XI, clause 2(1)(3)(A) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and

clause 3(f), the results and findings from Committee oversight activities are incorporated in the bill and this report.

#### VII. BUDGET ANALYSIS AND PROJECTIONS

Based upon revenue estimates prepared by the Joint Committee on Taxation, the Committee estimates that this legislation would decrease revenues in fiscal years 1999 through 2002 by \$869 million. The current level of revenues exceeds the revenue amount established in H. Con. Res. 84 for this period by \$3,075,000,000.

#### VIII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The Committee did not receive a cost estimate from the Congressional Budget Office before it was necessary to file this report.

#### IX. SPECIFIC CONSTITUTIONAL AUTHORITY FOR THIS LEGISLATION

Clauses 1 and 18 of Article I, Sec. 8 of the Constitution grant Congress the power to enact this law.

#### X. COMMITTEE RECOMMENDATION

On July 23, 1998, a quorum being present, the Committee ordered the bill favorably reported.

*Committee on Government Reform and Oversight—105th Congress.  
Rollcall*

Dated: July 23, 1998.

Final: Passage of H.R. 2526.

Offered by: Hon. Constance A. Morella (MD).

Adopted by voice vote.

#### XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1; SECTION 102(B)(3)

H.R. 2526 covers employees of the legislative branch who participate in the Thrift Savings Plan.

#### XII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104-4; SECTION 423

In the opinion of the Committee H.R. 2526 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not have any significant effects on the budgets of state, local, or tribal governments. The Committee has not received an estimate from the Congressional Budget Office.

#### XIII. FEDERAL ADVISORY COMMITTEE ACT (5 U.S.C. APP.) SECTION 5(b)

The Committee finds that H.R. 2526 does not establish or authorize establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 5, UNITED STATES CODE**

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**Subpart G—Insurance and Annuities**

\* \* \* \* \*

**CHAPTER 83—RETIREMENT**

\* \* \* \* \*

**SUBCHAPTER III—CIVIL SERVICE RETIREMENT**

\* \* \* \* \*

**§ 8351. Participation in the Thrift Savings Plan**

(a) \* \* \*

(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) An employee or Member may contribute to the Thrift Savings Fund in any pay period any amount not exceeding [5 percent of] the amount of the employee's or Member's basic pay for such period.

\* \* \* \* \*

**CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM**

\* \* \* \* \*

**SUBCHAPTER III—THRIFT SAVINGS PLAN**

\* \* \* \* \*

**§ 8432. Contributions**

(a) An employee or Member may contribute to the Thrift Savings Fund in any pay period, pursuant to an election under subsection (b)[(1)], an amount not to exceed [10 percent of] such individual's basic pay for such period. [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.] *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.*

(b)(1)(A) \* \* \*

(B) The amount to be contributed pursuant to an election under subparagraph (A) (or any election allowable by virtue of paragraph (4)) shall be the percentage of basic pay or amount designated by the employer or Member.

\* \* \* \* \*

(3) [Notwithstanding paragraph (2)(A), an] *An employee or Member who elects to become subject to this chapter under section 301 of the Federal Employees' Retirement System Act of 1986 may make the first election for the purpose of subsection (a) during the period prescribed for such purpose by the Executive Director. The period prescribed by the Executive Director shall commence on the date on which the employee or Member makes the election to become subject to this chapter.*

[(4)(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 period.]

(4) *The Executive Director shall prescribe such regulations as may be necessary to carry out the following:*

(A) *Notwithstanding subparagraph (A) of paragraph (2), an employee or Member described in such subparagraph shall be afforded a reasonable opportunity to first make an election under this subsection beginning on the date of commencing service or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.*

(B) *An employee or Member described in subparagraph (B) of paragraph (2) shall be afforded a reasonable opportunity to first make an election under this subsection (based on the appointment or election described in such subparagraph) beginning on the date of commencing service pursuant to such appointment or election or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election*

*becomes administratively feasible, as determined by the Executive Director.*

*(C) Notwithstanding the preceding provisions of this paragraph, contributions under paragraphs (1) and (2) of subsection (c) shall not be payable with respect to any pay period before the earliest pay period for which such contributions would otherwise be allowable under this subsection if this paragraph had not been enacted.*

*(D) Sections 8351(a)(2), 8440a(a)(2), 8440b(a)(2), 8440c(a)(2), and 8440d(a)(2) shall be applied in a manner consistent with the purposes of subparagraphs (A) and (B), to the extent those subparagraphs can be applied with respect thereto.*

*(E) Nothing in this paragraph shall affect paragraph (3).*

\* \* \* \* \*

- (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.

\* \* \* \* \*

- (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 distribution from a qualified trust. 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.*

\* \* \* \* \*

**§ 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(c)(1)] 8432 of this title or who makes contributions to the Thrift Savings Fund under section 8351 of this title.*

\* \* \* \* \*

(c)(1) \* \* \*

(2) Information under this subsection shall be provided at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title, 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.*

\* \* \* \* \*

#### **§ 8440a. Justices and judges**

(a)(1) \* \* \*

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to 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. *this chapter.*

(b)(1) \* \* \*

[(2) The amount contributed by a justice or judge shall not exceed 5 percent of basic pay.]

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

[(4) (3) 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 or chapter 84 of this title.

[(5) (4) 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) (5) 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) (6) Notwithstanding paragraphs [(4) and (5)] (3) and (4), 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 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.

#### **§ 8440b. Bankruptcy judges and magistrates**

(a) \* \* \*

(b)(1) \* \* \*

[(2) The amount contributed by a bankruptcy judge or magistrate for any pay period shall not exceed 5 percent of basic pay for such pay period.]

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

[(4) (3)(A) Section 8433(b) of this title applies to a bankruptcy judge or magistrate 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.

\* \* \* \* \*

[(5)] (4) With respect to bankruptcy judges and magistrates to whom this section applies, any of the actions described under paragraph [(4)(A)] (3)(A), (B), or (C) shall be considered a separation from service for purposes of this subchapter and subchapter VII.

[(6)] (5) 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)] (6) In the case of a bankruptcy judge or magistrate 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)] (7) Notwithstanding paragraph [(4)] (3), if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b) of section 8433, and such bankruptcy judge's or magistrate'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.

#### § 8440c. Claims Court judges

(a) \* \* \*

(b)(1) \* \* \*

[(2)] The amount contributed by a Claims Court judge for any pay period shall not exceed 5 percent of basic pay for such pay period.]

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

[(4)] (3)(A) Section 8433(b) of this title applies to a Claims court 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 Claims Court 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)] (4) With respect to Claims Court judges to whom this section applies, any of the actions described in paragraph [(4)(A)]

(3)(A) or (B) shall be considered a separation from service for purposes of this subchapter and subchapter VII.

[(6)] (5) 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)] (6) In the case of a Claims Court 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 Governments contribution to that person’s Thrift Savings Account, without regard to earning 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)] (7) Notwithstanding paragraph [(4)] (3), if any Claims Court 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.

**§8440d. Judges of the United States Court of Veterans Appeals**

(a)(1) \* \* \*

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) of this title for individuals subject to [chapter 84 of this title.] *this chapter.*

(b)(1) \* \* \*

[(2)] The amount contributed by a judge may not exceed 5 percent of the amount of the judge’s basic pay. Basic pay does not include any retired pay paid pursuant to section 7296 of title 38.]

(2) *For purposes of contributions made to the Thrift Savings Fund, basic pay does not include any retired pay paid pursuant to section 7296 of title 38.*

\* \* \* \* \*

