

*TITLE I—PROVISIONS RELATING TO FEDERAL EMPLOYEES  
RETIREMENT*

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**1 TITLE I—PROVISIONS RELATING**  
**2 TO FEDERAL EMPLOYEES RE-**  
**3 TIREMENT**

**4 SEC. 101. SHORT TITLE.**

*5 This title may be cited as the “Thrift Savings Plan*  
*6 Enhancement Act of 2009”.*

**7 SEC. 102. AUTOMATIC ENROLLMENTS AND IMMEDIATE EM-**  
**8 PLOYING AGENCY CONTRIBUTIONS.**

*9 (a) IN GENERAL.—Section 8432(b) of title 5, United*  
*10 States Code, is amended by striking paragraphs (2) through*  
*11 (4) and inserting the following:*

*12 “(2)(A) The Executive Director shall by regulation*  
*13 provide for an eligible individual to be automatically en-*  
*14 rolled to make contributions under subsection (a) at the de-*  
*15 fault percentage of basic pay.*

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

5       “(C) The regulations shall include provisions under  
6 which any individual who would otherwise be automati-  
7 cally enrolled in accordance with subparagraph (A) may—

8               “(i) modify the percentage or amount to be con-  
9 tributed pursuant to automatic enrollment, effective  
10 not later than the first full pay period following re-  
11 ceipt of the election by the appropriate processing en-  
12 tity; or

13              “(ii) decline automatic enrollment altogether.

14       “(D)(i) Except as provided in clause (ii), for purposes  
15 of this paragraph, the term ‘eligible individual’ means any  
16 individual who, after any regulations under subparagraph  
17 (A) first take effect, is appointed, transferred, or re-  
18 appointed to a position in which that individual becomes  
19 eligible to contribute to the Thrift Savings Fund.

20       “(ii) Members of the uniformed services shall not be  
21 eligible individuals for purposes of this paragraph.

22       “(E) Sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1),  
23 8440c(a)(1), 8440d(a)(1), and 8440e(a)(1) shall be applied  
24 in a manner consistent with the purposes of this para-  
25 graph.”.

1       (b) *TECHNICAL AMENDMENT.*—Section 8432(b)(1) of  
 2   *title 5, United States Code, is amended by striking the par-*  
 3   *enthetical matter in subparagraph (B).*

4   **SEC. 103. QUALIFIED ROTH CONTRIBUTION PROGRAM.**

5       (a) *IN GENERAL.*—Subchapter III of chapter 84 of  
 6   *title 5, United States Code, is amended by inserting after*  
 7   *section 8432c the following:*

8   **“§ 8432d. Qualified Roth contribution program**

9       “(a) *DEFINITIONS.*—For purposes of this section—

10           “(1) *the term ‘qualified Roth contribution pro-*  
 11       *gram’ means a program described in paragraph (1)*  
 12       *of section 402A(b) of the Internal Revenue Code of*  
 13       *1986 which meets the requirements of paragraph (2)*  
 14       *of such section; and*

15           “(2) *the terms ‘designated Roth contribution’*  
 16       *and ‘elective deferral’ have the meanings given such*  
 17       *terms in section 402A of the Internal Revenue Code*  
 18       *of 1986.*

19       “(b) *AUTHORITY TO ESTABLISH.*—The Executive Di-  
 20   *rector shall by regulation provide for the inclusion in the*  
 21   *Thrift Savings Plan of a qualified Roth contribution pro-*  
 22   *gram, under such terms and conditions as the Board may*  
 23   *prescribe.*

24       “(c) *REQUIRED PROVISIONS.*—The regulations under  
 25   *subsection (b) shall include—*

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

3                   “(A) by any individual who is eligible to  
4                   make contributions under section 8351, 8432(a),  
5                   8440a, 8440b, 8440c, 8440d, or 8440e; and

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

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

15           “(3) any other provisions which may be nec-  
16           essary to carry out this section.”.

17           (b) *CLERICAL AMENDMENT.*—The analysis for chapter  
18 84 of title 5, United States Code, is amended by inserting  
19 after the item relating to section 8432c the following:

          “8432d. Qualified Roth contribution program.”.

20 **SEC. 104. AUTHORITY TO ESTABLISH MUTUAL FUND WIN-**  
21 **DOW.**

22           (a) *IN GENERAL.*—Section 8438(b)(1) of title 5,  
23 United States Code, is amended—

24                   (1) in subparagraph (D), by striking “and” at  
25                   the end;

1           (2) in subparagraph (E), by striking the period  
2           and inserting “; and”; and

3           (3) by adding after subparagraph (E) the fol-  
4           lowing:

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

8           (b) *REQUIREMENTS*.—Section 8438(b) of title 5,  
9           United States Code, is amended by adding at the end the  
10          following:

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

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

18                   “(C) The Board may establish such other terms and  
19          conditions for the mutual fund window as the Board con-  
20          siders appropriate to protect the interests of participants,  
21          including requirements relating to risk disclosure.

22                   “(D) The Board shall consult with the Employee Thrift  
23          Advisory Council (established under section 8473) before  
24          authorizing the addition of a mutual fund window or estab-

1 *lishing a service that enables participants to invest in mu-*  
 2 *tual funds.”.*

3 (c) *TECHNICAL AND CONFORMING AMENDMENT.*—Sec-  
 4 *tion 8438(d)(1) of title 5, United States Code, is amended*  
 5 *by inserting “and options” after “investment funds”.*

6 **SEC. 105. REPORTING REQUIREMENTS.**

7 (a) *ANNUAL REPORT.*—*The Board shall, not later than*  
 8 *June 30 of each year, submit to Congress an annual report*  
 9 *on the operations of the Thrift Savings Plan. Such report*  
 10 *shall include, for the prior calendar year, information on*  
 11 *the number of participants as of the last day of such prior*  
 12 *calendar year, the median balance in participants’ ac-*  
 13 *counts as of such last day, demographic information on*  
 14 *participants, the percentage allocation of amounts among*  
 15 *investment funds or options, the status of the development*  
 16 *and implementation of the mutual fund window, the diver-*  
 17 *sity demographics of any company, investment adviser, or*  
 18 *other entity retained to invest and manage the assets of the*  
 19 *Thrift Savings Fund, and such other information as the*  
 20 *Board considers appropriate. A copy of each annual report*  
 21 *under this subsection shall be made available to the public*  
 22 *through an Internet website.*

23 (b) *REPORTING OF FEES AND OTHER INFORMATION.*—

24 (1) *IN GENERAL.*—*The Board shall include in*  
 25 *the periodic statements provided to participants*

1       under section 8439(c) of title 5, United States Code,  
2       the amount of the investment management fees, ad-  
3       ministrative expenses, and any other fees or expenses  
4       paid with respect to each investment fund and option  
5       under the Thrift Savings Plan. Any such statement  
6       shall also provide a statement notifying participants  
7       as to how they may access the annual report described  
8       in subsection (a), as well as any other information  
9       concerning the Thrift Savings Plan that might be use-  
10      ful.

11           (2) *USE OF ESTIMATES.*—For purposes of pro-  
12      viding the information required under this subsection,  
13      the Board may provide a reasonable and representa-  
14      tive estimate of any fees or expenses described in  
15      paragraph (1) and shall indicate any such estimate  
16      as being such an estimate. Any such estimate shall be  
17      based on the previous year’s experience.

18      (c) *DEFINITIONS.*—For purposes of this section—

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

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

1           (3) the term “account” means an account estab-  
 2           lished under section 8439 of title 5, United States  
 3           Code.

4 **SEC. 106. ACKNOWLEDGMENT OF RISK.**

5           (a) *IN GENERAL*.—Section 8439(d) of title 5, United  
 6           States Code, is amended—

7           (1) by striking the matter after “who elects to in-  
 8           vest in” and before “shall sign an acknowledgment”  
 9           and inserting “any investment fund or option under  
 10          this chapter, other than the Government Securities  
 11          Investment Fund,”; and

12          (2) by striking “either such Fund” and inserting  
 13          “any such fund or option”.

14          (b) *COORDINATION WITH PROVISIONS RELATING TO*  
 15          *FIDUCIARY RESPONSIBILITIES, LIABILITIES, AND PEN-*  
 16          *ALTIES*.—Section 8477(e)(1)(C) of title 5, United States  
 17          Code, is amended—

18          (1) by redesignating subparagraph (C) as sub-  
 19          paragraph (C)(i); and

20          (2) by adding at the end the following:

21          “(ii) A fiduciary shall not be liable under subpara-  
 22          graph (A), and no civil action may be brought against a  
 23          fiduciary—



1           “(I) for providing for the automatic enrollment  
2       of a participant in accordance with section  
3       8432(b)(2)(A);

4           “(II) for enrolling a participant in a default in-  
5       vestment fund in accordance with section 8438(c)(2);  
6       or

7           “(III) for allowing a participant to invest  
8       through the mutual fund window or for establishing  
9       restrictions applicable to participants’ ability to in-  
10      vest through the mutual fund window.”.

11 **SEC. 107. SUBPOENA AUTHORITY.**

12       (a) *IN GENERAL.*—Chapter 84 of title 5, United States  
13 Code, is amended by inserting after section 8479 the fol-  
14 lowing:

15 **“§ 8480. Subpoena authority**

16       “(a) In order to carry out the responsibilities specified  
17 in this subchapter and subchapter III of this chapter, the  
18 Executive Director may issue subpoenas commanding each  
19 person to whom the subpoena is directed to produce des-  
20 ignated books, documents, records, electronically stored in-  
21 formation, or tangible materials in the possession or control  
22 of that individual.

23       “(b) Notwithstanding any Federal, State, or local law,  
24 any person, including officers, agents, and employees, re-  
25 ceiving a subpoena under this section, who complies in good

1 *faith with the subpoena and thus produces the materials*  
 2 *sought, shall not be liable in any court of any State or the*  
 3 *United States to any individual, domestic or foreign cor-*  
 4 *poration or upon a partnership or other unincorporated as-*  
 5 *sociation for such production.*

6       “(c) When a person fails to obey a subpoena issued  
 7 under this section, the district court of the United States  
 8 for the district in which the investigation is conducted or  
 9 in which the person failing to obey is found, shall on proper  
 10 application issue an order directing that person to comply  
 11 with the subpoena. The court may punish as contempt any  
 12 disobedience of its order.

13       “(d) The Executive Director shall prescribe regulations  
 14 to carry out subsection (a).”.

15       (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The  
 16 table of sections for chapter 84 of title 5, United States  
 17 Code, is amended by inserting after the item relating to  
 18 section 8479 the following:

“8480. Subpoena authority.”.

19 **SEC. 108. AMOUNTS IN THRIFT SAVINGS FUNDS SUBJECT**  
 20 **TO LEGAL PROCEEDINGS.**

21       Section 8437(e)(3) of title 5, United States Code, is  
 22 amended in the first sentence by striking “or relating to  
 23 the enforcement of a judgment for the physically, sexually,  
 24 or emotionally abusing a child as provided under section  
 25 8467(a)” and inserting “the enforcement of an order for res-

1 *titution under section 3663A of title 18, forfeiture under*  
 2 *section 8432(g)(5) of this title, or an obligation of the Exec-*  
 3 *utive Director to make a payment to another person under*  
 4 *section 8467 of this title”.*

5 **SEC. 109. ACCOUNTS FOR SURVIVING SPOUSES.**

6 *Section 8433(e) of title 5, United States Code, is*  
 7 *amended—*

8 *(1) by inserting “(1)” after “(e)”;* and

9 *(2) by adding at the end the following:*

10 *“(2) Notwithstanding section 8424(d), if an employee,*  
 11 *Member, former employee, or former Member dies and has*  
 12 *designated as sole or partial beneficiary his or her spouse*  
 13 *at the time of death, or, if an employee, Member, former*  
 14 *employee, or former Member, dies with no designated bene-*  
 15 *ficiary and is survived by a spouse, the spouse may main-*  
 16 *tain the portion of the employee’s or Member’s account to*  
 17 *which the spouse is entitled in accordance with the following*  
 18 *terms:*

19 *“(A) Subject to the limitations of subparagraph*  
 20 *(B), the spouse shall have the same withdrawal op-*  
 21 *tions under subsection (b) as the employee or Member*  
 22 *were the employee or Member living.*

23 *“(B) The spouse may not make withdrawals*  
 24 *under subsection (g) or (h).*

1           “(C) *The spouse may not make contributions or*  
2           *transfers to the account.*

3           “(D) *The account shall be disbursed upon the*  
4           *death of the surviving spouse. A beneficiary or sur-*  
5           *living spouse of a deceased spouse who has inherited*  
6           *an account is ineligible to maintain the inherited*  
7           *spousal account.*

8           “(3) *The Executive Director shall prescribe regulations*  
9           *to carry out this subsection.”.*

10 **SEC. 110. TREATMENT OF MEMBERS OF THE UNIFORMED**  
11 **SERVICES UNDER THE THRIFT SAVINGS**  
12 **PLAN.**

13           (a) *SENSE OF CONGRESS.—It is the sense of Congress*  
14 *that—*

15               (1) *members of the uniformed services should*  
16               *have a retirement system that is at least as generous*  
17               *as the one which is available to Federal civilian em-*  
18               *ployees; and*

19               (2) *Federal civilian employees receive matching*  
20               *contributions from their employing agencies for their*  
21               *contributions to the Thrift Savings Fund, but the*  
22               *costs of requiring such a matching contribution from*  
23               *the Department of Defense could be significant.*

1       **(b) REPORTING REQUIREMENT.**—*Not later than 180*  
2 *days after the date of the enactment of this Act, the Sec-*  
3 *retary of Defense shall report to Congress on—*

4           *(1) the cost to the Department of Defense of pro-*  
5 *viding a matching payment with respect to contribu-*  
6 *tions made to the Thrift Savings Fund by members*  
7 *of the Armed Forces;*

8           *(2) the effect that requiring such a matching*  
9 *payment would have on recruitment and retention;*  
10 *and*

11           *(3) any other information that the Secretary of*  
12 *Defense considers appropriate.*